Royal Commission into Institutional Responses to Child Sexual Abuse

At Sydney

Response to Submissions of Counsel Assisting the Royal Commission

Case Study 23: Public Inquiry into the Response of Knox Grammar School

By Hunt & Hunt Lawyers

Wednesday 24 July 2015
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Introduction

Preliminary Comments

1. The establishment of this Royal Commission reflects, as the Letters Patent show, the fundamental change in our society’s attitude to the need to expose past child sexual abuse, recognise victims and their suffering and the need to ensure adequate safeguards and procedures to protect children in the future.

2. As is clearly evident, damage suffered 25 years ago has been compounded over the years and dramatically altered the prospects and lives of victims, their families and friends and also the lives of those who were responsible for their care and failed to prevent or detect the abuse that occurred.

3. Child sexual abuse was neither condoned nor accepted by our society 25 years ago, but then there was not the understanding that exists today about the warning signs of impending abuse, about the ineffectiveness of orthodox disciplinary measures, and about the need to provide immediate care and support for those abused in contradistinction to the belief that to focus on past incidents would cause the victims further damage.

4. Twenty-five years ago our society had great difficulty dealing with abuse and accepting that people to whom they entrusted their children could sexually abuse them. Those who were victims of child sexual abuse had no safe framework to expose the abuse within institutions and even to parents or other persons and often kept the pain and trauma inflicted by their abusers to themselves for decades at great personal cost.

5. Parents themselves did not have the awareness, understanding and resources that exist today to prevent or detect actual or potential abuse inflicted on, or endangering, their children. The devastating story of David Rentoul is a case in point. The insidious grooming behaviour of Barrie Stewart, who insinuated himself into David’s family life, did not ring alarm bells and left his parents unable to detect what was happening under their noses. What hope would any school system have had at that time against such a cunning predator?

6. In this regard, a key finding of the research and learning about child sexual abuse since the 1990s and the work of the Wood Royal Commission has been the concept of “grooming” behaviours used by paedophiles to gain the trust and confidence of potential victims of child sexual abuse. Before then, such behaviours were not commonly known.

7. This root problem was compounded by the fact that the behaviour was that of either persons with the recognised mental affliction of paedophilia, or simply perverts of the highest order. Active paedophiles are incorrigible. When the grooming behaviour – seen at that time as becoming one with the boys rather than appropriately keeping the respect of the teacher/student relationship - was recognised and corrective action taken, that action did not work. The paedophile simply could not help himself and became more cunning.

8. As a result of the knowledge and understanding developed in relation to grooming, substantial changes were made to the laws relating to child sexual abuse making it an offence to engage in grooming. For the first time a legal framework existed to deal with conduct which could lead to child sexual abuse before it reached the stage where child sexual abuse had occurred.

9. Today institutions have a considerable amount of material and specialist expertise available to assist in putting in place systems and processes to identify grooming behaviours and to investigate actual or potential child sexual abuse. Today, the corrective actions of the past are known not to work. This has resulted in a significant
reduction in the incidence of child abuse in institutions, earlier detection of potential
abuse and improved care of any child that is abused.

10. Sadly the changes in the last 20 years have occurred too late for a large number of
victims who have given evidence to the Royal Commission.

11. One of the most positive aspects of this Royal Commission is that it has been very
successful in encouraging those affected by child sexual abuse to come forward. For
many it's the first time they have told their stories freely without the constraints of a
court environment.

12. Understanding the past abuse is critical to ensuring it does not happen in the future but
gaining that understanding is not furthered by a process that seeks to blame, and to
apportion that blame vicariously. Returning to poor David Rentoul, Barrie Stewart is to
blame. His parents are not to blame, his Headmaster is not to blame, and his school is
not to blame. They all suffer greatly because they feel that they should have detected
Barrie Stewart, the trusted teacher and family friend. Dr Paterson and the school
apologised and held the cathartic hope of assuaging the suffering of David’s parents,
and all the students. They are all victims of a despicable pervert or paedophile.

13. In Australia it took far too long to recognise past injustice suffered by indigenous
Australians and to apologise because of a fear that an apology today would be an
admission of guilt and or liability.

14. Indeed it is clear from evidence in the Knox case and other case studies that one of the
constraints on recognising the suffering of victims of child abuse has been the
unwillingness to admit the events occurred and when they were exposed, putting
victims to strict legal proof and processes which has compounded and prolonged their
suffering.

15. In South Africa the election of Nelson Mandela saw a process – truth and reconciliation
- to accept the past, recognise the wrongs that had been done, to care for those who
suffered and to look to the future to ensure those terrible times never happened again.

16. The critical need for a process which will expose child sexual abuse and enable the
victims and those affected to tell their stories in their own words cannot be denied. But
the implementation of this process does present a challenge to the Commissioners
when examining evidence and making findings; particularly adverse findings against
individuals that cannot be challenged and may never be the subject of a formal legal
process.

17. It is not an easy task to balance the rights and needs of those who have been abused
or affected by abuse with the rights of those that were responsible for their care but
were not aware of the abuse which occurred.

18. In the case of Knox, the events being examined occurred more than 25 years ago and it
must be recognised that the evidence of victims and other witnesses will not and cannot
be perfect.

19. A clear example of this in the Knox case was the Balaclava Incident where, until the
McNeil House day book was located, there was no real evidence as to when it actually
occurred.

20. Some witnesses' recollections have been impacted by the trauma of abuse they
suffered. Others like Dr Paterson and Morris Ireland are now over 80 years old and in
the case of Dr Paterson, under treatment which may impact on their memory, as
evidenced by the medical report concerning his current treatment.
21. A further challenge present by the Knox enquiry is that whilst the school and particular Dr Paterson have been vilified in the media, with the exception of three students, no student has given evidence that he told Dr Paterson, other staff, their parents or friends of the abuse that clearly occurred until many years/decades after the event.

22. The fact abuse was not reported is today well understood and accepted. A great deal of work has and is being done to educate children and put in place frameworks to make sure children can and do report abuse. It must recognised that the knowledge and frameworks today were not available when assessing the response of institutions and those caring for children 25 years ago, indeed, they were not alone, our society generally did not know the extent of child sexual abuse 25 years ago.

23. The Royal Commission, when examining the response of Knox, Dr Paterson and other staff in the 1970's and 1980's, must first consider the evidence and actions having regard to what was actually known by the institution and its staff at the time. There is no evidence that establishes that Dr Paterson had knowledge of the extent of the sexual abuse during the 1970's and 1980's or the identity of all the abusers.

24. Dr Paterson has unconditionally apologised and expressed great remorse for all the abuse which clearly occurred; both that which he knew about and that which he did not know about.

25. Plainly today, unlike 25 years ago, one could look at some of the evidence with the benefit of current knowledge of grooming behaviours and expertise to conclude there was potential child abuse, but Dr Paterson and others responsible for the care of children 25 years ago had to carry out their responsibilities on the basis of the knowledge and expertise then available.

26. The Judges and Magistrates who have dealt with teachers who were convicted of abuse were required to apply the law as it existed 25 years ago so, because “[i]t is abhorrent to impose criminal liability on a person for an act or omission which, at the time it was done or omitted to be done, did not subject the person to criminal punishment.” – Bell J, *PGA v The Queen* [2012] HCA 21.

27. Likewise the Royal Commission must resist the temptation of assessing the response of Knox, Dr Paterson and staff by reference to the medical knowledge, standards and processes in place in 2015. They must be assessed as if standing in their shoes in a past era where:

- the protection of the student against actual sexual abuse was the primary concern
- a teacher’s behaviour in becoming mates with students (through participating together in activities otherwise done apart), was considered inappropriate in that it was contrary to the different type of respect required of a teacher. But it was not appreciated to be a grooming technique for identifying the vulnerable in order to sexual abuse them
- corrective disciplinary action was undertaken in the absence of knowledge that the teacher was either a paedophile who was unable or unlikely to, or a pervert who would not, respond to orthodox workplace admonishment and correction
- the publicity involved with an investigation of prior allegations was believed to cause further damage to the student, and to be avoided if the primary aim of protecting the student against further sexual abuse could otherwise be achieved
- the long term psychological damage associated with not dealing immediately and fully with a victim’s sexual abuse was not appreciated.
28. It is with these matters in mind that the actions (or inaction) of institutions’ people responsible are required to be judged, i.e., by what was reasonable, recommended and appropriate 25 years ago.

“One can say there is no clearer window than the window of hindsight. With the benefit of hindsight there is an argument that the offender most certainly would have been dismissed. As I have already observed, there is no evidence that Dr Paterson was aware of the extent of the inappropriate behaviour of this offender”1.

29. Set out below is a detailed response to submissions dated 21 May 2015 provided to the Royal Commission by Counsel Assisting the Royal Commission, received 26 May 2015. For ease of reference we have adopted the headings used in Counsel Assisting’s document.

Overview

30. The enquiry into Knox is to determine its response to the many incidents of child sexual abuse exposed by the tragically graphic and compelling statements of the students that were abused.

31. When considering what findings should be made, there are two key questions to be determined by the Royal Commission:

- What did Knox and in particular Ian Paterson know?
- Based upon what they knew how did they respond?

32. In answering these questions the Royal Commission must have regard to the broad picture painted by the evidence as set out below when considering the specific issues addressed later in these submissions:

1. There is no dispute that five teachers sexually abused a number of students and there were suspicions concerning a sixth teacher. This abuse, with exception of Roger James took place between 1985 and 1989, 25 years ago.

2. Until Strike Force Arika concluded with the arrest of five teachers in 2009, the full extent of the odious activities of the teachers was not revealed to the Knox community.

3. Operation Paradox is a community awareness campaign against child sexual abuse in Australia that commenced in 1990. Operation Paradox received a telephone call from an anonymous male informant who was a friend of a victim at Knox on 6 September 1996. The Police intelligence Report Summary notes no victims were identified2.

4. It may be inferred the informant named a number of teachers and that caused Inspector Cullen to seek and obtain the employment records of those named from Knox in December 1996.

5. No information was given to Knox and in particular Dr Paterson concerning details of the allegations investigated as a result of the information received by Operation Paradox.

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1 Exhibit 23-001 NSW.2022.007.0187 at 10-11
2 Exhibit 23-001 NPF.057.001.2949_R
6. Whilst Inspector Cullen gave evidence that she inspected records of persons of interest named to Operation Paradox in 1996 to confirm their dates of employment at Knox, no evidence has been given before the Royal Commission to explain what action (if any) was taken as part of Operation Paradox after the records were inspected by Inspector Cullen.

7. As part of Strike Force Arika and following the arrest of five teachers, victims came forward for the first time and began to expose the extent of child sexual abuse perpetrated by the teachers arrested.

8. In relation to abuse committed whilst Dr Paterson was Headmaster prior to 1999, with the exception of four victims who are subject of detailed submissions below all other victims and/or their families gave evidence that the abuse they had suffered was not revealed or reported to anyone prior to 2009, when most interviews forming part of Strike Force Arika took place.

9. One student, ASD, directly reported sexual abuse to Dr Paterson and based on his report, which was accepted, Mr Vance was removed from the school immediately.

10. One then former student, Coryn Tambling claims to have reported an unnamed teacher to Dr Paterson in 1989.

11. Mr Treloar admitted to Dr Paterson he had shown a pornographic video to an unidentified student, and Mr Treloar was disciplined on that basis. The details of the sexual abuse perpetrated by Mr Treloar was not exposed until his arrest, some ten years after Dr Paterson had retired from the school.

12. There were concerns about four teachers but no evidence or report from any victim to Dr Paterson:

- Roger James resigned on his own initiative, and there was no allegation of child abuse prior to his resignation.

- Mr Nisbett was investigated by Mr Pearson, Mr Wilson, Mr Crawley, Mr Weeks, Operation Paradox and the Ombudsman.

  No evidence of child abuse could be found and no victim identified and he resigned in 2004 but as a result of Strike Force Arika his abuse was exposed and he was later convicted of child sexual abuse.

  Whilst there was no evidence of child abuse at the time Dr Paterson accepted a recommendation by Mr Pearson based his investigation and removed Mr Nisbett from his position as a housemaster

- Mr Fotis was investigated but there was no evidence of sexual abuse or proof that he was the balaclava man.

  Dr Paterson however removed Mr Fotis from the boarding house and immediately his criminal record and other issues were reported to him by Mr Pearson from the school.

- Mr Stewart was the subject of a complaint by parents concerning Mr Stewart's sexual orientation and they did not wish him to drive their son home from school. There was no allegation of child abuse.
Dr Paterson immediately instructed Mr Stewart not to drive boys in his car.

13. The response of Knox and Dr Paterson to child sexual abuse during Dr Paterson's time as Headmaster must be considered having regard to what he and Knox knew at the time. One can only respond and take action relation to events which are known.

14. No parent or victim other than Coryn Tambling gives evidence that they made a report or attempted to make a report to Dr Paterson, Knox or the Uniting Church and were turned away and/or any of them failed to take any action.

15. No staff member (including Mr Pearson) in the 30 years that Dr Paterson was Headmaster gives evidence that he refused to receive and/or dismissed any attempt to report child abuse.

16. It is to be noted that staff members including Dr Paterson and the Assistant Headmaster sent their sons to Knox. Tragically, the Assistant Headmaster's son was also a victim of his work colleague (Mr Stewart), who he considered to be a friend of the family.

16. With the exception of Mr Roger James who resigned on his own initiative Dr Paterson dealt with five teachers that came to his attention over 30 years as Headmaster based on his knowledge of the allegations or concerns at the time.

17. In the case of two of the teachers named above, Mr Crawley, Mr Weeks, NSW Police and the Ombudsman failed to expose their activities and the abuse they had inflicted on a number of victims. They were finally exposed by Strike Force Arika in 2009.

18. Whilst Dr Paterson deeply and unconditionally regrets that he failed to uncover the sexual abuse suffered by boys in his care, it was not because he did not want to know about it or because he was trying to conceal it. The fact is he did not know and nor did the staff and Knox Community until the abuse was exposed by Strike Force Arika in 2009.

19. It is manifestly unfair to judge the whole Knox Community by the actions of five people who have been convicted for abusing students who managed to conceal their crimes for decades.

20. Dr Paterson and all those many wonderful staff members are also victims of the actions of those five persons. They must live with the fact that while they provided a good education and positive experience for several thousand boys, there is a very significant group who, with their families, were and remain greatly damaged from their time at Knox.
Part 1 History of Knox Grammar School

33. Dr Paterson outlined in his evidence that while he was Headmaster, Knox had a system of pastoral care for students\(^3\). This was not contested by any other witness.

34. In those days pastoral care was provided by all staff but specifically for each boy there was their teacher, their tutor and their house master and any boy could approach the headmaster. Only one student, Coryn Tambling, gave evidence of attempting to discuss sexual abuse and being turned away or ignored and Dr Paterson had no real recollection of this.

35. In addition, Dr Paterson and Mr Pearson gave evidence that included in Mr Pearson’s role, along with his general responsibilities for discipline, was a role to investigate any matters of concern including conduct of teachers. He did in fact investigate Mr Nisbett, Mr Treloar, and the Balaclava Incident.

36. Mr Pearson said in evidence he was employed inter alia because of his experience as a policeman and in dealing with child abuse. Mr Pearson accepted, under cross-examination, that he was in effect the school’s *“policeman on the beat”*.\(^4\)

37. Evidence was given by Mr Pearson that he was a dogged investigator and he suggested this reflected his police training and experience. Mr Pearson gave evidence of his investigations relating to Treloar, Nisbett and the Balaclava Incident.

38. Whilst the system that existed failed to expose the abuse being inflicted on students in the 1980’s there was a pastoral care system. The failure was in exposing the abuse, not ignoring reports of abuse.

39. Otherwise, no issue is raised with any matters contained in Part 1.

Part 2: The experience of the former students at Knox

40. No comment or issue was raised in relation to paragraphs 17-38.

Part 3: Uncontested relevant facts

41. No comment or issue is taken in relation to paragraph 39 and 128 -130.

42. The remaining paragraphs in Part 3 are contested as detailed below.

3.1 Roger James

43. Whilst Dr Paterson concedes he was concerned Mr James had become “too close to boys in the counselling sense” he managed those concerns by not permitting Mr James to take boys to activities at camp Knox alone. There is no evidence Dr Paterson was aware of any specific incidents of child sexual abuse by Mr James either generally or more specifically at Camp Knox in the 1970s.

44. There is no evidence given by ARY or any other student that they had reported to Dr Paterson and/or any other staff member any inappropriate behaviour or sexual abuse committed by Mr James. It is noted also that Mr James was convicted for sexually abusing ARY at Cadet Camp and not at Camp Knox.
45. There is no dispute that Dr Paterson was concerned with Mr James' skills, particularly his organisational skills as a teacher and had warned him regarding his performance. There is no dispute that Mr James subsequently resigned and moved to New Zealand and had obtained this position prior to requesting a reference from Dr Paterson.

46. It is agreed that Dr Paterson provided a reference in the terms set out in paragraph 42 of Counsel Assisting's submissions. However, it is not conceded that the reference was misleading. The passage quoted in paragraph 42 is accurate and describes the roles carried out by Mr James during his time at Knox.

47. There is no evidence to suggest the activities described in the reference were not in fact performed by Mr James. When read as a whole, the reference is an accurate statement of Mr James' service and it does not speak to his character.

48. Prior preparing the reference, Dr Paterson had counselled Mr James about becoming "too close to boys" and "the apparent lack of organisation in his classroom". However, there is no evidence that Dr Paterson had any knowledge the activities by Mr James had constituted abuse and/or behaviour which meant that Mr James was in fact unsuitable for the job he had already obtained.

49. Having regard to the reporting and disclosure obligations which existed in the 1970s, and even having regard to the current disclosure and reporting obligations, the matters that Dr Paterson had counselled Mr James about are not matters which should have been disclosed unless supported by other information relating to the suitability of Mr James for employment as a teacher.

50. The words highlighted in bold in paragraph 42 of Counsel Assisting's submissions do not support the proposed available finding at paragraph 186, as on their face the words simply state the fact Mr James had run camps at Knox and, indeed, "had a large hand in initiating our establishment and use of this camp" and that is the fact.

51. The words make no reference to anything other than the fact and in particular make no reference or comment as to Mr James' "suitability" to be involved in running school camps.

52. There is no proper basis for making the finding proposed at paragraph 186.

53. The only available findings on the evidence are:

1. Dr Paterson had no knowledge that Mr James had sexually assaulted any boy;
2. Dr Paterson was concerned that Mr James had become "too close to boys in the counselling sense" and in relation to his performance in the classroom;
3. Mr James resigned on his own initiative; he was not asked to leave and requested a reference;
4. Dr Paterson provided a letter which was factually correct;
5. Dr Paterson's letter does not make reference to Mr James' suitability to run camps but rather it simply states that he has done so which is an uncontested fact; and
6. Dr Paterson's direction to Mr James was that he was not permitted to run camps alone without other staff there is never evidence that there was a

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4 Exhibit 23-0001, KGS.006.001.0163 Transcript of I W Paterson T12407:30-36 (Day 119)
5 Exhibit 23-0001 KGS 006.001.0164_R

135340955v1_JGH
blanket ban on running camps and at that time there was no evidence to suggest such a ban would be justified.

3.2 Damian Vance

3.2.1 Disclosure of incident by ASD

54. In paragraph 48 of Counsel Assisting's submissions, reference is made to paragraph 53 of Dr Paterson's statement, to the effect that Mr Vance had offered him a cigarette and made an inappropriate sexual suggestion, and asserted that Dr Paterson had only learned in 2015 that Mr Vance had also inappropriately touched ASD.

55. It should be noted that Dr Paterson said in his statement in reference to the complaint by ASD, "the detail of which I cannot now recall".

56. At the time Dr Paterson prepared his statement, he was relying entirely on memory of an event that happened some 25 years ago and he had not had the advantage of referring to the statement made by ASD and other documents served after preparing his statement. It is submitted that no adverse inference should be drawn against Dr Paterson for not recalling the details of ASD's complaint in full when preparing his statement.

57. Dr Paterson does not dispute that ASD told him that Mr Vance had inappropriately touched him and made an inappropriate sexual suggestion to him.

58. On the evidence before the Royal Commission, this is the only time in the 30 years that Dr Paterson was Headmaster of Knox that a student directly reported to him an incident of sexual abuse.

3.2.2 Action Taken

59. Dr Paterson acted immediately following the disclosure by ASD. The same day, he met with Mr Vance, who made admissions and was removed from the school immediately.

60. After his departure, Mr Vance pressed for a statement of service which was provided by Dr Paterson.

61. In early 1991 Mr Vance had applied for a position in Victoria. Mr Vance gave evidence to the effect that he believed that he had been accepted for the position subject to providing a reference.

62. A letter dated 21 February 1991 was provided by Dr Paterson which is factually correct and concluded with the statement

"I am prepared to speak further to this reference as required".

63. Mr Vance gave further evidence that after he provided the document dated 21 February 1991 to his prospective employer, he had no further communication from that employer and contrary to the suggestion in paragraph 56 of Counsel's submissions he did not subsequently gain employment as a teacher.

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6 Exhibit 23-0026 at paragraph 53.
7 Transcript of I W Paterson, T12419: 33 (Day 119)
8 Transcript of D P Vance, 11891-11892 (Day 114)
9 Exhibit 23-0001 KGS.003.001.0009
10 Transcript of D P Vance, 11891-11892 (Day 114)
64. Mr Vance gave uncontested evidence is that he never provided the document signed by Dr Paterson dated 21 February 1991 in any other application for employment\textsuperscript{11}.

65. Dr Paterson gave evidence that his concluding words in the reference "I am prepared to speak further to this reference as required" were deliberately included to put the recipient on notice that they should contact him for further information and because he was not in fact employed one must conclude as Mr Vance did in his evidence that a call was made and because of the information given he did not get the job.

66. See also 6.3 below.

3.3 The balaclava man

67. It is uncontested that ARN was sexually assaulted in his bed on 23 November 1988.

68. The perpetrator of the assault has never been identified.

3.3.1 When did the assault occur?

69. Until the MacNeil House Day Book was located during the hearing there was no contemporaneous document relating to this incident and no evidence to establish when it actually occurred.

70. Having regard to the Day Book the chronology appears to be:

1. The event occurred on the morning of Wednesday 23 November 1988 close to the end of the school year.

2. The exact timing appears to be between 4.30am and 6.00am the recollection of witnesses is not consistent but the day book confirms following the incident must have occurred before 6.00 am when the "Morning Run with Tim (Dr Hawkes) @ boys" took place.

   It is uncontested that Dr Hawkes became aware of the incident very shortly after it occurred and boys were checked and a search conducted. The general consensus that can be distilled from the evidence seems to be that that the incident occurred sometime after 4.30 am and the boys of MacNeil House did not go back to bed after it occurred.

3. Whilst a search was conducted, the Balaclava man was not found and the evidence is he fled or was chased out of MacNeil House by the boys according to AST\textsuperscript{12} was last seen running up the Pacific Highway.

4. A number of boys remained in the House to provide information "regarding ARN and ARA"\textsuperscript{13} when the boys went for a run.

5. The boys proceeded to breakfast and school for the day.

6. At the end of the day Mr Bradford made arrangements for boys to call their parents, arrangements were made to move ARN who was distressed at night, and during the evening Dr Paterson & Dr Hawkes spoke to the boys, although what was said to the boys is not recorded in the Day Book.\textsuperscript{14}

\textsuperscript{11} Transcript of D P Vance, 11891-11893: 14-15 (Day 114)

\textsuperscript{12} Transcript of [AST], T12363: 2-6 (Day 118)

\textsuperscript{13} Exhibit 23-0038 TEN.0022.001.0001_R

\textsuperscript{14} Exhibit 23-0038 TEN.0022.001.0002_R
3.3.3 The Evidence

71. AST, a student at that time, gave evidence that the perpetrator of the assault put ARN’s doona on his head, fled MacNeil House and was chased out of the building by a number of boys up towards the Pacific Highway and there is no reason to doubt this evidence.

72. There is other evidence which suggests the face of the perpetrator was exposed and evidence as to what the person was wearing; however there is no consistency in this evidence.

73. Upon being notified of the incident, Dr Hawkes ensured that the boys in MacNeil House were safe and attended upon ARN in particular out of concern for his wellbeing. He then telephoned Dr Paterson to report the incident to him.\(^{15}\)

74. The police were not notified of the assault.

3.3.4 Was the intruder an insider?

75. There is evidence that Dr Paterson had a “theory”, and Mr Bradford wrote that:

“If H.M.’s theory is correct the culprit is just as informed about the layout of this house as any current boarder”\(^{16}\).

76. The basis for Dr Paterson’s theory, reported by Mr Bradford, is not disclosed and this was not clarified by the evidence, a judgment therefore cannot be made of its accuracy.

77. This does not give rise to a conclusion being drawn that all staff with knowledge of the incident theorised that the culprit was a resident master, or staff member. It may have been referring to a former student or boarder. Further if the intruder was a member of staff why would they wear an older style Knox tracksuit as described by some witnesses?

78. Evidence was given that it was possible at that time to access the dormitory where ARN was sleeping via the fire escape and that at that time of the year it was likely windows were open.\(^{17}\)

79. As had been the case during the year at MacNeil House, the security of the House was a matter of concern for staff:

"an inspection of all windows should be made as to their effectiveness! Areas such as library/quiet & master’s common room particularly vulnerable"\(^{18}\).

80. Approximately one week following the Balaclava incident, Mr Bradford "challenged an intruder in the house who claimed to be an old boy just paying a short visit."\(^{19}\)

81. Was the person challenged by Mr Bradford the Balaclava man returning to the scene of the crime?

\(^{15}\) Exhibit 23-0017 STAT.0484.001.0002_R, STAT.0484.001.0003_R.

\(^{16}\) Exhibit 23-0038 TEN.0022.001.0003_R

\(^{17}\) Transcript of C Fotis T13923: 32-44 (Day 133)

\(^{18}\) Exhibit 23-0038 TEN.0022.001.0003_R

\(^{19}\) Exhibit 23-0038 TEN.0022.001.0009
82. Mr Pearson's evidence was that he formed a view that the Balaclava man was a staff member at the time of the assault, either Mr Fotis or Mr Vance.

83. It is significant that there is no evidence from any boy that they were interviewed by Mr Pearson who was clearly investigating the matter. Indeed, it is extraordinary that there is no evidence that the victim of the assault, ARN, was interviewed by Mr Pearson. He further claims he interviewed both Mr Vance and Mr Fotis; Mr Fotis denies being interviewed and surprisingly claims no recollection of incident which was clearly the cause of great clamour and excitement.

84. Dr Hawkes' evidence was that he did not have a conversation with Dr Paterson about Mr Fotis, and Dr Paterson's evidence was that he did not have a recollection of discussing his suspicions about Mr Fotis with Dr Hawkes; there is no evidence which contradicts this evidence.

85. Having regard to the evidence of the events that occurred and the denials of Messrs Fotis and Vance that they were the Balaclava man the only available finding in relation to whether the intruder was an insider is:

Notwithstanding the considerable speculation that the person who assaulted ARN was an insider and possibly a teacher at Knox it is not possible on the available evidence to exclude the possibility that the assault was committed by an unknown outsider who gained access to MacNeil House.

3.3.4 The departure of Christopher Fotis from MacNeil House and then the school

86. Whilst there is no evidence to establish that Mr Fotis was the Balaclava man speculation continues to this day that he was the person who assaulted ARN.

87. As a result of the speculation that continued regarding Mr Fotis and the ongoing concerns of Mr Pearson, Dr Paterson directed Mr Fotis to move out of MacNeil House and it would appear this occurred at the end of the school year.

88. The MacNeil House Day Book discloses Mr Fotis did was the resident master on duty some two weeks after the Balaclava incident occurred, and on that day quite a lot of boys had already gone home. A copy of the Daily Report for 7 December 1988 is attached. As it was the end of term Mr Fotis' departure from MacNeil House was not a matter of note which required finding a replacement for Mr Fotis, or a reason for Dr Hawkes to have a discussion with Dr Paterson.

89. It is uncontested that Mr Fotis moved from MacNeil House to accommodation in "Woodville" an administrative building were no boys were accommodated.

90. Dr Paterson discussed Mr Fotis and Mr Vance (both whom were suspects in relation to the Balaclava incident) at the Staff Committee of the Knox Council on 7 February 1989 and the fact that a discussion took place is noted in the Committee Report dated 14 February 1989 presented to the Knox Council Meeting on 16 February 1989.

91. Whilst there are no minutes of the Knox Council Meeting on 16 February 1989 in evidence, one can infer from the fact that very shortly after the Council Meeting Dr Paterson wrote to Mr Fotis asking him to remove himself from Woodville because the

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20 The document was served but not tendered into evidence by Counsel Assisting.
21 Exhibit 23-0001 KGS.002.008.0008
Council and Dr Paterson were concerned, even without evidence, that Mr Fotis presented a risk if he resided in the school grounds.

92. In October 1989 Mr Pearson reported to Dr Paterson criminal proceedings relating to Mr Fotis and Dr Paterson confronted Mr Fotis who immediately resigned from the school.22

### 3.3.5 Fotis Statement of Service

93. Dr Paterson did provide to Mr Fotis a letter dated 19 October 198923. This letter is simply a statement of service. At that time Dr Paterson had no evidence to establish that Mr Fotis had engaged in sexual abuse or inappropriate behaviour relating to children.

94. There is no evidence to suggest Mr Fotis sexually abused children after leaving Knox, either as a result of the letter signed by Dr Paterson or otherwise.

95. The only available finding on the evidence is:

The letter dated 19 October 1989 was a statement of service and was not misleading.

### 3.4 Craig Treloar

#### 3.4.1 Incident Report

96. As noted in the submissions of Counsel Assisting at paragraphs 153-163, there is a contest concerning the Craig Treloar incident.

97. The only uncontested fact is that Mr Treloar did by his own admission and plea of guilty show a student a pornographic video.

98. Dr Paterson strongly denies ever being advised by Mr Pearson that in addition to showing a boy a pornographic video, the boy was also sexually abused24.

99. No student gave evidence that they went to Mr Pearson and reported that Mr Treloar had shown them a pornographic video and then sexually abused him.

100. Counsel Assisting submits that dispute as to whether Dr Paterson was told the boy had been sexually abused in addition to being shown a pornographic video is resolved by reference to the evidence of Mr Probert.

101. The unchallenged evidence of Mr Probert and ASE directly contradicts the evidence of Mr Pearson and the hypothesis propounded by Counsel Assisting at paragraph 160 of his submissions.

102. The evidence of Mr Probert is that ASE approached him in the late 1980s and told him that Mr Treloar had put a pornographic video on for ASE to watch and said to him “you show me yours and I will show you mine”.25

103. The timing of when ASE approached Mr Probert is clarified in the statement given by ASE to Hornsby Police on 9 February 2009. ASE details in his statement a number of

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22 Exhibit 23-0001, KGS.002.008.0003
23 Exhibit 23-0001, KGS.002.008.0001
24 Transcript of I W Paterson T12551: 12 (Day 120)
25 Transcript of M Probert T11993: 28 (Day 115)
incidents when he was sexually abused by Mr Treloar in company with other students who were identified in his statement in or about 1986.

104. Significantly ASE gave a statement in 2009 that he remembered sometime in the following years Mr Probert had moved into Mr Treloar’s room, remembered then discussing with Probert “the things that went on between me and my mates with Treloar”.

105. ASE goes on to give evidence that he is not sure of the full details discussed, however said “I recall Probert telling me I should report it. Probert was the first older person I had told about it.”

106. Significantly from the evidence of ASE, it is clear:

- ASE was not interviewed by Stuart Pearson;
- ASE did not report any events with Mr Treloar to Mr Probert until “sometime in the following years”;
- The sexual assaults perpetrated by Treloar occurred when one or more other students were present; and
- Neither ASE or Mr Probert assert that ASE was in tears or distressed when discussing Mr Treloar.

107. There is a conflict in terms of the timing of ASE’s discussion with Mr Probert. ASE suggests it was sometime in the following years whereas Mr Probert recalls it was around the time of Mr Treloar’s removal from the boarding house. In relation to the timing of the discussion, ASE’s evidence should be preferred.

108. It is noted that Mr Pearson, in his evidence, claimed to have no memory of the boy who reported the video incident to him even though he claimed under cross-examination that the demeanour of the boy and the facts the boy reported were amongst the most harrowing he had heard including during his time in the Police Force.

109. If Mr Probert’s evidence is a critical factor in resolving the dispute as to whether Dr Paterson was told by Mr Pearson of the sexual assault of the student shown the video, one must conclude that ASE did not tell Mr Probert about any details of the assault and ASE was not interviewed by Mr Pearson and therefore never told Mr Pearson of the assault or indeed that he had been shown the video.

110. It also follows that ASE’s evidence that other boys were present when he was assaulted (Mr Pearson does not suggest others were present) must also be rejected.

111. Based on the evidence of Mr Probert and ASE, it is unlikely that ASE was in fact the student to whom Mr Treloar admitted he showed the video to and was not “the same boy” referred to in Counsel’s Assisting’s submissions at paragraph 160, most critically because ASE makes no mention of actually reporting anything to Mr Pearson.

112. Therefore, Counsel Assisting’s rationale for rejecting Dr Paterson’s version of what was reported must be rejected.

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26 Exhibit 23-0001, NSW.2022.007.0741_R
27 Exhibit 23-0001, NSW.2022.007.0741_R
28 Transcript of C H Treloar, T11933 (Day 115)
Dr Paterson and Mr Treloar both gave consistent evidence to the effect Mr Treloar made admissions orally (not in writing) concerning the video but no mention or admissions in relation to committing a sexual assault on the boy shown the video.\(^{29}\)

In Mr Treloar's evidence before the Royal Commission he denied making any admissions that he assaulted a boy to Mr Pearson or Mr Paterson. This is consistent with Mr Treloar's frank admissions (against his interests) in his initial police statement dated 16 February 2009 and in the transcript of evidence at his sentencing hearing in the District Court on 15 June 2010.\(^{30}\)

Further, findings made by the Trial Judge on sentence confirm there is nothing to suggest Mr Treloar or Mr Pearson told Dr Paterson that he had abused the boy who was shown the video.\(^{31}\)

As noted by Council Assisting at 159, Mr Treloar presented as a witness who was attempting to give truthful and accurate evidence no obvious motive to give untruthful evidence on this issue and his evidence is deserving of considerable weight, his evidence corroborates Dr Paterson's evidence.

In contrast Mr Pearson clearly had a motive to tailor his evidence, he was "the policeman on the beat" and had no idea of the sexual abuse being perpetrated by teachers during his time at Knox and was attempting to hide his failures.

On this particular issue Mr Pearson's evidence is neither credible nor reliable and this is demonstrated by his inability to recall the name of the only boy who actually reported sexual abuse to him during his time at Knox and whilst he claims all his notes were lost in a "flood" he kept the video for decades before revealing its existence.\(^{32}\)

It is further notable that when Mr Pearson was interviewed by Mr Graham Wilson in 2004 he did not take the opportunity to tell of the Treloar incident in his rambling dissertation about other rumours and innuendo during his time at Knox. Mr Pearson was cross-examined as to why he did not tell Mr Wilson about the Treloar incident.

Under cross-examination Mr Pearson asserted that Treloar was not discussed, the focus was on Nisbett, this is plainly untrue having regard to evidence his interview with NSW Police that Mr Wilson told him about things "and Craig Treloar had come back to the school and I, I was gobsmacked"\(^{34}\), if truly gobsmacked why did he not tell Mr Wilson about the Treloar incident?

### 3.4.2 Action Taken

Following the interview between Mr Treloar and Dr Paterson, consideration was given to the action to be taken against Mr Treloar having regard to what was known at the time - that a pornographic video had been shown to a student.

Dr Paterson determined that:

\(^{29}\) Transcript of C H Treloar, T11935 (day 113)
\(^{30}\) Exhibit 23-0001 NSW.2022.007.0014_R, NPF.057.001.2468_R, NSW.2022.007.0263
\(^{31}\) Exhibit 23-0001, NSW.2022.007.0195
\(^{32}\) "I regret that this is the only item I still have from a confidential file of material that was lost due to flooding in my flat at Knox just before I left the school in about 1990. The material damaged beyond recovery unfortunately included the only copy of a confidential report I compiled on Adrian Nisbett. The original was handed to the Headmaster." Exhibit 23-0022 STAT.0480.002.0230, Transcript of S L Pearson T12324-12325 (Day 118)
\(^{33}\) Exhibit 23-0025 STAT.0474.001.0052_R
\(^{34}\) Transcript of S Pearson T11289
Mr Treloar should be removed from the boarding house, and;
- Mr Treloar should be suspended from teaching for a period and these sanctions were actioned.

123. Given Dr Paterson’s knowledge at the time, these sanctions were appropriate. This is supported by Dr Weeks having approached AIS about the matter, and receiving advice that based on that information alone no further action should be taken.\textsuperscript{35}

124. It should be noted when Mr Weeks made his enquiry of AIS, he was attempting to find a basis for the removal of Mr Treloar from the school and until Treloar was arrested no basis could be found to remove him by Mr Weeks in spite of his best efforts to do so.\textsuperscript{36}

125. At Mr Treloar’s sentencing hearing the Judge said:

“there is nothing in the evidence that Dr Paterson was remotely aware of the extent of the inappropriate behaviours of the offender; all he knew was that there had been pornographic videos shown, because that is what the offender admitted. I am in no way critical of Dr Paterson or the steps he took at that time, as he, on the evidence before me, was not fully informed about what had occurred”.\textsuperscript{37}

126. There was no evidence that following these sanctions that Mr Treloar was involved in any further inappropriate behaviour, the Judge found when sentencing Treloar in June 2010 found that

“he did not behave inappropriately again and his position at Knox became his life.”\textsuperscript{38}

127. Based on what Dr Paterson knew at the time there was no sexual abuse and the matter was closed as a result of the admissions made and sanctions imposed.

128. There is no evidence to support the findings at 222, 225 and 226 of Counsel Assisting’s submissions.

129. The only available findings on the evidence are:

1. Dr Paterson was informed that Mr Treloar had shown a pornographic video to an unidentified student in 1987.

2. Mr Treloar admitted to Dr Paterson showing the video but did not admit sexual abuse of the unidentified student.

3. Dr Paterson immediately removed Mr Treloar from the boarding house and he was suspended from teaching for a period.

4. Up to and including the time when he was sentenced there was no evidence that Mr Treloar abused any student after this incident,

5. The trial Judge when sentencing Mr Treloar found that Dr Paterson had no knowledge of sexual abuse when the video was shown to the unidentified student.

\textsuperscript{35} Exhibit 23-0069 KGS.022.002.0005\_R

\textsuperscript{36} Exhibit 23-0001 TEN.0020.001.0011\_R, TEN.0020.001.0012\_R

\textsuperscript{37} Exhibit 23-0001 at NSW.2022.007.0196

\textsuperscript{38} Exhibit 23-0001 NSW.2022.007.0194
3.4.3 Notification of Coryn Tambling

130. Coryn Tambling’s notification to Dr Paterson is dealt with at 6.7 below.

3.5 Barrie Stewart

3.5.1 Complaint made in about 1978

131. The only evidence of matters of concern brought to Dr Paterson’s attention in relation to Mr Stewart was a complaint by the parents of a Knox boy in about 1978\(^{39}\), that Mr Stewart had driven their son, ATJ, home from school approximately six to ten times over a 12 month period:

"my wife and I attended the school and spoke with the Head Master at the time and told him our fears. I told him that Barrie Stewart was driving ATJ home. I told him strange things were happening and fears for ATJ becoming a homosexual.\(^{42}\)

132. Counsel Assisting’s submission that no written record was made of the complaint is plainly incorrect. ATK, ATJ's father, has a specific recollection of receiving a letter in response from Dr Paterson\(^{41}\).

133. There is evidence that ATJ’s parents made specific allegations as to Mr Stewart's conduct beyond his being homosexual and his driving ATJ home. Therefore it must be assumed that the complaint was limited to the above, consistent with Dr Paterson’s evidence.

134. Dr Paterson did respond to the issues raised by ATK's parents, in writing.

135. There is no evidence that Dr Paterson or anyone else at Knox knew at that time of any other issues of concern relating to Mr Stewart, including Mr Jenkinson and tragically Dr Rentoul, then Assistant Headmaster and father of David Rentoul, who was a student at Knox.

136. The Rentoul family and Mr Stewart were near neighbours and friends on the Northern Beaches. Mr Stewart gave piano lessons to their son and at their request drove their son home from time to time. Dr and Mrs Rentoul never knew their son was being sexually abused by Mr Stewart until decades later, shortly before their son died.

3.5.2 Anticipated litigation in 1992

137. In late 1992, Dr Paterson was advised that ATJ intended to commence proceedings against both Mr Stewart, for sexually molesting him, and the School, on the basis of Dr Paterson’s letter in response to their complaint, a copy of which has not been tendered.

138. That file note, thought to be drafted 3 September 1992, is evidence of Dr Paterson asking Mr Stewart what he had to say about the allegations:

"I spoke with Barrie and asked him what? He could only recall that Mrs [REDACTED] had seen him with two gay men in a restaurant and had

\(^{39}\) In his statement Dr Paterson incorrectly recalls the complaint being made in 1987. The date of 1978 is accepted as being correct.

\(^{42}\) Exhibit 23-0001 NSW.2022.003.0304_R para 9.

\(^{41}\) Exhibit 23-0001 NSW.2022.003.0304_R

135340955v1_JGH
acquitted him of being gay consequently. She had subsequently written her concern to me.  

139. Counsel Assisting said to Dr Paterson:

Q. Do you have any explanation as to why this note does not record you asking Barrie Stewart whether he had sexually molested [ATJ]?

A. No.

140. Dr Paterson's forthcoming answer in response to a proposition by Counsel Assisting constructed upon a misunderstanding of the evidence does not make the proposition an uncontested fact. It is contested.

3.5.3 Dr Paterson's evidence as to matters reported to Mr Ireland

141. Counsel Assisting submits that "in circumstances where it was not possible to receive evidence from Mr Ireland about this matter, no finding can be made about it."  

142. This is plainly wrong as written evidence from Mr Ireland was received and tendered into evidence, and the Commission heard his oral evidence at the public hearing which was streamed to members of the public on the Royal Commission web site.

143. The written statement was subsequently withdrawn and the oral evidence was removed from the transcript.

144. On Counsel Assisting's own submission the findings summarised at paragraph 328, 329, 331 and 332 are not available as each is predicated upon a factual finding that Dr Paterson did not inform Mr Ireland, then Chairman of Knox Council, of the matters set out in his file note.

145. Counsel Assisting makes a number of submissions which do not fairly reflect the debate regarding Dr Paterson's evidence as to whether the file note was an accurate record of the matters he had discussed with Mr Ireland however it is more accurately described below:

1. On 3 March 2013, being day 119 of the public hearing, Dr Paterson gave evidence that the file note was correct and he had reported those matters to Mr Ireland.

2. Following that evidence, Mr Watson SC made the following representations about the evidence Mr Ireland would give, and Mr Lloyd endorsed his doing so:

   Mr Watson: "Questions and answers have been given which have implicated Mr Ireland in knowledge of that last particular document and it has been said that Mr Ireland was aware of a strategy. Mr Ireland has a reputation which he would like to maintain, so I think it's appropriate now that I say this. Mr Ireland will deny, on his oath, that those matters were communicated to him. He will accept that he was told at one stage that a teacher, probably Barrie Stewart, was transporting children in a car and that the principal thought that it was inappropriate, but apart from that, Mr

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42 Exhibit 23-0001, KGS.001.001.0003_R
43 Transcript of I W Paterson T12493: 39-42 (Day 119)
44 Paragraph 69 of Counsel Assisting's Submissions
45 Transcript of I W Paterson T12502: 32-47 (Day 119)
Ireland will deny ever having discussions along those lines with Dr Paterson. Thank you, Commissioners"

Mr Lloyd: For my part, that was entirely appropriate for Mr Watson to have raised the point. And I should say that Justice Ireland is on the witness list.**

Clearly Mr Watson SC’s theatrical statement was prompted because the file note and the answers given by Dr Paterson in response to questions from Counsel Assisting presented Mr Watson SC and his client with “an inconvenient truth”, that Dr Paterson did discuss the issues with the then Chair of the Knox Council and other persons and there was no cover up.

One can assume that the above statement made by Mr Watson SC was based on instructions from Mr Ireland and the evidence he would give and that those representing Knox did not have any reservations concerning the capacity of Mr Ireland to give evidence.

3. Mr Watson’s representations were reported in the media. Following the evidence given by Dr Paterson, and prior to the recommencement of the hearing the next day, Dr Paterson was served with a written statement by Morris Ireland, containing the evidence as foreshadowed by Mr Watson.

4. On 4 March 2015, day 120 of the hearing, under cross-examination, Dr Paterson concurred with Mr Ireland’s version of events as set out in Mr Ireland’s written statement. It was not a “correction” of his initial evidence.

5. Later that same day, Mr Ireland gave his oral evidence under oath, which was consistent with Dr Paterson’s initial evidence and inconsistent with his own written statement.

6. At no stage during the evidence given by Mr Ireland was any concern expressed regarding his capacity to give evidence and it was clear to all present and observing the proceedings that notwithstanding his age, he understood the questions put to him and answered the question asked to the best of his ability.

7. Mr Ireland’s oral evidence was clearly of great concern to Knox as it plainly confirmed the “inconvenient truth” that Dr Paterson had in fact, as noted in the file note, spoken to Mr Ireland.

8. The events that followed after the proceedings were adjourned were, as described by Mr Watson SC in a quite sensational fashion when the Royal Commission resumed the next morning to continue the evidence of Mr Ireland, extraordinary.

9. Plainly Knox wished to supress and indeed remove any evidence given by Mr Ireland (a witness that Knox requested be called to give evidence) that corroborated Dr Paterson’s evidence and had commenced a process overnight to achieve this outcome.

10. Mr Watson SC advised on the resumption the next day, 5 March 2015, that Mr Ireland’s son-in-law, an ophthalmic surgeon, had written a letter stating that in his opinion, Mr Ireland was not medically fit to present reliable evidence. Mr

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** Transcript of I W Paterson T12512: 12-28 (Day 119)
Ireland was stood down and he left the Royal Commission to be examined by a specialist identified by Knox to determine whether he was a competent witness.

11. Later that same day he said:

"There has been a development, Commissioners. A report has been received. Can you believe our luck, Mr Ireland was able to see one of the really leading doctors in the area, Dr Sandy Beveridge. Dr Beveridge has provided us with a report. Nobody else apart from Ms Blacker and myself will have had time to read it."  

12. When Mr Watson SC recounted the events that had occurred, there was no suggestion that Mr Ireland's capacity to give evidence had diminished in the 24 hours following Mr Watson SC's declaration as to the content of Mr Ireland's evidence.

13. There is no evidence that the actions taken by Knox had regard to Mr Ireland's interests or instructions, whether he received any independent legal advice, or the extent to which he was aware of and understood what was happening and why he did not return to the witness box.

14. Mr Ireland was not re-called before the Commissioners to ensure he was aware of what was happening and to enable him to state his position.

15. On 5 March 2015, being day 121 of the hearing, Mr Watson SC and Mr Lloyd were on notice that Dr Paterson wished to correct his evidence given 4 March 2015 and confirm that his initial evidence given 3 March 2015 was his recollection of what had occurred. On 6 March 2014 Dr Paterson confirmed that he endorsed Mr Ireland's oral evidence about his telephone calls to him.

16. Later that same day, Mr Ireland's written statement was withdrawn from tender and Counsel Assisting's submission that Mr Ireland's oral evidence should not be relied upon and should be "removed from the website" was accepted by the Commission.

17. In making those submissions, noting that Mr Ireland's oral evidence corroborating both Dr Paterson's written file note and Dr Paterson's oral evidence given both on 3 March 2015 and 5 March 2015 was to be excluded from evidence, Mr Lloyd said:

"Mr Harrowell's difficulty can be dealt with by him asking his client, Dr Paterson, about the matters which Mr Ireland said in his oral evidence. Dr Paterson can deal with those matters. He has already dealt with them in one way in his evidence, and there is no difficulty whatsoever in Mr Harrowell putting, as matters of fact to Dr Paterson, the sorts of matters that Mr Ireland said and asking Dr Paterson, who is a competent witness, whether he agrees."  

18. The position taken by Counsel Assisting was strongly opposed on behalf of Dr Paterson and it was submitted the appropriate course of action was that the report obtained in relation to Mr Ireland should be tendered and the evidence

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47 Transcript of T Hawkes T12770:46-47, T12771:1-4 (Day 121)
48 Transcript of I W Paterson T12779 (Day 122)
49 Transcript T12772:45-27, T12773:1-18 (Day 121)
should remain, with the Commissioners to have regard to the report when considering the evidence given by Mr Ireland.  

19. Mr Watson SC agreed with and did not oppose the proposal by Mr Harrowell however Counsel Assisting pressed his submission and all evidence given by Mr Ireland has been removed from the website.

20. Dr Paterson's clarification on 6 March 2015, foreshadowed by Mr Harrowell on 5 March 2015, as to his evidence has addressed the inconsistent evidence given 4 March 2015, as Counsel Assisting had proposed as set out in 17 above.

146. Dr Paterson's oral evidence given 3 March 2015, confirmed as being his recollection of events on 6 March 2015, is consistent with the contemporaneous file note tendered into evidence, and in the absence of evidence from any other witness to the contrary it should be accepted that Dr Paterson did in fact have a discussion with Mr Ireland as noted in the file note. Given that the matters discussed involved the threat of litigation, it is logical and reasonable that Dr Paterson would have spoken to Mr Ireland both as his Chairman and a very experienced lawyer.

147. The evidence relied upon by Counsel Assisting in paragraphs 238-243 and 246-251 is not the evidence counsel assisting submitted would "deal with" the effect of the withdrawal of Mr Ireland's evidence upon Dr Paterson's evidence in support of his application to withdraw that evidence.

148. On 6 March 2015, Mr Lloyd (Counsel Assisting and not Dr Paterson's solicitor, Mr Harrowell) put to Dr Paterson the oral evidence given by Mr Ireland, and Dr Paterson confirmed that oral evidence was correct.

149. Having regard to what occurred in relation to Mr Ireland and his evidence no adverse find should be made in relation to Dr Paterson's credit on the specific issues relating to the file note or as to his general credit as a witness.

3.5.3 Staff at Knox aware of the allegations reported in the file note

150. A number of staff at Knox, along with the Chairman of Knox Council, are recorded as being aware of the material contained within the file note. Dr Paterson names 9 people (himself and his wife included) as being aware of the allegations. This is plainly inconsistent with any suggestion of a cover up.

3.5.4 Summary

151. The examination of the issues relating to the file note and the events that occurred in relation to Mr Ireland must not and cannot reflect on Dr Paterson's credit and there is a real issue as to whether any findings should be made concerning this issue at all on the grounds of fairness to both Dr Paterson and Mr Ireland given what has occurred in relation to this aspect of the proceedings.

152. Accordingly the only available findings on this issue are:

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50 Transcript T12773:28-45 (Day 121)
51 Transcript of I W Paterson T12779 (Day 122)
52 Transcript of I W Paterson T12779 (Day 122)
53 Exhibit 23-0001, KGS.001.001.0003_R
1. That the best evidence as to whether the Knox Council was informed of the allegation of ATJ in the file note dated 3 September 1992 and there is no reliable evidence to the contrary.

Alternatively

1. Having regard to the withdrawal of evidence from Mr Ireland there is no reliable evidence to establish whether or not the allegation of ATJ in the file note dated 3 September 1992 was reported to the then Chairman Mr Ireland.

3.6 Adrian Nisbett

3.6.1 Background

153. Allegations and rumours about Mr Nisbett’s conduct had existed since the 1980’s, and Mr Nisbett was the subject of more investigations than any other teacher at Knox relevant to this case study.

154. Mr Nisbett's conduct has been the subject of investigation by:

- Dr Paterson
- Mr Pearson
- Operation Paradox
- Mr Crawley
- Mr Weeks
- Mr Wilson
- The Ombudsman
- Strike Force Arika

155. Prior to the investigation by Strike Force Arika, no evidence was available that Mr Nisbett had sexually abused seven students, the evidence exposed by Strike Force Arika resulted in Mr Nisbett being convicted for acts of indecency and indecent assault on those students.

156. Whilst both Mr Crawley and Mr Weeks, following Dr Paterson’s retirement, were determined to remove Mr Nisbett they were unable to get sufficient evidence to do so and Mr Nisbett resigned from Knox in 2004, some years prior to his arrest.

3.6.2 Investigations during Mr Paterson’s time as Headmaster

157. Dr Paterson was aware of rumours relating Mr Nisbett in or about 1984, and took steps to investigate these rumours but at that time there was no evidence to establish the names of students who had been abused, or the details of the abuse and there is no evidence of any report of abuse.

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54 Transcript of I W Paterson T12512:37-44 (Day 119)
Whilst in 1984, nothing had been reported to Dr Paterson beyond rumours; he sought to investigate these rumours and made contact with at least one staff member, Mr Gooding to seek information.  

As Dr Paterson was unable to progress his enquiries in relation to the rumours, in or about 1986 he discussed with Mr Pearson the need to conduct an investigation. Mr Pearson’s role at Knox as discussed below was to undertake investigations of matters which Dr Paterson drew to his attention.

Mr Pearson relished the opportunity to investigate Mr Nisbett and by his account conducted a very detailed examination which included a covert search of Mr Nisbett’s accommodation and he prepared a very detailed report which he presented to Dr Paterson.

Whilst in some of his evidence Mr Pearson seeks to suggest that Dr Paterson may have sought to restrict his investigation, Mr Pearson agreed there were no restrictions and no objection by Dr Paterson to the covert search of Mr Nisbett’s accommodation.

The report provided to Dr Paterson has disappeared, and Mr Pearson claims that his copy of the report was destroyed in a “flood”; the credibility of Mr Pearson’s story on this point is considered at 4.1.2 below.

Whilst Mr Pearson’s original report is not available, he was interviewed by Mr Wilson an independent investigator appointed by Knox in 2004 and gave a statement to NSW Police on 2 March 2009. There is no dispute he did prepare a report.

Mr Pearson’s investigation is dealt with at some length in the transcript of his interview by Mr Wilson and referred to in Mr Wilson’s final report.

Mr Pearson, in a rambling and in parts obviously self-serving interview with Mr Wilson, refers to a number of allegations rumours and innuendo concerning Mr Nisbett and other matters he claimed to have been aware of when investigating Mr Nisbett.

Mr Pearson was not able to tell Mr Wilson that he had discovered any specific details or abuse by Mr Nisbett or the names of any person abused.

Whilst there can be no doubt from the interview with Mr Wilson that Mr Pearson was determined to “get the goods” on Mr Nisbett, in spite of his police training and experience he was not able to obtain evidence of sexual abuse or other unsatisfactory behaviour to confirm the truth of the rumours.

Whilst Mr Pearson did not have evidence to confirm the truth of the rumours he was concerned of a potential or unproven risk to boys and recommended to Dr Paterson that Mr Nisbett be removed from his position as House Master of Ewan House.

Dr Paterson accepted Mr Pearson’s recommendation and Mr Nisbett was removed from the boarding house following the investigation by Mr Pearson.

It is uncontested there was a written record of Mr Pearson’s investigation, setting out the reasons for his recommendation which was accepted and acted upon by Dr Paterson. The fact this written record could not be located is not basis for a contrary finding.

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55 Transcript of I W Paterson T12513 (Day 119)
56 Transcript of S L Pearson, T12301:29-31 (Day 118)
57 Exhibit 23-0022 STAT.0480.002.0231, KGS.001 002.0026
58 Exhibit 23-0025, STAT.0474.001.0042_R

135340955v1_JGH
171. Mr Pearson states in his interview with Mr Wilson that in relation to the action taken by Dr Paterson against Mr Nisbett:

“Well I’m not going to blame the Headmaster for this one, because that was my recommendation. That was the way things were dealt with in those days.”

172. It is suggested that by acting on Mr Pearson’s recommendation and removing Mr Nisbett from his position reflected a view that he was, on information then known by Dr Paterson, an inappropriate person to be a Housemaster this does not necessarily follow it could easily be explained on the basis that there were rumours albeit unproven but there a possible risk and even without clear evidence to reduce the risk he had to be moved.

173. Further, Dr Scott, then Chairman of Knox Council, mentioned that Dr Paterson had advised him of the change to Mr Nisbett’s duties and mentioned a report from Stuart Pearson at that time. He further gave evidence that, having sent his sons to Knox, one of whom was taught by Mr Nisbett, he too had never heard rumours that Mr Nisbett was abusing children.

174. Even if one accepts that Dr Paterson had a view Mr Nisbett was not an appropriate person to be a Housemaster at this time, there was no evidence to confirm the rumours or that he had abused anyone which would require some other action.

175. It is important to note that in 2003-2004 Mr Wilson, Mr Crawley and Mr Weeks even with the assistance of Mr Pearson failed to find evidence to assist them in their objective to remove Mr Nisbett from Knox prior to him leaving Knox on 18 June 2004.

3.6.3 Action Taken by Dr Paterson

176. As noted above Mr Nisbett was removed as House Master of Ewan House in 1986.

177. It is suggested in the submission that on 1990 Dr Paterson permitted Mr Nisbett to reside in a new boarding house, Kooyong House this is not correct.

178. Mr Nisbett never resided in Kooyong House his accommodation whilst adjacent to Kooyong House was not part of the house and Mr Nisbett was not a Resident Master at Kooyong, and, did not play any role at all in the care and management of Kooyong House.

3.6.4 Available findings

179. The reasons for Mr Nisbett’s removal from Ewan House were recorded in, if Mr Pearson is accepted, his detailed report which was provided to Dr Paterson and the copy of that report which was lost in the flood.

180. There is no evidence which proves that Dr Paterson failed to report the rumours relating to Mr Nisbett and his removal from Ewan House, Dr Scott, the Chairman, gave evidence he was aware Mr Nisbett had been removed.

181. There is no evidence that Dr Paterson knew of evidence that Mr Nisbett had been guilty of inappropriate behaviour towards boys. The uncontested evidence of Pearson is that there was no evidence from his investigation of inappropriate behaviour towards boys.

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59 Exhibit 23-0025, STAT.0474.001.0042_R
60 Transcript of B W Scott T12645: 1-8 (Day 120)
61 Transcript of B W Scott T12645: 29-34 (Day 120)
182. Even in 2003-2004 Messrs Crawley and Weeks in spite of their best efforts had not exposed the abuse perpetrated by Mr Nisbett and Operation Paradox had also failed to expose the activities of Mr Nisbett.

183. Mr Nisbett was not in a boarding environment in 1990 unless one was to define the whole of the Knox grounds as a boarding environment.

184. Mr Chapman never identified Mr Nisbett (or any other teacher) as the subject or the rumours this issue is dealt with in detail at 3.9 below.

185. The only available findings in relation to Mr Nisbett are:

1. Dr Paterson investigated rumours relating to Mr Nisbett and requested Mr Pearson also to conduct an investigation.

2. On the completion of Mr Pearson's investigation there was no evidence to prove the rumours and no evidence that Mr Nisbett had actually abused any student and no student had been identified as having been abused.

3. Based on his investigation and notwithstanding the lack of evidence Mr Pearson recommended that Mr Nisbett be removed from Ewan House, Dr Paterson accepted that recommendation and he was removed from his position as Housemaster of Ewan House.

4. After his removal from Ewan House Mr Nisbett never resided in a boarding house and was never allocated any duties within a boarding house.

3.7 The attendance of Inspector Cullen in 1996

186. In December 1996, during a visit to Knox, Inspector Cullen recalls indicating to Dr Paterson she was "seeking to verify the details of these individuals; whether they were employed by the school at the time and whether they were still employed at Knox".62

187. Inspector Cullen says Dr Paterson "immediately referred me to his secretary or assistant whom he said would be able to assist in obtaining staff records".63 And Inspector Cullen goes on to state that she was provided with what she believed to be the staff records for each of the six persons of interest.

188. There is no evidence that Inspector asked Dr Paterson any questions in particular whether he had any information concerning allegations of child abuse relating to the persons named and no suggestion that she gave Dr Paterson any details of the allegations.

189. Inspector Cullen makes no claim in her statement that Dr Paterson and or his secretary in any way hindered or obstructed her enquiries and does not assert she was unable to obtain the information she was seeking to verify, which information was limited on her evidence to when those named, had then been employed and whether they were currently employed.

190. The comments and findings proposed by Counsel Assisting are all predicated (erroneously) on Dr Paterson knowing the details of allegations Inspector Cullen was investigating. The uncontested evidence of Inspector Cullen is that she did not tell Dr Paterson anything about any allegation in relation to any of the persons whose files she wished to inspect.

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62 Exhibit 23-0027 STAT.0518.001.0005 at 17.
63 Exhibit 23-0027 STAT.0518.001.0006
191. The fact is Inspector Cullen did not ask Dr Paterson when explaining her visit and asking for files "are you aware of any issues relating to inappropriate behaviour of child sexual abuse by any of these persons".

192. It is not within the terms of reference of this Royal Commission to make findings in relation to the commission of any criminal offence any adverse finding on this issue must be limited to a finding that Dr Paterson was not asked and did not tell Inspector Cullen anything about the person about whom she was seeking information.

193. Going further would be manifestly unfair as the public will assume the Royal Commission has in fact found that Dr Paterson has committed an offence.

194. There is no basis for a finding under S315 of the Crimes Act 1900. S315 (3) states "It is not an offence against this section merely to refuse or fail to divulge information or produce evidence".

195. Counsel's submission that Dr Paterson's conduct went beyond the mere refusal to divulge information or produce evidence has no basis on the evidence whatsoever, Dr Paterson and his staff clearly complied with the request made by Inspector Cullen, there was no refusal or failure to divulge information requested.

196. Dr Paterson's conduct falls short of a refusal to divulge information or produce evidence and. It does not even amount conduct described in s315 (3) of the Crimes Act.

197. He did not refuse to do anything Inspector Cullen asked him, and further he actively assisted her by providing the information she was seeking.

198. With regard to the submissions in relation to S316 of the Crimes Act there is no evidence that Inspector Cullen revealed any details of the allegations against the individuals. Accordingly there was no evidence in relation to the visit by Inspector Cullen which establishes the nature of the offences which may arise in relation to the unspecified allegations and more importantly in relation to Section 316 that the allegations related to a serious indictable offence.

199. With regard to Section 319 of the Crimes Act for the reasons set out above there is no evidence to suggest that Dr Paterson in any way took action or "intended" to deflect Inspector Cullen from prosecuting a criminal offence.

200. The only available findings on the evidence are:

1. Inspector Cullen attended Knox and advised Dr Paterson there was an investigation in to possible child sexual abuse and she was seeking to inspect files of nominated persons to determine their employment status.

2. Inspector Cullen did not provide details of any allegations relating to any of the nominated persons.

3. Inspector Cullen did not ask Dr Paterson for any questions.

4. Dr Paterson made arrangements for the files to be provided and they were inspected.

5. Following inspection of the files Inspector Cullen did not ask any questions about what was or was not in the files.

6. Inspector Cullen did not make any comment or complaint in relation to the response by Dr Paterson or any staff member to her requests.

7. Dr Paterson did not mislead Inspector Cullen.
3.8 Lucy Perry

3.8.1 Consideration of this Issue

201. The allegations made by Ms Perry are strongly denied and must be treated with great caution because of their significant prejudice and the fact that Ms Perry evidence at the time she made a report to the police and in giving evidence that she does not wish for the police to press charges.

202. These matters of concern are set out in more detail in the letters to the Royal Commission dated 22 and 26 February and 1 March, attached to these submissions for ease of reference.

203. This issue must be considered having regard to the Terms of Reference for this Royal Commission expressly state the Commission is not required "to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding."64

204. Whilst the role of this Royal Commission is to provide a forum for victims to tell their stories great care needs to be taken having regard to:

- the coercive powers given to a Royal Commission to compel witnesses to answer questions,
- the standard or proof in this Royal Commission is the civil and not the criminal standard
- the prospect that findings based allegations of criminal conduct may never be tested and or proved on the criminal standard and the person subject of an adverse finding in relation to criminal conduct even if the finding is qualified by the word "may" has no redress
- the need to allow persons to tell their stories must be balanced by the presumption of innocence when making findings relating to criminal conduct
- the need to ensure that the Royal Commission processes are not misused

205. The primary purpose of this Royal Commission is to enquire into institutional responses to child sexual abuse - to this end it has encourage victims to come forward so that they can inform the Royal Commission of what happened it is not the role of the Royal Commission to determine if a criminal offence has, or may have occurred.

206. It is submitted having regard to the comments above that in relation to Ms Perry the only findings should be:

1. Ms Perry claims to have been assaulted by Dr Paterson in front of a number people during the dress rehearsal for a musical.
2. Dr Paterson strongly denies the allegation.
3. Evidence was given by AUE a friend of Ms Perry in support of Ms Perry’s version and Mr Buggy a former Knox teacher in support of Dr Paterson’s version of events.

4. There is a clear conflict in the evidence and no contemporaneous or indeed any other evidence which otherwise corroborates the conflicting evidence.

5. There is no evidence except for Ms Perry’s allegation that Dr Paterson ever assaulted anyone at any time.

6. It is not the role of the Royal Commission to determine whether based on the allegations of Ms Perry that any offence has been committed.

3.8.2 The Evidence

207. The evidence in relation to this issue must be considered have regard to the following chronology:

- 19 February 2015 Miss Perry signs her statement
- 20 February 2015 Dr Paterson first became aware of the allegation by Ms Perry
- 2 March 2015 Ms Perry gives evidence at the public hearing
- 3 March 2015 AUE signed his statement and it was served on Dr Paterson at 6.00pm
- 5 March 2015 AUE gives evidence at the public hearing

208. Mr Treloar was arrested on 16 February 2009 and his arrest was subject of media reports at that time. Ms Perry reported her allegations to NSW Police on 9 March 2009 as noted in the police report

"in the hope it would back up other reports made by students in relation to the ongoing investigation of S/F ARIKA to child sexual assaults which occurred at Knox"65

209. Also noted in the police report and consistent with evidence in the Royal Commission

"PERRY does not wish to proceed with charges against PATERSON"66

210. Dr Paterson was given late notice of the allegations of Ms Perry and the Royal Commission gave only a short time from him to respond he was not afforded sufficient opportunity to adduce supporting evidence in response to what is a very serious and prejudicial allegation.

211. There are a number of inconsistencies in the evidence and as a consequence that evidence cannot be unequivocally accepted even applying the civil standard in circumstances where her allegation is strongly contested.

212. Ms Perry was uncooperative as a witness, and twice failed to properly respond to the proposition put to her that Dr Paterson did not sexually assault her, and any contact would simply be for the purpose of directing her onstage67.

65 Exhibit 23-0001 NPF.060.001.0010_R
66 Exhibit 23-0001 NPF.060.001.0010_R
67 Transcript of L Perry T12374: 27-42 (Day 118)
213. In assessing Ms Perry's evidence one must have regard to her demeanour as a witness, she clearly enjoyed her celebrity status and the fact that she received considerable media attention indeed said when giving her evidence:

“I can't think of a Royal Commission I'd rather assist more than one that is looking into the institutional responses to child sexual abuse. I just wanted to be able to assist the Royal Commission with details about an incident that, though that incident hasn't had a negative impact on my life, it may help the Royal Commission to build a - to make - to build a story for what the culture was like at Knox.”

214. One also needs to consider Ms Perry's own evidence of events leading up to her performance in the show when at one point she was apparently being disruptive and directed by Dr Paterson to leave the show which demonstrates that she was somewhat precocious and enjoyed the drama and being the centre of attention.

215. The inconsistent evidence recorded in the NSW Police record of the report made by Ms Perry in 2009, in the Evidence given by Ms Perry at the public hearing, as well as the inconsistent evidence given by AUE, is summarised in the below table:

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Ms Perry's age</td>
<td>16 years of age</td>
<td>15 years of age</td>
<td></td>
</tr>
<tr>
<td>Location</td>
<td>Backstage</td>
<td>Onstage</td>
<td></td>
</tr>
<tr>
<td>Time</td>
<td>After a performance</td>
<td>During a full dress rehearsal</td>
<td></td>
</tr>
<tr>
<td>Ms Perry's dress</td>
<td>A leotard and fishnet stockings</td>
<td>Feather boa, full length wrap around skirts over a black leotard and fishnet stockings</td>
<td>“black leotards with a red sash … maybe it’s called a wrap-around dress. I'm not quite sure”</td>
</tr>
<tr>
<td>alleged assault</td>
<td>“patted her on the bottom a few times and slide [sic] his hand underneath and touched her in the genital area”</td>
<td>“he placed his hand on my backside … between a pat and a grope. He then slid his hand right down to cup my buttocks and I felt him touch my genitals outside of my clothing”</td>
<td>“Dr Paterson hit her on the buttocks, but I wouldn't call it a pat, because his hand stayed there”</td>
</tr>
<tr>
<td>Ms Perry’s reaction</td>
<td>“she stepped forward to remove his hand”</td>
<td>“I turned around and saw Paterson had … a creepy look of satisfaction on his face”</td>
<td>Lucy had to almost jump out of his grasp and she turned and she gave a small scream of surprise.”</td>
</tr>
<tr>
<td>Witnesses</td>
<td>“Perry is unaware if the incident was witnessed by anyone else”</td>
<td>“Could be 40 boys, 80 boys”</td>
<td>“about 20 to 30 boys”</td>
</tr>
<tr>
<td>The reaction of any witnesses</td>
<td>“I heard the boys cheering”</td>
<td>“I do recall the absolute roar that they made when they saw the assault”</td>
<td>“Some of the boys laughed. I don’t think they all did and I don’t think the laughter was in full support of Dr Paterson; I</td>
</tr>
</tbody>
</table>

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68 Transcript of L Perry T12376:15-25 (Day 118)
69 Exhibit 23-0001 NPF.060.001.0010_R
70 Transcript of L Perry T:12366-T12376 (Day 118)
71 Transcript of [AUE] T12681-T:12699 (Day 121)
216. When shown a copy of the record of her report made to NSW Police in 2009, Ms Perry said:

Ms Perry: "It didn't happen backstage, so that may be an error on the police officers part"

Mr Harrowell: Could it be your error?

Ms Perry "No, I doubt it"72

217. The evidence of AUE must be treated some caution he did not give any statement until after Ms Perry had given evidence and her appearance had been widely reported including her taking exception to any suggestion that her version of the events was untrue.

218. AUE gave evidence before the Royal Commission for the express purpose of giving weight to Ms Perry's evidence: "I needed to corroborate her story".73

219. AUE's motivation is clear and unambiguous he "needed to corroborate her story" and one can infer that this need arose as a result of a combination of the media reports of Ms Perry's evidence, self-motivation and possibly a request from Ms Perry or other persons to help back up her story.

220. This inference is supported by AUE's sensitivity when questioned about his recollection the events he witnessed.

221. He was asked:

Q Are you sure that your recollection wasn't influenced by hearing her give her evidence?"

A: "Yes, I am sure"74

222. AUE then went on to say his views had been altered by Ms Perry's evidence:

"I was 90 per cent sure that his hand had made contact with her genitals... but after hearing her evidence, I was then a hundred percent sure"75

223. AUE's recollection of the events was imperfect and he was clearly concerned to back up Ms Perry examples include:

• he incorrectly recalled the year the musical Guys and Dolls was performed;
• he did not clearly describe the positioning of Dr Paterson and Lucy Perry onstage

72 Transcript of L Perry T12372:36-47, T12373:1-12 (Day 118)
73 Transcript of [AUE] 12686:31 (Day 121)
74 Transcript of [AUE] 12686:35 (Day 121)
75 Transcript of [AUE] T12696:9-12 (Day 121)
he did not clearly describe how he was able to see the events he gave evidence about from his position

he could not recall whether Ms Perry came out as part of the chorus line or by herself

he could not corroborate the "absolute roar" Ms Perry alleges she heard in response to the assault; and

could not recall whether or not he spoke to Ms Perry about the alleged assault, either immediately afterward or at any time prior to her giving evidence before the Royal Commission.76

224. A number of aspects of Ms Perry's version of the events are implausible:

- She claims not that he just touched her but he touched he genitals. This if one accepts the evidence of both Ms Perry and AUE occurred whilst Ms Perry was wearing a full length wrap round skirt (Ms Perry) or a wrap round dress (AUE).

  Given the clothing Ms Perry was wearing if would not have been physically possible touch her in that way.

- All witnesses agree a number of people were present facing the stage possibly 40 – 80 boys (Ms Perry) but not less than 20 -30 boys (AUE).

  It would be an extraordinary thing for Dr Paterson or anyone else to reach up and touch the genitals of a female in such a public place and to do so would clearly have provoked an outcry

  No one aside from Ms Perry and AUE have any memory. In particular Mr Buggy has no recollection of the events described and strongly denies that Dr Paterson would ever do such thing at any time

- Ms Perry claims "I do recall the absolute roar that they made when they saw the assault" yet AUE does not recall this and neither does Mr Buggy or anyone else give evidence of the "absolute roar".77

225. Having regard to the written evidence and the way Ms Perry and AUE presented in the witness box one must conclude both Ms Perry and AUE were attempting in parts of their evidence to add facts which they did not recall to strengthen their stories, in the case of Ms Perry it was her nature to do so and in the case of AUE as part of his desire to back up Ms Perry.

226. The evidence given by Lucy Perry and AUE is not evidence sufficient to justify a finding that Dr Paterson committed a criminal act and the only findings that can be made on this issue are those set out at the conclusion of 3.8.1 above.

3.9 Terry Chapman

3.9.1 The conversations between Dr Paterson and Mr Chapman

227. There is no evidence to suggest Mr Chapman raised any allegations about Mr Nisbett with Dr Paterson. He gave evidence that he was aware of "rumours", but does not say he heard rumours that would form the basis of an allegation of child sexual abuse.78

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76 Transcript of [AUE] T12681-T:12699 (Day 121)
77 Transcript of L Perry T12370:1-7 (Day 118)
Mr Chapman's evidence is that he informed Dr Paterson he had heard some rumours about child abuse issues at Knox, and he suggested Dr Paterson “inquire about those rumours” with a view to deciding whether further action might be necessary or advisable.  

He does not say he gave advice as to how Dr Paterson might undertake any inquiries, or that Dr Paterson should inform Knox Council of their conversation.  He does not say he told Dr Paterson what the rumours were. 

Insofar as Counsel Assisting's submission relates to Mr Nisbett, Mr Chapman's evidence was that he had no knowledge of the identity of any teacher or teachers subject of the rumours about child protection problems at Knox.  He says he did not identify the person/s subject of the rumours in conversation with Dr Paterson.

Further, he gave evidence that he could not recall how he came to hear of the rumours, and had no specific knowledge of the nature of the rumoured abuse:

Q: "...Did it appear to you that the problems with child sexual abuse at Knox, at the time you were told this information by several people, were an open secret? 
A: "No, I wouldn't have been aware of that. Just several people mentioned, and they didn't talk about sexual abuse, they just talked about abuse.

Q: Did you understand, when you spoke to them, what sort of abuse?
A: No. It was in a time when we were briefing schools about all of the – all of the forms of abuse contained within that word.

3.9.2 Dr Paterson's alleged "failure" to make inquiries following the conversations with Mr Chapman

Mr Chapman does not know whether Dr Paterson acted upon his advice following each conversation.  Dr Paterson cannot recall the conversations, although he accepts Mr Chapman's evidence that they occurred, and does not recall what action he took following those conversations but the absence of any recollection is not evidence he failed to do so, and it is submitted this is not a conclusion that can be drawn based upon the limited evidence available.

Further, if it is the case that no action was taken following the conversation, the circumstances do not warrant a finding of "failure" against Dr Paterson.  Mr Chapman's evidence is that he cannot recall when exactly the conversations occurred, but that they occurred in the mid to late 1990s.

Depending upon when they occurred, it is possible if not likely that at the time of those conversations both Mr Chapman and Dr Paterson would have been aware of the investigation commenced by NSW Police, having provided Inspector Cullen with records as requested in December 1996.

If the conversations had occurred after December 1996, Dr Paterson should not be criticised for not making further inquiries about "rumours", due to the general nature in

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78 Transcript of T W Chapman 12394:29-41 (Day 119)
79 Transcript of T W Chapman 12393:21-28 (Day 119)
80 Transcript of T W Chapman 12394: 13-16 (Day 119)
81 Transcript of T W Chapman 12394: 7-10 (Day 119)
82 Transcript of T W Chapman 12394:29-41 (Day 119)
83 Transcript of T W Chapman 12393:5-8 (Day 119)
which they were disclosed to him and the lack of evidence to suggest that further information might have been available if he took particular steps to obtain it.

236. There is no evidence that Dr Paterson was privy to the matters forming the basis of the rumours, what the rumours were and this is unclear to this day. There is no evidence of what allegations were being investigated by NSW Police at that time Inspector Cullen, on her evidence, went to Knox and she never told him.

237. The evidence does not exclude the possibility that it would be reasonable for Dr Paterson to be satisfied that whatever rumours Mr Chapman had heard were rumours pertaining to matters already known to police, and the police were the more appropriate body to undertake any inquiries and were in the process of doing so.

238. A submission cannot be made that Dr Paterson failed to do something cannot be made in the absence of evidence to prove what Dr Paterson knew, and should have done something based on that knowledge.

3.9.3 Dr Paterson’s alleged “failure” to inform Knox council of the conversations with Dr Chapman

239. We have not been served with any Headmasters Reports or Minutes of the Knox Council meetings for the period 1991-1999.

240. There is no proof that Dr Paterson failed to inform Knox Council of the conversations with Mr Chapman.

3.9.4 General Comments

241. Whilst the evidence relating the conversations with Mr Chapman does not and cannot support the finding proposed by Counsel Assisting it does refute the suggestion that Dr Paterson was not taking child abuse seriously and he was in fact seeking counsel from AIS.

242. The only available finding based on the evidence of the conversations with Mr Chapman is:

Mr Chapman did not give Dr Paterson any specific details of the rumours and in particular no staff member or victim was identified by Mr Chapman as being the subject of the rumours.

3.10 Record Keeping

243. No comment is made in relation to paragraphs 128 – 130.

244. In relation to paragraphs 125 – 127 there is no contest in relation to the factual matters or the available finding proposed.

Part 4 Contested Facts

4.1.1 Dr Ian Paterson’s credit

245. Counsel Assisting makes a general submission at 4.1 concerning the credit of Dr Paterson; this submission is unfair and not justified having regard to the evidence.

246. Dr Paterson’s statement is dated 7 February 2015 and responds to the letter from the Royal Commission dated 23 December 2014 which was not received by him until 20 January 2015, when he was advised that the Knox legal team would not be able to represent him at the hearing. He then retained his own legal advisors on 21 January
2015 and the Royal Commission was contacted to obtain an extension of time to respond to the letter.

247. When responding to the letter from the Royal Commission Dr Paterson had no access to any documents and the tender bundle from the Royal commission was not served until 12 February 2015.

248. Counsel Assisting only refers to paragraph 18 of Dr Paterson’s statement and neglects to make any reference to paragraphs 37 – 56 of his statement.

249. Dr Paterson’s statement is not inconsistent with his evidence and the evidence received by the Royal Commission, the only report of child abuse received by Dr Paterson was relating to Vance who he dismissed that day.

250. Dr Paterson denies that he was advised of sexual abuse by Stewart, Nisbett and James. The only contest regarding Dr Paterson knowledge of abuse relates to Treloar and this is dealt with below where there is evidence to corroborate the fact he was only aware of the video and nothing more.

251. The submission made regarding the visit of Inspector Cullen is unfair and clearly contradicted by the evidence of Inspector Cullen as detailed in 3.7 above.

252. Whilst Dr Paterson’s recollection of events 25 years ago understandably as with other witnesses may not be perfect, the general submission is not justified on the evidence.

253. Dr Paterson gave evidence in a forthright manner, and did not proffer self-serving statements or in any way seek to avoid responsibility and/or answering questions.

254. Dr Paterson was asked questions about a number of matters he had no actual memory of, and gave evidence that certain scenarios were possible or likely having regard to the evidence put to him. Evidence given as to his state of mind at various times when he has no actual memory of the event or circumstances is speculation. It is not evidence of his actual state of mind at the time and should not be relied upon as such.

255. No person, regardless of their credit as a witness, can possibly be said to be guilty of each and every hypothetical scenario adverse to their interests that is put to them and they acknowledge it is possible. Evidence must be led in support of that hypothetical scenario being the most likely state of events on the balance of probabilities.

4.1.2 Stuart Pearson’s credit

256. The evidence given to the Royal Commission by Mr Pearson must be treated with great caution. Mr Pearson’s evidence is relied on by Counsel Assisting in relation to several matters in particular Treloar, Nisbett and the Balaclava Man, the fact is that he failed to expose most of the sexual abuse now subject of this enquiry.

257. The evidence discloses that Mr Pearson was a police officer prior to joining Knox as the General Duties Master, and that his duties at Knox included matters of discipline and he investigated issues on his own initiative which may have come to his attention. Mr Pearson also gave evidence that as a result of his work in the Police Force he was experienced in matters relating to young people and child abuse.

258. Mr Pearson gave evidence that he had a close working relationship with Dr Paterson, at least until the time he left Knox Grammar and was trusted by Dr Paterson both for his investigative skills and his discretion and he agreed under cross-examination that his role at Knox could be described as “the policeman on the beat”.
259. Mr Pearson gave evidence to matters which he investigated unrelated to child sexual abuse and also the investigations conducted in relation to matters before the Royal Commission.

260. Mr Pearson, when pressed under cross examination agreed that he was never prevented from investigating any matter of concern that he raised with Dr Paterson and was not restricted in the way he conducted investigations.  

261. Staff including Dr Hawkes, Mr Bradford and others gave evidence that Mr Pearson's reputation within Knox Grammar was that he was a dogged and persistent investigator and anyone questioned by Mr Pearson "would remember it".85

262. The evidence discloses that Mr Pearson, following the breakdown of his then marriage, sought accommodation within the grounds of Knox Grammar and was provided with accommodation adjacent to the McNeil Boarding House where he carried out Duty Master responsibilities from time to time.

263. Mr Pearson initially in his evidence attempts to paint a picture that any issues relating to the investigation of teachers and the detection of possible abuse of students by teachers was closely controlled and limited by Dr Paterson.

264. An example of Mr Pearson's changing position was his concession that even though Dr Paterson cautioned him in relation to the investigation of Mr Nisbett, at no time was he prevented from taking any steps he thought appropriate including a covert search of Mr Nisbett's room to ascertain whether Mr Nisbett had any pornography or other material which was inappropriate.

265. Mr Pearson was pressed in relation to his record-keeping of investigations conducted and he did not give any direct evidence of any direction or policy that the lack of records was because Dr Paterson did not wish a record to be retained on sensitive matters.

266. There is evidence however that Mr Pearson's record-keeping practises were not governed by any express or implied direction from Dr Paterson - rather that was Mr Pearson's way of doing things. This was consistent with his complaints in 1982 that while serving as a policeman he was required to necessarily prepare reports and records rather than perform policing duties.86

267. Whilst it must be accepted that all witnesses' recollections of events that occurred many decades ago may be impaired in relation to dates, times and specific details, Mr Pearson was a trained policeman who one might expect had a better recall than an untrained person.

268. Mr Pearson gave evidence that he felt deeply responsible in carrying out his role for the care of students and was, no doubt, devastated to be confronted with the details of child sex abuse which undoubtedly occurred "on his watch" as "the policeman on the beat" which he had not discovered, investigated or prevented.87

269. Persons placed in the position of Mr Pearson commonly seek to pass responsibility to others including superiors such as Dr Paterson.

270. It is also not uncommon for persons in Mr Pearson's position to revisit their recollection of past events and in so doing attempt to minimise their role by, for example, claiming

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84 Transcript of S L Pearson T:12283:14-17 (Day 118)
85 Transcript of D P Vance T11919:13-15 (Day 115); Transcript of I S Bradford T1276-T12730 (Day 121); Transcript of TS Hawkes:T12071:34-34 (Day 116)
86 Exhibit 23-0026
87 Transcript of S L Pearson T12285:11-15,33-35 (Day 118)
they would have done more but were prevented from doing so or to create a picture which shows them in a more favourable light.

271. A clear example in the present case of this happening is the evidence given by Mr Pearson concerning his discussion with an unnamed sergeant in relation to the balaclava incident.

272. In the Royal Commission unlike court hearings where witnesses are excluded from the courtroom until they have given their evidence, witnesses giving evidence at the Royal Commission are able to attend the hearing and/or watch the evidence given by other witnesses before they enter the witness box.

273. Mr Pearson was present at the Royal Commission and heard Counsel Assisting closely examining Dr Hawkes as to whether the balaclava incident had been reported to the police. Before entering the witness box Mr Pearson well knew, both from what he had heard in relation to the examination of Dr Hawkes and also because of his experience as a policeman in both giving evidence and prosecuting cases, that he had been identified by Dr Hawkes as a person who Dr Hawkes thought would report the matter to the police.\footnote{88 Transcript of S L Pearson T12319:36-T12340:44 (Day 118)}

274. Mr Pearson when asked questions concerning the reporting of the balaclava incident to police for the first time claimed that he had himself contacted the police to ascertain whether or not the incident had been reported\footnote{89 Transcript of S L Pearson T12322:1-34 &Day 118).}

275. The fact that Mr Pearson took it upon himself to call the police regarding the matter is plainly inconsistent with his evidence that at Knox at that time police would only be contacted with Dr Paterson's approval. It is also inconsistent with the uncontested evidence that Counsel Assisting seeks to rely on at paragraph 132 of his submissions, that Mr Jenkinson contacted police on his own initiative without Dr Paterson's approval.

276. More significantly Mr Pearson gave no adequate explanation as to why having a sergeant from NSW Police on the phone and being told the incident had not been reported he did not immediately report the incident.

277. There is no evidence to corroborate the call Mr Pearson claims to have made to NSW Police, no records have been produced from NSW Police to prove that Mr Pearson called and Mr Pearson does not assert he told Dr Paterson or any other person that he had checked and no report had been made to NSW Police.

278. Mr Pearson’s evidence in relation to calling the police regarding the balaclava incident confirms a tendency to re-invent history to distance himself from events that occurred at Knox on his watch.

279. The need for caution in relation to Mr Pearson’s evidence is further demonstrated in relation to the Treloar incident.

280. Mr Pearson gives evidence that notwithstanding his service in the NSW Police Force and the disturbing situations he was confronted with as a policeman the events detailed by the student greatly upset him because of the nature of the allegations and the extreme distress of the student and this incident has always remained in his memory.\footnote{90 Transcript of S L Pearson, T12239-12240}
281. It is surprising however, that the one thing that has not remained in Mr Pearson's memory is the name or description of the boy. This was the only time that a student actually went to Mr Pearson to report a teacher for sexual abuse.

282. Whilst there is no doubt that the showing of a video did occur and Mr Treloar was removed from the boarding environment and did subsequently plead guilty to showing the video the boy who Mr Pearson claimed reported the incident to him has not been identified by Mr Pearson. It is curious that Mr Pearson cannot remember the name of the student and it is also not explained why Mr Pearson kept the video without disclosing its existence to anyone for several decades.

283. What is even more curious is given Mr Pearson's statement of his various roles and reputation as an investigator no student who has given evidence in relation to the balaclava incident makes any reference to being interviewed by Mr Pearson.

284. With the exception of evidence given by AST in 2009 that Mr Pearson jointly asked a group of boys in about 1987 whether they had been shown a pornographic video (all of them denied it)\(^91\), there is no evidence he ever interviewed any student regarding Mr Treloar's conduct.

285. Having regard to the evidence given by the victims of child sexual abuse which cannot be denied one must conclude that Mr Pearson failed to detect and did not know of the incidents of child sexual abuse which are a key focus of the enquiry into Knox Grammar at the time he left the school in 1990.

286. Knox Grammar has produced to the Royal Commission a handwritten note prepared by Mr Pearson in which he summarises his achievements at Knox in 1990\(^92\).

287. At item 12 he refers to the investigation of the activities of 2 Masters and notes that:

"only when all the facts – had been compiled – did I take the matter to the Headmaster. At no stage was either Master aware they were being observed. The matters were of such a serious nature that one was asked to leave and the other psychiatrically counselled."

288. This note plainly contradicts his evidence where he tries to suggest Dr Paterson tried to restrict his investigations; he says "only when all the facts – had been compiled – did I take the matter to the Headmaster."

289. The note prepared by Stuart Pearson does make reference to his determined efforts to investigate some matters at Knox but it is significant in writing a note to himself: he mentions only 2 Masters both of which were unnamed, and that one appears to have left the college and the other remained after counselling.

290. In the note, Mr Pearson embellishes his achievements at Knox, and did so in the witness box and written evidence to protect himself and avoid responsibility for his failure to detect the abuse that occurred during his time at the Knox.

291. It is significant that Mr Pearson, having resigned in 1990, enrolled his son at Knox in 1995\(^93\), when Mr Nisbett, Mr Stewart, and Mr Treloar were teachers at the school. At the time he enrolled his son at the school he was not, apparently, concerned about the safety of his own son despite what he claimed to know abuse or potential abuse at Knox. It is further surprising that Mr Pearson would entrust his son to Dr Paterson who,

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\(^91\) Exhibit23-0001 NSW.2022.007.1083_R
\(^92\) Exhibit 23-0001 KGS.001.005.0002_R
\(^93\) Transcript of I W Paterson T12794:13-17 (Day 122)
if his evidence in 2015 is accepted, was a person who he was concerned may ignore or cover up child sexual abuse.

292. It is significant that while Mr Pearson suggests that Dr Paterson discouraged him from keeping records of sensitive matters, he took documents from the school upon his resignation but says they were destroyed in a flood yet the video obtained from Treloar (which plainly remained in his possession, not Dr Paterson) was inexplicably preserved, and there is no other evidence to confirm any other records existed.

293. Mr Pearson's claim that his records in particular his copy of the Nisbett report was "lost in a flood" is convenient and sounds like "the dog ate my homework", and on this issue it is notable that he admits he did have copy of this report contrary to other evidence he gave which tried to suggest Dr Paterson did not want copies kept and therefore and that his explanation for the lack of records.

4.2 Whether Dr Timothy Hawkes knew that the police were not notified of the assault on ARN

4.2.1 Dr Hawkes' credit

294. Protecting and furthering the best interests of students is a topic to which Dr Hawkes has a unique affinity, and demonstrable personal interest and passion.

295. His passion is such that he developed a certificate course for the professional development of staff responsible for the care of students in boarding schools and has authored two books on the subject, and upon successful completion of the compulsory requirements of the course a staff member is eligible for accreditation by the Australian Boarding Schools Association. The Course is titled "Duty of Care".94

296. A copy of the index of each of Dr Hawkes' published works, which form the core material for the course, is attached. The indexes demonstrate his thorough consideration and knowledge of a multitude of matters relevant to caring for boarding school students, including the responsibility of staff for the protection of students, not only from a legal perspective but also from a philosophical, operational and pastoral care perspective. Should the Commission wish to receive a copy of the books to satisfy itself as to their content, they will be supplied.

297. It is submitted that Dr Hawkes is well-regarded as a person who would be very unlikely to prioritise the reputation of an institution above his duty to act in the best interest of boys in his care, and the evidence to support any contrary view is far from compelling.

298. When taken as a whole, the evidence as the balaclava incident and the events following the incident is confusing and there is no real consensus as to what occurred after ARN yelled out upon waking up when he was sexually assaulted, see part 4.3 below.

299. The Reports contained within the 1988 MacNeil House Duty Book, although not tendered in their entirety, are a contemporaneous record of Dr Hawkes' interest in furthering the interests of the safety and well-being of the boys under his care at MacNeil House, and the pages extracted from the book that were tendered into evidence are consistent with the material contained in the Duty Book as a whole and confirms Dr Hawkes' long term personal interest in studying, and teaching, how his duty of care might be fulfilled to the highest standard is reflected in his written works.

95 Exhibit 23-0028
4.2.2 Dr Hawkes’ response to the assault upon ARN

300. Dr Hawkes’ evidence\(^ {96}\) is that a report was made to him that an intruder had entered MacNeil house and “groped” a student.

301. He immediately roused his resident masters by banging on the doors to seek their assistance in carefully searching the house to ensure the man in the balaclava was not hiding within the house whilst he attended to the pastoral care of the boys, having particular regard to ARN’s wellbeing.

302. After ensuring the immediate safety of the boys and attending to ARN, for whom he expressed particular concern, he reported the incident to Dr Paterson as soon as was reasonably practicable.

303. He is not sure how Mr Pearson became aware of the incident, but he knew that Mr Pearson who also performed Resident Master duties at MacNeil House had knowledge it occurred and the uncontested evidence is that Mr Pearson at that time was the person responsible for investigating matters that occurred at Knox, he was “the policeman on the beat”.

304. The 1988 MacNeil House Duty Book confirms that Mr Pearson was interviewing boys when Dr Hawkes took those not involved for an early morning run.

305. After doing so, Dr Hawkes’ evidence was:

“I had absolutely every confidence that with an experienced headmaster, and with a recently superannuated member of the constabulary, they would be doing exactly the right thing, and I had absolutely no doubt in my mind that they would.”\(^ {97}\)

306. Dr Hawkes’ evidence as to his state of mind at that time should be accepted and it is submitted that no adverse finding should be made regarding any failings in his efforts to fulfil his duty to the boys under his care.

307. Not one person gave evidence at the public hearing to support a finding that a student had suffered as a direct consequence of Dr Hawkes not calling police. There were no further “balaclava incidents”.

4.2.3 Whether Dr Hawkes knew the matter had not been reported to the Police

308. Dr Hawkes’ first priority was the pastoral care of the boys in MacNeil House. The “facts” submitted to be “incontrovertibly established” by the evidence were not incontrovertibly established:

1. The evidence that there was no report of the event in the media was qualified by the disclosure that a search of the archives of the North Shore Times, the local newspaper, had not been undertaken as those archives were not available online\(^ {98}\).

2. There was evidence that Mr Pearson had commenced an investigation.

3. Further, if Mr Pearson’s evidence as to the nature of the speech which he says was given by Dr Paterson to the boys of MacNeil House were to be accepted (although it is far from comfortably established), it would logically follow that Dr

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\(^ {96}\) Exhibit 23-0017
\(^ {97}\) Transcript of T Hawkes T12043:14-24 (Day 116)
\(^ {98}\) Exhibit 23-0059
Hawkes would have heard Dr Paterson’s advice that the perpetrator was arrested and would have to conclude the police had been notified and carried out the arrest.

4. It is uncontested that Dr Hawkes did not consider himself to be a person Dr Paterson would take into his confidence and he would have no expectation that he would be advised as to the progression of any investigation.

309. It is entirely conceivable if not likely that Dr Hawkes, having initially believed the matter would be reported to the police by another person, gave no further thought to whether or not that report had in fact been made.

310. Conducting or auditing investigations was not his expertise or priority in his role as Housemaster, particularly in circumstances where a former police officer was on staff at Knox.

311. Looking after the boys in his care on a day-to-day basis was his priority and having regard to the balance of the evidence it is unfair to reject his evidence as to his state of mind based upon the material available.

4.2.3 Notification under the 1987 Act

312. Dr Hawkes’ evidence that the procedure at Knox was to report significant matters to the Headmaster and/or the General Duties Master is consistent with the agreed statement of processes, being to report to the “senior person” or that person’s delegate99.

313. His evidence is that he carried out that procedure by reporting the incident to Dr Paterson. Further, Dr Hawkes’ evidence that Mr Pearson became aware of the incident is not contested. The incident was reported to Dr Hawkes by another staff member and he progressed the report up the chain of command.

314. Upon becoming aware of the assault upon ARN, Dr Hawkes’ obligation under the 1987 Act at first instance, having regard to the agreed statement of processes, was to report not to the Director-General but to Dr Paterson, his superior within the hierarchy of the School.

315. It is submitted that Dr Hawkes had fully discharged his first principle obligation to report an incident of suspected child abuse by reporting same to the Headmaster in accordance with the agreed statement of processes. If it is submitted that a further reporting obligation was remitted or returned to him, this should be stated.

316. Should counsel assisting wish to press a submission contrary to Mr Chapman’s evidence of the accepted “best practice” in making a mandatory report under the 1987 Act, it is submitted that the evidence is insufficient to warrant such a finding.

317. Counsel assisting has not tendered contrary evidence of the nature of the procedures agreed by the Director General for making a report as at 23 November 1988 for consideration by the Commission.

4.2.4 Counsel assisting’s submission as to the subject of the available findings

318. No reason is given by Counsel Assisting for his submission that the findings at paragraphs 346-348 are available in respect of Dr Hawkes only, and not in respect of other staff members below Dr Paterson in the hierarchy of Knox staff who also had mandatory reporting obligations under the 1987 Act and who had knowledge of the incident.

99 Exhibit 23-0025 at 7.5
319. Mr Pearson is not exempted from the reporting obligations under the Act and therefore the findings at paragraphs 346-348 if one accepts the submissions by Counsel Assisting in relation to Dr Hawkes are also available against Mr Pearson and indeed against every teacher who was aware of the incident.

320. Mr Pearson gave evidence of having actual knowledge that the police had not been called in response to the sexual assault of ARN, although whether the evidence he gave is to be believed is a matter for the Royal Commission:

Q. And there’d been no notification, to your knowledge, to the police of the incident at all?

Well, in fact, I can answer this question more authoritatively. I rang Hornsby Police station, spoke to the sergeant - desk sergeant - asked him if there’d been any occurrences on the occurrence pad with regards to a break and enter or break, enter and assault at Knox Grammar School. He went to look, or said he did, and came back and he said, “No, nothing. There is nothing on here at all about anybody being arrested for anything to do with Knox.”

Q. When did you make that call?

Probably within the hour of hearing Dr Paterson make his statement.

Q. So you knew that what Dr Paterson had said to the boys was false, at least insofar as that there’d been an arrest by the police?

A. Correct. 100

321. Mr Pearson did not give evidence that he then made a report either to the police or to the Director-General, and he did not give evidence he informed Dr Hawkes of his telephone call indeed there is no evidence that he told anyone of this call including in particular Dr Paterson until was asked the question set out above.

322. Mr Pearson was the delegate of the Headmaster on these types of matters; he was supposed to be doing the investigation and the one person having spoken to the boys involved according to the MacNeil House Day Book was best able to report the matter to the police and the Director General.

323. If Mr Pearson is to be believed and that he did not simply "invent" the story he told in answer to the question above he is the one person who claimed knowledge that the incident had not been reported to the police yet he did nothing.

324. Having regard to the evidence of Mr Chapman referred to in 5.2 below, in relation to the procedures for reporting under the 1987 Act, Mr Pearson and not Dr Hawkes had the primary responsibility for reporting the incident and if story is believed that responsibility increased if he made the call he claims he made to the police when answering the question above because he had (if believed) positive knowledge no report had been made.

325. The only available findings on the evidence relating to Dr Hawkes are:

1. The procedure at Knox in relation to reporting matters which might require a report to the police was to report them to either or both of the Headmaster and Mr Pearson

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100 Transcript of S L Pearson T12265:29-47 (Day 117)
2. Dr Hawkes reported the incident to Dr Paterson immediately and Mr Pearson commenced an investigation.

3. The procedure to make a mandatory report under the 1987 Act required Dr Hawkes to report the matter up the chain of command he did so by informing both the Headmaster and Mr Pearson.

4. Dr Hawkes uncontested evidence is that he was not aware the incident had not been reported until preparing his evidence to the Royal Commission.

5. Having reported the incident up the chain of command, there was nothing that Dr Hawkes was required to do unless it was reported to him that it has not been reported.

6. Dr Hawkes having reported the incident to the Headmaster and Mr Pearson had complied with all his obligations in relation to reporting the incident and appropriately focussed his attention on the pastoral care of students affected by the incident.

4.3 The assault on ARN speech to boys of MacNeil House

326. The evidence as to who spoke to the boys of MacNeil House and what they said is by no means clear.

327. AST says it was Dr Paterson two days after the event and as noted at 145 of Counsel Assisting’s submissions. AST had no recollection that Dr Paterson stated the police had arrested anyone, however recalled that the school was taking care of matters. Whilst AST may be in error as to the date of the speech, his evidence should be accepted as he has no reason not to be telling the truth to the best of his recollection.

328. The evidence of Mr Bradford summarised at 147 is largely consistent with AST and whilst he says Dr Hawkes may have spoken, it would be logical for Dr Hawkes to make some introductory remarks upon the Headmaster’s arrival and closing remarks and for the Headmaster to speak to the incident.

329. The evidence of Dr Paterson and Dr Hawkes is that Dr Paterson advised the boys that matter “was in hand” no mention of any arrest and this is supported by AST and Mr Bradford and the only evidence to the contrary is Mr Pearson whose evidence for the reasons set out in 4.1.2 needs to be treated with great caution.

330. Dr Hawkes’ recollection of the events should be accepted. He is the only person who gave evidence about the address to the boys who correctly identified when it occurred and did so prior to the Duty Book being located.

331. Mr Pearson’s evidence set out at paragraph 144 of Counsel Assisting’s submissions is not reliable and is self-serving. It purports to explain why he did not take action following the Balaclava incident noting he gave oral evidence that Dr Paterson never prevented him from conducting an investigation.

332. The issue of whether Mr Fotis had assaulted ARN remained a live issue for both Dr Paterson and Mr Pearson after the address to the boys of MacNeil house, and as noted in 3.3 above, led to Mr Fotis’s removal from MacNeil House and Woodville.

333. The evidence regarding the Dr Paterson’s description of the intruder is inconsistent. Dr Paterson and Dr Hawkes say no reference was made to racial characteristics, which is

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101 Transcript of [AST] T12363:29-32 (Day 118)
102 Transcript of T Hawkes T12049:24-29 (Day 116)
consistent with AST, and Mr Bradford and Mr Pearson claim reference was made to race.

334. No comment is made as to paragraphs 151 and 152 of the submissions except to say that the evidence relied upon does not warrant any finding being made.

335. If there is be any finding at all in relation to the address to the boys on the day of the Balaclava incident the only finding available on the evidence is:

On the day of the Balaclava incident Dr Paterson addressed the boys of MacNeil House and advised the matter was being investigated.

4.4 The notification of the Craig Treloar incident

336. We refer to 3.4 above. Dr Paterson denies any knowledge that the boy shown the video was also sexually abused and denies Mr Treloar made any admissions other than showing the video.

337. The evidence of Mr Probert and the submissions at paragraphs 159-163 are addressed at 3.4 above.

4.5 The information given by John Weeks to Inspector Cullen in March 2007

338. No issue or comment is made, save that it is surprising that Inspector Cullen did not recall and/or indeed raise with Mr Weeks that she had attended Knox on 1996 to investigate a number of staff in addition to Mr Nisbett.

4.7 The Lucy Perry allegations

339. We refer to 3.8 above.

Part 5 Mandatory reporting obligations

5.1 Matters required to be reported under the 1987 Act

340. It is submitted that Dr Paterson did not have an obligation under the 1987 Act to report the suspected child sexual abuse to the Director-General of Community Services in respect of the following persons:

1. ASD;

2. Coryn Tambling;

3. ATJ; and

4. Anthony Carden.

341. The only incident of child abuse Dr Paterson was required to report under the 1987 Act was the sexual assault of ARN, who was 13 years old at the time he disclosed the assault.\(^{103}\)

342. Section 22(4) of the 1987 Act was applicable to persons who had reasonable grounds to suspect "that a child who is under the age of 16 years has been abused"\(^{104}\). It was

\(^{103}\) Exhibit 23-00001, NSW.2022.007.1194_R at [16]

\(^{104}\) Emphasis added. See Children (Care and Protection) Amendment Act 1987 (No 269) Sched 1(2)
not applicable to persons who had grounds to suspect a person had been abused as a child if that person was over the age of 16 at the time the grounds for suspicion arose.

343. Further, there was no obligation under the 1987 Act generally to notify the Director-General of suspected child sexual abuse or assault if the suspected victim was over the age of 16 years when the abuse was discovered or disclosed.

344. Unlike today, there is no provision in the 1987 Act for the Director-General to receive reports concerning young persons aged 16-17.

5.2 Procedure for making a mandatory report under the 1987 Act.

345. Mr Chapman was executive director of the Association of Independent Schools of New South Wales (AIS) from 1979 to 2004\textsuperscript{105}. From the introduction of mandatory reporting legislation as it applied to educational staff, the AIS offered information seminars and training about the mandatory reporting legislation to both member schools and non-member schools. The legislation was also discussed at meetings attended by representatives of member schools\textsuperscript{106}.

346. Mr Chapman gave evidence that:

\textit{"the mandatory reporting legislation was very complex, and developed over time, so that the understanding of what was required did keep changing."}\textsuperscript{107}

347. The AIS also provided advice and support to its member schools, and the nature of that advice and support:

\textit{"varied over time as the requirements under that legislation changed by agreement with the Ombudsman and others, but the nature of the advice was to be understanding of the legislation and to follow it."}\textsuperscript{108}

348. Mr Chapman said that having regard to s22(4) of the 1987 Act, the reporting obligation was not literally applied in practice:

\textit{"… that came subsequently to the negotiation of a process of reporting that spelt out that a teacher would take the matter to their senior person and it would then return to the teacher."}\textsuperscript{109}

\textit{"I particularly recall the discussions [at AIS meetings] as to how that would take place that resulted in an agreed statement of processes."}\textsuperscript{110}

349. He gave evidence that agreed statement of processes was:

\textit{"That a person, in particular, a teacher, who became aware of the allegation, would report to their senior person and receive advice within 3 days as to whether it had been reported, and then that obligation would return to the teacher."}\textsuperscript{111}

350. A senior person meant someone of greater seniority within the school hierarchy. Under that agreed process, if a "senior person" advised a teacher within 3 days of the teacher

\textsuperscript{105} Transcript of T W Chapman, T12388: 23 (Day 119)
\textsuperscript{106} Transcript of T W Chapman, T12388: 33-37 and T12389: 43-47 (Day 119)
\textsuperscript{107} Transcript of T W Chapman, T12390: 26-28 (Day 119)
\textsuperscript{108} Transcript of T W Chapman, T12389: 8-12 (Day 119)
\textsuperscript{109} Transcript of T W Chapman, T12392: 33-38 (Day 119)
\textsuperscript{110} Transcript of T W Chapman, T12392: 27-31 (Day 119)
\textsuperscript{111} Transcript of T W Chapman, T12392: 33-38 (Day 119)
reporting an allegation of suspected child abuse, the teacher's obligation was, by 
agreement with the Director-General, effectively fulfilled and the teacher would not be 
taken to have committed an offence under the 1987 Act.

351. It is unclear whether the teacher was required to have regard to the matter in 
circumstances where no advice was given as to whether the matter had been 
progressed by the senior person.

352. Mr Chapman's evidence should be accepted, including his evidence that the AIS was 
aware of the 1987 Act prior to its commencement on 18 January 1988. In the absence 
of any evidence as to when exactly the "agreed statement of processes" took effect, it is 
submitted that agreed statement of processes should be taken to have been negotiated 
prior to the commencement of the Act, and effective the same day the Act commenced, 
or at the latest shortly after the Act commenced.

353. The agreed statement of processes survived the repeal of the 1987 Act and was not 
formalised in the 1998 Act, but rather formalised by way of a memorandum of 
understanding (attached).

354. The 1987 Act therefore should not be read alone as an accurate description of a 
teacher's mandatory reporting obligation, and was not the standard practice at the time.

Dr Paterson's knowledge of his mandatory reporting obligations

355. Although Mr Chapman gave evidence that he did not attend Knox to present a "session" 
about child protection legislation to staff, he recalls speaking with Dr Paterson, or 
another Knox staff member, at AIS meetings.\(^ {112} \) At any such meeting, he said, a 
number of topics might have been discussed, including child protection legislation.

356. Dr Paterson gave evidence that he would have known AIS could provide training and 
assistance on the topic of child protection. He further gave evidence to the effect that 
he now believes he should have better informed himself and deeply regrets not doing 
so.

357. Having attended the AIS meetings on various topics, it is likely that at some point in 
time in the years following the commencement of the 1987 Act Dr Paterson understood 
he might be required to report certain matters relating to child protection. That being 
said, it is likely having regard to his evidence that he was not familiar with the Act itself 
at the relevant times, or perhaps even to whom a report was to be made to under the 
Act, but knew he could seek assistance from AIS if he wished to clarify his mandatory 
reporting obligations.

**Part 6 Available finding discussion**

6.1 The reference for Roger James

358. See 3.1 above, we do not accept the proposed findings and say the only findings having 
regard to the evidence are:

1. Dr Paterson had no knowledge that Mr James had sexually assaulted 
   any boy;

2. Dr Paterson was concerned that Mr James had become "too close to 
   boys in the counselling sense" and in relation to his performance in 
   the class room;

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\(^ {112} \) Transcript of T W Chapman, T12390:5-7 (Day 119)
3. Mr James resigned on his own initiative; he was not asked to leave and requested a reference;

4. Dr Paterson provided a letter which was factually correct;

5. Dr Paterson's letter does not make reference to Mr James' suitability to run camps, it simply states that he has done so which is an uncontested fact; and

6. Dr Paterson's direction to Mr James was that he was not permitted to run camps alone without other staff there is never evidence that there was a blanket ban on running camps and at that time there was no evidence to suggest such a ban would be justified.

6.2 The system for employment of Resident Masters at Knox

6.2.1 General Comments

359. There is no basis for rejecting Dr Paterson's qualification that the absence of a detailed system for vetting prospective Resident Master was a failure "in retrospect".

360. There is now, 25 years later, evidence of abuse relating to three Resident Masters during Dr Paterson's 30 year tenure as Headmaster of Knox.

361. The three Resident Masters now known to have abused students are Mr Nisbett, Mr Treloar and Mr Vance.

362. In addition to these three persons, Mr Fotis who has given evidence was also a Resident Master.

363. At the time the abuse occurred, there was not the same rigour applied by employers generally in relation to prospective employees and more particularly by institutions.

364. Police checks whilst conducted by the Department of Education were not a mandatory or even a routine procedure and the well-developed system which exists today for seeking a police check did not exist.

6.2.2 The Employment of persons now known to have sexually abused students

Mr Treloar

365. Mr Treloar is an old boy of Knox. It is not unreasonable for the school to rely on their knowledge of Mr Treloar in relation to his general character, he returned to Knox as a graduate teacher and did not have a teaching history and hence no past in relation to his teaching skills which could be verified by a reference. The evidence discloses he was well regarded as a teacher until the time of his arrest.

366. Mr Treloar did not have a criminal record when he was employed that would have been revealed in a police check.

Mr Vance

367. When Mr Vance applied for the position of Resident Master, he nominated the then Headmaster of Sydney Grammar School, Mr A Mackerras, and Mr D Degotardi, Commanding Officer of the Knox Cadet Unit, as referees.  

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113 UCA.001.002.0197_R
368. Mr Vance's letter of application dated 9 November 1983 was not served or tendered however is referred to in a written advice in respect of ASD's civil claim.

369. It is possible, therefore, that an absence of tendered material as to references about a teacher may not preclude those references from being sought, provided or checked.

370. Mr Vance did not have a criminal record when he was employed that would have been revealed in a police check.

Mr Nisbett

371. Mr Nisbett was also an old boy of Knox and as with Mr Treloar it is not unreasonable for the school to rely on their knowledge of Mr Nisbett in relation to his general character.

372. Mr Nisbett did not have a criminal record when he was employed that would have been revealed in a police check.

Mr Stewart

373. There is no evidence concerning Mr Stewart's application for employment at Knox.

374. The only evidence relating to a possible issue that may have been disclosed if a police check had been conducted on Mr Stewart is in the police intelligence report which refers to any entry relating to "masturbating in toilet block" in 1969. It is not clear whether Mr Stewart was charged and/or convicted of an offence.

6.2.3 Mr Fotis

375. There is no evidence before the Royal Commission that Mr Fotis has ever been charged or convicted of an offence that could be considered child sexual abuse.

376. Mr Fotis was a student studying to complete his qualifications when he first became a resident master in 1984 and in 1986 applied for a teaching position.

377. As a student Mr Fotis was supplied with free board and meals but the position was otherwise unpaid and it is not clear if at that time he was an "employee".

378. Mr Fotis pressed Dr Paterson for an employed position as a teacher and was successful in obtaining employment as a teacher. It is not unreasonable in considering Mr Fotis's application for a teaching position to have regard to the knowledge of his general character as an unpaid Resident Master over several years.

379. If a police check had been conducted before employing Mr Fotis when he first became a resident master, it would have revealed a charge of urinating in public.

380. Depending upon when he pressed Dr Paterson for a teaching position in 1986 (his letter seeking an interview is undated), if a police check had been conducted before offering Mr Fotis employment as a teacher the following year, it may have also revealed charges for assault and refuse to quite licensed premises\(^\text{114}\).

381. The evidence discloses that the Department of Education carried out a police check on Mr Fotis in response to an application by Mr Fotis in late 1986 for a teaching position before he was employed as a teacher by Knox.

382. Notwithstanding the police check by the Department the application by Mr Fotis for employment by the Department was approved.
6.2.4 Findings

383. Dr Paterson's qualification that the absence of a detailed system for vetting prospective Resident Master was a failure "in retrospect" is having regard to the evidence reasonable.

384. Even if the rigorous systems used in 2015 were applied 25 years ago they would not have revealed that these persons were potential abusers of children.

385. At most a question may have been raised in relation to Mr Stewart

386. If Knox had contacted the Department regarding Mr Fotis they would have been advised he had been approved by the Department as a teacher

387. The only findings on the evidence should be:

1. Knox did not have in place 25 years ago the rigorous systems and procedures to check applicants seeking employment which exist today.

2. It is reasonable for Dr Paterson to concede that the procedures in place at Knox 25 years ago failed "in retrospect" because even if the systems today were applied 25 years ago they would not have revealed that any of the Resident Masters referred to in this Royal Commission had or potentially would engage in child sexual abuse or other behaviour which would disqualify them for employment at Knox

6.3 The complaints by ASD about Damian Vance

388. For preliminary comments, see 3.2 above.

6.3.1 Assault by Damian Vance not subject to mandatory reporting obligation

389. The evidence is that Mr Vance sexually assaulted ASD sometime in 1987 at the "end of term mid year", when ASD remained in the boarding house for a further day after the other students went home for the holidays115. In 1987 there were 4 "terms" in the school year, and it is accepted that the incident occurred on or about the day following the last day of term 2 in that year.

390. We do not have the terms dates for Knox in 1987. We have reviewed the Shore "weekly record" publications from 1987, on the basis that the two schools were likely to have had similar term dates as they played in the same sporting competitions.

391. The last day of term two in 1987 at Shore was Friday 26 June116, and it is likely the assault upon ASD occurred on or around this date. No mandatory reporting obligation existed for school teachers or principals at this time.

392. Term 3 of that same year at Shore commenced on Monday 20 July 1987117. The first mandatory reporting legislation said to be applicable to teachers and school principals commenced 19 July 1987118. Any offence that had occurred prior to this date could not be said to have been an offence that gave rise to a mandatory reporting obligation applicable to a school teacher or principal.

115 Exhibit 23-0001, UCA.001.002.0210_R
118 Exhibit 23-0046
393. Further, ASD is said to have been born some time in 1972, and turned 18 years of age sometime in 1990\textsuperscript{119}, meaning he was over the age of 16 years at the time of reporting the offence to Dr Paterson. There was no obligation under the 1987 Act to report a matter if the person concerned was over the age of 16 years at the time of disclosure.

6.3.2 Dr Paterson’s actions

394. Dr Paterson has accepted he did not notify the police or the Director General of Community Services of the allegation made by ASD, but denies he failed to act in the best interests of the boys under his care at Knox.

395. It was in the best interest of the boys at Knox that Mr Vance be removed from the school. Dr Paterson removed Mr Vance from the school immediately.

6.3.3 Summary - available findings

396. See 3.2 above. We do not accept the proposed findings and say the only findings having regard to the evidence are:

1. ASD reported that Mr Vance had had inappropriately touched him and made an inappropriate sexual suggestion to him.

2. At the time ASD reported the incident he was over the age of 16 years and there was no obligation to report the matter under the 1987 Act to the Director-General of Community Services.

3. Dr Paterson believed ASD and interviewed Mr Vance who admitted the allegation.

4. Mr Vance was removed from the school immediately

5. Mr Vance had been offered a specific job and requested a reference and Dr Paterson provided a letter dated 21 February 1991.

6. The offer of employment to Mr Vance was withdrawn after the letter dated 21 February 1991 was supplied to the prospective employer and that letter was never thereafter used by Mr Vance to seek employment.

6.4 The balaclava incident

397. See 3.3 above. We do not accept the proposed findings and say the only findings having regard to the evidence are:

1. Dr Paterson was informed that ARN was sexually assaulted.

2. Dr Paterson ought to have notified the police of the sexual assault or directed that a person do so.

3. Dr Paterson failed to comply with his obligations under the 1987 Act to report the sexual assault on ARN to the Director-General of Community Services.

4. Notwithstanding the considerable speculation that the person who assaulted ARN was an insider and possibly a teacher at Knox it is not possible on the available evidence to exclude the possibility

\textsuperscript{119} Exhibit 23-0001, UCA.001.002.0200_R
that the assault was committed by an unknown outsider who
gained access to MacNeil House.

6.5 Christopher Fotis' removal from the school

398. See 3.3 above. We do not accept the proposed findings and say the only available
findings on the evidence are:
1. In October 1989 Mr Pearson reported to Dr Paterson criminal
proceedings relating to Mr Fotis and Dr Paterson confronted Mr
Fotis who immediately resigned from the school.
2. There is no evidence to suggest Mr Fotis sexually abused children
after leaving Knox, either as a result of the letter signed by Dr
Paterson or otherwise.
3. The letter dated 19 October 1989 was a statement of service and
was not misleading.

6.6 The incident involving Craig Treloar

399. See 3.4 above. We do not accept the proposed findings and say the only findings
having regard to the evidence are:
1. Dr Paterson was informed that Mr Treloar had shown a pornographic
video to an unidentified student in 1987.
2. Mr Treloar admitted to Dr Paterson showing the video but did not
admit sexual abuse of the unidentified student.
3. Dr Paterson immediately removed Mr Treloar from the boarding
house and he was suspended from teaching for a period.
4. Up to and including the time when he was sentenced there was no
evidence that Mr Treloar abused any student after this incident,
5. The trial Judge when sentencing Mr Treloar found that Dr Paterson
had no knowledge of sexual abuse when the video was shown to the
unidentified student.

6.7 The complaint by Coryn Tambling to Dr Paterson

400. Mr Tambling gave evidence that he attended a comedy revue in 1989 (not 1990 as
stated by counsel assisting) and said to Dr Paterson:

"the reason I was so much trouble for you was this boarding house
master made me watch these straight, animal and gay porn movies
and then asked me to perform a sexual act on him"

Dr Paterson asked me: "Is that person still here?"

I told him "He's no longer a boarding master"20

401. Dr Paterson's evidence was that he did not recall the encounter with Mr Tambling at this
social function but he conceded it may have occurred. There is no evidence that Mr

20 Exhibit No 23-0011 paras 52-54 and Transcript of C Tambling, T11815:16-38 (Day114)
Tambling identified the person at this encounter or that he sought to follow up Dr Paterson after the event. to provide the name noting that Mr Tambling's evidence in reply to Dr Paterson's question is somewhat cryptic as he does not make it clear whether he meant the teacher was no longer at the school or still there but not a boarding house master.

402. It is regrettable that Dr Paterson did not attempt to contact Mr Tambling in the days following the comedy revue to follow up with him about the allegation he made, and as he does not recall the conversation it is understandable he is unable to offer an explanation as to his reasoning in failing to pursue the matter.

403. His best recollection is given in his evidence "I don't think the comment registered"\textsuperscript{121}, however he cannot remember and has not attempted to find excuses for his behaviour or give self-serving explanations for not acting on a disclosure he now accepts he should have acted on.

404. It is not accepted that Dr Paterson failed to comply with his obligations under the 1987 Act to report Coryn Tambling's allegation to the Director-General of Community Services. No such obligation existed under that Act at that time.

405. There was no obligation under the 1987 Act generally to notify the Director-General of suspected child sexual abuse or assault if at the time of disclosure the suspected victim was not a child under the age of 16 years.

406. It is accepted that Dr Paterson failed to inform the Knox Council of the allegation made by Coryn Tambling in 1989.

407. The only findings available on the evidence are:

1. Mr Tambling then an old boy of the school raised allegations of sexual abuse with Dr Paterson in 1989 at a social function he did not name the teacher;

2. Dr Paterson does not recall the conversation with Mr Tambling but concedes it may have occurred;

3. At the time Mr Tambling spoke to Dr Paterson he was over the age of 16 years;

4. Dr Paterson was not required to notify Mr Tambling's allegations under the 1987 Act as Mr Tambling was then over the age of 16 years; and

5. Dr Paterson did not report the conversation with Coryn Tambling to Knox Council.

6.8 The incidents involving Barrie Stewart

408. See 3.6 above. The only available findings on this issue are:

1. That the best evidence as to whether the Knox Council were informed of the allegation of ATJ is the file note dated 3 September 1992 which advises Dr Paterson spoke to Mr Ireland and there is no reliable evidence to the contrary.

Alternatively:

\textsuperscript{121} Transcript of I W Paterson T12483:21-22 (Day 119)
1. Having regard to the withdrawal of evidence from Mr Ireland, there is no reliable evidence to establish whether or not the allegations were reported to the then Chairman of Knox Council, Mr Ireland.

409. The evidence establishes that Dr Paterson and Mr Thomas made inquiries following being informed of the allegations made by ATJ and made those inquiries of Mr Stewart directly, to say they failed to make any inquiries is simply untrue.

410. Dr Paterson was not obliged to report the matters to the Director-General under the 1987 Act because ATJ was over the age of 16 when Dr Paterson became aware of the allegation, for the reasons set out in Part 5 above.

6.9 Anthony Carden

411. Paragraphs 247-251 of Counsel Assisting’s submissions are not available findings on the evidence and are contested.

412. The best evidence as to whether the Knox Council were informed of the “affair” is the file note dated 3 September 1992 which records the Chairman of Council was informed, as was part of Dr Paterson’s report to Mr Ireland as to the possible litigation by ATJ.

413. Counsel Assisting seeks findings be made in respect of Dr Paterson’s conduct following his being told of the “Anthony Carden/ARZ affair”, but made a decision not to lead evidence before the Commission as to the specific nature of the allegation and whether or not they had basis.

414. It cannot be assumed on the basis of Counsel Assisting’s decision not to pursue this line of inquiry that the matter was never pursued by senior staff members at Knox.

415. ARZ, having become aware his name had been disclosed during the public hearing, attended the Commission’s rooms in a most distressed state but was not summonsed to give evidence before the Royal Commission.

416. ARZ’s evidence may have been of assistance in establishing whether or not any senior staff member at Knox approached him in respect of the allegation however he did not give evidence for reasons unexplained.

417. Without establishing any other aspect of the allegation beyond the fact that at some point Dr Paterson became aware of it, a finding cannot be made that by being aware of that allegation and nothing more Dr Paterson failed to give priority to the interests of the boys at Knox.

418. It cannot be said that a number of senior staff members at Knox failed to make any inquiries about the allegations when no evidence has been given by the relevant senior staff members.

419. It cannot be said that "a number of senior staff members at Knox .... Failed to make any inquiries". Mr Thomas and Dr Paterson were the only persons said to be "aware of this situation" in the list of names on the file note who gave evidence. Mr Thomas was not asked whether he had made any inquiries.

420. There is simply no reliable evidence upon which a finding Dr Paterson attempted to "cover up" the allegation can be made, given it is alleged a number of persons are recorded to have been informed of the allegations.

421. Counsel Assisting does not allege that those senior staff members assisted Dr Paterson in any attempt to "cover up" the allegation, only that they failed to act. Dr Paterson cannot be found to have attempted to "cover up" the allegation which a number of
persons were aware of unless it is established those other persons also were parties to the cover up.

422. Dr Paterson had no obligation under the 1987 Act to report the matter to the Director-General under the 1987 Act as Anthony Carden over the age of 16 when Dr Paterson became aware of the allegation in 1992, for the reasons set out in Part 5 above.

423. If Mr Carden himself wished to make that allegation it was a matter for him to report to the Police, and not a matter for others to report a rumour, especially having regard to ARZ's distress upon becoming aware the rumour had been disclosed at the public hearing.

424. Having regard to the circumstances, a failure to report the matter to police cannot be presumed to be a failing on the part of Dr Paterson without evidence led in support of this assertion.

6.10 Adrian Nisbett

425. Having regard to 3.6 above, the only available findings in relation to Mr Nisbett are:

1. Dr Paterson investigated rumours relating to Mr Nisbett and directed Mr Pearson to conduct an investigation.

2. On the completion of Mr Pearson's investigation there was no evidence to prove the rumours and no evidence that Mr Nisbett had actually abused any student and no student had been identified as having been abused.

3. Based on his investigation and notwithstanding the lack of evidence Mr Pearson recommended that Mr Nisbett be removed from Ewan House, Dr Paterson accepted that recommendation and he was removed from his position as Housemaster of Ewan House.

4. After his removal from Ewan House Mr Nisbett never resided in a boarding house and was never allocated any duties within a boarding house

6.10.1 Conversations with Mr Chapman

426. Having regard to 3.9 above, the only available finding based on the evidence of the conversations with Mr Chapman is that Dr Paterson was not told on any specific details of the rumours and in particular no staff member or victim was identified by Mr Chapman as being the subject of the rumours.

6.11 Lucy Perry

427. See 3.4 above. We do not accept the proposed findings and say the only findings having regard to the evidence and the role of the Royal Commission are:

1. Ms Perry claims to have been assaulted by Dr Paterson in front of a number people during the dress rehearsal for a musical.

2. Dr Paterson strongly denies the allegation.

3. Evidence was given by AUE a friend of Ms Perry in support of Ms Perry's version and Mr Buggy a former Knox teacher in support of Dr Paterson's version of events.
4. There is a clear conflict in the evidence and no contemporaneous or indeed any other evidence which otherwise corroborates the conflicting evidence.

5. There is no evidence except for Ms Perry's allegation that Dr Paterson ever assaulted anyone at any time.

6. It is not the role of the Royal Commission to determine whether based on the allegations of Ms Perry that any offence has been committed.

6.12 Policies and procedures

428. The available finding is not contested.

6.13 Dr Paterson misleading the police

429. See 3.7 above. We do not accept the proposed findings and say the only findings having regard to the evidence are:

1. Inspector Cullen attended Knox and advised Dr Paterson there was an investigation into possible child sexual abuse and she was seeking to inspect files of nominated persons to determine their employment status.

2. Inspector Cullen did not provide details of any allegations relating to any of the nominated persons.

3. Inspector Cullen did not ask Dr Paterson for any questions.

4. Dr Paterson made arrangements for the files to be provided and they were inspected.

5. Following inspection of the files Inspector Cullen did not ask any questions about what was or was not in the files.

6. Inspector Cullen did not make any comment or complaint in relation to the response by Dr Paterson or any staff member to her requests.

7. Dr Paterson did not mislead Inspector Cullen.

6.14 The culture at Knox

430. Dr Paterson denies that he failed to treat child sexual abuse seriously and such an allegation is not supported or warranted by the evidence.

431. During Dr Paterson's time as Headmaster, one boy reported he had been abused by Mr Vance and Dr Paterson dismissed Mr Vance immediately.

432. Mr Treloar was reported to Dr Paterson and admitted to showing a pornographic video and Dr Paterson removed him from the boarding house immediately.

433. Dr Paterson whilst not having any evidence of child sexual abuse in relation to Messrs James, Stewart, Fotis and Nisbett did identify possible risks and took steps to address those risks:
- in the case of Messrs Fotis and Nisbett by removing them from the boarding environment and ultimately in the case of Mr Fotis from the school
- the case of Mr Roger James he was not permitted to take students to Camp Knox alone
- in the case of Mr Stewart was directed not to drive boys in his car.

434. The only former student who raised allegations of possible child abuse with Dr Paterson where no action was taken was Coryn Tambling. Dr Paterson admitted he did not recall being approached during a social function at the school.

435. In the case of ATJ the evidence is unclear but there were discussions regarding the rumour of a threat of litigation and there is no evidence that the litigation threatened was ever commenced.

436. Whatever failings Dr Paterson may have had, the fact is he did take action in relation to six teachers where he knew of abuse or based on rumours and considered there was a possible risk to boys in his care.

437. Counsel Assisting makes reference to evidence given by Dr Paterson in paragraphs 288 and 289.

438. With regard to 288, Dr Paterson answered that question on the basis that he at the time believed alcohol and cigarettes had been given to boys. He did not have information other than rumours which established Mr Nisbett was inappropriately touching boys.

439. With regard to 289 Mr Nisbett was never in fact a Resident Master at Kooyong and was never a Resident Master after being removed from Ewan House.

440. Whilst it cannot be denied that a number of students were abused during Dr Paterson’s time as Headmaster the evidence establishes that neither he nor other staff were aware of the issue at the time.

441. Unlike other case studies where those seeking to report abuse were turned away or ignored the evidence shows that Dr Paterson took action on every matter he was aware of which clearly rebuts the proposed finding at paragraphs 293 and 294 of Counsel Assisting’s submissions.

442. The only available findings on the evidence are:

1. The evidence does not support a finding that Dr Paterson and or senior staff did not treat the issue of child sexual abuse seriously.

2. Dr Paterson took action with one exception on every report of possible child abuse based on the information available to him at the time and this was also the case with senior staff.

6.15 Record Keeping

443. The available finding is not contested.

6.16 Ombudsman

444. The available finding is not contested.
6.17 Effect of failures on the boys of Knox

445. Dr Paterson does not contest that he did not take proper steps to acquire information about the effects of child sexual abuse but denies a total and utter failure to comply with his obligations to the boys of Knox. Dr Paterson took action with one exception on every matter he knew about based on the information he had at the time.

446. Dr Paterson does not contest that he failed to protect the victims from child sexual abuse but denies that justifies the finding proposed in paragraph 302.

447. There is no basis at all on the evidence for the finding in paragraph 303 for the following reasons:

1. Such a finding can only be made if there is evidence that Dr Paterson knew the extent of the activities of the six teachers of interest at this inquiry;

2. Mr Treloar made an admission regarding the video and when sentenced the Trial Judge noted there was no evidence of abuse after that matter had been dealt with;

3. Had Mr Treloar been arrested and removed from Knox the day he made admissions it would not have prevented abuse which had already occurred unbeknown to Dr Paterson;

4. Mr Vance was removed from the school immediately Dr Paterson was aware that he had abused ASD and was no longer a threat to Knox boys;

5. Roger James resigned from the school before any evidence of abuse was known to Dr Paterson;

6. There is no evidence Mr Fotis ever abused any Knox boy;

7. Whilst it might be said that early detection may have prevented further abuse by Mr Nisbett the fact is no one was able to get any evidence of his abuse until long after Dr Paterson had retired; and

8. With regard to Mr Stewart as with Mr Nisbett it might be said that early detection may have prevented further abuse but there was no evidence of his abuse until after Dr Paterson had retired.

448. The only available findings on the evidence are:

1. Dr Paterson did not take proper steps to acquire information about the effects of child sexual abuse.

2. Dr Paterson did take action based on what he knew at the time to meet his obligations to the boys at Knox and with the exception of Messrs Nisbett and possibly Stewart the other teachers had left Knox or the case Treloar a court has held there were no further acts of abuse and/or risk to boys following investigations by Dr Paterson.

Part 7 Available Findings Summary

References [ ] are to the paragraph numbers in the submissions of Counsel Assisting.
7.1 Available findings in respect of Knox

7.1.1 The system in place at Knox for the employment of Resident Masters between 1982 and 1987 was deficient, in that there was no requirement for conducting reference checks or criminal history checks for applicants. [304]

449. This is not contested.

7.1.2 A number of senior staff members at Knox failed to make any inquiries about allegations made in 1992 by a former student ATJ that he had been sexually molested by Barrie Stewart who was then a teacher of the school. [305]

450. This is not an available finding on the evidence – refer to 6.9 above.

7.1.3 The senior staff members at Knox should have reported the allegations made by ATJ against Barrie Stewart to the police and failed to do so, and in so failing did not give priority to the interests of the boys at Knox. [306]

451. This is not an available finding on the evidence – refer to 6.9 above.

7.1.4 A number of senior staff members at Knox failed to make any inquiries about allegations made in 1992 about Anthony Carden having an ‘affair’ with teacher ARZ while Mr Carden was a student.[307]

452. This finding is not available on the evidence – refer to 6.9 above.

7.1.4 The senior staff members of Knox should have reported the allegations made about Anthony Carden having an ‘affair’ with teacher ARZ to the police and failed to do so, and in so failing did not give priority to the interest of boys at Knox.[308]

453. This finding is not available on the evidence – refer to 6.9 above.

7.1.5 Knox failed between 1988 and 1988 to have in place any system of training or education of its staff in respect of mandatory reporting obligations imposed by legislation in New South Wales.[309]

454. This finding is available and not contested – refer to 6.12 above.

7.1.6 There was a culture at Knox during Dr Paterson’s time as Headmaster among at least some members of the senior staff which did not treat the matter of child abuse sexual abuse as being serious matter.[310]

455. This finding is not available on the evidence – refer 6.14 above.

456. The only findings available on the evidence are:

1. The evidence does not support a finding that Dr Paterson and or senior staff did not treat the issue of child sexual abuse seriously.

2. Dr Paterson took action with one exception on every report of possible child abuse based on the information available to him at the time and this was also the case with senior staff.
7.2 Available findings in respect of Dr Ian Paterson

7.2.1 Roger James

At Dr Paterson prepared a misleading reference for Mr James in that it suggested that he was a person who was suitable to be involved in running school camps in circumstances where Dr Paterson’s view was that he was unsuitable to be involved in running school camps.[312]

457. This finding is not available on the evidence – refer to 3.1 above.

458. The only findings having regard to the evidence are:

1. Dr Paterson had no knowledge that Mr James had sexually assaulted any boy;

2. Dr Paterson was concerned that Mr James had become "too close to boys in the counselling sense" and in relation to his performance in the class room;

3. Mr James resigned on his own initiative; he was not asked to leave and requested a reference;

4. Dr Paterson provided a letter which was factually correct;

5. Dr Paterson's letter does not make reference to Mr James' suitability to run camps but rather it simply states that he has done so which is an uncontested fact; and

6. Dr Paterson's direction to Mr James was that he was not permitted to run camps alone without other staff there is never evidence that there was a blanket ban on running camps and at that time there was no evidence to suggest such a ban would be justified.

7.2.2 Damian Vance

Dr Paterson ought to have notified the police of the allegation made by ASD about Mr Vance and admitted by Mr Vance in February 1989, and failed to do so and in failing to do so he failed to act in the best interests of the boys under his care at Knox.[313]

459. This finding is not available on the evidence – refer to 3.2 above.

Dr Paterson failed to comply with his obligations under the 1987 Act to report the allegations of ASD to the Director-General of Community Services.[314]

460. This finding is not available on the evidence – refer to 3.2.2 and Part 5 above.

Dr Paterson failed to make any written record of the true reasons for Mr Vance’s departure from Knox.[315]

461. This finding is not available on the evidence – refer to 3.2.2 and Part 5 above.

Dr Paterson prepared a misleading reference for Mr Vance by omitting critical details as to the true reasons for Mr Vance’s departure from Knox and he did so in the knowledge that Mr Vance may use the reference to obtain employment as a teacher. [316]
462. This finding is not available on the evidence – refer 3.2 and 6.3 above.

463. The only findings having regard to the evidence are:

   1. ASD reported that Mr Vance had had inappropriately touched him and made an inappropriate sexual suggestion to him.
   2. At the time ASD reported the incident he was over the age of 16 years and there was no obligation to report the matter under the 1987 Act to the Director-General of Community Services.
   3. Dr Paterson believed ASD and interviewed Mr Vance who admitted the allegation.
   4. Mr Vance was removed from the school immediately.
   5. Mr Vance had been offered a specific job and requested a reference and Dr Paterson provided a letter dated 21 February 1991.
   6. The offer of employment to Mr Vance was withdrawn after the letter dated 21 February 1991 was supplied to the prospective employer and that letter was never thereafter used by Mr Vance to seek employment.

7.2.3 ARN

Dr Paterson ought to have notified the police of the sexual assault on ARN in late 1988 and failed to do so and in failing to do so he failed to act in the best interests of the boys under his care at Knox.[317]

464. This finding is not available on the evidence – refer to 3.3 and 6.4 above.

Dr Paterson failed to comply with his obligations under the 1987 Act to report the sexual assault on ARN to the Director-General of Community Services.[318]

465. This finding is not contested – refer to 3.3 and 4.3 above.

Dr Paterson made statements to the boys of MacNeil House shortly after the assault on ARN that the perpetrator had been identified and was probably an Old Boy of Knox and these statements was false to the knowledge of Dr Paterson. [319]

466. This finding is not available on the evidence – refer to 3.3, 4.3 and 6.4 above.

467. The only other findings available on the evidence are:

   1. Dr Paterson was informed that ARN was sexually assaulted.
   2. Dr Paterson ought to have notified the police of the sexual assault or directed that a person do so.
   3. On the day of the Balaclava incident Dr Paterson addressed the boys of MacNeil House and advised the matter was being investigated.
   4. Dr Paterson failed to comply with his obligations under the 1987 Act to report the sexual assault on ARN to the Director-General of Community Services.
5. Notwithstanding the considerable speculation that the person who assaulted ARN was an insider and possibly a teacher at Knox it is not possible on the available evidence to exclude the possibility that the assault was committed by an unknown outsider who gained access to MacNeil House.

7.2.4 Christopher Fotis

Dr Paterson did not record in writing the true reasons for Mr Fotis’ dismissal from MacNeil House and that this involved a failure by him to maintain proper records.[320]

468. This finding is not available on the evidence- refer 3.3.4, 3.3.5 and 6.2.3 above.

Dr Paterson prepared a reference for Mr Fotis upon his departure from Knox which was misleading in that it omitted details as to the true reasons for Mr Fotis’ departure from the school and in doing so failed to have any regard for the interests of the students at any school at which Mr Fotis may teach.[321]

469. This finding is not available on the evidence- refer 3.3.4, 3.3.5 and 6.2.3 above.

470. Based upon the evidence the only available finding relevant to Dr Paterson is:

1. The letter dated 19 October 1989 was a statement of service and was not misleading.

7.2.5 Craig Treloar

Dr Paterson was informed in 1987 that Mr Treloar had shown a pornographic video to a student and had also sexually propositioned the student.[322]

471. This finding is not available on the evidence – refer to 3.4, 4.4 and 6.6 above.

Dr Paterson ought to have informed the Knox Council about and taken steps to investigate the allegations made against Mr Treloar in 1987.[323]

This finding is not available on the evidence – refer to 3.4, 4.4 and 6.6 above.

Dr Paterson ought to have notified the police of the allegations made against Mr Treloar and failed to do so and in failing to do so he failed to act in the best interests of the boys under his care at Knox.[324]

472. This finding is not available on the evidence – refer to 3.4, 4.4 and 6.6 above.

473. The only findings having regard to the evidence in respect of Mr Treloar are:

1. Dr Paterson was informed that Mr Treloar had shown a pornographic video to an unidentified student in 1987.

2. Mr Treloar admitted to Dr Paterson showing the video but did not admit sexual abuse of the unidentified student.

3. Dr Paterson immediately removed Mr Treloar from the boarding house and he was suspended from teaching for a period.

4. Up to and including the time when he was sentenced there was no evidence that Mr Treloar abused any student after this incident,
The trial Judge when sentencing Mr Treloar found that Dr Paterson had no knowledge of sexual abuse when the video was shown to the unidentified student.

### 7.2.6 Coryn Tambling

Dr Paterson failed to take steps to investigate the allegations made by Coryn Tambling in 1990 that he had been shown pornographic videos by a House Master, and in so failing he did not give priority to the interests of the boys at Knox.[325]

474. This finding is not available on the evidence – refer to 6.7 above.

Dr Paterson failed to inform the Knox Council of the allegations made by Coryn Tambling in 1990.[326]

475. This finding is not contested however the date should be amended to 1989 – refer to 6.7 above

Dr Paterson failed to comply with his obligations under the 1987 Act to report Coryn Tambling’s allegations to the Director-General of Community Services.[327]

476. This finding is not available on the evidence – refer to part 5 above and 6.7 above.

477. The only findings available on the evidence are:

1. Mr Tambling then an old boy of the school raised allegations of sexual abuse with Dr Paterson in 1989 at a social function;

2. Dr Paterson does not recall the conversation with Mr Tambling but concedes it may have occurred;

3. At the time Mr Tambling spoke to Dr Paterson he was over the age of 16 years;

4. Dr Paterson was not required to notify Mr Tambling’s allegations under the 1987 Act as Mr Tambling was then over the age of 16 years; and

5. Dr Paterson did not report the conversation with Coryn Tambling to Knox Council.

### 7.2.7 Barrie Stewart

Dr Paterson failed to inform the Knox Council of the allegations made by ATJ against Barrie Stewart. [328]

478. This finding is not available on the evidence – 3.5, 6.9 and Part 5 above.

479. Dr Paterson’s response to the allegations made by ATJ against Barrie Stewart involved in attempt by him to cover up those allegations. [329]

480. This finding is not available on the evidence – 3.5, 6.9 and Part 5 above.

Dr Paterson failed to comply with his obligations under the 1987 Act to report the allegations of ATJ to the Director-General of Community Services. [330]

481. This finding is not available on the evidence – 3.5, 6.9 and Part 5 above.
Dr Paterson failed to inform the Knox Council of the allegations made about Anthony Carden having an ‘affair’ with teacher ARZ. [331]

This finding is not available on the evidence –3.5, 6.9 and Part 5 above.

Dr Paterson’s response to the allegations made about Anthony Carden involved an attempt by him to cover up those allegations. [332]

This finding is not available on the evidence –3.5, 6.9 and Part 5 above.

Dr Paterson failed to comply with his obligations under the 1987 Act to report the allegations about ARZ to the Director-General of Community Services. [333]

This finding is not available on the evidence – refer to 3.5, 6.8 and Part 5 above.

Dr Paterson failed to inform the Knox Council of the allegations about Mr Nisbett and the reason for his removal from Ewan House in 1986. [335]

This finding is not available on the evidence- refer to refer to 3.6, 3.9 and 6.10 above.

Dr Paterson permitted Mr Nisbett to occupy a position in the boarding environment where he resided near Kooyong House in 1990, in circumstances where he knew of evidence suggesting Mr Nisbett had been guilty of inappropriate behaviour towards boys. [336]

This finding is not available on the evidence – refer to 3.6, 3.9 and 6.10 above.

Dr Paterson failed to take any steps to inquire into the allegations raised with him by Mr Chapman about Mr Nisbett, or inform the Knox Council about those allegations. [337]

This finding is not available on the evidence – refer to 3.6, 3.9 and 6.10 above.

The only available findings in relation to Mr Nisbett are:

1. Dr Paterson investigated rumours relating to Mr Nisbett and directed Mr Pearson to conduct an investigation.

2. On the completion of Mr Pearson's investigation there was no evidence to prove the rumours and no evidence that Mr Nisbett had...
actually abused any student and no student had been identified as having been abused.

3. Based on his investigation and notwithstanding the lack of evidence Mr Pearson recommended that Mr Nisbett be removed from Ewan House, Dr Paterson accepted that recommendation and he was removed from his position as Housemaster of Ewan House.

4. After his removal from Ewan House, Mr Nisbett never resided in a boarding house and was never allocated any duties within a boarding house.

491. The only available finding in relation to Dr Paterson's conversation with Mr Chapman is:

Mr Chapman did not give Dr Paterson any specific details of the rumours and in particular no staff member or victim was identified by Mr Chapman as being the subject of the rumours.

7.2.8 Lucy Perry

Lucy Perry’s evidence that Dr Paterson sexually assaulted her during a full dress rehearsal at the ‘Guys and Dolls’ musical in 1989 should be accepted. [338]

492. This finding is not available on the evidence – refer to 3.8 above.

493. Further, it is not appropriate that a finding be made as to Lucy Perry's evidence.

494. The only findings having regard to the evidence of Lucy Perry and the role of the Royal Commission are:

1. Ms Perry claims to have been assaulted by Dr Paterson in front of a number of people during the dress rehearsal for a musical.

2. Dr Paterson strongly denies the allegation.

3. Evidence was given by AUE a friend of Ms Perry in support of Ms Perry's version and Mr Buggy a former Knox teacher in support of Dr Paterson's version of events.

4. There is a clear conflict in the evidence and no contemporaneous or indeed any other evidence which otherwise corroborates the conflicting evidence.

5. There is no evidence except for Ms Perry’s allegation that Dr Paterson ever assaulted anyone at any time.

6. It is not the role of the Royal Commission to determine whether based on the allegations of Ms Perry that any offence has been committed.

7.2.10 Inspector Cullen’s investigation

Dr Paterson may have breached s.315 Crimes Act by hindering the investigation of Inspector Cullen which carries a maximum term of imprisonment of seven years. [339]

495. This finding is not available on the evidence – refer to 3.7 above.
Dr Paterson may have breached s.316 Crimes Act by concealing a serious indictable offence which carries a maximum term of imprisonment of two years. [340]

This finding is not available on the evidence – refer 3.7 above.

Dr Paterson may have breached s.319 Crimes Act in doing an act and making omissions intending to pervert the course of justice by deliberately hindering and misleading Inspector Cullen in December 1996, which carries a maximum term of imprisonment of 14 years. [341]

This finding is not available on the evidence – refer to 3.7 above.

Dr Paterson failed to inform the Knox Council that Inspector Cullen was investigating allegations against a number of members of the Knox teaching staff, including current teachers. [342]

This finding is not available on the evidence – refer to 3.7 above.

In respect of Inspector Cullen’s investigation the only finding having regard to the evidence is:

1. Inspector Cullen attended Knox and advised Dr Paterson there was an investigation into possible child sexual abuse and she was seeking to inspect files of nominated persons to determine their employment status;
2. Inspector Cullen did not provide details of any allegations relating to any of the nominated persons;
3. Inspector Cullen did not ask Dr Paterson for any questions;
4. Dr Paterson made arrangements for the files to be provided and they were inspected;
5. Following inspection of the files Inspector Cullen did not ask any questions about what was or was not in the files; and
6. Inspector Cullen did not make any comment or complaint in relation to the response by Dr Paterson or any staff member to her requests.
7. Dr Paterson did not mislead Inspector Cullen.

7.2.11 Effect on boys at Knox

Dr Paterson in his time as Headmaster of Knox did not treat the issue of child sexual abuse seriously and on a number of occasions he preferred the reputation of the school over the interests of the boys. [343]

This finding is not available on the evidence – refer to 6.17 above.

Dr Paterson did not take proper steps to acquire information about the effects of child sexual abuse and his failure to do so comprised a total and utter failure to comply with his obligations to the boys at Knox. [344]

This finding is not available on the evidence – refer to 6.17 above.
If Dr Paterson had investigated allegations of child sexual abuse during his time as Headmaster at Knox, it is likely that a number of boys under his care at Knox who were abused would not have been abused. [345]

502. This finding is not available on the evidence – refer to 6.17 above.

503. In respect of the effect on boys at Knox, the only available findings on the evidence are:

1. The evidence does not support a finding that Dr Paterson did not treat the issue of child sexual abuse seriously.

2. There was not a culture at Knox during Dr Paterson's time which did not treat child sexual abuse seriously.

3. Dr Paterson did not take proper steps to acquire information about the effects of child sexual abuse.

4. Dr Paterson did taken action based on what he knew at the time to meet his obligations to the boys at Knox and with the exception of Messrs Nisbett and possibly Stewart the other teachers had left Knox, and in the case of Treloar, a Court held in 2010 there were no further acts of abuse and/or risk to boys following investigations by Dr Paterson.

7.3 Available findings in respect of Dr Timothy Hawkes

Dr Hawkes was aware that the police had not been called in response to the sexual assault on ARN. [346]

504. This finding is not available on the evidence – refer to 3.3, 4.2, 4.3, 6.5 and Part 5 above.

Dr Hawkes ought to have notified the police of the sexual assault on ARN in late 1988 and failed to do so, and in failing to do so, he failed to act in the best interests of the boys under his care at MacNeil House.[347]

505. This finding is not available on the evidence – refer to 3.3, 4.2, 4.3, 6.5 and Part 5 above.

Dr Hawkes failed to comply with his obligations under the 1987 Act to report the sexual assault on ARN to the Director-General of Community Services.[348]

506. This finding is not available on the evidence – refer to 3.3, 4.2, 4.3, 6.5 and Part 5 above.

Summary of only available findings on the evidence in relation to Dr Hawkes

507. The only available findings on the evidence concerning Dr Hawkes are:

1. The procedure at Knox in relation to reporting matters which might require a report to the police was to report them to either or both of the Headmaster and Mr Pearson.

2. Dr Hawkes reported the incident to Dr Paterson immediately and Mr Pearson also commenced an investigation.
3. The procedure to make a mandatory report under the 1987 Act required Dr Hawkes to report the matter up the chain of command he did so by informing both the Headmaster.

4. Dr Hawkes’ uncontested evidence is that he was not aware the incident had not been reported until preparing his evidence to the Royal Commission.

5. Under the procedures established under 1987 Act the obligation to report only returned to Dr Hawkes if and when he is advised that a report under the 1987 Act has not been made.

6. Dr Hawkes having reported the incident to the Headmaster and Mr Pearson had complied with all his obligations in relation to reporting the incident and appropriately focussed his attention on the pastoral care of students affected by the incident.

7.4 Available findings in respect of Mr Christopher Fotis

7.4.1 Mr Fotis failed to report his charge or subsequent conviction for wilful and obscene exposure to the Director-General of the DoE in breach of cl.47 (1) (a) of the Education Teaching Service Regulation 1982 (NSW). [349]

508. No comment or contest is made in relation to this finding.

7.5 Available findings in respect of Mr John weeks

7.5.1 Mr Weeks’ evidence that he could have done more to check whether Mr Treloar was still coaching sporting teams between the time in 2007 when Mr Weeks became aware of the allegations about Mr Treloar and Mr Treloar’s arrest in 2009 should be accepted.[350]

509. No comment or contest is made in relation to this finding.

7.6 Available findings in respect of the Ombudsman

7.6.1 The Ombudsman’s concession that there were significant shortcomings in the Ombudsman’s overall response to the matter involving Adrian Nisbett in 2004 should be accepted. [361]

510. No comment or contest is made in relation to this finding.

Jim Harrowell AM
Hunt & Hunt
24 June 2015