

**SUBMISSIONS FOR MR PETER GREEN IN RESPONSE TO SUBMISSIONS OF
COUNSEL ASSISTING**

1. Only paragraphs [1]-[118] of the submissions of counsel assisting dated 12 December 2016 are about Trinity Grammar School and relevant to Mr Green.

Submissions generally of counsel assisting

2. Those submissions of counsel assisting affecting Mr Green, extracted in the following paragraphs, are supported for the following reasons.

3. ***[52]: It is submitted that it is not necessary to make findings about the difference between the recollections of Ms Lumsdaine and Mr Green about what Ms Lumsdaine told Mr Green on 11th August [2000].***

4. It is submitted that in his evidence to the Commission Mr Green was candid and truthful and doing his best to assist the Commission. Apparent differences in recollection between him and Ms Lumsdaine should be accepted as genuine and explained not only by the passage of time but also possibly by different inputs of information at the time and different perspectives at the time.

5. ***[63]: It is submitted that it is open to prefer the evidence of Mr Green to the evidence of Mr Cujes as to what occurred at this meeting.***

6. Indeed, on behalf of Mr Green it is submitted that his evidence should be preferred. On behalf of Mr Green the foundations for that conclusion outlined by Mr Lloyd in the paragraphs [64]-[67] are adopted and supported.

7. ***[67]: At that time, Mr Cujes was responsible for child protection within Trinity.***

8. It is submitted that the evidence is quite clear in this, as is the then applicable legislation.

9. ***[73]-[74]: ... Mr Green said that at the time they were allegations and that he did not believe that there had been dildos placed up boys bottoms. He said that he did not think that there had been attempted rape and that if he told***

CLB's grandfather it would have added to the grandfather's stress and this would have made the situation worse. Mr Green said that if more information became available [that showed that there were more things going on], he intended to give that information to CLB's grandfather.

10. Mr Green's basis for not believing at the time that *"these sticks, dildos, had actually gone up [CLB's] anus"*¹ was explained by him in his evidence, and it is submitted that it should be accepted by the Commission that this was his genuine contemporaneous belief, or disbelief.
11. Essentially, CLB had told him that he was always clothed², and in any event Mr Green also had the denials of the other boys who were interviewed on the day in question.
12. Further, it is submitted that there was a legitimate basis for confusion in Mr Green's mind at the time, and upon the knowledge that he had, and in the context of conflicting accounts that he was given, as to where the boundaries were between 'wrestling' or 'wrestling got out of hand'³ or 'rumbling' and sexual assaults.
13. Also CLA's statement to the Commission, not known to Mr Green at the time he gave his evidence, reveals that the first discovery of wooden implements by an adult staff member of the school was roughly two weeks before the CLB incident. There is no evidence or suggestion that Mr Green knew of that.
14. Mr Green said at T 21783:32-35:

"... it seemed to me to be stick, boy with clothes on, that it was poking and so on. When I spoke to [CLB] I did not get the sense that these were being rammed up boys' backsides, that it was more poking at boys' bottoms".
15. Again, he gave the following evidence at T 21782:40-44:

*'Q... what basis did you have to think that boys who might have been assaulted by this 30cm stick weren't being damaged and weren't screaming out in pain and fear?
A. Damage like that would result in boys going to the health clinic and so on. Remembering, too that ...CLB had said that the boys had their clothes on, its just – well, it just didn't seem to me to be a possibility that that was happening.'*

¹ T 21/10/2016 21775:43-44

² see e.g. at T 21/10/2016 221775:45-46

³ see the statement of CLA at [10], which counsel assisting himself picks up in [27] of his submissions

16. It is submitted that the Commission is not in a position to determine, despite the comprehensive and detailed evidence now before it, precisely what the physical nature of the assaults upon CLB and CLA were in detail.
17. Mr Green had even less evidence at the time – on 11 August 2000 and subsequently over the next few weeks, given that Ms Lumsdaine chose not to share her enquiries with him.
18. It is also entirely plausible that when speaking to Mr Green on 11 August 2000 CLB was circumspect in his description of the lurid details of the assaults upon him and upon the other boys, - given embarrassment (after all, CLB apparently did not tell his grandfather later, or at any time), their respective positions in the school hierarchy, the knowledge no doubt of CLB that the other boys at the time were vociferously denying it – even, quite possibly, some desire not to be a complete ‘dobber’ residually held by CLB at the time.
19. There is no evidence from CLB - he was not called and did not provide a statement. Nor is there evidence from any other source to gainsay this reasonable assumption.
20. It is submitted that Mr Green’s evidence as to his sense at the time of the nature of the incidents, falling short of the sexual assaults that were subsequently revealed, should be accepted.
21. In his evidence to the Commission he was candid in accepting, with hindsight, some personal failures in that regard, and in his actions consequent upon the knowledge he did have, and he expressed what should be accepted as genuine regret for that.
22. It should be accepted that his failures were not deliberate.

‘Available findings’ submitted by counsel-assisting

23. The ‘available findings’ submitted by Mr Lloyd that concern Mr Green are:

- AF 1, at [53] and repeated at [111];
- AF 3, at [68]/[113];
- AF 5, at [75]/[115]; and
- AF 7, at [82]/[117].

24. Addressing these submitted findings in order:

AF 1 - As at 11 August 2000, the senior master at Trinity, Mr Green, knew of allegations by CLB that other boys in the boarding house had attempted to sexually assault him that day, and that CLB had alleged that other boys in the boarding house had sexually assaulted boys and used wooden dildos on boys in the boarding house on multiple occasions before 11 August 2000.

25. Mr Green accepts this finding. It is submitted by counsel assisting at [53] of his submissions, after thorough identification of the relevant evidence, much of it being Mr Green's own testimony.

26. However, as noted above, Mr Green's subsequent actions upon this knowledge must be judged in the light of his evidence, which should be accepted, that he did not believe CLB as to the sexual nature of the assaults.

27. Also, the submissions as above are repeated - that his disbelief was genuine and, although with hindsight wrong, understandable at the time from his perspective.

28. It is Mr Green's subjective perception at the time of the nature of the assaults against which his actions and omissions should be judged.

AF 3 – Mr Green made a report to Mr Cujes on 11 August 2000 which included giving to Mr Cujes to read CLB's incident report and informing Mr Cujes that CLB was alleging that there had been simulated rape or that a dildo had been shoved up boys' bottoms on multiple occasions.

29. Mr Green supports this finding. It is submitted by counsel assisting at [68], again after thorough identification of the relevant evidence.

AF 5 - Mr Green and Mr Scott did not inform CLB's grandfather about his allegations that he had been sexually assaulted, and they should have done so.

30. Mr Green accepts this finding – but, as he stated in his evidence, upon the basis of what he now knows in 2016, but did not know then, not only about this incident but also about the harm that is caused by sexual assaults and their non-disclosure.

31. He gave reasons for why he did not inform CLB's grandfather - because he did not believe that there had been attempted sexual assault at that time and also, as he said at T 21766:42-44:

“If I had told him it would have added stress that was unnecessary at the time and it would have – for me, it would have made an even worse situation for him.”

32. It is submitted that the Commission should accept that Mr Green’s concerns at the time for the sensitivities of the situation, i.e. for the feelings of CLB and of his grandfather, were, even if in hindsight wrong nonetheless genuine, well meaning and not irrational - and that he is genuine now in his regret that he didn’t tell the grandfather.

AF 7 – Despite having knowledge of CLB’s allegations on 11 August 200, Mr Green did not conduct a proper investigation into those allegations or make any notification to the Department of Family and Community Services

33. Mr Green accepts this finding – but, as he stated in his evidence, upon the basis of what he now knows in 2016, but did not know then.
34. As he explained in his evidence, before the revelations that came from Kate Lumsdaine, neé Pearce, after her independent investigations in 2000, his own personal experience and belief of the culture in the boarding house was that it was very caring and supportive – so much so that he was happy for his three sons to be part of it when he lived there for two and a bit years up to 1998⁴.
35. At T 21786:17-35 the following evidence was given by Mr Green:

“Q. The fact that you had these serious allegations before you and the investigation ultimately was done by one of the employed psychologists at the school, does that say anything to you about the culture of the school or the attitude that it had to allegations of this kind as at 2000?”

A. If I could - our normal - with these type of investigations is we have an investigator and a counsellor and we work together and information comes from the counsellor if they have private sessions. That helps to give the full information that can then be used for an investigation. Having part of the information, there was other information that was being gathered that wasn't, I wasn't privy to. I would suggest that even on the day in question, 11 August, I did not get a full sense, from my discussions with Ms Pearce, of the situation. Irrespective of that, I'm sorry that, for whatever reason, Ms Pearce didn't want to share that information with me. It would have made a significant difference.

THE CHAIR: Ms Pearce concluded that there was much to be done to change the culture of the boarding house?

A. Yes

Did you have that view back in 2000?

A. After this, yes.

⁴ see at T 21747:7-29

Q. I am sorry, after what?


A. After these events, your Honour, I had the same conclusion. I did not have it before 11 August..."

36. It is clear from the evidence that none of the adult staff had been confronted with a situation like this before, and there was no direct protocol for dealing with it and as a result of that Ms Lumsdaine had to just use her common sense and judgment in the way that she continued to investigate⁵.
37. Her judgment was that she should do so independently and without keeping at least Mr Green in the loop as to that.
38. These submissions do not seek to criticise her for that, but nonetheless the practical result was that Mr Green's possible responses and actions were never able to be tested. He was never given the information but more importantly the opportunity to respond in a different way than he did.
39. There is no basis to suppose that if he had been better informed Mr Green would not have responded in a more appropriate way.

Conclusion

40. It is submitted that Mr Green should not be the subject of any adverse findings or criticism going beyond those submitted by counsel assisting, and which, to his credit, he is willing to accept.
41. It is submitted that it should be accepted by the Commission that to the best of his ability and recollection Mr Green's evidence was truthful and he was doing his best to assist the Commission in his testimony.
42. It is submitted that it should be accepted by the Commission that he was genuine in expressing regret for the hurt and damage to CLA and CLB and his wish that he could have prevented that.
43. It is submitted that Mr Green was not really in a position to influence the response of the school to the report of Ms Lumsdaine as to her investigations, and any inadequacies in same were not as a result of decisions or actions by Mr Green.
44. In all the circumstances Mr Green respectfully requests of the Commission that it acknowledge some of these positive matters about him in its report.

⁵ see xx of Ms Lumsdaine at T 21737:44-46



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