

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES
TO CHILD SEXUAL ABUSE

AT SYDNEY

PUBLIC INQUIRY INTO

THE RESPONSE OF SHALOM CHRISTIAN COLLEGE TO ALLEGATIONS OF
CHILD SEXUAL ABUSE

(CASE STUDY 45)

SUBMISSIONS IN REPLY ON BEHALF OF MR CHRISTOPHER SHIRLEY

INTRODUCTION

1. These submissions are made on behalf of Mr Christopher Shirley and address the findings proposed by Counsel Assisting.
2. Those participating in these proceedings have the advantage of hindsight and information that was not available to Mr Shirley when he made decisions or responded to events in real time. The benefit of hindsight is easily articulated but, in practice, the considerable advantages of hindsight are hard to ignore.
3. It is submitted that those participating in the proceedings must be vigilant about the prejudice hindsight can impose in retrospective assessments of past actions. This is particularly so in relation to findings that involve serious criticisms of past actions which are likely to have serious consequences and be distressing to persons called before the Commission.

4. Before proceeding to deal with the proposed findings in detail, set out below is a chronological summary of the evidence given by Mr Shirley.

5. Mr Shirley has approximately 30 years experience in education across four Australian states, with more than 20 years at the level of educational administration,¹ although none of that experience was in boarding houses or indigenous schools.² He was the principal of Shalom Christian College between 2003-2008 and he remains the longest serving principal.³ When he began in 2003, the principal's office had no desk, no chair, no computer and no filing system of any kind. At the end of his tenure, the school had undergone significant improvements.

6. The student population was made up of students from various communities, all with different and complex social needs. The level of literacy and basic education was far below standard measures. To various degrees, students at the school were affected in the community by the use of alcohol, marijuana, petrol sniffing, gambling and significant under employment. The prevalence of child sexual abuse was high, in the vast majority of cases, students identified as victims of sexual abuse had suffered that abuse before arrived at SCC⁴. He estimated that 'one Shalom year equaled 20 previous years' and that equated to 'at least 5 instances of child sexual abuse each term, 20 a year' with the vast majority occurring off campus.

7. In 2005, he created the Health and wellbeing Centre to deal with these and other issues and employed one fulltime counsellor, in addition to other health professionals. Inadequate funding did not

¹ Exhibit 45-051, Statement of Christopher Shirley

² Transcript 22731, 35

³ Exhibit 45-051, Statement of Christopher Shirley

⁴ Exhibit 45-051, Statement of Christopher Shirley

allow for any additional staff and this issue was raised by him with the Board regularly.⁵

8. During his tenure, Mr Shirley was recognized as a leader in indigenous education for boarding students and as result secured additional funding and oversaw significant upgrades to the school including completely new boarding facilities.

9. Mr Shirley gave unchallenged evidence that his normal practice with respect to child sexual abuse, and the procedure he implemented within the school was to immediately report all instance to the authorities. His practice was to over report rather than underreport, making no judgment on the specifics of each case. He said, *'my standard response...to contact child protection...on the bottom of the report that came to me, not the one that's on the screen at the moment, but the previous report. I would have written the date I made the call, the time I made the call, the person who I spoke to...and the action that they recommended.'*⁶ *As I said, for personal reasons, I overreport. I don't make any judgment about the information that comes to me about inappropriate sexual behaviour or sexual abuse. I send that straight to Child Safety and to JAB, and I keep detailed records of that.*⁷

10. Mr Shirley gave evidence regarding the events relating to CLF. Mr Shirley's uncontested evidence is that detailed records were maintained by him regarding this and other instances at the school. These records which include a child protection file and student file have not been produced to the Royal Commission. At the end of his tenure those records were in the possession of the school. Mr Shirley have evidence that those documents had records of all actions made by him with respect to this matter and without those records he was relying on his memory in answering questions.

⁵ Transcript 22734, 21 – 22737, 32

⁶ Transcript 22744

⁷ Transcript 22765

11. Mr Shirley gave evidence that he first became aware of the 23 March incident on the afternoon of 28 March when he was provided a copy of the incident report by the house master. Mr Shirley's evidence was that the original copy of the incident report contained hand written notes on the bottom of the page recording all actions undertaken by him.⁸ That document has not been located.
12. He said, at the time of receiving the report he was unclear as to what exactly had occurred as he understood CLF had previously denied the substance of the reports. Nonetheless, his immediate action was to ensure the safety of CLF until she was able to talk with somebody with whom she had developed a relationship.⁹ He contacted the boarding house to ensure that she was physically safe until he could activate the health services for another interview or support the following day.¹⁰ He also contacted Ms Benjamin, advising her of the situation and requested that she see CLF.
13. On 29 March, he notified child safety and notified JAB.¹¹
14. Following CLF's meeting with Ms Benjamin, he arranged for her to be moved to the Crystal Creek Campus. He did this to ensure her safety and to maintain the integrity of the police investigation. He said, *'my understanding of the dynamics was that there was a high potential that the other girls would have become physical in their belief of what had actually occurred, and, in a sense done things to CLF that wouldn't be safe for her. I was also aware, having been in contact with the police, that they were in the process of activating a warrant and that warrant would have meant that the boys were going to be visited by police early in the morning and potential for them to be arrested. So I needed to keep the boys onsite, unaware that that was going on, so*

⁸ Transcript 22753

⁹ Transcript 22756, 42-46

¹⁰ Transcript 22755, 15-18

¹¹ Transcript 22759, QLD.0137.001.0988

*they couldn't dispose of any clothing or anything else that would provide evidence, and that they wouldn't abscond from the place.'*¹²

15. On 30 March, he arranged for CLF to be returned to the main campus for her to meet with police and provide a statement. This was cancelled by CLFs parents.¹³ CLF was then returned to the Crystal Creek campus until her parents could arrive.¹⁴ On 2 April, he met with CLFs parents.

16. He gave evidence that he had a 'recollection of Ms Oxenburgh and myself discussing the support services that would be put in place and coordinating that with Ms Benjamin, Ms Oxenburgh and the external services.'¹⁵

17. The chronology of events, clearly demonstrates that Mr Shirley's acted swiftly to ensure the physical and psychological safety of CLF upon being notified of the allegations. To his credit, Mr Shirley accepted that with the benefit of hindsight he could have taken different steps. That concession does not however, support a finding that he acted inappropriately.

18. It is submitted that Mr Shirley acted appropriately and in a timely manner, particularly when this issue is assessed without the benefit of hindsight and with proper regard to the resources available to him at the time.

Evidence of EAL and EAM

19. The evidence of EAM and EAL was contested in the following respects;

¹² Transcript 22760, 43 – 22761, 12

¹³ Transcript 22761, 32 -40

¹⁴ Transcript 22761, 32 – 22962, 3

¹⁵ Transcript 22762

- a The normal practice at SCC, was for students from out of town to attend the school with their parents on the first day for an orientation. The parents were shown around the school and permitted to sit in on classes and dine with their child.¹⁶ He is not able to provide an explanation as to why this did not occur in this case.
- b The school was never in the condition described by EAM and EAL. Ms Bridson gave evidence that she had worked at the school for 6 years as at 2006 and had never seen the school in the state described by EAL and EAM. Specifically, that the grounds were always well maintained and the grass was never overgrown to hip height as described. Graffiti was not prevalent and rubbish was not floating in drains.¹⁷
- c It is incorrect that the school did not contact police. Mr Shirley's evidence is that he contacted child safety and JAB on 29 March 2006. The police documents support this evidence¹⁸ as do Ms Bridson's case management notes.¹⁹
- d Counselling support was provided to CLF by Ms Bridson and offered to CLFs parents.²⁰ In addition, Mr Shirley said, *'well, I would have gone down that process...and that would have been the procedure by which we alerted each other about things that were happening...we would discuss incidents and then different people would take that off for appropriate action.'*²¹

¹⁶ Exhibit 45-049, Supplementary statement of Amy Frances Bridson

¹⁷ Exhibit 45-049 Supplementary statement of Amy Frances Bridson

¹⁸ QLD.0137.001.0988

¹⁹ Exhibit 45-049, Supplementary statement of Amy Frances Bridson

²⁰ Exhibit 45-049, Supplementary statement of Amy Frances Bridson

²¹ Transcript 22747,4

- e SCC did not take boarders from the Townsville area and the boys involved in this incident were not older students studying apprenticeships.²²

- f Mr Shirley does not accept that he conveyed to EAM and EAL that they should not proceed with the criminal process. He said in evidence, *'It doesn't make sense to me that - no, I didn't say that. I'd already activated procedures before they arrived and if matters had progressed the way that had been planned, then [CLF] would have been - made her statement to the Juvenile Aid Bureau prior to them arriving, but that was stopped.'*²³

- g Mr Shirley agreed that he told EAM and EAL about rumours relating to CLF. He said, 'my only intent in explaining to them why I moved CLF and not the boys was to convey I was totally focused on her safety.'²⁴ He denies that he in way sought to blame CLF for what had occurred.

Findings proposed by Counsel Assisting,

20. Before addressing proposed findings 16 -22, the following observations are made.

21. Those participating in these proceedings have the advantage of hindsight and information that was not available to Mr Shirley when he made decisions or responded to events in real time. The benefit of hindsight is easily articulated but, in practice, the considerable advantages of hindsight are hard to ignore.

²² Exhibit 45-049, Supplementary statement of Amy Frances Bridson

²³ Transcript 22777

²⁴ Transcript 22766, 1-5

22. It is submitted that those participating in the proceedings must be vigilant about the prejudice hindsight can impose in retrospective assessments of past actions. This is particularly so in relation to findings that involve serious criticisms of past actions which are likely to have serious consequences and be distressing to persons called before the Commission.
23. Secondly, there was no question or challenge concerning the motivations or bona fides of Mr Shirley. There was no suggestion that he was not highly motivated to protect the children in his care and act appropriately in every instance of child sexual abuse. On more than one occasion, Mr Shirley stated that for personal reasons he tended to over report rather than under report instances of child sexual abuse. This was unchallenged and supported by the evidence given by Ms Benjamin. [footnote]
24. Thirdly, based on his extensive experience as a teacher and principal, he provided opinion evidence regarding the prevalence of child sexual abuse of students at SCC. This is clearly evidence of his ability to recognize such abuse and provides some insight into the difficult and challenging environment of the school.
25. Finally, in assessing the actions of Mr Shirley, one must recognize the extreme pressure that he and other staff worked under with very troubled teenagers who brought with them 'significant traumas' from their communities and with gross under funding and Board management that was not capable of addressing the 'extreme needs' of the school community.

Proposed Finding 16-18

26. The seriousness of the allegations in proposed findings 16 – 18 and the gravity of the consequences flowing from such findings must

affect the answer to the question whether an issue has been proved to the requisite 'reasonable satisfaction' of the Commission.²⁵

27. Mr Shirley denies that he failed to report the incident of 26 February 2006 to Child Safety Office or the police/Juvenile Aid Bureau. He submits that given the lack of documentary records, it is not possible to reach a determination to the requisite standard.

28. Mr Shirley gave clear and uncontested evidence that is standard practice was to report all instances of child sexual abuse to authorities. He said on more than one occasion, that for personal reasons his policy and the policy he implemented in the school was to overreport rather than underreport matters. He said, *'for personal reasons, I overreport. I don't make any judgment about the information that comes to me about inappropriate sexual behaviour or sexual abuse. I send that straight to Child Safety and to JAB, and I keep detailed records of that.'*²⁶

29. There is no evidence to suggest that he diverted from his usual practice in this instance.

30. Responding to questions about this specific matter, he said, *'my standard response, which would have been to contact child protection...on the bottom of the report that came to me, not the one that's on the screen at the moment, but the previous report. I would have written the date I made the call, the time I made the call, the person who I spoke to...and the action that they recommended.'*²⁷ And further *'Yes. I understand that to be the case, but my records that I left at Shalom aren't there and that is what I would have done.'*²⁸

²⁵ *Briginshaw v Briginshaw* (1990) 170 CLR 596; Royal Commission into Institutional Responses to Child Sexual Abuse, Practice Guideline 1 at [91] – [92]

²⁶ Transcript 22765

²⁷ Transcript 22744,

²⁸ Transcript 22744, 22

31. It became apparent that the state of the available records was unsatisfactory. Mr Shirley gave unchallenged evidence regarding his recording system. He gave detailed evidence regarding the extent of the records he maintained with respect to this and other instances. Those documents are no longer able to be located. Without the assistance of those primary records, it is submitted that it is impossible to find to the requisite standard that Mr Shirley failed to report the matter. In addition, the documents that have been produced contained a number of errors which affect their reliability.
32. Personal reputation is an interest that should not be damaged by an official finding after a statutory enquiry unless the person whose reputation is likely to be affected has had a full and fair opportunity to show why the finding should not be made: *Annetts v McCann* (1990) 170 CLR 596 per Mason CJ, Deane, and McHugh JJ at 603 and Brennan J at 608-609; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 per Mason CJ, Dawson, Toohey and Gaudron JJ at 578-579. The absence of those records through no fault of Mr Shirley has significantly affected his ability to respond to the suggestion that he failed to report the matter.
33. Proposed finding 17 is a serious finding which, as stated above, would have significant consequences. For the Commission to be reasonably satisfied of the factual foundation underpinning proposed finding 17, a high degree of probability is required. For the reasons stated, the proposed findings are not available on the evidence before the Commission.

Louise Jardim

16 January 2017