

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES  
TO CHILD SEXUAL ABUSE

AT SYDNEY

**CASE STUDY 45  
PUBLIC INQUIRY INTO  
CHILDREN WITH PROBLEMATIC OR HARMFUL SEXUAL BEHAVIOURS  
IN SCHOOLS**

**SUBMISSIONS IN RESPONSE ON BEHALF OF EAA**

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**INTRODUCTION**

1. EAA adopts and endorses the submissions made by Counsel Assisting the Royal Commission ('Counsel Assisting').
2. He wishes to make the following further submissions in response.

**SUBMISSIONS**

3. EAA accepts the summary of his evidence by Counsel Assisting at paragraphs [14]-[24], and the summary of his son CLA's evidence at [25]-[32]. EAA supports Counsel Assisting's submissions that the evidence points inexorably to available findings AF1-AF8.
4. CLA experienced very serious sexual abuse by his peers whilst a boarder at Trinity Grammar School. It happened on a significant number of occasions. Wooden dildos were used to penetrate him. This occurred on occasion within the sight and earshot of the other boarders. CLA was not the only boarder who was abused, physically and sexually. Understandably, EAA is still left with concerns about Trinity Grammar as an institution in its response to the issues raised in evidence. It is submitted that further findings are available from the evidence in this case which are consistent with Counsel Assisting's summary of the evidence.
5. Dr Wendy O'Brien was asked by Counsel Assisting to confirm, *"that in terms of the impact of the behavior on the children who are the subject of it, the research suggests that the impact is as severe with child-on-child behavior as it is with adult perpetrators?"* CLA's abuse is an example of all of the aspects of her answer:

*That's correct. And that's one of the key reasons why we need to counter the incorrect responses that dominate when incidents occur. One is to minimise,*

*silence and to sweep under the carpet and reputational concerns of a variety of kinds come to play in that area; but so, too, do community standard around idealised childhood and so on. There is a great reluctance to acknowledge that children could behave in this way, so denial, a culture of denial and shame and silencing occurs in that space.<sup>1</sup>*

### **A culture of bullying and silencing in the Boarding House at Trinity Grammar School**

6. It is respectfully submitted that this Commission should find that there was a culture of bullying within the boarding house, whilst CLA was a boarder there; and, also, a culture of silence. In order for this Commission to report fully on the institutional response to CLA's abuse, it must recognise the relevant cultural factors in which the abuse occurred, and influencing the delay in CLA's complaint. The existence of a bullying culture at The King's School has been recognised by Counsel Assisting in his submissions AF13, but not in relation to the boarding house at Trinity Grammar. The evidence supports such a finding, in the proper application of the *Briginshaw* test, based upon the evidence that follows.
7. CLA's written statement was tendered without objection. In it, as noted by Counsel Assisting at paragraph 26 of his Submissions, CLA stated that he was also aware that 'the boarding house had a reputation for being a rough and tough environment for boys,'<sup>2</sup> and that his first few weeks in the boarding house showed the rumours to be true.<sup>3</sup> CLA said that he witnessed many incidents of racial bullying and that violence between boys was 'endemic' and part of the 'boarding house culture' which imposed a 'clear hierarchy' with year 7 and 8 students at the bottom and year 12 students at the top.<sup>4</sup> CLA stated 'What amplified this situation was an unspoken culture of silence, as 'dobbing' on fellow boarders was a sign of betrayal and ultimately, weakness.'<sup>5</sup>
8. CLA stated,
  - . *What happened to me was not an isolated incident, but manifested itself from a culture of hierarchical bullying, where young vulnerable middle school boys (years 7-9) were subject to assaults and bullying from senior boys (years 11-12) in the boarding school. A culture that was entrenched before I arrived.<sup>6</sup>*
9. The incident reports compiled in the immediate aftermath of the CLB boot polish incident also speak of extensive and systemic violence. The following examples are not exhaustive. CLB's incident report complained that "*this wasn't the first time that they and more have tried to rape me or anyone else.*

<sup>1</sup> Transcript of EAA, Case Study 45, 20 October 2016, T21657:44-T21658:6.

<sup>2</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [6]-[7].

<sup>3</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [8]-[9].

<sup>4</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [9].

<sup>5</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [9].

<sup>6</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [34].

... One of them made a dildo in wood tech and they use that to stick up people's butts, but I haven't seen them do that for a while and they didn't use it on me today.<sup>7</sup>

10. DFB's Incident Report speaks of such a culture:

*In the boarding house when people came into the dorm instead of giving them Boarding house punishments people (including myself) would pretend to have sex with them as a joke and some fun. But bullying has been apart (sic) of boarding house life even before I came to this school.*

*There has been organised rumbles there is almost a verbal fight every night but that is part of being in the boarding house.*

*It has happened to almost every person in the boarding house at one stage but mostly when they were in there (sic) younger years. It just happens when you live with sixty other boys.<sup>8</sup>*

11. CLA gave evidence in his statement that there was a lack of supervision in the boarding house in 2000, and that most of the assaults occurred during periods when no staff members supervised the boys. This is also manifestly clear from the very facts that opportunities for extensive assaults and sexual assaults occurred, also that the perpetrators could store their weapons within their possessions in the dormitories either without detection, or without any sanction upon discovery.

12. CLA's evidence was that, after making the complaint, he was left unsupervised to fend for himself and *'this resulted in a number of senior boarders seeking retribution.'*<sup>9</sup> He was bullied and he removed himself from Trinity a few days later. EAA's evidence was that, some time in November 2000 (ie after the commencement of the police investigation, but prior to the boys' guilty pleas in February 2011), CLA phoned home from the boarding house and said that he was being bullied. One of the perpetrators' older brothers had said to CLA, *'you will be leaving this school before I will'* and *'you're a dobber.'* CLA had said to EAA, *'I can't take this anymore.'* EAA gave evidence that he lost it, and told his wife, *'tell him I'm on my way down. I'm withdrawing him from the school,'* and he collected his son from the school.<sup>10</sup>

13. Boarding house master, Robert Scott, accepted that there was a culture of silence (which he described as a "code of silence") which meant that the boys felt compelled never to dob on their mates, even if dangerous or threatening behavior was occurring.<sup>11</sup> Instances of bullying had gone unreported in

<sup>7</sup> Exhibit 45-002, Case Study 45, TRIN.0006.001.0022\_R (Tab 8).

<sup>8</sup> Exhibit 45-002, Case Study 45, TRIN.0006.001.0025\_R (Tab 3).

<sup>9</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [24].

<sup>10</sup> Transcript of EAA, Case Study 45, 20 October 2016, T21682:37-47.

<sup>11</sup> Transcript of R Scott, Case Study 45, 21 October 2016, T21796:11-18.

consequence, and the victim was too afraid to report because of the fear of possible retribution.<sup>12</sup>

14. CLA's view that violence was 'endemic' was supported by the institutional witnesses in this case. The evidence is complicated by the widespread discursive use of the terms "rumbling," and "horseplay." CLA's evidence was that there were incidents where wrestling would get out of hand, *'I believe Mr Green, Mr Scott and Mr Cujes called these 'rumbling'.*<sup>13</sup> Certainly, rumbling and horseplay were endemic in the boarding house.
15. The term "rumble," or some variant of it, is used in most of the Incident Reports and complaints by the boarding house residents after the boot polish incident.<sup>14</sup> Counsel Assisting has summarised the references by the institutional witnesses to what rumbling is, and the characterisation of the boot polish incident by Mr Green as rumbling at paragraph 40. EAA submits that the discourse of rumbling, when amplified by consideration of the particulars that the incident reports were describing, demonstrates a cultural issue and this Commission should so find. Indeed, Mr Green testified that where Kate Lumsdaine (née) Pearce was reporting that CLB had said that "this" had happened on 50 occasions, he took that to mean that he had been rumbled on many occasions.<sup>15</sup>
16. Mr Green accepted in his evidence upon questioning by the Chair that the information received following the boot polish incident bespoke a serious behavioural issue in multiple boys in the boarding house. He also accepted that that behavior issue went beyond even bullying in the ordinary sense. It was really serious criminal conduct.<sup>16</sup> Mr Green testified that he realised that he had a really serious problem in the boarding house. The events were clearly not isolated, there were a number of offenders within the boarding house, and sexual assaults had occurred within the boarding house, involving a weapon. He had, though, characterised these assaults and sexual assaults as rumbling, which led to three boarders being sent home for the weekend.
17. On 7 September 2000, Kate Lumsdaine wrote to the Headmaster Mr Cujes and stated what seems incontrovertibly clear: *"There is much to be done to change the culture of the Boarding House so that all the students can live together without tension or fear."*<sup>17</sup> In EAA's opinion, *"Trinity had a culture and a tolerance of roughing up and bullying at the school, where senior students saw it as their right to bully younger, more vulnerable boys. The school did not have adequate procedures in place to deal with serious matters and the school held*

<sup>12</sup> Transcript of R Scott, Case Study 45, 21 October 2016, T21797:26-32.

<sup>13</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [10].

<sup>14</sup> See, eg, Exhibit 45-002, Case Study 45, TRIN.0006.001.0020\_R (Tab 2); TRIN.0006.001.0025\_R (Tab 3); TRIN0006.001.0021\_R (Tab 7); TRIN.0006.001.0026\_R (Tab 13).

<sup>15</sup> Transcript of P Green, Case Study 45, 21 October 2016, T21759:33-39.

<sup>16</sup> Transcript of P Green, Case Study 45, 21 October 2016, T21754:39-45-T21755:43.

<sup>17</sup> Exhibit 45-002, Case Study 45, TIN.0006.001.0056\_R (Tab 18).

a 'boys will be boys' attitude, failing to identify harmful and bullying behaviours."<sup>18</sup> This opinion is borne out by the evidence of what was known to Ms Lumsdaine, Mr Green, Mr Scott, and Mr Cujes on 11 August 2000 (consequential to AF1-AF3). Mr Cujes accepted in his evidence that back in 2000 and 2001, there was "a problem with a subculture in the boarding house" (though he did not accept that there was a problem with the culture at the boarding house or at the School).<sup>19</sup>

18. As in the case of the Kings School, a bullying culture existed at Trinity Grammar in the Boarding House in 2000 and 2001. That was accompanied by a culture or code of silence. This was largely accepted by the institutional witnesses. The Commission should so find.

### **Lack of adequate pastoral care**

19. It is submitted that this Commission should find that the evidence leading to the Available Findings supports a separate finding that the pastoral care provided to the boarders at Trinity Grammar was inadequate. There are two issues in this submission. The first relates specifically to Trinity Grammar's omission in both CLB and CLA's circumstances to provide any information or intelligence to their caregivers of their knowledge or suspicion that either child had been sexually abused. The second follows from EAA's first submission in this outline – alongside the culture of bullying and silence within the boarding house, there was inadequate pastoral care provided to the boarders generally.
20. Counsel Assisting has concluded at AF5 that Mr Green and Mr Scott did not inform CLB's grandfather about his allegations that he had been sexually assaulted, and they should have done so. EAA supports this finding and the other findings (as mentioned). Similarly, no one from the School advised EAA or EAB that CLA had been the victim of sexual abuse. Though EAA accepts that by the time CLA's complaints were known, the School may have considered itself restricted from discussing particulars of his abuse, it is impossible to fathom why no information whatsoever was provided to them as to their son's extensive victimisation.
21. The necessity of informing parents of a child's complaint may appear to be intuitive; we can also draw on Dr Wendy O'Brien's expert evidence emphasising the necessity of involving parents and caregivers in the earliest response to a child's complaint:

*The first priority for an adult responder is to ensure safety, to ensure the physical safety of both children. That requires resources, because in that moment, of course, the children need to be separated. They need to be separated calmly and respectfully, and there need [sic] to be other adult responders around to ensure the immediate physical wellbeing of that child.*

<sup>18</sup> Transcript of EAA, Case Study 45, 20 October 2016, T21686:1-7.

<sup>19</sup> Transcript of M Cujes, Case Study 45, 21 October 2016, T21874:13-17, 27-31.

*It's then important that parents and caregivers are made aware of what has occurred and that needs to occur immediately, and there are many reasons for this, but amongst these is the fact that the children will be seeking the support of the person that perhaps they are closest to. So a child that is newly traumatised should not be severed from their closest natural supports, which are their parents, so reporting to parents in a respectful, calm way is something that needs to occur.<sup>20</sup>*

22. As noted by Counsel Assisting at [32], CLA was not offered any support when he returned to the boarding house at Trinity after the assaults were made public. He was left unsupervised to fend for himself and *'this resulted in a number of senior boarders seeking retribution.'*<sup>21</sup> He was bullied and he removed himself from Trinity a few days later. CLA said that Mr Cujes and Mr Scott, the persons his parents put their trust in to be his guardian at school, failed to protect him at Trinity.<sup>22</sup>

23. EAA's evidence to this Commission highlights the qualitative impact of the School's inadequate pastoral care of EAA:

*For a school that prided itself on its pastoral care and its open communication with parents, I think how we found out [about CLA's abuse] was appalling. The School should have contacted us directly, as soon as they reasonably knew that something had happened to our son, some four weeks before receiving a phone call from DoCS.<sup>23</sup> ...*

*The first time we became aware of the details of the assault against [CLA] was when we received the transcript of [CLA]'s police interview. I read it together with my wife at home. It was disgusting. No-one ever told us anything more than that the assault against [CLA] was 'serious.' We had no idea of the nature of the assault – that it was actually rape, that [CLA] had been tied up, and that it had happened to him at least 50 times. I still cannot believe that the school never told us what happened to [CLA] in the boarding house on their watch.<sup>24</sup>*

24. There was a clear dissonance between the pastoral care that EAA had relied upon as being available to his son, and what was in fact available. EAA's sworn evidence was that he chose Trinity Grammar School for his son for reasons including that it had a good reputation, particularly relating to its pastoral care.<sup>25</sup>

25. In the circumstances described in this case study, and in view of the culture or code of silence that existed within the boarding house, a lack of adequate pastoral care contributed to an environment in which abuse occurred, but also

<sup>20</sup> Transcript of W O'Brien, Case Study 45, 20 October 2016, T21663:6-23.

<sup>21</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [24].

<sup>22</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [24].

<sup>23</sup> Transcript of EAA, Case Study 45, 20 October 2016, T21676: 26-28.

<sup>24</sup> Transcript of EAA, Case Study 45, 20 October 2016, T21679:25-34.

<sup>25</sup> Transcript of EAA, Case Study 45, 20 October 2016, T21678:16-21.

in which children silenced themselves, as they had no or inadequate opportunity to seek the assistance of a trusted adult.

### **Kate Lumsdaine (née) Pearce's investigation**

26. Counsel Assisting has concluded that findings are available that:

- a. 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 the police (AF4);
- b. 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 (AF6);
- c. 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 (AF7).

27. EAA supports these findings. It is however submitted that this Commission should find that, had Kate Lumsdaine (née) Pearce not investigated, it was unlikely that the allegations of CLA would have come to light. Furthermore, Ms Lumsdaine's investigation into the allegations made by CLB in his incident report, and orally on 11 August 2000, was performed of her own initiative and not pursuant to any deliberate delegation of responsibility by Mr Green or Mr Cujes. These findings are perhaps implicit in Counsel Assisting's recommendations as to Available Findings, but in EAA's submission they should be made emphatically clear.

28. The potential for conflict arises from Peter Green's police statement in the matter of the assault of CLA and CLB, dated 18 October 2000, in which he stated, "*The follow up inquiries in relation to the boys who were the victims of the bullying were left in the hands of Kate Pearce.*"<sup>26</sup> However, when Mr Green was taken by Counsel Assisting to his statement to police in the matter of the assault of CLA and CLB, dated 18 October 2000, in which he included the phrase, "*The follow up inquiries in relation to the boys who were the victims of the bullying were left in the hands of Kate Pearce,*" his answer was,

*And that is true - the pastoral care that we would expect normally from our counsellors when boys have had a situation like that or have been upset or whatever else.*<sup>27</sup>

29. If Mr Green's answer is confined to leaving pastoral care in Ms Lumsdaine's hands, the conflict is resolved. There is no basis for any suggestion that either Mr Green or Mr Cujes left responsibility for a proper investigation of past assaults and sexual assaults in the boarding house, and continuing risks, in the

<sup>26</sup> Exhibit 45-002, Case Study 45, TRIN.0006.001.0205\_R (Tab 52).

<sup>27</sup> Transcript of P Green, Case Study 45, 21 October 2016, T21749:10-12.

hands of Kate Lumsdaine. In EAA's submission, Ms Lumsdaine deserves the credit for that investigation – indeed, her view expressed to Mr Cujes, in her email of 17 February 2001 that she faced opposition for taking the matter further, appears to be entirely appropriate.

30. The events of 11 August 2000 have been well explored in Counsel Assisting's submissions and that evidence and the consequential findings will not be repeated here. CLA's evidence from his written statement was that there were no formal investigations by the school into the incidents.<sup>28</sup>
31. Counsel Assisting discusses and evaluates the evidence relating to Trinity's investigations after 11 August 2000 at paragraph 76 and following. Mr Scott accepted in his evidence that it was partly his responsibility and partly Mr Green's responsibility to conduct any subsequent investigation.<sup>29</sup>
32. As noted by Counsel Assisting at paragraph 83, Ms Lumsdaine's evidence was that she spoke to another psychologist employed by the school, Mr Paull Mayne, about what she had been told on 11 August 2000, and that she believed that *"absolutely nothing would be done about it by Rob Scott and Peter Green."*<sup>30</sup> Mr Mayne suggested that she gather all of the information and give it to Mr Cujes. Her investigation ensued.
33. Mr Green accepted in his sworn evidence that, had Kate Lumsdaine not done her investigating, it was unlikely that anything more would have come to light about the allegations, beyond that which he discovered by 12 August.<sup>31</sup>
34. Notwithstanding this acceptance by Mr Green, Mr Cujes in his sworn evidence endeavoured to claim that, on 11 August 2000, he believed that the matter wouldn't be left in abeyance or unexplored after the meeting of 11 August 2000, and Ms Lumsdaine was one of *"the three people involved [who] would continue to look into the matter."*<sup>32</sup> He disputed Ms Lumsdaine's evidence that she conducted the interview with the boys off her own bat, not at the request of Mr Green or himself or anyone else, and testified that it was common practice than any follow up would involve a team effort, between Mr Scott, Mr Green and Mrs Pearce.<sup>33</sup> He *"asserted"* that Mr Scott contributed by supporting the process that Mrs Pearce made, giving *"the situation an opportunity to come forward."*<sup>34</sup> He maintained that assertion in spite of Mr Scott's evidence that the informal investigation that Mr Scott purported to conduct didn't turn up a single complaint.<sup>35</sup> Mr Cujes' endorsement of the *"joint effort"* was repeated, when

<sup>28</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [25].

<sup>29</sup> Transcript of R Scott, Case Study 45, 21 October 2016, 21812:15-19.

<sup>30</sup> Transcript of K Lumsdaine, Case Study 45, 20 October 2016, 21705:8-32; Exhibit 45-002, Case Study 45, TRIN.0005.001.0324\_R (Tab 98).

<sup>31</sup> Transcript of P Green, Case Study 45, 21 October 2016, T21786:2-12.

<sup>32</sup> Transcript of M Cujes, Case Study 45, 24 October 2016, T21859:6-12.

<sup>33</sup> Transcript of M Cujes, Case Study 45, 24 October 2016, T21859:36-40.

<sup>34</sup> Transcript of M Cujes, Case Study 45, 24 October 2016, T21860:5-7; 29.

<sup>35</sup> Transcript of M Cujes, Case Study 45, 24 October 2016, T21860:47-21861:19.

Counsel Assisting put to him that, if it wasn't for the investigation that Ms Pearce went off and performed after 11 August, these matters, discussed between you and Mr Green on 11 August, wouldn't have come to light.<sup>36</sup>

35. As stated previously, the evidence points unequivocally to the Available Findings that, despite having knowledge of CLB's allegations on 11 August 2000, both Mr Scott nor Mr Green did not conduct proper investigations into those allegations. CLA's evidence from his written statement was that there were no formal investigations by the school into the incidents.<sup>37</sup>
36. There was no other evidence of a "joint effort." There was no other evidence of any explicit or even implicit delegation of responsibility to Ms Lumsdaine. There was her evidence, to the contrary, that she sensed opposition to the process that she was undertaking. She voiced concerns as to Mr Green and Mr Scott's indifference to the process in a reasonably contemporaneous way by email to Mr Cujes. Her evidence must be accepted.
37. It is therefore submitted that this Commission should explicitly find that Ms Pearce's investigations were performed of her own initiative and not pursuant to any deliberate delegation of responsibility by Mr Green or Mr Cujes.

Dr Martine Marich  
Counsel for EAA  
17 January 2017

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<sup>36</sup> Transcript of M Cujes, Case Study 45, 24 October 2016, T21868:8-14.

<sup>37</sup> Exhibit 45-064, 'Statement of CLA', Case Study 45, STAT.1234.001.0001\_R at [25].