

The Debelles Report - What Really Happened?

By David Knuckey

Wednesday, December 1, 2010 was a warm, pleasant day, one week before the end of the school year. At an Adelaide public school, the OSHC Director led a seven year old girl into the canteen to prepare snacks for the other children. He then blindfolded her and sexually assaulted her.

That night, the girl told her mother. The child was asleep when police arrived at 9:15pm, so they resolved to take her statement the next day. At 10:15pm, the police called the school principal and told her of the crime.

The Inquiry

Two years later, on November 6, 2012, Justice Bruce Debelles commenced an inquiry into the case. His report, released in July 2013, was described by DECD Chief Executive as, 'a sobering chronicle of failures at every level within the department'. He was not exaggerating.

At least six different departments in DECD would be involved with this case, as well as the Chief Executive, both deputy Chief Executives, the district office, two school principals and the Minister's office.

More important than the 'complete incompetence' Premier Weatherill labelled this sad affair, is the apparent fact that at every step 'keeping the lid' on this scandal came before the wellbeing of children.

For undisclosed legal reasons, the offender is referred to as 'X' and the school is not named.

The Day After

The school principal slept in the next morning and left late for the school. Astoundingly, to this day, nobody knows whether Mr. X was in the OSHC that morning. There are no records or timesheets and nobody seems to remember.

Justice Debelles concludes it is likely Mr. X - less than 24 hours after molesting a child - was back at the OSHC from 7am that morning. Nobody stopped him and nobody was watching him.

The police say they told the principal to keep Mr. X away from children until they had interviewed the victim - the principal claims they didn't.

Two years later, when the story blew up in the media, Premier Jay Weatherill said 'the actual employer is the school council because it is an OSHC, so ultimately the decision process fell to the school council which was informed about this matter'.

This rightly angered parents. First it was not their wish to cover it up - they were instructed to keep it quiet. Second, in addition to being their OSHC Director, Mr. X was also employed by DECD as a SSO when the rape occurred. He was responsible for the care of a child under the guardianship of the Minister. He had passed criminal history checks for both roles.

Misinformation

At 12:50pm, five police officers entered the school and arrested Mr. X, having interviewed the victim that morning. They told the principal of the charges and advised her she would need to send a letter to parents notifying them of the incident.

That afternoon, various DECD officers at both the district and head offices were deciding what information would be released. At this point began the misinformation which would continue for two years.

The next day a letter was sent to parents of children in the OSHC only - telling them that an OSHC staff member was on leave. There was no mention of any incident.



“The Department had previously obtained legal advice on whether parents should be informed that a teacher had been arrested. This was on September 30, 2010.

The Crown Solicitor gave clear and unequivocal advice that it was lawful to inform parents.”



Justice DeBelle: *"...it was a misleading letter giving entirely inadequate reasons for the absence of X ... Many parents might well have believed and, in all probability did believe, that X was again on sick leave".*

Nobody Thinks To Tell The Parents

As the last week of school began, DECD drew up a plan for dealing with the Mr. X. case.

Justice DeBelle: *"Nowhere is there any discussion of the question whether a letter should be sent to parents of all children in the school."*

The person who authored the plan said his failure to include informing parents, was because it wasn't his job. It was the job of the School Care Unit - but they hadn't seen the DECD plan.

Three months before Mr. X assaulted the seven year old girl, the Crown Solicitor had given DECD clear advice, in reference to another case, that a letter should be sent to parents to inform them about sexual misconduct by teachers:

"I do not believe I can present the issues to DECS any more forcefully than I did previously, namely: If you were a parent of any of the relevant children, would you not want to know? Also, it is far better they hear it from DECS than through the media..."

This legal advice apparently escaped the 'corporate memory' of the department for the next two years.

The Suppression Order That Never Existed

On December 9, the Governing Council met, learned of Mr. X's offence and were asked to fire him. The Council's immediate reaction was to tell parents. Based on instructions from Mardi Barry in DECD HR, the principal told the Council there was a suppression order in place and they were not allowed to tell the parents. **Not true.**

Assistant District Director, Mr. Petherick also told the council that because of the suppression order, they were not allowed to speak about the case to anyone. **Not true.**

There never was a suppression order.

What was in place was Section 71A of the Evidence Act, which restricts public publication of some information when a person has been charged with a sexual offence. It's what stops the media from saying who it is or showing their face. It

is to protect the identity of the victim. This only applies until the accused has been committed for trial.

Justice DeBelle: *"There is nothing in section 71A(2) that prevents private communication ... section 71A does not apply to a private communication made by a school to members of its staff and parents."*

A Year Passes

On February 9, 2012 Mr. X was convicted and sent to prison. His identity and sentencing were reported in the media and parents started piecing it together and asking questions. The principal told these parents that all information other than Mr. X's name was suppressed. **Not true.**

DECD prepares a letter for parents, but decides it will only be released if the story breaks in the media.

Justice DeBelle: *"It (the letter) did nothing to alert parents to the possibility that their children might have been victims of the offending. It was curious also that Ms Kibble decided that the letter should not be sent 'unless the story was released in the media'."*

Parent Pressure

In March 2012, parents contacted Minister Portolesi. This was the first she knew of the case. In her response to parents, the minister stated that SAPOL had advised DECD to keep the matter confidential. **Not true.**

Justice DeBelle: *"It was not correct that SA Police had advised the Department to keep the matter confidential ... at no stage after the arrest of X had the police asked the Department to keep the matter confidential ... these simple facts seemed to have escaped the attention of the Department"*.

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In March 2012, another parent, who was also an analyst with SAPOL wrote to the principal, pointing out that information about Mr. X was readily available to parents and explained why all parents should now be told.

Ms. Soester

Requests for information from parents continued. At the March 2012 Governing Council meeting, Danyse Soester told the meeting that Mr. X had now been sentenced so the suppression order no longer applied and as the employer, it was time for the Governing Council to tell parents.

The motivation was simple - it might result in other victims coming forward and they could then receive counselling. The principal told Ms. Soester that she could not move a motion for the Governing Council to send a letter. **Not true.**

The principal then asked Ms. Soester (the secretary) to give her the minutes for editing before they went to Council members. Ms. Soester (correctly) refused and sent the draft minutes to all members for approval.

In the coming months, Ms. Soester continued her quest to have parents informed. In May, she raised the issue with the district office and with Don Mackie, head of the DECD legal unit, though not a lawyer. Mr. Mackie acknowledged the Governing Council could inform parents, but said it would serve no purpose and that it could open members up to prosecution. **Not true.**

Justice Debelle: "His statement that giving information to parents ... would serve no legitimate purpose is extraordinary ... a letter to parents would serve the very legitimate purpose of informing parents ... so that they could be on the alert for any untoward behaviour in their children that might require counselling and support".

Things Start To Unravel

At the next Governing Council meeting, in May, a representative from the district office told the council that if they told parents, they would be contravening a 'suppression order'. **Not true.**

Ms. Soester then tried the Parents Complain Unit. She ended up speaking to Mr. Costello, Head of Schools. The written response from this conversation argued a ridiculous notion that the addresses needed to send a letter to parents were collected for school purposes and this letter 'clearly isn't a school purpose'. **Not true.**

The letter also said that the Governing Council has no role in informing the broader community and that if they try to inform parents the protection councils have under the Education Act will be voided and they will be liable for their actions. **Not true.**

Justice Debelle describes these remarks as 'extraordinary'. Ms. Soester then lodged a complaint with the department, stating officers were providing incorrect advice.

The Truth Discovered, But Not Disclosed

Following this complaint, Don Mackie finally checked with the courts and discovered there was no suppression order. Rather than inform colleagues that everyone was mistaken and DECD should come clean, he tells them, "I don't particularly think that whether the advice was 'legally correct' or not need be at issue". He then sends a letter to the Governing Council maintaining that they

"One matter that is especially striking about this unhappy saga is the fact that the Department did not pause to think whether it should reconsider its view that parents should not be informed until it was compelled to do so in consequence of ... media attention."



have no role to play in informing parents and that they could expose themselves to legal action if they try to do so.

Justice Debelle: "Mr. Mackie's observation ... betrays an unwillingness to consider whether Ms. Soester might, in fact, be correct."

On June 25, following a complaint by Ms. Soester, the State Ombudsman wrote the Chief Executive.

Justice Debelle: "It is relevant to note also that not even the inquiry by the Ombudsman caused the Department to pause and consider whether it was acting correctly in not informing parents..."

Parents continued to complain. They are now citing precedents and providing documentation proving that parents can be told about teacher sex cases. Don Mackie's reply was disappointing.



Justice Debelle: "The tone of the email borders on aggressive. It is certainly not conciliatory. (the parent) had done no more than request an explanation ... why the Department was prepared to inform parents at other schools of sexual misconduct by staff but had failed to advise parents at (this) school."

Did The Department Make Threats?

Justice Debelle identifies three incidents where the Governing Council might have felt threatened or pressured. These involved comments from DECD that if they told parents about the sexual assault, the Governing Council might be legally liable.

Justice Debelle states that he tried to consider each of these statements in a generous light: *"I must conclude that while it is not possible to state that the minute contained threats, it could readily be understood as a threat."*

Ms. Soester understood it as a threat. Certainly, if it was not a threat, it was intended to bring pressure to bear on Ms. Soester and other members of the Governing Council".

The Story Breaks & There's Action

Finally, parents approached the Shadow Minister, David Pisoni, who raised the issue in parliament on October 30, 2012.

On October 31, the media descend on the story, and someone at DECD finally asks the Crown Solicitor if parents can be told about such incidents.

DECD got a response that same day, saying yes. **True.**

Justice Debelle: "It is remarkable that advice on these questions had not been sought earlier, especially given the desire of the Governing Council to the school to inform parents".

On November 2, the media identified the school. DECD then urgently wrote a letter

to parents. The letter, sent two years after the assault, told parents there was a hotline for them (run by the Parents Complaint Unit) and that counsellors would be at the school.

This failed to placate parents, who felt the counsellors were not suitable. Also, the operator of the hotline did not have enough knowledge to answer parent's questions.

Victim's Rights Vs. Criminal's Rights

The teacher's union made a submission to Justice Debelle, that when a teacher is accused of a sexual assault on a child, they should be given the name of the alleged victim - the child.

Justice Debelle: "If the alleged victim is named, there might be a risk that the teacher might attempt to persuade the alleged victim to withdraw or modify the allegations. The attempt to persuade might be accompanied by a threat or some other form of inducement."

The protection of the alleged victim must prevail over informing the teacher of the name of the alleged victim".

Conclusion

Justice Debelle: "There is an especially sad irony in the large number of documents tendered in this Inquiry. They are emails sent by officers of the Department to each other. Almost every one of these emails has the following message printed across the foot of the email:

Children and young people are at the centre of everything we do.

All too sadly, both the letter and the spirit of that message were ignored in this case." ■