



**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES  
TO CHILD SEXUAL ABUSE  
AT MELBOURNE**

COMMONWEALTH OF AUSTRALIA

***Royal Commissions Act 1902***

PUBLIC INQUIRY INTO

**THE RESPONSE OF YESHIVAH MELBOURNE AND YESHIVA BONDI**

**SUBMISSIONS OF COUNSEL ASSISTING THE ROYAL COMMISSION**

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## Introduction

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### About the public hearing

- 1 This public hearing examined the response of the Yeshivah Centre and the Yeshivah College in Melbourne (Yeshivah Melbourne), in Victoria, and Yeshiva Centre and the Yeshiva College Bondi (Yeshiva Bondi), in New South Wales, to allegations of child sexual abuse.
- 2 The hearing examined the systems, policies, practices and procedures for the reporting of and responding to allegations of child sexual abuse of:
  - a. Yeshivah Centre Melbourne,
  - b. Yeshivah-Beth Rivkah Colleges Melbourne,
  - c. The Yeshiva Centre - Chabad NSW, and
  - d. Yeshiva College Bondi, New South Wales.
- 3 This public hearing examined evidence of offending by three convicted perpetrators, David Cyprys, (Melbourne), Rabbi David Kramer (Melbourne) and Daniel ‘Gug’ Hayman (Bondi) committed in connection with the activities of the institutions. The public hearing also examined the response of Yeshivah Melbourne to complaints of child sexual abuse made Aron ‘Ezzy’ Kestecher.
- 4 The public hearing examined when Yeshivah Melbourne and Yeshiva Bondi first came to know of allegations of abuse by David Cyprys, Rabbi David Kramer and Daniel ‘Gug’ Hayman and how leaders and management responded to that information.
- 5 The hearing also examined how the institutions responded to victims and community members following publication of the allegations of abuse, during and after the police investigation into the allegations and the criminal process and following public statements by witnesses critical of the response of the institutions.
- 6 The public hearing heard evidence from four survivors of the sexual abuse perpetrated by the convicted offenders: AVA, a former student of Yeshivah College Melbourne; Menahem ‘Manny’ Lieb Waks, also a former student of Yeshivah College Melbourne; AVR, another former student of Yeshivah College Melbourne; and AVB, a former student of Yeshiva Bondi. All of the victims were students at schools run by the institutions at the time of their abuse. The victims came into contact with the perpetrators as a result of the perpetrators’ involvement in or association with activities run by the institutions such as after school martial arts classes, religious programmes and overnight youth camps.
- 7 As both David Cyprys and Rabbi David Kramer committed offences against multiple victims, the Commission examined records of the convictions and sentences imposed on the perpetrators in order to understand the full extent of the perpetrators’ crimes.
- 8 The Commission heard evidence from members of the victims’ families: AVQ, mother of AVA; Zephaniah Waks, father of Manny Waks; and AVC, wife of AVB. Each of these

witnesses gave evidence about the effect on the family, which is often referred to as the secondary impact of the trauma of child sexual abuse. Some of the witnesses also gave evidence of difficulties experienced in the aftermath of the victims' abuse becoming public and as a result of the victims' participation and assistance in the investigation and prosecution of the offences.

### Institutional witnesses

- 9 This public hearing heard from a number of witnesses in order to examine the institutional responses of Yeshiva Bondi and Yeshivah Melbourne. These included:
- a. **Rabbi Pinchus Feldman**,<sup>1</sup> Head Rabbi, Yeshivah Sydney;
  - b. **Rabbi Yosef Feldman**,<sup>2</sup> son of Rabbi Pinchus Feldman and Dean of the Yeshiva Gedola Rabbinical College, Yeshiva Bondi;
  - c. **Rabbi Moshe Gutnick**,<sup>3</sup> Senior Dayan (judge) of the Sydney Beth Din (a rabbinical court) and former teacher at Yeshiva Bondi and former President of the Organisation of Rabbis of Australasia (ORA);
  - d. **Rabbi Zvi Hersh Telsner**,<sup>4</sup> currently the Head Rabbi of Yeshivah Melbourne, a role held by him since 2007. He is the son in law of the late Rabbi Groner, the original Head Rabbi. Rabbi Groner was the Head Rabbi at the time of the abuse examined in this hearing. Rabbi Telsner was the Head Rabbi at the time of the police investigation into much of the abuse examined;
  - e. **Rabbi Abraham Glick**,<sup>5</sup> former Principal of Yeshivah College from 1986 to 2007. Rabbi Glick was the Principal at the time of the abuse examined in this hearing;
  - f. Members of the Committee of Management at the relevant times, **Don Wolf**,<sup>6</sup> Chairman of the Committee of Management at the Yeshivah Centre in Melbourne from 1997 to late 2014 and **Nechama Bendet**,<sup>7</sup> former General Manager;
  - g. **Rabbi Mordechai Gutnick**,<sup>8</sup> Senior Rabbi of the Elwood Shule in Melbourne and current President of the Rabbinical Council of Victoria since 2014. Rabbi Gutnick

<sup>1</sup> Exhibit 22-0022, Statement of P Feldman, STAT.0448.002.0001\_R; Exhibit 22-0022, Supplementary Statement of P Feldman, STAT.0448.004.0001\_R. Rabbi Feldman gave evidence on 5 February 2015 (Day C63).

<sup>2</sup> Exhibit 22-0025, Statement of Y Feldman, STAT.0468.001.0001\_R; Exhibit 22-0025, Supplementary Statement of Y Feldman, STAT.0468.002.0001. Rabbi Feldman gave evidence on 6 February 2015 (Day C64) and 7 February 2015 (Day C65).

<sup>3</sup> Exhibit 22-0019, Statement of M D Gutnick, STAT.0458.001.0001; Exhibit 22-0019, Supplementary Statement of M D Gutnick, STAT.0458.003.0001, Rabbi M D Gutnick gave evidence on 4 February 2015 (Day C62).

<sup>4</sup> Exhibit 22-0040, Statement of Z Telsner, STAT.0456.002.0001\_R. Rabbi Telsner gave evidence on 12 February 2015 (Day C68) and 13 February 2015 (Day C69).

<sup>5</sup> Exhibit 22-0039, Statement of A Glick, STAT.0452.002.0001\_R. Rabbi Glick gave evidence on 12 February 2015 (Day C68).

<sup>6</sup> Exhibit 22-0034, Statement of D Wolf, STAT.0453.002.0001\_R. Don Wolf gave evidence on 11 February 2015 (Day C67).

<sup>7</sup> Exhibit 22-0033, Statement of N Bendet, STAT.0455.002.0001\_R. Nechama Bendet gave evidence on 10 February 2015 (Day C66) and 11 February 2015 (Day C67).

<sup>8</sup> Exhibit 22-0035, Statement of Mordechai Gutnick, STAT.0450.002.0001. Rabbi Gutnick gave evidence on 12 February 2015 (Day C68).

was examined in relation to acts done by him during the police investigation and charging of David Cyprys;

- h. **Rabbi Yehoshua Smukler**,<sup>9</sup> current Principal of Yeshivah-Beth Rivkah Colleges, Yeshivah Melbourne, to hear evidence of the schools' current approach to child protection and the policies and processes in place;
- i. **Rabbi Yaakov Glasman**,<sup>10</sup> past President of the Rabbinical Council of Victoria (the RCV); and
- j. **Rabbi Meir Shlomo Kluwgant**,<sup>11</sup> current President of the Organisation of the Rabbis of Australasia (the ORA), former President of the Rabbinical Council of Victoria (RCV) and chaplain for orthodox Jewish members of Victoria Police. This inquiry examined public statements issued by those organisations on the issue of child sexual abuse.

10 Additionally, the Commission received statements from a number of witnesses without calling these witnesses to give evidence. These included, AVQ,<sup>12</sup> mother of AVA who gave evidence of complaints made by her to Rabbi Groner, Rabbi Moshe Kahn,<sup>13</sup> director of Chabad Youth, Yeshivah Melbourne and AVS, former employee of the Yeshivah Centre, Melbourne.

11 The Commission received a statement from Rabbi Boruch D Lesches, a former Dean of the Yeshiva Gedola (rabbinical training college) at Yeshiva Bondi. Rabbi Lesches is resident in the United States of America and was invited to make himself available for questioning about complaints made to him of child sexual abuse by Daniel Hayman, his response to those complaints and other matters arising from the evidence. Rabbi Lesches declined to make himself available for questioning at the public hearing.

### Identification of witnesses and victims

12 In line with the usual practice of this Commission, victims and members of their families who gave evidence were referred to either by name or by allocated pseudonym. Some of the convicted perpetrators offended against multiple children. Where victims of the offenders were not called in this case study, but documents tendered outlined the victims' abuse, the names of the victims and other witnesses that may have enabled the victim to be identified were redacted from the documents. Where offenders pleaded guilty to or were otherwise convicted of offences, they were referred to by name. The same course was adopted where allegations were made against a person who is deceased. The hearing also examined evidence of allegations of abuse that are the subject of ongoing investigation. The persons against whom

<sup>9</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R. Rabbi Smukler gave evidence on 13 February 2015 (Day C69).

<sup>10</sup> Exhibit 22-0042, Statement of Y Glasman, STAT.0465.001.0001. Rabbi Glasman gave evidence on 13 February 2015 (Day C69).

<sup>11</sup> Exhibit 22-0047, Statement of Rabbi M Kluwgant, STAT.0466.001.0001. Rabbi Kluwgant gave evidence on 13 February 2015 (Day C69).

<sup>12</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R.

<sup>13</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R.

those complaints are made but have not been determined were referred to by pseudonym.

### **What this case study considers**

- 13 This case study considered the response of the two Jewish institutions to allegations of child sexual abuse and examined whether religious beliefs, cultural attitudes or other systemic issues impacted on an effective response by the institutions to the issue of child sexual abuse.
- 14 This case study examined the historical background and development of the religious communities to understand whether that background has influenced the response of leaders and the institutions. Where it was identified through examination that religious beliefs, cultural attitudes or systemic issues have inhibited an effective response to allegations of abuse, or affected attitudes to survivors of abuse, their families or to advocates, the public hearing inquired into actions taken by the institutions to address inhibitors to an effective institutional response.
- 15 This hearing examined the experience of survivors whose abuse became public. The hearing examined how leaders of the institutions responded to survivors and in particular, how they treated survivors and advocates who called for past and present leaders to be held accountable for any failures in their response on the issue of child sexual abuse. The hearing sought to examine what factors may have inhibited an effective or compassionate response to survivors and/or their families.
- 16 Finally, this public hearing examined whether the institutions had formal child protection policies at the time of the abuse and current protocols and policies.

## **Part 1 The Chabad-Lubavitch communities of Yeshiva Bondi and Yeshivah Melbourne**

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### **1.1 The historical background to the establishment of Yeshiva Bondi and Yeshivah Melbourne**

- 17 Yeshivah Melbourne and Yeshiva Bondi are Jewish institutions that exist within the fold of the Chabad-Lubavitch movement. Chabad-Lubavitch is a sect of Orthodox Judaism within the general class of movements described as Hasidism. Members of Chabad communities are sometimes but not uniformly, referred to as 'ultra' Orthodox Jews.
- 18 From 1951 to 1994, the Chabad movement was led by the late Rabbi Menachem Mendel Schneerson (the Rebbe).<sup>14</sup> The Rebbe was the last of the rabbis to lead the movement and was largely responsible for the growth of the Chabad movement worldwide. Yeshiva Bondi says on its website that the Rebbe is widely considered to

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<sup>14</sup> Exhibit 22-0022, Statement of P Feldman, STAT.0448.002.0001\_R at [1.1].

have been responsible for guiding post-Holocaust Orthodox Jewry to safety from the ravages of that devastation.<sup>15</sup>

- 19 Chabad is described as a philosophy, a movement and an organisation.<sup>16</sup> The word 'Chabad' is a Hebrew acronym for the three intellectual faculties of *Chochmah* – wisdom, *Binah* – comprehension and *Da'at* – knowledge.<sup>17</sup> The word 'Lubavitch' is the name of the town in White Russia<sup>18</sup> where the movement was based for more than a century, having been founded there approximately 250 years ago.<sup>19</sup>
- 20 In the early 1940s, the Rebbe was appointed to head the newly founded educational and social service arms of the Chabad movement. During his leadership, the Rebbe established a worldwide outreach movement to encourage Jews to adhere to the precepts of Orthodox Judaism.<sup>20</sup> The Rebbe sent emissaries to locations all around the world in order to fulfil this mission.
- 21 The Rebbe would appoint an emissary to set up or run an appointed territory and would then be responsible for carrying out the mission or outreach in that territory.<sup>21</sup> In addition to outreach, the Rebbe encouraged emissaries to establish Jewish educational systems for their community.
- 22 Once the Rebbe appointed an emissary to a territory, that emissary had the responsibility and authority to manage, control and lead the activities of Chabad within that territory; including, the authority to appoint other official Chabad representatives within his territory.<sup>22</sup> Each emissary was responsible for fundraising, setting up legal entities to run its outreach and educational activities in the appointed territory, staffing management and control.<sup>23</sup> The emissary could appoint other emissaries who followed the ethos of the Chabad movement to operate in their territory.
- 23 In simple terms, Chabad operated like a franchise, with the franchisee for a territory – the emissary – having the right to appoint sub franchisees (or other emissaries) within that territory.<sup>24</sup>

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<sup>15</sup> The Yeshiva Centre, 'About Chabad-Lubavitch', [http://www.yeshiva.org.au/library/article\\_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm](http://www.yeshiva.org.au/library/article_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm) (viewed 19 March 2015).

<sup>16</sup> The Yeshiva Centre, 'About Chabad-Lubavitch', [http://www.yeshiva.org.au/library/article\\_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm](http://www.yeshiva.org.au/library/article_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm) (viewed 19 March 2015).

<sup>17</sup> The Yeshiva Centre, 'About Chabad-Lubavitch', [http://www.yeshiva.org.au/library/article\\_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm](http://www.yeshiva.org.au/library/article_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm) (viewed 19 March 2015).

<sup>18</sup> 'White Russia' is the eastern part of Belarus, formerly Ruthenia or Rus.

<sup>19</sup> The Yeshiva Centre, 'About Chabad-Lubavitch', [http://www.yeshiva.org.au/library/article\\_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm](http://www.yeshiva.org.au/library/article_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm) (viewed 19 March 2015).

<sup>20</sup> Exhibit 22-0022, Statement of P Feldman STAT.0448.002.0001\_R at [1.1].

<sup>21</sup> Exhibit 22-0022, Statement of P Feldman STAT.0448.002.0001\_R at [1.1].

<sup>22</sup> Exhibit 22-0022, Statement of P Feldman STAT.0448.002.0001\_R at [1.1].

<sup>23</sup> Exhibit 22-0022, Statement of P Feldman STAT.0448.002.0001\_R at [1.3].

<sup>24</sup> Exhibit 22-0022, Statement of P Feldman STAT.0448.002.0001\_R at [1.4].

- 24 Within a territory, an emissary is absolutely autonomous in the way in which he operates. If an emissary appoints further emissaries to operate within their territory, those emissaries are similarly independent.<sup>25</sup>
- 25 During the Rebbe's lifetime, the head emissary for a territory was only answerable to the Rebbe himself. After the Rebbe's death, in the case of any dispute, the emissary was only answerable to a religious tribunal established under the aegis of the central Chabad organisation in New York.<sup>26</sup>
- 26 Often the Rebbe would send a rabbi and their family as the emissary for a territory. Those emissaries would in turn appoint further emissaries within the territory who were members of their own family, or members related by marriage, or other members of the Chabad with whom they had longstanding friendships or other ties. That practice means that, at least as far as the two Chabad communities examined - Yeshivah Melbourne and Yeshiva Bondi – rabbinical leaders and those in charge of various institutions run by Yeshivah Melbourne and Yeshiva Bondi were and are still closely connected by family, marriage or longstanding friendships.

### Yeshivah Melbourne

- 27 The Yeshivah Centre in Melbourne, Victoria, was established by a group of Jewish migrants in the late 1940s in response to a post-war influx of Jews to Melbourne.<sup>27</sup> The Yeshivah Centre aimed to provide a wide range of educational, social, welfare and cultural services to the Jewish community.<sup>28</sup>
- 28 In 1949, the Yeshivah Centre opened a Jewish day school. The success of this school led, in 1954, to the purchase of the Yeshivah College at Hotham Street, St Kilda, East Victoria. This was in turn followed by the purchase of a property to house Beth Rivkah Ladies College at 14 Balaclava Road in 1959, and 16-20 Balaclava Road in 1969.<sup>29</sup>
- 29 In 1958, Rabbi Yitzchok Dovid Groner arrived in Melbourne as the emissary of the Rebbe to take up the position of full time Director of the Yeshivah Centre.<sup>30</sup> From 1958 until his death in 2008, Rabbi Groner was the Senior Rabbi, figurehead and director of the Yeshivah Centre.<sup>31</sup>
- 30 In the mid to late 1980s, three incorporated associations were formed to carry on the then activities of the Yeshivah Centre: Chabad Institutions of Australia Inc, Yeshivah-

<sup>25</sup> Exhibit 22-0022, Statement of P Feldman STAT.0448.002.0001\_R at [1.4], Transcript of P Feldman, C6317:11-6318:20 (Day C63).

<sup>26</sup> Exhibit 22-0022, Statement of P Feldman STAT.0448.002.0001\_R at [1.2].

<sup>27</sup> Yeshivah Beth-Rivkah Colleges, 'History', <http://www.ybr.vic.edu.au/about-us/history/> (viewed 18 March 2015).

<sup>28</sup> Yeshivah Beth-Rivkah Colleges, 'History', <http://www.ybr.vic.edu.au/about-us/history/> (viewed 18 March 2015).

<sup>29</sup> Yeshivah Beth-Rivkah Colleges, 'History', <http://www.ybr.vic.edu.au/about-us/history/> (viewed 18 March 2015).

<sup>30</sup> Yeshivah Beth-Rivkah Colleges, 'History', <http://www.ybr.vic.edu.au/about-us/history/> (viewed 18 March 2015).

<sup>31</sup> Exhibit 22-0034, Statement of D Wolf STAT.0453.002.0001\_R at [4].

Beth Rivkah Colleges Inc and Chabad Properties Inc. In these submissions, the term 'Yeshivah Centre' is used to refer collectively to:

- a. the functions and activities operated under the auspices of the Yeshivah Centre from the time of Rabbi Groner's arrival in Melbourne in 1958; and
- b. in latter times, the business affairs and activities carried out under the auspices of each of the incorporated associations: Chabad Institutions of Australia Inc, Yeshivah-Beth Rivkah Colleges Inc and Chabad Properties Inc.

- 31 Chabad Institutions of Australia Inc (Chabad Institutions) was and remains responsible for all religious activities including, relevantly, the operation of colleges and institutions of religious Orthodox Jewish education, the operation of the shules (synagogues) and to engaging rabbis and other teachers as appropriate in the pursuit of the purposes of the Association.<sup>32</sup> Chabad Institutions also ran 'Chabad Youth' which organised Jewish youth events and programs including camps.
- 32 Yeshivah-Beth Rivkah Colleges Inc (Yeshivah-Beth Rivkah) operated the various school and education centres including the schools, Yeshivah College, for boys, and Beth Rivkah Ladies College, for girls. Both schools served as day schools for students from kindergarten through to year 12. Yeshivah Beth Rivkah also operates other early education centres including Gurewicz Learning Centre, Yeshivah Brighton Kindergarten and South Caulfield Children Centre.<sup>33</sup>
- 33 Chabad Properties Inc (originally called Yeshivah and Beth Rivkah Properties Inc) owns the Yeshivah Centre's properties. The Yeshivah Synagogue and the schools were located on the same premises. Closely proximate to the synagogue, is a mikveh, a ritual bathhouse. The mikveh is a place where young and old males undertake daily rituals of cleansing or bathing as an adjunct to the living practice of Orthodox faith. The mikveh is considered a sacred place, and the process of immersion in the mikveh to be a holy and purifying experience.
- 34 Rabbi Groner oversaw the affairs of the Yeshivah Centre on a day-to-day basis and was described as the senior Rabbi, CEO and decision maker.<sup>34</sup> Rabbi Groner was one of the first ordinary members of each of the three incorporated associations and a founding member of the committee of management of each association.<sup>35</sup> He was the founding President and Chairman of the committee of management of Chabad Institutions.<sup>36</sup> Rabbi Groner was an employee of the Yeshivah Melbourne. Mr Wolf told the Royal Commission that Rabbi Groner was most likely employed by Chabad Institutions.<sup>37</sup>

<sup>32</sup> Exhibit 22-0052, IND.0248.001.0024, IND.0248.001.001 at [1], [3], [4].

<sup>33</sup> Yeshivah Beth-Rivkah Colleges, 'History', <http://www.ybr.vic.edu.au/about-us/history/> (viewed 18 March 2015); Yeshivah Beth-Rivkah Colleges, 'About Us', <http://www.ybr.vic.edu.au/about-us/> (viewed 18 March 2015).

<sup>34</sup> Exhibit 22-0034, Statement of D Wolf STAT.0453.002.0001\_R at [9].

<sup>35</sup> Exhibit 22-0052, IND.0248.001.0001 at 0007 [3(3)], and 0017 [24(1)(a)]; IND.0248.001.0053 at 0058 [3(3)] and 0064 [24(2)(a)]; IND.0248.001.0031 at 0032 [3(3)] and 0040 [24(2)(a)].

<sup>36</sup> Exhibit 22-0052, IND.0248.001.0001 at 0017 [24](1)(a)].

<sup>37</sup> Transcript of D Wolf, C6848: 45 – C6849: 5 (Day C67).

- 35 The committees of management had responsibility to control and manage the business and affairs of each of the associations.
- 36 Historically, there were different members (with some overlap) of each of the associations. From 1992, until the present time, there was common membership of each of the associations, and a single committee of management (the Committee of Management) that managed the business and affairs of each of the associations.<sup>38</sup>
- 37 Historically, and presently, members of the incorporated associations and the Committee of Management were often connected through longstanding personal friendships and familial ties.<sup>39</sup> Key employees of the Yeshiva Centre and the members of the Committee of Management were closely connected by family, longstanding friendships, or relationships of marriage.<sup>40</sup>
- 38 Employees of the Yeshiva Centre and members of the Committee of Management, and many members of the community were connected by long standing loyalties to the late Rabbi Groner,<sup>41</sup> the person and his legacy.

### **Yeshiva Bondi**

- 39 Yeshiva Bondi was established in 1956. In 1968, the Rebbe sent Rabbi and Rebbetzin Pinchus and Pnina Feldman as emissaries to Sydney with the task of organising a Chabad-Lubavitch centre to strengthen Jewish education and outreach throughout NSW. Rabbi Feldman was appointed Dean and Spiritual Leader of the Yeshiva Centre and Chabad's emissary to New South Wales. He remains the emissary of Chabad in New South Wales.
- 40 As the emissary for Chabad in NSW, Rabbi Pinchus Feldman has authority over spiritual questions and the appointment of emissaries within New South Wales.<sup>42</sup>
- 41 Since his appointment, Rabbi Pinchus Feldman has established schools (including Yeshiva College Bondi), a rabbinical college (the Yeshiva Gedola Rabbinical College) (Yeshiva Gedola), many synagogues and set up Chabad outreach entities, including Young Adult Chabad.
- 42 Originally, Yeshiva Bondi operated from premises on Flood Street, Bondi, NSW, through a charitable trust called the Sydney Talmudical College Association (STCA). Two entities operated the schools: Yeshiva College Ltd, and Yeshiva Jewish Day School Ltd. Until 2003, Rabbi Pinchus Feldman was involved in the management of the schools and other activities undertaken by STCA.

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<sup>38</sup> Exhibit 22-0052, IND.9999.001.0004, Exhibit 22-0052, IND.0248.001.0052.

<sup>39</sup> Transcript of M Kluwgant C7183:13-37 (Day C69).

<sup>40</sup> Transcript of M Kluwgant C7183:29-37 (Day C69).

<sup>41</sup> Transcript of M Kluwgant C7183:39-42 (Day C69); Transcript of M Waks, C6056: 39 – C6057: 12 (Day C60).

<sup>42</sup> Exhibit 22-22, Statement of P Feldman, STAT.0448.002.0002\_R at [2.2], Transcript of P Feldman C6316: 11-16 (Day C63).

- 43 At the end of 2003, and after a change of management, Yeshiva College Ltd changed its name to Kesser Torah College Ltd. Rabbi Pinchus Feldman ceased to have any role in the management of the corporate entity known as Yeshiva College Ltd/Kesser Torah College Ltd and the school known as Yeshiva College, which later became known as Kesser Torah College, located in Dover Heights NSW.
- 44 In 2004, home schooling arrangements were commenced for children of Chabad adherents at the Yeshiva premises in Bondi. By 2007, these home schooling arrangements led to an application for registration with the Board of Studies and in 2008, a new entity, Yeshiva College Bondi Ltd was established. Rabbi Pinchus Feldman is a director of Yeshiva College Bondi Ltd. Rabbi Pinchus Feldman is the emissary and final arbiter of religious matters associated with the new school operated by Yeshiva College Bondi Ltd.
- 45 Yeshiva Bondi continues to operate Yeshiva Gedola. Yeshiva Gedola is a tertiary vocational school providing education and training for young men wishing to be ordained as rabbis. In 1986, Rabbi Baruch Lesches was appointed the Rosh Yeshiva, or the dean, of the Yeshiva Gedola in Bondi. In 1993, Rabbi Yosef Feldman, son of Rabbi Pinchus Feldman, became supervisor of the students and a few years later he was appointed the Rabbinical Administrator. Rabbi Yosef Feldman remains the Rabbinical Administrator of the Yeshiva Gedola.

### **Cultural, historical and religious influences**

- 46 Chabad communities are defined by their strict observance of Orthodox Judaism. Witnesses gave evidence of the religious observances and practices that strict observance of Orthodox Judaism requires for Chabad adherents and the central role those practices play in the day-to-day life of community members. Those practices included daily prayer, observances of dress, food and fasting, requirements of modesty and segregation of the sexes, dedication to Jewish study and outreach.
- 47 The Yeshivah Centre in Melbourne was a central place for the community to practice and live out their Orthodox faith on a day-to-day basis.<sup>43</sup> The Yeshivah Centre was a place to go to pray, do outreach, to send their children to be educated or engage in after school activities and a place for religious studies.<sup>44</sup> For many young Chabad, life revolved around the Yeshivah and their family.
- 48 For many families, the Yeshivah Centre was at the centre of family life.<sup>45</sup> Members of the Chabad community often sought partners who were also members of Chabad.<sup>46</sup> A person's standing in the community and community attitudes to a member could affect, positively or adversely, a member's prospect of marriage and economic opportunities.<sup>47</sup>

<sup>43</sup> Transcript of A Glick, C6995:9-12 (Day C68).

<sup>44</sup> Transcript of M Waks C6010: 29-38 (Day C60); Transcript of Z Waks C6074: 30- C6075: 23 (Day C61); Transcript of A Glick, C6994:32-6995:7 (Day C68).

<sup>45</sup> Transcript of M Waks, C6010: 23-27 (Day C60); Transcript of Z Waks, C6075: 16-23 (Day C62).

<sup>46</sup> Transcript of M Waks, C6022: 27 – C6023: 8 (Day C60).

<sup>47</sup> Transcript of AVB C6212: 36 - C6213: 23 (Day C62).

- 49 Many in the Yeshivah Melbourne community minimised their contact with the secular world. Witnesses gave evidence of the insular nature of the Yeshivah community.<sup>48</sup> Some ultra-orthodox members did not have a television, and would restrict their children's access to books or materials, even newspapers, that were deemed unacceptable to their ultra-orthodox faith.<sup>49</sup>
- 50 This was a very traditional society. Members of the ultra-orthodox faith did not believe in sex before marriage.<sup>50</sup> There were requirements of modesty, particularly for women, and at the time that most of the survivor witnesses were students at the Yeshivah College, boys and girls were segregated.<sup>51</sup> Historically, students received no sex education while growing up or at school<sup>52</sup> and family members and members of the community did not openly discuss the issue of sex.<sup>53</sup> It was not uncommon for some boys not to receive a more detailed discussion about sex until the time of their marriage.<sup>54</sup> For some survivors, their lack of knowledge about sex and the nature of abuse meant they did not understand what was happening when the abuse was perpetrated upon them.<sup>55</sup>

### **The role of the rabbi**

- 51 Within the community, the shule (the synagogue) was a very important institution.<sup>56</sup> The head rabbi of the shule had a central role in guiding and leading members of the community.<sup>57</sup>
- 52 As Chabad adherents strived to be devout in their commitment to the Orthodox Jewish faith, a consideration of what their faith required of them and how they should conduct themselves 'halachically' (that is according to what the Jewish law required of them) was of central importance. The head rabbi for a territory had responsibility for teaching the people the faith and answering 'halachic' concerns for the community.<sup>58</sup> The rabbi provided spiritual, moral and practical guidance to the community.<sup>59</sup>
- 53 The rabbi could exert significant influence over the people who gathered to congregate in the synagogue.<sup>60</sup> For many in the community, the role of the rabbi was

<sup>48</sup> Transcript of M Waks, C6002: 40-44, C6010: 4-21 (Day C60); Transcript of AVB, C6210:13-14 (Day C62); Transcript of M Gutnick, C6931: 46- C6932:6, C6932:19-25 (DayC68).

<sup>49</sup> Transcript of A Glick, C6994:3-30 (Day C68).

<sup>50</sup> Transcript of A Glick, C6993:18-22 (Day C68).

<sup>51</sup> Transcript of M Waks, C6003: 1-7 (Day C60); Transcript of A Glick, C6993:24-30 (Day C68).

<sup>52</sup> Transcript of A Glick, C6992:33-6993:16 (Day C68).

<sup>53</sup> Transcript of M Waks, C6003: 7-9, C6007: 25-28 (Day C60); Transcript of AVA, C5996: 1-5 (Day C60), Transcript of AVB, C6211: 35-45 (Day C62).

<sup>54</sup> Transcript of A Glick, C6993:40-43 (Day C68).

<sup>55</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [11]; Transcript of AVR, C6568:29-32 (Day C65); Transcript of AVA, C5989:5-7 (Day C60); Transcript of AVA C5995:46-C5996:5 (Day C60); Transcript of M Waks, C6002:46-C6003:9, C6004:4-7, C6007:16-17, C6007:25-29 (Day C60).

<sup>56</sup> Transcript of A Glick, C6995:14-16 (Day C68).

<sup>57</sup> Transcript of A Glick, C6995:18- 6996:13 (Day C68).

<sup>58</sup> Transcript of A Glick C6996:2-4 (Day C68).

<sup>59</sup> Transcript of A Glick 6996:6-13 (Day C68).

<sup>60</sup> Transcript of D Wolf, C6861:5-16 (Day C67); Transcript of A Glick C6996:15-36 (Day C68).

all encompassing. Members of the community would either have the head rabbi or their own appointed rabbi to be someone that they go to for advice and decisions. According to Manny Waks it was common within the movement for significant decisions to be run past the rabbi, who could provide guidance and in some cases actually make the decision for the individual, such as whether the person should go back to study, or apply for a job.<sup>61</sup>

- 54 Rabbis chosen as emissaries by the Rebbe, had a particular place in the community. The Rebbe is and has been widely revered by Chabad adherents.<sup>62</sup> A witness said the Rebbe was considered to have special spiritual powers and in his lifetime, members would seek the Rebbe's guidance and permission for major life decisions such as changing countries, or medical procedures.<sup>63</sup> Zephaniah Waks gave evidence of seeking the Rebbe's permission to move back to Australia and waiting years for that permission. Zephaniah Waks also described seeking guidance on whether his wife should have a biopsy on her finger, and electing not to undergo the procedure when they did not receive a response to their request.<sup>64</sup> The Rebbe exerted great influence on the Chabad community and the fact that the Rebbe had chosen a particular rabbi to be his emissary, gave that rabbi additional standing and influence within the community.<sup>65</sup>

### **Jewish Law**

- 55 Jewish law is called halochah. Witnesses often referred to whether something or an act is 'halachically' permitted; that is, whether Jewish law permits something to be done. Witnesses gave evidence of the importance for Orthodox Jews to act in a way that is 'halachically' (legally) permitted.
- 56 One of the concepts examined was the principle of 'arka'ot', that required disputes between Jewish people to be determined by applying Jewish law rather than using secular courts.
- 57 One of the concepts of Jewish law that was examined in this hearing is the concept of 'mesirah'.<sup>66</sup> The concept of mesirah is a prohibition against a Jewish person handing over, or informing on, another Jewish person to a secular (non-rabbinic) authority. The prohibition mandated by mesirah developed as a response to the persecution of Jews throughout history. Jewish law mandated that a Jew was not permitted to hand over (or inform on) a fellow Jew to the secular authorities. Historically, being in the hands of corrupt police or constabulary was a death sentence for Jews and the concept of mesirah was one of particular concern for Jews persecuted in Europe in both the pre and post war era. From that perspective, the concept of mesirah was one intimately connected to survival of the Jewish people. A person who engaged in mesirah, was

<sup>61</sup> Transcript of M Waks, C6040:12-C6041:17 (Day C60).

<sup>62</sup> Transcript of Z Waks, C6083:28 – 6084:20 (Day C61); Transcript of AVB C6252:24-30 (Day C62).

<sup>63</sup> Transcript of Z Waks, C6083:28-34 (Day C61).

<sup>64</sup> Transcript of Z Waks, 6083:37-47, C6084:6-19 (Day C61).

<sup>65</sup> Transcript of A Glick, C6996:38 -40 (Day C68), Transcript of Z Waks, C6083:28 – 6084: 34 (Day C61).

<sup>66</sup> Exhibit 22-0019, Statement of M D Gutnick, STAT.0458.001.0001 [44] - [49].

labelled a 'moser' (an informer). AVB said that being labelled a moser was one of the worst things a Jew could be called. He said *'they are the low of the low. You can't get any lower than a moser'*.<sup>67</sup>

- 58 Some members of the community believed that reporting child sexual abuse matters to the police was a breach of Jewish halachic concept of mesirah and were concerned that reporting to the police may lead to them being labelled by the community as a moser.<sup>68</sup> Some survivors gave evidence that after reporting their abuse or being involved in the criminal process against a perpetrator, they were told that others in the community were calling them mosers.<sup>69</sup> Witnesses, including rabbis, who reported crimes to the police were called mosers<sup>70</sup> or were called if they had the permission of a rabbi to report a crime.<sup>71</sup> Members of survivors' families were told they were being called mosers.<sup>72</sup> Rabbis in Australia and overseas debated whether and in what circumstances a person could report a crime of child sexual abuse to the authorities.
- 59 Zephaniah Waks gave evidence that, when in 1992, he and other parents discovered Rabbi David Kramer had abused their children he was concerned that if he went to the police with the allegations he would be breaching mesirah.<sup>73</sup> He said there was an expectation that matters like this would be dealt with in the community and the parents would have needed the approval and involvement of the rabbis to go to the police.<sup>74</sup>
- 60 Nearly 20 years on, when the Victoria Police were investigating the allegations against Rabbi Kramer in 2011, community reluctance to co-operate with police persisted. On 22 June 2011, an article appeared in *The Age* (a newspaper published in Victoria) in which Jewel Topsfield, journalist, said in relation to the Victoria Police investigation into the allegations against Rabbi Kramer, that *'Police officers are expected to meet Jewish community leaders this week and ask them to give their imprimatur for victims to speak to the police'*.<sup>75</sup> Concerned about community reluctance, Victoria Police met with Rabbi Telsner and Rabbi Kluwgant to discuss Rabbi Telsner providing a statement that members of the community could co-operate with the police. On or about 16 June 2011, Rabbi Telsner erected a notice in those terms on the noticeboard outside the shule.<sup>76</sup>

<sup>67</sup> Transcript of AVB, C6232:29-6233:14 (Day C62).

<sup>68</sup> Transcript of Z Waks C6155:30-6157:13, (Day C61).

<sup>69</sup> Transcript of M Waks C6042:43 – 6043:10, 6059:22 – 6059:26 (Day C60); Transcript of AVB, 6213:6 -:18, 6229:44 – 6230:4, 6230:46-6232:31 and 6236:3-:11, (Day C62); C6668:11-:34 (Day C66); Transcript of Z Waks C6158: 42-47 (Day C61).

<sup>70</sup> Transcript of P Feldman T6380:28 – 6382:6, (Day C63).

<sup>71</sup> Transcript of Z Waks T6185:40 – 6186:39, (Day C61).

<sup>72</sup> Transcript of Z Waks T6155:30- 6157:13, T6157:43 -6158:10 (Day C61).

<sup>73</sup> Transcript of Z Waks, C6082:3-40 (Day C61).

<sup>74</sup> Transcript of Z Waks, C6082:30-6083:10 (Day C61).

<sup>75</sup> Exhibit 22-0041, MED.0006.001.0001 at 0002.

<sup>76</sup> Exhibit 22-0009, YSV.0001.001.0268\_R (Tab 34); Transcript of Z Telsner, C7075: 4-6 (Day C68).

## **Jewish leadership bodies respond to the issue of child sexual abuse and address misconceptions about *mesirah***

- 61 In 2010, the RCV resolved to act to address community misconceptions about the application of *mesirah* to child abuse allegations and complaints, recognising there were conflicting community attitudes to people reporting abuse to the authorities or to dealing with the authorities on child sexual abuse investigations.<sup>77</sup> The RCV resolved to issue a resolution to provide halachic leadership on the issue and specifically, on the need for complaints to be reported to the police.
- 62 The resolution issued by the RCV was the ‘RCV Resolution Condemning and Combating Child Abuse’ (the 2010 RCV Resolution). The 2010 RCV Resolution had been adapted from the wording of a resolution issued by the Rabbinical Council of America in April 2010.<sup>78</sup>
- 63 The RCV is a religious leadership body of Victoria’s Jewish community, whose primary role is to represent Victoria’s congregational rabbis<sup>79</sup> and to provide clear religious guidance on matters affecting the Jewish community, including on the issue of child sexual abuse.<sup>80</sup> The RCV represents a large number of rabbis and resolutions issued by the RCV have some authority amongst rabbinical leaders and the community.<sup>81</sup>
- 64 The 2010 RCV Resolution made plain that the concept of *mesirah* did not apply to allegations of child sexual abuse and it was halachically obligatory for allegations of child sexual abuse to be reported to the police. The 2010 RCV Resolution confirmed that victims and their families required the support of the community. The RCV’s policy of reporting information about child sexual abuse to the police was clear and reiterated numerous times through media releases and public statements.<sup>82</sup>
- 65 The 2010 RCV Resolution was a call to rabbinical leaders and members of the RCV to act consistently with principles set out in the 2010 RCV Resolution and the direction and support promised by the resolution.<sup>83</sup> Rabbis who were members of the RCV and, in particular, those who affirmed a commitment to the resolution at the time it was passed, were expected to act consistently with the promises and statements set out in the 2010 RCV Resolution. The Commission heard evidence from Rabbi Yaakov Glasman, past President of the RCV, that if a rabbi later acted in a way that was inconsistent or appeared to be inconsistent with the principles and promises of the 2010 RCV Resolution, the rabbi should take steps to immediately rectify his actions or any misconception about his actions and to remedy any damage that was flowing from his actions.<sup>84</sup>

<sup>77</sup> Transcript of Y Glasman, C7157:32-36 (Day C69).

<sup>78</sup> Exhibit 22-0042, Statement of Y Glasman, STAT.0465.001.0001 at [9].

<sup>79</sup> Exhibit 22-0042, Statement of Y Glasman, STAT.0465.001.0001 at [5].

<sup>80</sup> Exhibit 22-0042, Statement of Y Glasman, STAT.0465.001.0001 at [8].

<sup>81</sup> Transcript of Y Glasman, C7166:9-14 (Day C69).

<sup>82</sup> Exhibit 22-0042, Statement of Y Glasman, STAT.0465.001.0001 at [25].

<sup>83</sup> Transcript of Y Glasman, C7157:39-C7158:18 (Day C69).

<sup>84</sup> Transcript of Y Glasman, C7157:39-C7158:18 (Day C69).

- 66 Rabbi Glasman explained that since issuing the resolution, the RCV has also acted to provide training to its members, relevantly, on how to respond to disclosures of child sexual abuse. Training has been conducted in October 2009, March 2011, December 2012 and August 2013. The training sessions aimed to equip rabbis with the skill set to appropriately respond to disclosures from members of their respective congregations or others, about family violence and sexual abuse, including child sexual abuse.<sup>85</sup> The RCV appoints a member to act in a liaison role, available to support RCV members with queries or concerns in relation to abuse.<sup>86</sup>
- 67 Rabbi Moshe Gutnick, Senior Dayan (judge) of the Sydney Beth Din (rabbinical court) said the concept of mesirah developed in response to the persecution of Jews throughout history and was of particular concern to Jews in Europe, in both the pre and post war era. Rabbi Moshe Gutnick said that the older generation of Jews may still consider mesirah an issue but was it was unlikely to influence younger Chabad adherents.<sup>87</sup> He said that in a country with a Western democratic legal system, mesirah has no application.<sup>88</sup> Rabbi Moshe Gutnick further said that to use mesirah to cover up child sexual abuse dishonours the fundamental principles of Chabad, Judaism and Orthodoxy.
- 68 Rabbi Moshe Gutnick described an edict issued by Rabbi Schneerson in New York who evoked a biblical obligation to those who witnessed an assault to report the assault to the secular authorities and declared that whoever does not report a crime becomes a partner to that crime.<sup>89</sup> Rabbi Moshe Gutnick also gave evidence that those who have used the concept of mesirah to seek to dissuade people from reporting child sexual abuse to the authorities have used the concept as means to retain power and control.<sup>90</sup> Rabbi Moshe Gutnick said *'it is an absolute religious obligation to report any allegation of child sexual abuse as quickly as possible to the appropriate authorities and to suggest that there is some religious obligation not to do so is an abomination.'*<sup>91</sup>
- 69 On 27 July 2011, the Melbourne Beth Din, the Sydney Beth Din and the ORA issued a joint press release outlining a joint view on the appropriate response to child sexual abuse. The press release issued by three leading organisations included the following comment:

*Whereas there have been in recent times the reporting of unfortunate cases of abuse of children including sexual abuse... and the misapprehension that Jewish Law prohibits the reporting of such abuse to the relevant authorities, or G-D forbid condones the non-reporting or concealment of such abuse, the Melbourne Beth Din and the Sydney Beth*

<sup>85</sup> Exhibit 22-0042, Statement of Y Glasman, STAT.0465.001.0001 at [26].

<sup>86</sup> Exhibit 22-0047, Statement of M Kluwgant, STAT.0466.001.0001 at [11].

<sup>87</sup> Exhibit 22-0019, Statement of M D Gutnick, STAT.0458.001.0001 [44] – [46].

<sup>88</sup> Exhibit 22-0019, Statement of M D Gutnick, STAT.0458.001.0001 [44] – [46].

<sup>89</sup> Exhibit 22-0019, Supplementary Statement of M D Gutnick, STAT.0458.003.0001 at [8].

<sup>90</sup> Exhibit 22-0019, Statement of M D Gutnick, STAT.0458.001.0001 at [48].

<sup>91</sup> Transcript of Rabbi M D Gutnick, C6270:32-36 (Day C62).

*Din together with the organisation of Rabbis of Australasia wish to reiterate the following Halachic principles:*

1. *We reiterate our unqualified condemnation of all forms of child abuse.*
2. *We reiterate that there is no Halachic impediment to conveying all credible information regarding such matters to the police or relevant authorities, but to the contrary, it is halachically obligatory to do so.*
3. *The obligation applies not only to mandatory reporters but to all who become aware that abuse is taking place.*
4. *We encourage all in the community who have information in relation to abuse to come forward to the relevant authorities so that the 'evil can be removed from our midst'.<sup>92</sup>*

### **The concept of 'loshon horo'**

- 70 The Jewish law discourages 'loshon horo',<sup>93</sup> meaning gossip or saying something negative about someone, even if true.<sup>94</sup> The concept was described as the Jewish law not liking people to engage in talking publicly about other people in a negative way.<sup>95</sup> The prohibition applied to saying negative things about institutions and people.
- 71 The concept of loshon horo could be invoked if a person asked for a Jewish institution or person to be held accountable for failure to act, or for recognition that they had covered up child sexual abuse.<sup>96</sup> Publicly calling for people or institutions to be accountable for errors or failures was seen as committing a sin.<sup>97</sup> Saying someone had been negligent in his or her response to child sexual abuse issues, was loshon horo.<sup>98</sup> Saying something negative about a learned scholar, even if deceased, was a serious sin in Jewish law - a grave sin. Rabbis could impose consequences on a person who engaged in grave sin, such as shunning the person who had sinned.<sup>99</sup>
- 72 Witnesses said the concept extended as far as needing to be careful not to embarrass someone when publicising events. A witness expressed the view that this principle was potentially infringed when the ORA made a public statement in response to the conviction of Daniel Hayman for the abuse of AVB. Rabbi Yosef Feldman referred to that public statement being a form of 'shaming' and that there was an issue as to

<sup>92</sup> Exhibit 22-0023, YSV.0003.001.0001\_R (Tab 58).

<sup>93</sup> The term was also referred to as 'loshon hora'.

<sup>94</sup> Transcript of Y Feldman, C6649:23-38 (Day C65).

<sup>95</sup> Transcript of Y Feldman, C6593:3-5 (Day C65).

<sup>96</sup> Transcript of AVB, C6681:29 – 6682:38 (Day C66).

<sup>97</sup> Transcript of AVB, C6681:29 -36 (Day C66).

<sup>98</sup> Transcript of Z Telsner, C7133: 42 -46 (Day C69).

<sup>99</sup> Transcript of Z Telsner: C7106:12-28 (Day C69).

whether or not according to Jewish law that was the right thing to do.<sup>100</sup> This concern about loshon horo was said to apply even if a court had convicted the person, as one should not publicise that the person is a sinner.<sup>101</sup> The Jewish law requires that a person's badness is not publicised to the whole world.<sup>102</sup>

- 73 Witnesses described a sermon delivered by Rabbi Telsner at the Yeshivah Synagogue in Melbourne on 18 June 2011, in which he preached against the sending of emails and the use of emails and other means to engage in loshon horo in the context of the police investigation into child sexual abuse. AVB heard from other congregants that they believed this sermon had been directed at an email he had sent the day before in connection with the police investigation into historical allegations of abuse at Yeshivah Melbourne.
- 74 Witnesses also described a sermon delivered by Rabbi Telsner on 16 July 2011, in which he preached to his community that the worst sin was to besmirch the name of the late Rabbi Groner, and chastised those who spoke out without their rabbi's permission. That sermon was delivered eight days after an article appeared in *The Age*, featuring Manny Waks and his disclosure of his abuse and criticism of Rabbi Groner. Whether or not the sermons were directed at AVB and Manny Waks is discussed later in these submissions.

### **Other Cultural Influences**

- 75 Rabbi Moshe Gutnick said that some leaders may not have reported child sexual abuse because they wanted to protect the community. He believed that they may have feared bringing shame to the Jewish community or that they will give people who may target the Jewish community ammunition.<sup>103</sup>
- 76 Rabbi Moshe Gutnick said that older members of the community often had the mindset that saw the police as the enemy,<sup>104</sup> and would have been reluctant to report abuse or to co-operate with any police investigation.<sup>105</sup>
- 77 Rabbinical leaders called as witnesses were asked whether they thought negative publicity might lead to anti-Semitism. They did not, and agreed that the Jewish faith and impressions of the Jewish community are bolstered and assisted by victims of child sexual abuse coming forward to the secular authorities and appropriate convictions being secured<sup>106</sup> and by rabbis who endorse and support that process.<sup>107</sup> Victims coming forward encourage other victims to come forward and this leads in turn to

<sup>100</sup> Transcript of Y Feldman, C6593:3-13 (Day C65).

<sup>101</sup> Transcript of Y Feldman, C6593:15-42 (Day C65).

<sup>102</sup> Transcript of Y Feldman, C6593:31-42 (Day C65).

<sup>103</sup> Exhibit 22-0019, Statement of M D Gutnick, STAT.0458.001.0001 at [50].

<sup>104</sup> Exhibit 22-0019, Statement of M D Gutnick, STAT.0458.001.0001 at [45].

<sup>105</sup> Transcript of M Kluwgant, C7189: 9-14 (Day C69).

<sup>106</sup> Transcript of Y Glasman, C7174:22-0028 (Day C69).

<sup>107</sup> Transcript of Y Glasman, C7174:30-34 (Day C69).

other victims coming forward.<sup>108</sup> In this way, perpetrators know that they will be found and held accountable.<sup>109</sup>

## **Part 2 Evidence of child sexual abuse examined – Yeshivah Melbourne and Yeshiva Bondi**

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78 The public hearing examined abuse by three convicted perpetrators: Shmuel David Cyprys, Rabbi David Kramer and Daniel ‘Gug’ Hayman. The public hearing also examined the response of Yeshivah Melbourne to a complaint against Aron ‘Ezzy’ Kestecher.

### **Shmuel David Cyprys**

79 David Cyprys was a serial sexual abuser of children.

80 On 8 September 1992, in the Magistrates’ Court at Prahran, David Cyprys pleaded guilty to an indecent assault perpetrated on witness AVR on or about 24 August 1991.<sup>110</sup> Cyprys was placed on a good behaviour bond for a period of three years. No conviction was recorded.

81 On 28 August 2013, in the County Court of Victoria in Melbourne, a jury found David Cyprys guilty of five charges of the rape of AVR.<sup>111</sup> The offences were committed in 1990-1991, at a time when AVR was approximately 15 or 16 years old and Cyprys was in his early 20s.

82 Following the jury’s decision, David Cyprys pleaded guilty to a further 12 offences: five offences of indecent assault, one offence of attempted indecent assault, four offences of procuring an act of indecency and two offences of gross indecency.<sup>112</sup>

83 Cyprys was sentenced on 20 December 2013. The Royal Commission received into evidence the sentencing remarks of Wischusen J of the County Court of Victoria sentencing Cyprys for offences committed when Cyprys was aged approximately 15 to 20 years.<sup>113</sup> Cyprys pleaded guilty to and was sentenced in relation to the following:

- an act of indecent assault against a 13 year old boy in 1983;<sup>114</sup>
- an act of indecent assault against an 11 year old boy in 1984;<sup>115</sup>

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<sup>108</sup> Transcript of Y Glasman, C7174:36-39 (Day C69).

<sup>109</sup> Transcript of Y Glasman, C7174:41-43 (Day C69).

<sup>110</sup> Exhibit 22-0023, OPP.3017.008.0037 (Tab 1), Exhibit 22-0023, OPP.3017.011.0026\_R at [9] (Tab 141).

<sup>111</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at [1] (Tab 141).

<sup>112</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at [13], [22] (Tab 141).

<sup>113</sup> Exhibit 22-0023, OPP.3017.011.0026\_R (Tab 141).

<sup>114</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at (Tab 141).

<sup>115</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at (Tab 141).

- gross acts of indecency against two boys aged seven and eight in April 1984, when they attended youth group activities at Yeshivah on a Saturday afternoon. Cyprys took the boys to the mikveh where he abused them;<sup>116</sup>
- a gross act of indecency against a 14 year old boy, an act of indecent assault and procuring a gross act of indecency between July 1986 and December 1987. Each charge was a representative charge for acts that commenced when AVA was aged 14 years and continued until AVA was aged 17 years;<sup>117</sup>
- two acts of indecent assault and procuring an act of gross indecency against Manny Waks who was then aged 14 years, between 1 April 1989 and 30 September 1990.

84 In addition, Cyprys was found guilty by jury of five counts of rape against witness AVR in 1991.<sup>118</sup>

85 Cyprys was sentenced to a total effective sentence of eight years imprisonment, with a non-parole period of five years and six months.<sup>119</sup> He was sentenced as a serious sex offender and orders were made to register Cyprys as a sex offender under the *Sex Offenders Registration Act 2004* (Vic) with reporting obligations for the rest of his life. Cyprys is currently serving his sentence.

86 The County Court found that David Cyprys came into contact with his victims through his connections with the Yeshivah Centre and its associated sporting, educational, religious and youth programs.<sup>120</sup> The Court further found that David Cyprys' activities in association with the Yeshivah Centre, including running classes as a Kung-Fu teacher, and his having keys and means of access to a number of buildings in the Yeshivah Centre created an impression in his victims that David Cyprys had some authority and official standing within the Yeshivah. The Court also found Cyprys had means of access to a number of buildings within the Yeshivah Centre.

### **Rabbi David Kramer**

87 Rabbi David Kramer was a teacher at the Yeshivah Primary School.<sup>121</sup> He came to Australia in late 1989 and was employed as a primary school teacher at the Yeshivah Centre Primary School.<sup>122</sup> Between January 1990 and December 1991 he sexually assaulted four students aged 10 to 11 years old. David Kramer was 29-31 years old at the time.<sup>123</sup>

88 The evidence before the Royal Commission, set out below, is that in 1993, a parent complained to Rabbi Groner and Rabbi Glick, leaders at Yeshivah Melbourne, that

<sup>116</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at (Tab 141).

<sup>117</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at [16] (Tab 141).

<sup>118</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at [16] (Tab 141).

<sup>119</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at [51], [52] (Tab 141).

<sup>120</sup> Exhibit 22-0023, OPP.3017.011.0026\_R at [14] (Tab 141).

<sup>121</sup> Exhibit 22-0023, OPP.3016.002.0108\_E\_R (Tab 38).

<sup>122</sup> Exhibit 22-0023, YSV.0010.001.0042 at [2] (Tab 123).

<sup>123</sup> Exhibit 22-0023, YSV.0010.001.0042 at [2] and [10] (Tab 123).

David Kramer was touching the children. The evidence is that David Kramer left Australia within days of the complaints, returned to Israel, and later travelled to the United States. In the United States, he was charged and sentenced for serious sexual offending against a child committed in March 2007. He was sentenced to seven years imprisonment with a statutory minimum term of four and a half years.

- 89 On 20 December 2011, Victoria Police charged David Kramer with five charges of indecent assault and one charge of an indecent act with a child under 16, for offences committed against four victims, then aged between 10 and 11 years of age.<sup>124</sup> All assaults occurred in the school environment. Two of the victims were siblings of witness Manny Waks.<sup>125</sup>
- 90 David Kramer was extradited to Australia on 29 November 2012. On 17 July 2013, in the County Court of Victoria, David Kramer pleaded guilty to the five charges of indecent assault and one charge of indecent act with a child under 16.<sup>126</sup> He was sentenced to a term of imprisonment with a total effective sentence of three years and four months and a minimum term of 18 months before eligibility for parole.<sup>127</sup>
- 91 David Kramer was sentenced as a serious sex offender and orders made for him to be registered as a sex offender under the *Sex Offenders Registration Act 2004* (Vic) with reporting obligations for the rest of his life.
- 92 David Kramer has served his sentence and has been deported to the United States.

### **Daniel ‘Gug’ Hayman**

- 93 On 10 June 2014, in the Downing Centre Local Court in Sydney, Daniel ‘Gug’ Hayman was sentenced on a charge of indecent assault of AVB. Daniel Hayman committed the offence while attending a youth camp, known as Camp Gan Israel in Stanwell Tops, south of Sydney, NSW. His victim, AVB, attended the camp as a student of Yeshiva Bondi. Daniel Hayman attended that camp in the role of chaperone or house parent.<sup>128</sup> Daniel Hayman was 24 when he indecently assaulted AVB. AVB was 14.
- 94 The magistrate who sentenced Daniel Hayman described the offending conduct as a serious example of the offence of indecent assault. The conduct was substantial, actively non-consensual and involved skin-to-skin contact notwithstanding the victim demonstrated his lack of consent. The magistrate found that Daniel Hayman overpowered the victim to allow him to continue the act despite the victim’s protestations. The act was motivated by sexual gratification and took place in an isolated location to which the offender took his victim.<sup>129</sup> Daniel Hayman was

<sup>124</sup> Exhibit 22-0023, YSV.0010.001.0042 at [10] (Tab 123).

<sup>125</sup> Transcript of Z Waks.

<sup>126</sup> Exhibit 22-0023, YSV.0010.001.0042 at [2], [4] (Tab 123).

<sup>127</sup> Exhibit 22-0023, YSV.0010.001.0042 at [29] (Tab 123).

<sup>128</sup> Exhibit 22-0023 IND.0214.001.0110\_R.

<sup>129</sup> Exhibit 22-0023 IND.0214.001.0110\_R at 0112\_R.

sentenced to a term of imprisonment of 19 months, to be suspended upon entering a bond to be of good behaviour for the same period.<sup>130</sup>

- 95 Daniel Hayman was charged with other offences against minors in addition to the charge for the offence against AVB. Plea negotiations resulted in one of the other offences being withdrawn following a plea of guilty to the offence against AVB.<sup>131</sup> Two remaining charges were withdrawn as a result of legal difficulties in proving the offences<sup>132</sup>.

### **The experience of survivors**

- 96 The Commission heard evidence of the impact of sexual abuse on survivors: AVA, Manny Waks, AVR and AVB.

#### **AVA**

- 97 AVA gave evidence that he was abused by David Cyprys between 1986 and 1988, when he was 14-17 years old. At the time, AVA was a student at Yeshivah College Melbourne. AVA said he met David Cyprys when he was in year 8 as part of an after school martial arts program, Cyprys was about 18 years old at the time and an instructor's aide at Kung-Fu classes, which were held in the gymnasium of the Beth Rivkah College.<sup>133</sup>
- 98 The abuse began when Cyprys took AVA for Kung-Fu lessons.<sup>134</sup> AVA said that in the latter half of 1986, AVA commenced to have one on one Kung-Fu lessons with Cyprys outside of normal classes.<sup>135</sup> The abuse continued for about three years, from 1986 to 1989. AVA explained that the abuse occurred mostly at night in the mikveh (a ritual bath) located on the premises of the Yeshivah Centre.<sup>136</sup> AVA said that on about two occasions, Cyprys abused AVA at the Yeshivah College.<sup>137</sup> On one of those occasions, AVA gave evidence that Cyprys took him to a classroom because somebody was in the mikveh.<sup>138</sup> It appeared to AVA that Cyprys had keys for the entire property.<sup>139</sup> AVA also gave evidence that the abuse occurred at the Yeshivah Gedolah Rabbinical College.<sup>140</sup>
- 99 AVA said the sexual abuse affected every aspect of his life, causing him great pain, suffering and sadness. It robbed him of his innocence, his childhood and his life. He

<sup>130</sup> Exhibit 22-0023 IND.0214.001.0110\_R at 0118\_R.

<sup>131</sup> Exhibit 22-0023, NSW.2021.001.0003\_E\_R (Tab 152).

<sup>132</sup> Exhibit 22-0023, NSW.2021.001.0003\_E\_R (Tab 152).

<sup>133</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [7].

<sup>134</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [10].

<sup>135</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [8].

<sup>136</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [12].

<sup>137</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [12].

<sup>138</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [12].

<sup>139</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [12].

<sup>140</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [12].

lived a long time thinking that he had done something wrong and he lived with feelings of guilt and shame for the actions and wrongdoing of someone else.<sup>141</sup>

- 100 AVA gave evidence of the psychological disturbances suffered as a result of his abuse: chronic dysthymia, episodes of major depression in partial remission, post-traumatic stress disorder and substance abuse now in remission. He said the abuse impacted his social and intimate life, he felt scared to get close to people and subsequently felt guilty that he had kept people at a distance. AVA talked about the great financial impact the abuse had had on his life.<sup>142</sup>
- 101 AVA said the abuse had affected his earning capacity, he missed out on career opportunities and the anxiety and insomnia caused difficulties in his studies. He kept quiet about his abuse because there was a stigma attached to being a victim and he believes the stigma can be career limiting.<sup>143</sup> AVA's mother, AVQ described that her son struggled with depression, weight gain and other debilitating problems, none of which he had before the abuse by Cyprys.

### **Manny Waks**

- 102 Manny Waks is the second eldest of 17 children. He lived across the road from the Yeshivah Centre Melbourne and attended Yeshivah College.
- 103 In 1998, when Manny Waks was 11 years old he was abused by AVP over a period of several months. He described being bullied and taunted when he tried to confide his abuse to a classmate and former close friend. He was called 'gay' because he had been abused by a man. It has been his subsequent experience that many in the community conflate paedophilia perpetrated against young boys with homosexuality.<sup>144</sup>
- 104 From 1987 to 1990, when he was about 12 years old until he was 14 years old, he was abused by David Cyprys. Cyprys was in his 20s at the time. David Cyprys was responsible for security at the Yeshivah Centre. He was the locksmith at the Yeshivah Centre and had keys to all areas. He taught karate classes that Manny Waks attended.<sup>145</sup> Cyprys seemed to Manny Waks to be in a position of power and authority. He seemed to be trusted by the Yeshivah Centre.<sup>146</sup> His abuse occurred at the back of the Yeshivah Centre, in the backyard of the Elwood Synagogue, in the mikveh on the Yeshivah Centre. Manny Waks described becoming so dizzy when abused in the mikveh, he blacked out briefly.<sup>147</sup> Before the abuse, the mikveh had always been a safe place for Manny Waks.

<sup>141</sup> Transcript of AVA, C5993:1-9 (Day C60).

<sup>142</sup> Transcript of AVA, C5993:26-46 (Day C60).

<sup>143</sup> Transcript of AVA, C5994:1-22 (Day C60).

<sup>144</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [11], [15].

<sup>145</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18]-[19].

<sup>146</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18]-[19].

<sup>147</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [25].

- 105 Manny Waks gave evidence about the impact on the abuse. He changed from a happy, positive and reasonably well-behaved boy to an angry, rebellious teenager with a substance abuse problem. He rejected the religion in which he had been raised and lost focus on his studies. He became alienated from his family and community.<sup>148</sup> He regularly thought about the experience of his abuse including having flashbacks and feeling a sense of helplessness and despair.<sup>149</sup>
- 106 He described the frustration of going to the police in 1996 and being left feeling despondent and disillusioned that no charges were laid. He described a discussion he had with Rabbi Groner in 1996 in which he discussed what Cyprys had done to him. Manny Waks said that Rabbi Groner told him that the Yeshivah was dealing with Cyprys and that Manny Waks should not do anything of his own accord.<sup>150</sup> Manny Waks said he lost faith in the police, the judicial system, the religion he was brought up in and its leaders, and his own powerlessness was reinforced.<sup>151</sup> From his perspective as a victim, he had done everything he could, *'To obtain justice for Cyprys' crimes and to protect our community from the possibility of Cyprys committing future crimes. However, my efforts had been to no avail'*.<sup>152</sup>
- 107 He described speaking to Rabbi Groner a second time, in the early 2000s. He went to see him in his office and asked why David Cyprys was still undertaking security services.<sup>153</sup> He asked Rabbi Groner how he could have David Cyprys there providing him access to children. Manny Waks said that Rabbi Groner told him that he was dealing with it and told him adamantly that he should not raise it elsewhere.<sup>154</sup> He recalled Rabbi Groner *'practically pleading'* with him not to pursue the matter, he was taking care of it and David Cyprys was getting help and was making improvements.<sup>155</sup> Manny Waks said Rabbi Groner could not, when asked, give Manny Waks an assurance that David Cyprys would not offend in the future.<sup>156</sup>
- 108 Manny Waks said that in July 2011 he decided to go public about his abuse and he hoped that by telling his story other victims of child sexual abuse would feel empowered and encouraged to come forward to either speak with the police or to seek any help that they need. An article appeared in The Age on 8 July 2011 ('The Age article 8 July 2011'), which featured Mr Waks and in which he described his abuse and his belief that abuse had been covered up at Yeshivah Centre. For Mr Waks speaking publicly was about justice and closure and as a leader within the Jewish Community at the time, he also wanted to take a leadership role in this area because no one else had. He said the following:

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<sup>148</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [84].

<sup>149</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [85].

<sup>150</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [43].

<sup>151</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [85].

<sup>152</sup> Transcript of M Waks, C6037:16-24 (Day C60).

<sup>153</sup> Exhibit 22-003, Statement of M Waks, STAT.0460.001.0001\_R at [51] – [53].

<sup>154</sup> Exhibit 22-003, Statement of M Waks, STAT.0460.001.0001\_R at [51].

<sup>155</sup> Exhibit 22-003, Statement of M Waks, STAT.0460.001.0001\_R at [51].

<sup>156</sup> Exhibit 22-003, Statement of M Waks, STAT.0460.001.0001\_R at [51].

*I know that there are many within the Chabad/Yeshivah community and some within the broader Jewish community who wish that I would be quiet about what happened to me and also in relation to my advocacy and support of others. However, I feel that as a community we need to learn from the past in order to address the future. I believe this is something that is owed both to victims and survivors and to the broader community.<sup>157</sup>*

- 109 Manny Waks said that going public was cathartic for him and empowering, even though he continues to live within the effects of the abuse. He still has vivid and distressing memories of the abuse including in dreams. He feels less ashamed now that it is no longer a secret but he still feels guilty, particularly about the effect of the disclosure on his family. He feels deep anger towards the Yeshivah Centre and its leadership for leaving Cyprys in a position where he was able to continue abusing boys. Manny Waks still finds it hard to deal with the emotional and psychological impact of the abuse on him although he is starting to understand it better.<sup>158</sup>
- 110 Manny Waks described becoming active within the broader Jewish community, including being the former Vice President of the Executive Council of Australia Jewry and being the founder and CEO of Tzedek, an Australian based support and advocacy group for Jewish victims and survivors of child sexual abuse.<sup>159</sup> Since its foundation, Tzedek has been in contact with over 100 Jewish victims and their families across Australia.<sup>160</sup>
- 111 Manny Waks was the CEO of Tzedek until November 2014. Manny Waks told the Royal Commission he and his family have recently relocated to Europe, he said that one of the main reasons for this move has been the ramifications of publicly disclosing his story. Manny Waks said that he will continue his work addressing child sexual abuse within the global Jewish community.<sup>161</sup>

## **AVR**

- 112 AVR told the Royal Commission that during the school holidays of December/January 1990/1991 he travelled from interstate to study at Yeshivah College on a scholarship.<sup>162</sup> AVR said Cyprys was introduced to him as the caretaker of the Yeshivah Centre.<sup>163</sup> AVR told the Royal Commission he was repeatedly sexually abused by Cyprys but that he did not wish to repeat the awful details.<sup>164</sup>
- 113 AVR said that at the time of the abuse he did not know much about sexual matters and it was difficult for him to describe what was done to him. The Royal Commission heard

<sup>157</sup> Transcript of M Waks, C6038:22-0029 (Day C60).

<sup>158</sup> Transcript of M Waks, C6038:31-43 (Day C60).

<sup>159</sup> Exhibit 22-0003, Statement of M Waks STAT.0460.001.0001\_R at [88], [98].

<sup>160</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [99].

<sup>161</sup> Transcript of M Waks, C6050:22-26 (Day C60).

<sup>162</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [6].

<sup>163</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [7].

<sup>164</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [10].

that AVR was embarrassed, his mother was sick, alone and interstate and AVR was worried about her.<sup>165</sup>

- 114 AVR told the Royal Commission that one day he was crying in the playground and another child took AVR home with him. AVR said that he is not exactly sure, but that he may have told the other child's mother what had been happening to him. AVR was sure that the other child's mother rang his mother and told her she needed to come to Melbourne.<sup>166</sup> AVR gave evidence that his mother came and got him and that night he told his mother that Cyprys had been sexually abusing him.<sup>167</sup> AVR told the Royal Commission that his mother then rang Rabbi Groner and told him about Cyprys sexually abusing AVR.<sup>168</sup>
- 115 AVR gave evidence that the next day he and his mother went to Yeshivah and spoke to Rabbi Glick, who told them that AVR's scholarship to Yeshivah had been cancelled.<sup>169</sup>
- 116 AVR told the Royal Commission that he felt that from the time of his disclosure that neither Rabbi Glick nor Yeshivah wanted him there anymore.<sup>170</sup> The Royal Commission heard that from the time of AVR's disclosure of the abuse by Cyprys no one associated with Yeshivah would speak with or help him or his mother. AVR said that even their own family members refused to help them.<sup>171</sup>
- 117 AVR gave evidence that he made a complaint to the police, but at the time could not bring himself to mention his rape by Cyprys.<sup>172</sup> The Royal Commission received into evidence an extract from the Magistrate's Court of Victoria that shows that on 8 September 1992 Cyprys pleaded guilty to an indecent assault committed on or about 24 August 1991.<sup>173</sup>
- 118 AVR gave evidence that he later gave a more complete report to the police resulting in Cyprys being charged with further sexual offences against AVR and ultimately being convicted in 2013 of multiple charges of rape perpetrated against AVR.<sup>174</sup>

## **AVB**

- 119 AVB was a victim of abuse by David Cyprys and Daniel Hayman, while a student at Yeshiva Bondi.
- 120 AVB gave evidence of the effects of the abuse and his experience of being involved in the police investigation and the criminal justice process. He gave evidence of sending an email on 17 June 2011 to his contacts in the community in the wake of a call by the

<sup>165</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [11].

<sup>166</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [11].

<sup>167</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [12].

<sup>168</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [12].

<sup>169</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [13].

<sup>170</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [14].

<sup>171</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [15].

<sup>172</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [10].

<sup>173</sup> Exhibit 22-0023, OPP.3017.008.0037 (Tab 1).

<sup>174</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [10].

Victoria Police for assistance, urging them to co-operate with the police.<sup>175</sup> He said that shortly afterwards, members of the community told him that Rabbi Telsner had delivered a sermon that appeared to criticise his decision to send the email.<sup>176</sup>

- 121 AVB gave evidence that a few days later Rabbi Klwngant also told him he should not have sent the email.<sup>177</sup> He described attending a bail hearing for David Cyprys and that soon after his attendance at Court word had spread throughout the community of his attendance at Court.<sup>178</sup> Cruel blogs surfaced in which he was criticised, labelled a moser for attending Court and denigrated.<sup>179</sup> AVB gave evidence of being deeply affected by the criticisms on the blog.
- 122 AVB gave evidence of people contacting his employer to tell him he had been at court and had been involved in a criminal justice process against Cyprys.<sup>180</sup> AVB gave evidence that he called the legal representative for Cyprys, Alex Lewenberg, because AVB believed that Mr Lewenberg had told others that AVB had been at court and had been assisting the prosecution.<sup>181</sup> Mr Lewenberg told AVB that he was disappointed that he had even participated in the process and was not exactly *'delighted'* that *'another Yid'* would assist police against a Jewish accused no matter what the person was accused of. *'There is a tradition'*, Mr Lewenberg told AVB, *'if not a religious requirement, that you do not assist against a Jew.'*<sup>182</sup> Mr Lewenberg would go on to talk about the principle of being a moser. AVB said this conversation led him to conclude that some people still believed the prohibition of mesirah applied and that Jews should not inform on other Jews.<sup>183</sup>
- 123 AVB said the understanding of the concept of being a moser was a central part of the makeup of being a Jew and being called a moser had consequences for someone within the Jewish community. He described a moser as someone equivalent to the Jewish police in the time of the Nazis. They were *'the low of the low. You can't get any lower than a moser'*.<sup>184</sup>
- 124 AVB gave evidence that it is *'soul destroying'* to hear that complaints had been made and that for whatever reason, whatever was done or what was not done the same person is able to offend again.<sup>185</sup>
- 125 AVB gave evidence that he was still feeling the effects of the trauma of that abuse in his day-to-day life. He further explained that while he can rationalise that the perpetrator of child sexual abuse often suffers some form of illness, it was more

<sup>175</sup> Transcript of AVB, C6216:12-25, C6219:34 -42 (Day C62).

<sup>176</sup> Transcript of AVB, C6222:16 -19 (Day C62).

<sup>177</sup> Transcript of AVB, C6224:35 -47, (Day C62).

<sup>178</sup> Transcript of AVB, C6229:5 - :13, C6230:43- C6231 (Day C62).

<sup>179</sup> Transcript of AVB, C6224:5 – C6230:18 (Day C62).

<sup>180</sup> Transcript of AVB, C6231:2 - :34 (Day C62).

<sup>181</sup> Transcript of AVB, C6230:43 – 6231:11 (Day C62)

<sup>182</sup> Transcript of AVB, C6230:46-C6232:31 (Day C62).

<sup>183</sup> Transcript of AVB, C6230:30- 6233:11 (Day C62)

<sup>184</sup> Transcript of AVB, C6233:5-14 (Day C62).

<sup>185</sup> Transcript of AVB, C6239:7-13 (Day C62).

difficult to be able to process what was done to him by people of morals and other religious ideals who are meant to conduct themselves in a particular way. He gave evidence that:

*The secondary trauma... is greater than the original trauma because that is a conscious, deliberate and calculated decision by a person in whom by their mere position of leadership you would expect or believe has... knowledge and foresight. They have been elevated to that position because of some assumed ability, great insight, emotional intelligence, knowledge of the law and the world, and then they act, enable or incite others to act in that way...*<sup>186</sup>

- 126 At the time of giving his evidence AVB said he was still trying to live and operate within the ultra-orthodox community. AVB said that when he sent his email on 17 June 2011 he was seeking to be part of the community's response to the issue of child sexual abuse and later sought the support of the Yeshivah Centre to embrace him in his suffering and support him through the process of police charging the offender and the court process and the sentencing.<sup>187</sup> He said he was looking for his community to recognise not only that a secular crime had been committed, but also a crime that was both heinous and repugnant under Jewish concepts and laws.<sup>188</sup>
- 127 AVB said hearing and believing that a rabbi preached against him, and the lack of response from the executive board at Yeshivah to his problems made him feel like there was nowhere to turn within his own community for assistance.
- 128 AVB said that it appeared at times that calling on others for accountability was sometimes seen as committing some kind of sin; AVB went on to explain the Jewish concept of *loshon horo* could be invoked to criticise a Jew for speaking words about a person that were true if the words were critical or negative.<sup>189</sup>
- 129 AVB told the Royal Commission that he suffered ostracisation, bullying, the drying up of social invitations and being treated like some type of pariah including being actively and deliberately denied the religious rite of being called to the Torah.<sup>190</sup>
- 130 AVB said he suffered vandalism to his car, signs that he had erected on the community noticeboard were ripped down and he was physically pushed on occasions.<sup>191</sup> AVB said he tried to work within the community to seek to address the problems that had arisen for him and his ostracisation and bullying. He also sought to work within the community to address the problem of child sexual abuse.
- 131 AVB gave evidence of the difficulty he had seeking to obtain some redress or assistance with the difficulties he was experiencing in his community.

<sup>186</sup> Transcript of AVB, C6669:35-44 (Day C66).

<sup>187</sup> Transcript of AVB, C6670:46-C6671:5 (Day C66).

<sup>188</sup> Transcript of AVB, C6671:19-25 (Day C66).

<sup>189</sup> Transcript of AVB, C6681:29-C6682:37 (Day C66).

<sup>190</sup> Transcript of AVB, C6683:13-30 (Day C66).

<sup>191</sup> Transcript of AVB, C6683:13-30 (Day C66).

## Experience of Families of Survivors

### Zephaniah Waks

- 132 Zephaniah Waks, father of Manny Waks, described his experience as a father of three children abused by perpetrators connected with the Yeshivah Centre: Manny Waks and two children abused by Rabbi David Kramer.<sup>192</sup>
- 133 Zephaniah Waks described his experience in the community following Manny going public with his abuse in The Age article 8 July 2011, when police commenced to investigate the historical allegations against Rabbi Kramer and after sermons delivered by Rabbi Telsner at the time of the police investigation and in particular, after the sermon of 16 July 2011, which appeared to Zephaniah Waks to be directly critical of Manny Waks' decision to speak publicly about his abuse and to criticise the Yeshivah Centre and Rabbi Groner.<sup>193</sup>
- 134 Zephaniah Waks said he and his wife, Haya, had lost most of their friends in 2011 and in the years that followed.<sup>194</sup> He described how he had been denied aliyah and had heard that Rabbi Telsner had issued a direction that he not be granted aliyah. He said he was subject to vicious attacks on blog sites blaming him for the Victoria Police investigation in 2011 into Rabbi Kramer's abuse.
- 135 Zephaniah gave evidence that he and his wife had tried to remain within the Orthodox community but ultimately, Zephaniah and Haya Waks decided to sell their home opposite the Yeshivah Centre and move to Israel.

### AVC

- 136 AVC is the wife of AVB and mother of their four children.<sup>195</sup>
- 137 AVC described the pain and suffering she and her family endured as a result of the way many in the community responded to AVB, herself and her family in the wake of the police investigation, AVB's involvement with police and the response of the Yeshivah community including its rabbis to the issue of child sexual abuse. AVC described the loss of friends and invitations, smart quips, clips on the shoulder and vicious accusations shouted out in the shule.<sup>196</sup>
- 138 AVC described the physical pain and early labour she endured hearing of her husband's experience of abuse and of reading in the paper of abuse of children at the hands of the church. AVC told of the horror of realising the '*cruelty of people and the power of an act of abuse to ripple out and affect the lives of so many*'.<sup>197</sup> AVC said she waited for people to stand up for the truth and to speak out for the children – now men – who had been abused and who had been failed. AVC said she came to understand that self-

<sup>192</sup> Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R.

<sup>193</sup> Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R at [8], [33]-[39].

<sup>194</sup> Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R at [36].

<sup>195</sup> Exhibit 22 -0013, Statement of AVC, STAT.0467.001.0001\_R.

<sup>196</sup> Exhibit 22 -0013, Statement of AVC, STAT.0467.001.0001\_R.

<sup>197</sup> Exhibit 22 -0013, Statement of AVC, STAT.0467.001.0001\_R.

preservation, one's standing in the community and pedigree were the main concern for many.

- 139 AVC described her experience of witnessing the community turning on the victim and making them the subject of suspicion. She described how she and her husband were falsely accused of being responsible for the accusations of child sexual abuse made about Rabbi Glick. AVC described the vicious gossip and anonymous posts. AVC described approaches made to her husband's employer to seek to have her husband fired and anonymous vicious posts mauling his character and spreading gossip.
- 140 AVC said that beyond the horrible acts of the perpetrators, she felt that she and AVB were abused a second time by the callous response of the community. As the spouse of a victim and whistleblower, AVC said she felt hated and isolated in her community and had lost faith in the leadership of the Jewish community.

### **Part 3 Institutional Response: Yeshiva Bondi**

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#### **Knowledge of and response to complaints of inappropriate sexual conduct by Daniel 'Gug' Hayman**

##### **1985/1986**

- 141 The Royal Commission received into evidence a statement made to NSW Police dated 15 November 2013.<sup>198</sup> The deponent of the statement is a male whose name is redacted. In his statement to the police the deponent says that in 1985 or 1986, when he was 16 or 17 years old, he was invited to attend a Jewish festival in Bondi by his brother's schoolmate.<sup>199</sup> The deponent understood that arrangements were made for him and others to stay at Daniel Hayman's sister's unit.<sup>200</sup> He said that Daniel Hayman also spent the night there and at the time Daniel Hayman was about 23 years old at the time. The deponent said that as there were four or five people in the apartment. The boy, Daniel Hayman, and another person shared a bed, with Daniel Hayman sleeping in the middle.<sup>201</sup> The deponent stated that during the night, he awoke to discover Daniel Hayman's hand reaching down his pants and fondling his penis.<sup>202</sup> The deponent said he tried to push Daniel Hayman away; however, he was 'too embarrassed to say anything' and 'almost frozen.'<sup>203</sup> The following day, the deponent's friend asked him if something had happened, but the deponent was too embarrassed to talk about the assault.<sup>204</sup>
- 142 The deponent goes on to say that in 1986 or 1987, he spoke with his peers about the sexual assault<sup>205</sup> and they came to realise they all had been sexually assaulted by

<sup>198</sup> Exhibit 22-0024, NSW.2021.001.0221\_R.

<sup>199</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [4].

<sup>200</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [4].

<sup>201</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [6].

<sup>202</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [7].

<sup>203</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [7].

<sup>204</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [8].

<sup>205</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [10].

Hayman at different junctures.<sup>206</sup> The deponent and his friends knew Daniel Hayman to be a volunteer who did a lot of outreach work at the Yeshiva Gedola.<sup>207</sup> The boys knew Rabbi Boruch Lesches as the senior Rabbi of the Yeshiva Gedola.<sup>208</sup> The boys then decided to go to Rabbi Lesches' home to tell Rabbi Lesches what had happened to them.<sup>209</sup> The deponent told Rabbi Lesches that Gug (Hayman) had been *'inappropriate with myself and the others here, we're all victims of his'* and *'we've all been touched inappropriately, I think he is gay.'*<sup>210</sup> The deponent said, *'We weren't sure what to do, so we've come to you.'*<sup>211</sup> The deponent explained that the other boys also spoke to Rabbi Lesches.<sup>212</sup> The deponent stated that Rabbi Lesches responded, *'Oh, we have a problem with him'* and *'I will deal with it.'*<sup>213</sup> The deponent went on to state that Rabbi Lesches did not suggest that the boys seek counselling, nor did he suggest they contact the police.<sup>214</sup>

- 143 Rabbi Lesches was asked to respond to the allegation that he met with a group of boys in 1986 or 1987 as detailed above. Rabbi Lesches was also provided with a copy of the statement to NSW Police. In his statement to the Royal Commission, Rabbi Lesches said that *'he has no recollection of that meeting.'*<sup>215</sup> Rabbi Lesches went on:

*Nevertheless I have seen the statement to police of [redacted] in which he attests to such a meeting having occurred. I regard him as an honest man and I accept that a conversation must have taken place even though I have absolutely no memory of it.*<sup>216</sup>

- 144 However, Rabbi Lesches did not concede that the conversation was about inappropriate sexual conduct by Daniel Hayman against a child.<sup>217</sup> Rabbi Lesches said:

*Whatever passed between us in the course of the conversation it is inconceivable to me that I understood that the boys were reporting sexual contact with Daniel Hayman. If that had been my understanding it would have been a great shock to me and not something I am likely to have ever forgotten.*<sup>218</sup>

<sup>206</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [10].

<sup>207</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [10].

<sup>208</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [10]; Transcript of Rabbi P Feldman, C6345: 9-11 (Day C63); Transcript of P Feldman, C6342:10-14 (Day C63).

<sup>209</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [10].

<sup>210</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [11].

<sup>211</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [11].

<sup>212</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [11].

<sup>213</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [11].

<sup>214</sup> Exhibit 22-0024, NSW.2021.001.0221\_R at [11].

<sup>215</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [17].

<sup>216</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [17].

<sup>217</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [17].

<sup>218</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [18].

145 On 5 June 2013, Rabbi Lesches made a public statement in which he expressed his belief that the deponent of the statement to NSW Police was of a similar age to Daniel Hayman, implying that there had been consensual adult sexual relations.<sup>219</sup>

## 1987

146 Rabbi Moshe Gutnick gave evidence that in 1987 he telephoned Rabbi Lesches and told Rabbi Lesches he had received an anonymous disclosure over the telephone from a young boy who complained of having been sexually abused by Daniel Hayman.<sup>220</sup> Rabbi Moshe Gutnick said he called Rabbi Lesches because he knew him to be in charge of senior students at the Yeshiva and close to Daniel Hayman.<sup>221</sup> Rabbi Moshe Gutnick's evidence was that he thought the telephone call was a prank but conveyed the information to Rabbi Lesches, notwithstanding.<sup>222</sup>

147 Rabbi Moshe Gutnick gave evidence that one night in August 2011 he was contacted by a man he knew well who said he wanted to come to see Rabbi Moshe Gutnick at his house.<sup>223</sup> He said that man came to his house and told him that he had been the young boy on the phone in the 1980s.<sup>224</sup> Rabbi Moshe Gutnick said that this '*was the first time [he] actually came to the realisation that Gug was indeed a perpetrator.*'<sup>225</sup>

148 In the summer holidays of 1987/1988, Daniel Hayman attended a youth camp. The camp, Camp Gan Israel, was organised and run by Yeshiva College Bondi and was attended by AVB.<sup>226</sup>

## AVB

149 AVB gave evidence that he attended the camp when he was 14 years old. AVB gave evidence that Hayman regularly coordinated youth activities and was involved in Camp Gan Israel.<sup>227</sup> AVB gave evidence that both boys and girls attended the camp; however, they were in separate campsites.<sup>228</sup> AVB said that on a Friday afternoon, Hayman asked him to assist in setting up a bonfire for the girls' camp before Sabbath prevented them from doing so.<sup>229</sup> AVB gave evidence that his counsellor at the camp gave permission for Hayman to drive him to set up the bonfire near the other camp.<sup>230</sup> AVB told the Royal Commission that while setting up the bonfire, Hayman forcibly sexually assaulted him.<sup>231</sup> AVB said that after the assault, Hayman told him not to tell anybody.<sup>232</sup> AVB said he did not tell anybody what happened for another 20 years

<sup>219</sup> Exhibit 22-0023, WEB.0014.001.0001\_E (Tab 134).

<sup>220</sup> Exhibit 22-0019, Statement of M Gutnick STAT.0458.001.0001 at [17].

<sup>221</sup> Exhibit 22-0019, Statement of M Gutnick STAT.0458.001.0001 at [17].

<sup>222</sup> Exhibit 22-0019, Statement of M Gutnick STAT.0458.001.0001 at [15] and [17].

<sup>223</sup> Exhibit 22-0019, Statement of M Gutnick STAT.0458.001.0001 at [32].

<sup>224</sup> Exhibit 22-0019, Statement of M Gutnick STAT.0458.001.0001 at [33].

<sup>225</sup> Exhibit 22-0019, Statement of M Gutnick STAT.0458.001.0001 at [33].

<sup>226</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [24]-[25].

<sup>227</sup> Transcript of AVB, C6203:35-37 (Day C62).

<sup>228</sup> Transcript of AVB, C6203:46-47 (Day C62).

<sup>229</sup> Transcript of AVB, C6204:6-7 (Day C62).

<sup>230</sup> Transcript of AVB, C6204:7-9 (Day C62).

<sup>231</sup> Transcript of AVB, C6204:17-19 (Day C62).

<sup>232</sup> Transcript of AVB, C6204:28-29 (Day C62).

because he did not think anyone would believe him.<sup>233</sup> In 2014, Hayman pleaded guilty to one count of indecent assault by a person in authority, being the assault of AVB.<sup>234</sup>

150 AVB gave evidence that in November 2011, AVB called Daniel Hayman and confronted him about the assault.<sup>235</sup> During that conversation, Daniel Hayman told AVB that Rabbi Lesches and 'Rabbi Feldman' had spoken to him in relation to his conduct with boys.<sup>236</sup> AVB gave evidence that Daniel Hayman told him that Rabbi Lesches and Rabbi Feldman spoke to Hayman about sexual assaults against a student at Yeshiva in Bondi and told him to keep away from the student.<sup>237</sup>

151 AVB also gave evidence that on 3 April 2012, he called Rabbi Lesches and confronted him about his knowing of Hayman sexually abusing children.<sup>238</sup> AVB told the Royal Commission that Rabbi Lesches admitted to receiving complaints of inappropriate sexual conduct by Daniel Hayman against a number of adolescent boys.<sup>239</sup> AVB recalled Rabbi Lesches saying '*I told him to stay away and I told him if this will not stop both of them will have to go away, absolutely emes (truth) you got it right.*'<sup>240</sup>

152 Rabbi Lesches was provided a copy of AVB's statement. In his statement to the Royal Commission, Rabbi Lesches acknowledged that he had received a telephone call from AVB who spoke with him about Daniel Hayman.<sup>241</sup> Rabbi Lesches said that in June 2013 excerpts of this phone call were released to the media.<sup>242</sup> Rabbi Lesches went on

*Subsequent to the release of these audio excerpts, I was portrayed as a person who seeks to protect perpetrators of child sexual abuse and shield them from being reported to police. I was also portrayed as having direct knowledge about Daniel Hayman's criminal activity against others before he offended against AVB. As I have set out above, this is not the case.*<sup>243</sup>

153 Rabbi Lesches says that when he said '*Yes. I spoke to him, that he has to stop it. I told him, he must stop what he was doing*' he was referring to having spoken to Daniel Hayman about an incident in which Hayman was overheard discussing sex and sexuality with children.<sup>244</sup>

154 AVB gave evidence that during the 3 April 2012 conversation with Rabbi Lesches he also asked Rabbi Lesches '*what the right thing to do in regard to the situation now is*' and Rabbi Lesches said words to the following effect:

<sup>233</sup> Transcript of AVB, C6204:35-39 (Day C62).

<sup>234</sup> Exhibit 22-0023, IND.0214.001.0110\_R (Tab 162).

<sup>235</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [76].

<sup>236</sup> Transcript of AVB, C6237:12-21 (Day C62).

<sup>237</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [78].

<sup>238</sup> Transcript of AVB, C6241:36-38 (Day C62).

<sup>239</sup> Transcript of AVB, C6241: 43 – C6242:4 (Day C62).

<sup>240</sup> Transcript of AVB, C6242:16-19 (Day C62).

<sup>241</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [27].

<sup>242</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [27].

<sup>243</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [28].

<sup>244</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [30].

*If you are asking me, it is really up to you kind of, I don't have to tell you in America in a lot of places they will say that you have to go to the police and make sure that it will not happen again and so on, maybe yeah maybe not. I cannot tell you exactly, but when you are speaking about a person in your age in your stage, and Gug in his age and his stage, when people already have children and they have to marry children and so on, you have the expression in Australia, 'it is not a big thing to open up a can of worms'. If so just to open up things like this and so on, sometimes could not be productive not to anybody and so on, especially when things like this are done between people basically the same age.*<sup>245</sup>

155 Rabbi Lesches issued a public statement dated 5 June 2013,<sup>246</sup> after publication of the views he expressed in his call with AVB. Rabbi Lesches set out in that public statement his endorsement of rabbinical rulings encouraging victims of abuse to report to the police, when referring to the conversation with AVB, he said '*If the caller had mentioned present abuse, I would have advised him to contact the proper legal authorities*'.<sup>247</sup>

156 In his statement to the Royal Commission, Rabbi Lesches said that his comment to AVB '*had nothing to do with [his] attitude toward the protection of children who are or might be being abused.*'<sup>248</sup> Rabbi Lesches said:

*I was referring to the fact that the events that AVB had revealed to me occurred nearly 30 years earlier. The view I expressed was that it was entirely up to AVB to decide whether or not he wished to take his complaint against Hayman to police at that stage of his life, but I was concerned about the secondary impact on AVB and his family that this could have. I respect both his right and his decision to do so. My remarks also had regard to the impact on Hayman and his family so many years after the events complained of. I have reflected on those remarks and recognise that they may be seen as implying that the impact on Hayman himself of reporting the matter to police so many years after the fact ought figure in AVB's thinking. In that respect I was wrong and I apologise.*<sup>249</sup>

157 Rabbi Lesches was notified that the public hearing was being held and he was invited to make himself available for questioning but declined to do so.<sup>250</sup> It is submitted that the Royal Commission should reject the evidence of Rabbi Lesches where it is inconsistent with AVB's evidence or other evidence examined at the public hearing. It is submitted that the Royal Commission should reject his assertion that he fully endorses rabbinical rulings encouraging all victims to report their abuse to the

<sup>245</sup> Transcript of AVB, C6243:26-43 (Day C62).

<sup>246</sup> Exhibit 22-0023, WEB.0014.001.0001\_E (Tab 134).

<sup>247</sup> Exhibit 22-0023, WEB.0014.001.0001\_E (Tab 134).

<sup>248</sup> Exhibit 22-0050, Statement of Rabbi Boruch Dov Lesches, STAT.0493.001.0010\_R at [31].

<sup>249</sup> Exhibit 22-0050, Statement of Rabbi Boruch Dov Lesches, STAT.0493.001.0010\_R at [31].

<sup>250</sup> Transcript at C7257:8-32 (Day C69).

authorities to the extent that his conversation with AVB is inconsistent with such endorsement.

### **The complaint from a 12 year old girl**

158 The Royal Commission received into evidence a statement dated 15 November 2013 from a woman who, as a 12 year old girl, had been billeted to live with Daniel Hayman.<sup>251</sup> The Royal Commission also received into evidence statements made by her parents to NSW Police.<sup>252</sup>

159 In her statement, the woman told police:

- when she was 12 years old her parents decided to enrol her in Yeshiva Ladies College Bondi.<sup>253</sup> In October 1989, she was placed by her father under the care and guidance of Rabbi Lesches;<sup>254</sup>
- she travelled to Sydney to study at Yeshivah Ladies College and the first home she boarded in was the home of Daniel Hayman and his wife. She lived there for at most a month;<sup>255</sup>
- when she was living with Hayman, Hayman walked around naked in front of her when his wife was not home;<sup>256</sup>
- one night, as she slept on a fold out sofa bed, Hayman entered the room completely naked and tried to remove her quilt covering.<sup>257</sup> She moved away from Hayman and, when he eventually left the room, she changed into her school uniform and left the apartment immediately even though it was 4.30am;<sup>258</sup>
- she made her way to Yeshiva Bondi and later spoke to Rabbi Lesches in his office telling him what had happened.<sup>259</sup> After she told Rabbi Lesches what had happened earlier that morning he responded '*I do not believe you. Why would you invent such a story?*'<sup>260</sup> Rabbi Lesches told her to '*Go to school. Get over it*';<sup>261</sup>
- she then called her father and said she did not want to '*go back there*'; she also called a family friend who drove her to Daniel Hayman's house to collect her

<sup>251</sup> Exhibit 22-0024, NSW.2021.001.0225\_R.

<sup>252</sup> Exhibit 22-0024, NSW.2021.001.0239\_R; Exhibit 22-0024, NSW.2021.001.0242\_R.

<sup>253</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [9]-[10].

<sup>254</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [9]-[10]; Exhibit 22-0024, NSW.2021.001.0239\_R at [6]-[8].

<sup>255</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [10].

<sup>256</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [15].

<sup>257</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [17].

<sup>258</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [17]-[18].

<sup>259</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [19].

<sup>260</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [19].

<sup>261</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [19].

belonging.<sup>262</sup> She then stayed with this family friend for the rest of the school term.<sup>263</sup>

- 160 The girl's parents told police they made arrangements with Rabbi Lesches for their daughter to travel to Sydney for her schooling and to board with families in Sydney.<sup>264</sup> The girl's father told police that Rabbi Lesches called him and told him that his daughter had complained Hayman had touched her through the night but that Rabbi Lesches believed the girl might have dreamt it or imagined it and that his daughter *'can't stay there any longer as there is a doubt about the propriety of it'*.<sup>265</sup> The girl's mother stated that they contacted their daughter that night and their daughter was *'adamant that it did happen.'*<sup>266</sup>
- 161 Rabbi Lesches was asked to respond and was provided with a copy of the statements made to NSW Police by the woman and her parents. In his statement to the Royal Commission, Rabbi Lesches confirmed that the 12 year old girl made a complaint to him, confirmed the complaint was about Daniel Hayman but denied that the girl had said that Hayman was naked, instead claiming that she said he had just come to her bed during the night.<sup>267</sup> Rabbi Lesches denied accusing the girl of lying.<sup>268</sup> Rabbi Lesches said that he might have expressed doubt to the girl's father.<sup>269</sup>
- 162 Rabbi Lesches was invited to make himself available for questioning at the hearing, but declined to do so. It is submitted that his evidence in relation to complaints by the 12 year old girl should be given little weight.
- 163 It is submitted that the Commission should find that in or about 1989 a 12 year old girl made a complaint to Rabbi Lesches of sexually inappropriate conduct by Daniel Hayman involving Daniel Hayman approaching her bed naked during the night. It is submitted that a further finding should be made that in responding to the complaint, Rabbi Lesches expressed doubt about the complaint and sought to discourage the girl's parents from believing the complaint. It is submitted that the Commission should reject Rabbi Lesches' evidence to the contrary.

### **Rabbi Pinchus Feldman**

- 164 In a recorded interview with police, Daniel Hayman said that that Rabbi Pinchus Feldman had spoken to him about his conduct with boys but the content of what may have been said was vague.<sup>270</sup> Daniel Hayman told the police that he did not recall the

<sup>262</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [19].

<sup>263</sup> Exhibit 22-0024, NSW.2021.001.0225\_R at [19].

<sup>264</sup> Exhibit 22-0024, NSW.2021.001.0239\_R at [6]-[7]; Exhibit 22-0024, NSW.2021.001.0242\_R at [8].

<sup>265</sup> Exhibit 22-0024, NSW.2021.001.0242\_R at [9]; NSW.2021.001.0239\_R at [9].

<sup>266</sup> NSW.2021.001.0239\_R at [10].

<sup>267</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [23].

<sup>268</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [23].

<sup>269</sup> Exhibit 22-0050, Statement of B D Lesches, STAT.0493.001.0001\_R at [24].

<sup>270</sup> Exhibit 22-0023, NPF.053.002.0030\_E\_R at 0031\_E\_R (Tab 213).

conversation and that he just remembered the incident taking place.<sup>271</sup> Rabbi Pinchus Feldman said he did *'not recall any such conversation at all.'*<sup>272</sup>

- 165 Rabbi Pinchus Feldman gave evidence that Rabbi Lesches was an employee of the Yeshiva Centre and the Yeshiva Gedola<sup>273</sup> and that he had effective control over Rabbi Lesches.<sup>274</sup> Rabbi Pinchus Feldman agreed that knowledge of an employee is deemed knowledge of the institution<sup>275</sup> and said that the complaints should have been reported to him.<sup>276</sup> Rabbi Pinchus Feldman said that to the best of his recollection Rabbi Lesches did not inform him of the allegations that had been made against Daniel Hayman.<sup>277</sup> It is submitted that complaints received by Rabbi Lesches about Daniel Hayman put Yeshiva Bondi on notice that Daniel Hayman may pose a risk to children who attended Yeshiva Bondi.
- 166 No material or internal Yeshiva Bondi documents recording the early complaints to Rabbi Lesches were produced to the Royal Commission. Rabbi Pinchus Feldman gave evidence that he was *'convinced that there were no written reports of this matter.'*<sup>278</sup>
- 167 Rabbi Pinchus Feldman gave evidence that it is *'very likely'* that in 1986/1987 there were no formal policies in place at the Yeshiva Centre to require complaints to be recorded or mandating what should be done in response to complaints.<sup>279</sup> Rabbi Pinchus Feldman said *'although in the school there may have been. But in regard to the Yeshiva Gedola I do not believe that there was any.'*<sup>280</sup>

#### **Available findings on Yeshiva Bondi's knowledge of complaints against Daniel Hayman**

- F1 In 1986/1987, Rabbi Lesches, a senior employee of Yeshiva Bondi, received multiple complaints of alleged conduct amounting to child sexual abuse by Daniel Hayman. At the time, Daniel Hayman was permitted to frequently act as a volunteer youth worker at Yeshiva Bondi.
- F2 The complaints put Yeshiva Bondi on notice that Daniel Hayman may pose a risk to children who attended Yeshiva Bondi. The complaints were not documented or investigated further.
- F3 Notwithstanding the 1986/1987 complaints of conduct amounting to child sexual abuse by Daniel Hayman, during the summer holidays of 1987/1988 Yeshiva Bondi allowed Daniel Hayman to attend Camp Gan Israel as a volunteer, giving him unsupervised access to children attending the camp.

<sup>271</sup> Exhibit 22-0023, NPF.053.002.0030\_E\_R at 0031\_E\_R (Tab 213).

<sup>272</sup> Transcript of P Feldman, C6341:44 (Day C63).

<sup>273</sup> Transcript of P Feldman, C6345:7 (Day C63).

<sup>274</sup> Transcript of P Feldman, C6345:25 (Day C63).

<sup>275</sup> Transcript of P Feldman, C6349:39 (Day C63).

<sup>276</sup> Transcript of P Feldman, C6349:24-31 (Day C63).

<sup>277</sup> Transcript of P Feldman, C6353:7-11; C6361:28 (Day C63).

<sup>278</sup> Transcript of P Feldman, C6362:16-31 (Day C63).

<sup>279</sup> Transcript of P Feldman, C6342:21-23 (Day C63).

<sup>280</sup> Transcript of P Feldman, C6342:21-23 (Day C63).

- F4 Notwithstanding the 1986/1987 complaints of conduct amounting to child sexual abuse by Daniel Hayman, in 1989 Rabbi Lesches arranged for a 12 year-old girl to live at Daniel Hayman's house, giving him unsupervised access to a child. Shortly afterwards, the 12 year old girl complained to Rabbi Lesches of sexually inappropriate conduct by Daniel Hayman. Rabbi Lesches expressed doubt about the girl's complaint and sought to discourage her parents from believing the girl's complaint.
- F5 In 1986/1987, Yeshiva Bondi did not have formal child protection policies that set out how staff of the Yeshiva Gedola should respond to complaints of child sexual abuse.

### **Assault by David Cyprys against AVB**

168 AVB gave evidence that in the mid-year holidays of 1984 or 1985, when he was 11 or 12 years old, Cyprys travelled to Yeshiva College Bondi as part of a religious learning program through which students from Yeshivah College Melbourne would study at the Yeshiva College Bondi during holidays.<sup>281</sup> AVB said that the students would stay on campus, sleeping in Yeshiva College Bondi classrooms.<sup>282</sup> AVB said that he met David Cyprys through this program and that Cyprys befriended him.<sup>283</sup> AVB gave evidence that Cyprys forcibly sexually assaulted AVB in a classroom at Yeshiva College in Bondi.<sup>284</sup>

### **Knowledge of and response to the 2002 complaint of child sexual abuse by AVL**

#### **Handling of the complaint**

169 The Royal Commission heard evidence about a complaint of child sexual abuse allegedly perpetrated by AVL in 2002. The Royal Commission was told that at the time, AVL was a rabbinical student at the Yeshiva Gedola.<sup>285</sup> He was the nephew of Rabbi Mordechai Gutnick.<sup>286</sup> Rabbi Mordechai Gutnick is Rabbi Moshe Gutnick's brother, Rabbi Yosef Feldman's uncle and Rabbi Pinchus Feldman's brother-in-law. AVL was a member of the extended family of Rabbi Pinchus Feldman and Rabbi Yosef Feldman.

170 Rabbi Pinchus Feldman gave evidence that while studying as a rabbinical student, AVL was working as a teacher's aide at Yeshiva College.<sup>287</sup> Rabbi Yosef Feldman explained that it was the practice in 2002 for rabbinical students to work as assistant teachers to students at Yeshiva College and to attend youth camps as assistants.<sup>288</sup> Documents

<sup>281</sup> Transcript of AVB, C6202:31-33 (Day C62).

<sup>282</sup> Transcript of AVB, C6202:34-36 (Day C62).

<sup>283</sup> Transcript of AVB, C6202:39-41 (Day C62).

<sup>284</sup> Transcript of AVB, C6202:42-44 (Day C62).

<sup>285</sup> Transcript of Rabbi M D Gutnick, C6262:46 – C6263:1 (Day C62).

<sup>286</sup> Transcript of Rabbi Y Feldman, C6420:15-18 (Day C64).

<sup>287</sup> Transcript of Rabbi P Feldman, C6375:8-9 (Day C63).

<sup>288</sup> Transcript of Y Feldman, C6408: 2-9 (Day C64).

examined by the Royal Commission suggest AVL was an employee of the then Yeshiva College.<sup>289</sup>

- 171 Rabbi Pinchus Feldman told the Royal Commission that in July 2002, AVL assisted at a youth camp run by the South Head Synagogue.<sup>290</sup> The evidence before the Royal Commission is that on 12 July 2002, AVL is alleged to have abused a young boy attending the camp by lying down with him in his bed, touching the boy's genitals and trying to force the boy's hand to touch AVL's genitals.<sup>291</sup> Afterwards, the boy reported AVL's conduct to his mother.<sup>292</sup>
- 172 The documents examined by the Royal Commission reveal that at about 4.30pm on 23 July 2002, the boy's mother reported the abuse to William Conway, then Head of Primary at Yeshiva College.<sup>293</sup> Mr Conway made notes headed '*Report on accusation*' that set out the action taken after the complaint was received and these notes were received into evidence by the Royal Commission. Mr Conway also provided a statement to the Royal Commission regarding the events.
- 173 Mr Conway states that on 23 July 2002 he received a complaint from a mother who said that AVL had acted inappropriately with a student, her son, at a recent camp.<sup>294</sup> Mr Conway says that immediately after the mother told him this he met with her and Rabbi Zev Simons, Head of Jewish Studies at Yeshiva College Bondi, to discuss the allegations during which meeting the '*mother reported that her son had told her that AVL had touched him inappropriately at a camp that had taken place earlier that month*'.<sup>295</sup> Mr Conway said that on 24 July 2002, he and Rabbi Simons met with the mother and the student and at this meeting the '*student definitely indicated that he had been touched inappropriately (on the genitals)*'.<sup>296</sup>
- 174 Mr Conway's notes reveal that on 24 July 2002 at approximately 1.45pm, he told Rabbi Pinchus Feldman of the allegation of abuse.<sup>297</sup> The notes state that Rabbi Pinchus Feldman told Mr Conway to tell AVL not to come to work until further notice.<sup>298</sup> Mr Conway's notes state that at 2.00pm, on 24 July 2002, Mr Conway and Mr Simons met with AVL and told him there had been an incident that needed to be investigated and he was not to return to work until further notice. The notes record that AVL was told '*there would be an investigation of the matter that would involve him at some point*' but that Mr Conway and Rabbi Simons were '*not prepared to divulge the details of the situation*' at that time.<sup>299</sup> The notes state that '*AVL said he thought he knew what it*

<sup>289</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>290</sup> Transcript of Rabbi P Feldman, C6374:18-21 (Day C63).

<sup>291</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>292</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>293</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>294</sup> Exhibit 22-0044, Statement of William Conway, STAT.0492.001.0001 at [6]-[7]

<sup>295</sup> Exhibit 22-0044, Statement of William Conway, STAT.0492.001.0001 at [7].

<sup>296</sup> Exhibit 22-0044, Statement of William Conway, STAT.0492.001.0001 at [8].

<sup>297</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>298</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>299</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

*might be about, but that he felt it wasn't "serious"*.<sup>300</sup> In his statement, Mr Conway says that AVL became angry and denied any wrongdoing.<sup>301</sup>

175 Mr Conway states that he then reported the allegations to the appropriate external authorities. He said *'I wanted to do this immediately because I felt that I may be discouraged from reporting the matter externally or denied permission to do so'*.<sup>302</sup> The evidence details the steps he took:

- on 24 July 2002 at 2.15pm, Mr Conway tried to report the allegation to DOCs. He disengaged after waiting for 20 minutes but recorded details on their automated system;<sup>303</sup>
- on 24 July 2002 at 2.30pm, Mr Conway consulted with Mr Geoff Newcombe from the Association of Independent Schools and was told that the allegation was subject to mandatory reporting procedures;<sup>304</sup>
- on 25 July 2002 at 8.30am, Mr Conway faxed a 'Form A'<sup>305</sup> to DOCS which was acknowledged as received that day;<sup>306</sup>
- on 25 July 2002 at 9.30am, Mr Conway spoke with the DOCS caseworker, made a report of the incident, and informed the caseworker that AVL's usual place of residence was outside Australia.<sup>307</sup>

176 Rabbi Pinchus Feldman gave evidence that sometime between 1.45 pm on 24 July 2002 and 1.30pm on 25 July 2002 he and Rabbi Yosef Feldman held a meeting with AVL.<sup>308</sup> Both rabbis told the Commission the purpose of the meeting was to discuss AVL's position as a rabbinical student in light of the complaint.<sup>309</sup> Rabbi Pinchus Feldman told the Commission that at that meeting, AVL denied the allegation.<sup>310</sup> Rabbi Pinchus Feldman said he told AVL that, nevertheless, it had been reported to authorities and that AVL should have no contact with children until a full investigation had been undertaken.<sup>311</sup> Rabbi Pinchus Feldman said that AVL then said that he might leave the country and return to his home in the United States of America.<sup>312</sup> Rabbi Pinchus Feldman gave evidence that he told AVL that it was his choice, and that if he

<sup>300</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>301</sup> Exhibit 22-0044, Statement of William Conway, STAT.0492.001.0001 at [10].

<sup>302</sup> Exhibit 22-0044, Statement of William Conway, STAT.0492.001.0001 at [11].

<sup>303</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0508 (Tab 5).

<sup>304</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0509 (Tab 5). See also Exhibit 22-0044, Statement of William Conway at [11]-[12] and Exhibit 22-0023, YSV.0005.001.0026\_R (Tab 185).

<sup>305</sup> Exhibit 22-0023, KTC.0001.001.0033\_R (Tab 3).

<sup>306</sup> Exhibit 22-0023, KTC.0001.001.0026\_R (Tab 4).

<sup>307</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0509 (Tab 5).

<sup>308</sup> Transcript of P Feldman, C6376: 6-11 (Day C63).

<sup>309</sup> Transcript of P Feldman, C6371:41-46 (Day C63); Exhibit 22-0025, Statement of Y Feldman, STAT.0468.001.0001\_R at [2.R.(b).1; Transcript of Y Feldman, C6411: 46-C6412:21 (Day C64).

<sup>310</sup> Transcript of P Feldman, C6371:25-28 (Day C63).

<sup>311</sup> Transcript of P Feldman, C6371:30-34 (Day C63).

<sup>312</sup> Transcript of P Feldman, C6377:19-21 (Day C63).

chose to return to USA, they would not stop him;<sup>313</sup> however, Rabbi Pinchus Feldman informed him that he could not get his ordination from Yeshiva Gedola if he left.<sup>314</sup>

- 177 Rabbi Pinchus Feldman gave evidence that he did not notify any authority that AVL was considering leaving the country.<sup>315</sup> Rabbi Pinchus Feldman accepted that his failure to notify authorities that AVL was considering leaving the jurisdiction was an error of judgment on his part.<sup>316</sup> Rabbi Pinchus Feldman said that he thought that if it could be established that AVL had committed a crime then the police would be able to extradite him.<sup>317</sup>
- 178 Rabbi Yosef Feldman gave evidence that shortly after the meeting with his father and AVL, Rabbi Yosef Feldman spoke a second time with AVL.<sup>318</sup> Rabbi Yosef Feldman's evidence suggests that it is likely that this further conversation occurred late on 24 July 2002.<sup>319</sup> Rabbi Yosef Feldman said the second meeting happened within a short time, and on the same day, as the previous conversation with his father and AVL.<sup>320</sup>
- 179 Rabbi Yosef Feldman said that at the second meeting, AVL told him that he lay down with the child and massaged him but nothing inappropriate happened. Rabbi Yosef Feldman thought the behaviour was highly inappropriate and suggestive of being sexual in nature.<sup>321</sup> Rabbi Yosef Feldman told the Commission that AVL said that he was no longer concerned about receiving his ordination as Rabbi Gutnick told him that he would get it without the Yeshiva Gedola.<sup>322</sup> It is submitted that it is reasonable to infer that Rabbi Yosef Feldman would have known from this conversation it was likely that AVL would now leave the country. It is further submitted that Rabbi Yosef Feldman should have known that AVL was leaving the country to avoid the consequences of the complaint, including potentially being charged for a criminal offence.
- 180 Rabbi Yosef Feldman said about AVL leaving the country, *'like any normal person who knows that he's been reported, it's obvious that there would be a concern and they would want to leave.'*<sup>323</sup> Rabbi Yosef Feldman asserted he did not know whether the complaint against AVL involved a criminal matter.<sup>324</sup>
- 181 Rabbi Yosef Feldman said that at the time he spoke to AVL he understood that AVL might be thinking of leaving the country and that he was aware that a process was

<sup>313</sup> Transcript of P Feldman, C6377:19-21 (Day C63).

<sup>314</sup> Transcript of Y Feldman, C6412:35-38 (Day C64).

<sup>315</sup> Transcript of P Feldman, C6378:11-22 (Day C63).

<sup>316</sup> Transcript of P Feldman C6378: 11 – 26 (Day C63).

<sup>317</sup> Transcript of P Feldman C6379: 21-36 (Day C63).

<sup>318</sup> Transcript of Y Feldman, C6417:25-30 (Day C64).

<sup>319</sup> Transcript of Y Feldman C6411: 24-34; C6411:39-44; C6419: 18-C6420:12 (Day C64).

<sup>320</sup> Transcript of Y Feldman, C6411: 39-44 (Day C64).

<sup>321</sup> Transcript of Y Feldman C6422: 29-33 (Day C64).

<sup>322</sup> Transcript of Rabbi Y Feldman, C6417:34-36 (Day C64).

<sup>323</sup> Transcript of Rabbi Y Feldman, C6412:45-47 (Day C64).

<sup>324</sup> Transcript of Rabbi Y Feldman, C6422:20-27 (Day C64).

under way by which the matters would be reported to the authorities, but *'[w]hat the ramification of that was, [Rabbi Yosef Feldman] wouldn't have a clue.'*<sup>325</sup>

- 182 Both Rabbi Pinchus Feldman and Rabbi Yosef Feldman gave evidence that they had not made notes of the meeting(s) with AVL.<sup>326</sup> When asked about taking notes, Rabbi Pinchus Feldman said:

*[T]he formal part of the reporting process was done by Bill Conway. I was, as he points out himself, I was overall responsible for the institution, but he was specifically responsible for the behavior of students and any complaints and communicating with the relevant departments.*<sup>327</sup>

- 183 When asked why he did not make records of actions taken by him separate to Mr Conway, Rabbi Pinchus Feldman said that he took no action and that action was taken by Mr Conway and Rabbi Simons who were *'dealing with the parents and the department'*.<sup>328</sup>

- 184 Rabbi Yosef Feldman was dealing with the complaint in his capacity as Rabbinical Administrator of the Yeshiva Gedola and because he was the direct supervisor of AVL.<sup>329</sup> When asked why he made no notes of the meetings with AVL, Rabbi Yosef Feldman said the following:

*Anyone who knows me knows that I don't usually make notes and I keep everything in my mind. It's not ... not my style. I'm not - it's not what I normally do regarding these issues.*<sup>330</sup>

- 185 It is submitted that both Rabbi Pinchus Feldman and Rabbi Yosef Feldman were aware that a serious allegation had been made against AVL. There is no evidence that either rabbi notified the authorities or Mr Conway or Rabbi Simons that AVL was thinking of leaving the country in response to the complaint.

- 186 Mr Conway's notes show that on 25 July 2002 at about 1.30pm, or 2.15pm, Rabbi Pinchus Feldman informed Mr Conway that he had been told by Rabbi Yosef Feldman that AVL had left the country that morning, that AVL *'had vacated his room and was gone, presumably on a plane to the US'* and that Rabbi Pinchus Feldman told Mr Conway to follow the procedures required by law.<sup>331</sup> The evidence suggests that AVL left the country within 24 hours of being informed of the complaint against him.

<sup>325</sup> Transcript of Y Feldman C6429:11-29 (Day C64).

<sup>326</sup> Transcript of P Feldman C6372: 47 – 6373:3 (Day C63); Transcript of Rabbi Y Feldman, C6432:11-15 (Day C64).

<sup>327</sup> Transcript of Rabbi P Feldman, C6371:1-6 (Day C63).

<sup>328</sup> Transcript of Rabbi P Feldman, C6371:13-16 (Day C63).

<sup>329</sup> Transcript of Rabbi Y Feldman, C6407:38-40 (Day C64); Exhibit 22-0025, Statement of Y Feldman, STAT.0468.001.0004\_R at [2.R.(b).1].

<sup>330</sup> Transcript of Rabbi Y Feldman, C6432:12-15 (Day C64).

<sup>331</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0509 (Tab 5).

- 187 Rabbi Yosef Feldman said overseas students are usually given a return ticket when they travel to Australia to study at the Gedola and that would have been the case with AVL.<sup>332</sup> During the public hearing, a call was made to Yeshiva Bondi to produce records of the purchase of AVL's ticket. It is submitted that those records would have established when the ticket had been purchased. These records have not been produced. It is submitted that, based on the evidence of Rabbi Yosef Feldman, it is likely that AVL returned to the United States on a ticket paid for by the Yeshiva Gedola.
- 188 Mr Conway's notes state that after being advised by Rabbi Pinchus Feldman that AVL had left the country, Mr Conway rang Geoff Newcombe at 2.45pm for advice and was told to ring DOCS and the Joint Investigation Response Team (JIRT) in Kogarah.<sup>333</sup> The notes state that Mr Conway rang Kogarah JIRT at 2.55, advised them that AVL had left the country.<sup>334</sup> It is submitted that the investigation into the offences complained of was hindered by AVL's departure.
- 189 Mr Conway's note states that on 5 August 2002 he spoke with the mother who had made the complaint and was informed by her JIRT had '*requested information in order to pursue their investigation, but indicated there wasn't much they could do if [AVL] was in the US.*'<sup>335</sup>
- 190 Mr Conway's notes record that on 5 August 2002, he noted that a report to the NSW Ombudsman was completed and needed the signature of '*Rabbi Feldman*' and that Mr Conway would ask him about it at their management meeting.<sup>336</sup> Also on 5 August 2002, Mr Conway also wrote to Dr Geoff Newcombe from the Association of Independent Schools, notifying him of the steps taken.<sup>337</sup>
- 191 A document received into evidence by the Commission shows that the notification to the NSW Ombudsman of the allegation against AVL was signed on 7 August 2002 and stamped as received on 12 August 2002.<sup>338</sup> On 4 September 2002, the NSW Ombudsman sent a letter to Rabbi Pinchus Feldman acknowledging that the notification and report had been received.<sup>339</sup>
- 192 The Commission received into evidence a letter sent by Mr Conway to the NSW Ombudsman dated 23 October 2002. The letter attached his written notes of the investigation following the allegation.<sup>340</sup> On 4 December 2002, the NSW Ombudsman wrote to Rabbi Pinchus Feldman and acknowledged receipt of Mr Conway's letter.<sup>341</sup>

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<sup>332</sup> Transcript of Y Feldman, C6415: 24-39 (Day C64).

<sup>333</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0509 (Tab 5).

<sup>334</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0509 (Tab 5).

<sup>335</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0510 (Tab 5).

<sup>336</sup> Exhibit 22-0023, NPF.053.002.0507\_E\_R at 0510 (Tab 5).

<sup>337</sup> Exhibit 22-0023, KTC.0001.001.0043 (Tab 186).

<sup>338</sup> Exhibit 22-0023, OMB.0008.001.0294\_R (Tab 6).

<sup>339</sup> Exhibit 22-0023, OMB.0008.001.0293\_R (Tab 7).

<sup>340</sup> Exhibit 22-0023, OMB.0008.001.0282\_R (Tab 8).

<sup>341</sup> Exhibit 22-0023, OMB.0008.001.0276\_R (Tab 9).

## Rabbi Yosef Feldman's understanding of whether a crime had been committed by AVL and his understanding of mandatory reporting requirements in 2002

- 193 Rabbi Yosef Feldman told the Commission that he did not recognise that AVL's conduct may have amounted to a crime or that one of the consequences of reporting the conduct might be that AVL would be charged with a crime.<sup>342</sup> Rabbi Yosef Feldman said he *'didn't know much about sex abuse at all'*<sup>343</sup> and *'it didn't enter into [his] mind the whole idea of what's considered a legal crime or not; what should be reported to the police or not.'*<sup>344</sup> Rabbi Yosef Feldman said he *'didn't know whether it's a criminal matter, [he] didn't know - [he] really didn't know much about sex abuse at all.'*<sup>345</sup> Rabbi Yosef Feldman said he did not think about whether child sexual abuse was criminal and whether it needed to go to the police.<sup>346</sup> He said he did not know abuse involving a child might expose someone to criminal liability.<sup>347</sup> He stated that he only recently learnt of the serious criminal nature of child sexual abuse.<sup>348</sup>
- 194 Rabbi Yosef Feldman said his understanding was that the allegations involving AVL were that he touched the genitals of an underage boy.<sup>349</sup> Rabbi Yosef Feldman gave evidence that AVL told him that *'I did not actually do anything wrong. I just laid with him. I may have massaged him but not inappropriately'*.<sup>350</sup> Rabbi Yosef Feldman said he thought the behaviour both highly inappropriate<sup>351</sup> and suggestive of being sexual in nature.<sup>352</sup> When asked whether he agreed that a teacher should not lie down in a bed and massage a child, he said that the conduct was wrong from a 'Jewish perspective' as he considered it an abuse but not necessarily wrong from a legal perspective.<sup>353</sup>
- 195 When asked if a massage involved touching of genitals of a child was likely a crime, Rabbi Yosef Feldman said that he would probably have thought it criminal.<sup>354</sup> During questioning by his counsel, Rabbi Yosef Feldman said that if he had known that AVL had fondled the child's genitals *'with sexual connotation or overtone'*, he would have known it was a crime.<sup>355</sup> It is submitted that the certainty of his response to his counsel on this point cannot be reconciled with his earlier ambiguity and repeated assertions that he did not know much about the criminal nature of child sexual abuse in 2002. It is submitted that it is likely that his response was motivated by the public response to his evidence given at the Commission on an earlier date.

<sup>342</sup> Transcript of Y Feldman C6433:12-22 (Day C64); Transcript of Y Feldman C6430:39-C6431:2 (Day C64).

<sup>343</sup> Transcript of Rabbi Y Feldman, C6422:23 (Day C64).

<sup>344</sup> Transcript of Rabbi Y Feldman, C6425:37-40 (Day C64).

<sup>345</sup> Transcript of Y Feldman, C6422:22-23 (Day C64).

<sup>346</sup> Transcript of Y Feldman C6423:39-6424:34 (Day C64).

<sup>347</sup> Transcript of Y Feldman C6423: 39-41 (Day C64).

<sup>348</sup> Transcript of Rabbi Y Feldman, C6424:27-31 (Day C64).

<sup>349</sup> Exhibit 22-0025, Statement of Y Feldman, STAT.0468.001.0004\_R at [2.R.(b).7].

<sup>350</sup> Exhibit 22-0025, Statement of Y Feldman, STAT.0468.001.0001\_R at [2.R.(b).5].

<sup>351</sup> Transcript of Rabbi Y Feldman, C6422:31 (Day C64); C6429:31- 41 (Day C64).

<sup>352</sup> Transcript of Rabbi Y Feldman, C6429:39 (Day C64).

<sup>353</sup> Transcript of Y Feldman, C6427:5-14, C6427:16-28 (Day C64).

<sup>354</sup> Transcript of Y Feldman, C6431:4 -13 (Day C64).

<sup>355</sup> Transcript of Y Feldman, C6637:13-17 (Day C65).

196 In any event, Rabbi Yosef Feldman was not being asked about his knowledge of specific crimes only whether he knew that child sexual abuse was a crime. Rabbi Yosef Feldman was given many opportunities to accept a proposition that depending on what was massaged by AVL at the time the conduct might amount to a crime; he resisted those propositions and argued that he did not understand the criminal nature of child sexual abuse in 2002.<sup>356</sup>

197 Given that Rabbi Yosef Feldman knew:

- a complaint had been made against AVL of inappropriate contact with a child at camp;
- that AVL had been told following the complaint he had to keep away from children because *'he would be a big danger to the students'*;<sup>357</sup>
- that AVL had laid down with a child and massaged him;
- that the complaint was going to be reported; and

coupled with Rabbi Feldman's impression that AVL's behaviour was highly inappropriate and sexual in nature, it is submitted that Rabbi Yosef Feldman should have known or suspected that the conduct complained of could have been a crime.

198 Rabbi Yosef Feldman told the Commission that in 2002 he was not aware of the mandatory reporting requirements<sup>358</sup> or of mandatory reportable conduct to the NSW Ombudsman<sup>359</sup> despite being a director of an entity that ran a school.<sup>360</sup> Rabbi Yosef Feldman said that he was aware that a process was under way in relation to the complaints made against AVL where matters would be reported to the authorities. He said however, *'What the ramification of that was, I wouldn't have a clue'*.<sup>361</sup>

199 Rabbi Yosef Feldman sought to explain his lack of knowledge by saying that he did not have any involvement in the day-to-day running of the school,<sup>362</sup> and that he relied on his father, Rabbi Pinchus Feldman to tell him of his obligations.<sup>363</sup> It is submitted that neither explanation should be accepted by the Royal Commission as a reasonable explanation for Rabbi Yosef Feldman's lack of knowledge.

200 In 2002, Rabbi Yosef Feldman was a senior employee of Yeshiva Bondi. He was Rabbinic Administrator of Yeshiva Gedolah; a director of STCA, the company that carried on the business as the Yeshiva Centre; and a director Yeshiva College Ltd, the

<sup>356</sup> Transcript of Y Feldman C6421:12- 6423:3 (Day C64); C6423:5 – 6424:40 (Day C64); C6425:3 -45 (Day C64); C6425:29- 6427:14 (Day C64); C6430:39-C6431:2 (Day C64),C6433:12-22 (Day C64).

<sup>357</sup> Transcript of Y Feldman, C6637:38-43 (Day C65).

<sup>358</sup> Transcript of Rabbi Y Feldman, C6428:27-28 (Day C64).

<sup>359</sup> Transcript of Y Feldman 6428: 30-36 (Day C64).

<sup>360</sup> Transcript of Rabbi Y Feldman, C6428: 38-C6429:1 (Day C64).

<sup>361</sup> Transcript of Y Feldman C6429:28-29 (Day C64).

<sup>362</sup> Transcript of Rabbi Y Feldman, C6433:40 (Day C64).

<sup>363</sup> Transcript of Rabbi Y Feldman, C6433:37-43 (Day C64).

company that ran Yeshiva College.<sup>364</sup> By 2002, Rabbi Yosef Feldman had been a director of Yeshiva College Limited for ten years.<sup>365</sup>

- 201 It is submitted that given Rabbi Yosef Feldman's directorships and his senior role at Yeshiva Bondi, Rabbi Yosef Feldman should have known what conduct amounted to child sexual abuse and that child sexual abuse was a crime. Rabbi Feldman should have been aware of the statutory reporting obligations for responding to child sexual abuse.

**Rabbi Moshe Gutnick's knowledge of the complaint against AVL before AVL's departure on 25 July 2002**

- 202 In his statement dated 2 January 2015,<sup>366</sup> Rabbi Moshe Gutnick gave evidence about his knowledge of the allegations made against AVL. Rabbi Moshe Gutnick says:

*At the time the allegations were made against the rabbinic student [AVL] my family and I were away on holidays. When I returned to Sydney the rabbinic student was no longer at the Yeshiva campus. I was told that he had returned home to the United States but I was not told why. Eventually, the reason why he returned to the United States leaked out.<sup>367</sup>*

- 203 In his statement dated 22 January 2015,<sup>368</sup> Rabbi Yosef Feldman gave an account of a conversation he had with AVL before AVL left Australia. Rabbi Yosef Feldman asserts that AVL said to him:

*I have received an assurance from Rabbi Moshe Gutnick [redacted] that if I leave and complete my studies successfully overseas then Rabbi Moshe Gutnick can arrange and probably give me semicha independently of Yeshiva Gedola.<sup>369</sup>*

- 204 Rabbi Yosef Feldman further stated that a short time after this AVL returned to the USA.<sup>370</sup>

- 205 A satisfactory explanation of what assistance was or was not given to AVL in returning to the USA was not given, leaving open to question the circumstances of AVL's departure.

- 206 Rabbi Moshe Gutnick was questioned regarding the timing of his knowledge about the allegations made against AVL.<sup>371</sup> Rabbi Moshe Gutnick gave evidence that the first he heard of an issue with AVL was when one of his brothers called him to say that AVL

<sup>364</sup> Exhibit 22-0025 Statement of Y Feldman, STAT.0465.001.0001 [1.R.1-1.R.5]

<sup>365</sup> Transcript of Rabbi Y Feldman, C6428:20, 38-41 (Day C64).

<sup>366</sup> Exhibit 22-0019 Statement of M Gutnick, STAT.0458.001.0001.

<sup>367</sup> Exhibit 22-0019 Statement of M Gutnick, STAT.0458.001.0001 [20].

<sup>368</sup> Exhibit 22-0025 Statement of Y Feldman, STAT.0468.001.0001\_R.

<sup>369</sup> Exhibit 22-0025 Statement of Y Feldman, STAT.0468.001.0001\_R [2.R.(b).4].

<sup>370</sup> Exhibit 22-0025 Statement of Y Feldman, STAT.0468.001.0001\_R [2.R.(b).8].

<sup>371</sup> Transcript of M D Gutnick, C6263:16-C6264:1 (Day C62).

had left the country and that there was a '*suspicion or an allegation of abuse*'.<sup>372</sup> Rabbi Moshe Gutnick said he did not recall whether or not he was told it was an allegation of abuse at the time he was told AVL left the country or subsequently, but he recalls there were multiple conversations, the conversations occurred after AVL had left the country, and he did not speak to AVL before AVL left the country.<sup>373</sup>

- 207 Rabbi Moshe Gutnick recalled that several weeks after finding out about the allegation, he received a telephone call from AVL's father who asked him if he would still examine AVL for his rabbinic ordination.<sup>374</sup> Rabbi Moshe Gutnick said he told AVL's father that he would not do so because of the allegation that had been made.<sup>375</sup> Rabbi Moshe Gutnick said AVL's father acknowledged to him that something had occurred but did not go into detail.<sup>376</sup> Rabbi Moshe Gutnick said AVL's father said that his son was receiving therapy.<sup>377</sup>
- 208 Rabbi Moshe Gutnick gave evidence that he did not remember the name of the person '*overseeing*' AVL, but that he recalled speaking to that person in order to ascertain that AVL was '*being overseen*'.<sup>378</sup> Rabbi Moshe Gutnick said that he understands that to this day AVL remains under care and is being kept away from children, but that he is unaware of the extent and nature of the supervision.<sup>379</sup>
- 209 Rabbi Moshe Gutnick gave evidence that he agreed to test AVL for his rabbinic ordination provided he remained under care.<sup>380</sup> However, Rabbi Moshe Gutnick said that the suggestion that he had agreed to test AVL, or provided some assurance to AVL that he would still be able to be tested, for rabbinical ordination before AVL left the country was '*absolutely false*'.<sup>381</sup>
- 210 Rabbi Yosef Feldman was questioned at the public hearing about the conversation he asserted he had with AVL about an assurance given by Rabbi Moshe Gutnick.<sup>382</sup> Rabbi Yosef Feldman said that at the time of the alleged conversation he did not know whether Rabbi Moshe Gutnick knew there had been an allegation of abuse.<sup>383</sup> Rabbi Yosef Feldman said that all he knew was that AVL had told him that Rabbi Moshe Gutnick had given AVL an assurance of some kind but did not say '*on what basis, why and what*'.<sup>384</sup>

<sup>372</sup> Transcript of M D Gutnick, C6263:16-36 (Day C62).

<sup>373</sup> Transcript of M D Gutnick, C6264:7-24 (Day C62).

<sup>374</sup> Transcript of M D Gutnick, C6264: 28-32 (Day C62); Exhibit 22-0019 Statement of M Gutnick, STAT.0458.001.0001 [21].

<sup>375</sup> Transcript of M D Gutnick, C6264: 32-33 (Day C62); Exhibit 22-0019 Statement of M Gutnick, STAT.0458.001.0001 [21].

<sup>376</sup> Transcript of M D Gutnick, C6264: 33-35 (Day C62); Exhibit 22-0019 Statement of M Gutnick, STAT.0458.001.0001 [21].

<sup>377</sup> Transcript of M D Gutnick, C6264: 36-37; C6264:2-7 (Day C62); Exhibit 22-0019 Statement of M Gutnick, STAT.0458.001.0001 [21].

<sup>378</sup> Transcript of M D Gutnick, C6264: 38-44 (Day C62).

<sup>379</sup> Transcript of M D Gutnick, C6264: 38-44; C6264:2-7 (Day C62).

<sup>380</sup> Transcript of M D Gutnick, C 6264: 26-47; C6264:9-11 (Day C62)

<sup>381</sup> Transcript of M D Gutnick, C6265:37 (Day C62).

<sup>382</sup> Transcript of Y Feldman, C6417:32-C6419:16 (Day C64).

<sup>383</sup> Transcript of Y Feldman, C6418:19 (Day C64).

<sup>384</sup> Transcript of Y Feldman, C6418:20-21 (Day C64).

- 211 It is submitted that Rabbi Moshe Gutnick's evidence that he did not know about AVL's departure from Australia and the alleged abuse until AVL had left Australia should be accepted. It is submitted that the evidence of Rabbi Moshe Gutnick that the suggestion that he had agreed to test AVL, or provided some assurance to AVL that he would still be able to be tested, for rabbinical ordination before AVL left the country was '*absolutely false*' should be accepted and preferred over the evidence of Rabbi Yosef Feldman to the contrary.

#### **Available findings on Yeshiva Bondi's response to the 2002 complaint of child sexual abuse by AVL**

- F6 On 24 July 2002, Rabbi Pinchus Feldman and Rabbi Yosef Feldman were both aware that a student at Yeshiva Bondi had made a complaint of child sexual abuse by AVL, a rabbinical student at the Yeshiva Gedola. Both Rabbi Pinchus Feldman and Rabbi Yosef Feldman failed to tell key employees involved in responding to the complaint or the authorities that AVL was thinking of leaving the country because of the complaint.
- F7 AVL left the country less than 24 hours after being informed of the allegation on a ticket paid for by the Yeshiva Gedola. AVL's rapid departure from Australia hindered the police investigation of the complaints made against him.
- F8 As at 24 July 2002, Rabbi Yosef Feldman lacked understanding of:
- conduct amounting to child sexual abuse ;
  - the criminal nature of child sexual abuse; and
  - the obligations in NSW to report complaints of child sexual abuse to external authorities including the NSW Ombudsman.
- F9 As at 24 July 2002, Rabbi Yosef Feldman was a director of Yeshiva College Ltd which operated Yeshiva College, a director of STCA which ran Yeshiva Bondi and the Dean of Yeshiva Gedola, a rabbinical training college whose students were routinely involved in working with children. As a director and senior employee, Rabbi Yosef Feldman should have had an understanding of what conduct amounted to child sexual abuse and that child sexual abuse was a crime. Rabbi Feldman should have been aware of the statutory reporting obligations for responding to child sexual abuse.
- F10 William Conway, employee of Yeshiva College Ltd appropriately documented the complaint against AVL and reported the allegations made against AVL to the relevant authorities.

#### **Yeshiva Bondi: Views expressed by Rabbi Yosef Feldman on the halachic obligation of reporting child sexual abuse allegations and how rabbis should respond to child sexual abuse allegations**

- 212 The public hearing examined documents in which Rabbi Yosef Feldman expressed views about the nature of child sexual abuse and how the Jewish community and rabbis, in particular, should respond to allegations of child sexual abuse and the issue generally.

***Rabbi Feldman's views in July 2011: The 21 – 25 July 2011 emails, the public statement of 26 July 2011, the emails of 27 July 2011***

213 The public hearing examined a number of emails exchanged between a number of rabbis in the period 21 to 25 July 2011.<sup>385</sup> In these emails Rabbi Yosef Feldman expressed a position that appeared to indicate that he did not support the reporting of all allegations of child sexual abuse to the secular authorities, appeared to advocate a role for rabbis in investigating the truth of the complaints and appeared to advocate for rabbis to have a role in deciding how to respond to allegations of child sexual abuse.

214 The views expressed by Rabbi Yosef Feldman in the emails included views that:

- allegations of child sexual abuse should be first reported to a rabbi, before any report is made to secular authorities, so that the rabbi may ascertain the validity of the complaint and avoid any contravention of mesirah;<sup>386</sup>
- advocate for a position that the Jewish community deal with allegations rather than the secular authorities;<sup>387</sup>
- in some instances, a reporter of child sexual abuse would be a moser and drawing a distinction between a sexual assault that is molestation as opposed to an assault resulting in intercourse.<sup>388</sup>

215 Rabbi Yosef Feldman argued in the email exchange that the rabbinate should adopt a position in line with his interpretation of the view of the Agudas Yisroel of America that all complaints of sexual abuse should first be made to a rabbi who should decide whether to go to the authorities.<sup>389</sup> Rabbi Yosef Feldman questioned the position of the ORA that all allegations should be reported to the police immediately.<sup>390</sup>

216 In the email discussions, a number of rabbis actively disagreed with the views expressed by Rabbi Yosef Feldman:

- Rabbi Moshe Gutnick said that Rabbi Yosef Feldman was wrong, stating that rabbis lack the capacity to conduct a proper investigation of allegations;<sup>391</sup>
- Rabbi Mendel Kastel highlighted mandatory reporting requirements and a need for formal training when dealing with children;<sup>392</sup>

<sup>385</sup> Exhibit 22-0023, IND.0214.001.0179\_R (Tab 50); Exhibit 22-0023, KAA.0001.001.0102\_R (Tab 51); KAA.0001.001.0002\_R (Tab 52); Exhibit 22-0023, KAA.0001.001.0091\_R (Tab 53); Exhibit 22-0023, KAA.0001.001.0082\_R (Tab 54); Exhibit 22-0023, KAA.0001.001.0071\_R (Tab 55); Exhibit 22-0023, KAA.0001.001.0119\_R (Tab 56); Exhibit 22-0023, KAA.0001.001.0061\_R (Tab 57).

<sup>386</sup> Exhibit 22-0023, IND.0214.001.0179\_R (Tab 50).

<sup>387</sup> Exhibit 22 -0023, IND.0214.001.0179\_R at 0179 and 0180 (Tab 50).

<sup>388</sup> Exhibit 22 -0023, IND.0214.001.0179\_R at 0182 (Tab 50).

<sup>389</sup> Exhibit 22-0023, KAA.0001.001.0102\_R (Tab 51).

<sup>390</sup> Exhibit 22-0023, IND.0214.001.0179\_R (Tab 50).

<sup>391</sup> Exhibit 22-0023, KAA.0001.001.0102\_R at 0107\_R (Tab 51).

<sup>392</sup> Exhibit 22-0023, IND.0214.001.0179 at 0180\_R (Tab 50).

- Rabbi Meir Shlomo Klwugant stated that victims should be encouraged to go to the police;<sup>393</sup>
- Rabbi Moshe Gutnick argued that any allegations should be handed to the police immediately;<sup>394</sup> and
- Rabbi Laibl Wolf labelled Feldman's views '*socially dangerous for Jews.*'<sup>395</sup>

217 In oral evidence, Rabbi Yosef Feldman told the Royal Commission that the emails were a discussion among rabbis.<sup>396</sup> Rabbi Yosef Feldman was taken to the words '*Toiroh hee velilmoid unee tzorich*' used at the beginning of his first email sent on 21 July 2011<sup>397</sup> and agreed that the words were a form of disclaimer meaning to the effect that he was raising the matter for the purpose of debate.<sup>398</sup>

218 Rabbi Yosef Feldman said during his examination that he was motivated to send the emails because of what was going on in the community, which he felt hurt and upset with.<sup>399</sup> He explained his reasons: first, because of his perceived vilification of Rabbi Groner and the way the media was treating him;<sup>400</sup> and secondly, because accusations of child sexual abuse were being made against friends of his, including David Cyprys, and Rabbi Yosef Feldman was '*wondering from the Jewish perspective if they are being treated properly*'.<sup>401</sup>

219 Rabbi Yosef Feldman said that the views he expressed were to encourage the Jewish community to address its problem internally and not just leave it to others to deal with.<sup>402</sup>

220 At the public hearing, Rabbi Yosef Feldman conceded that certain views he expressed in the emails were halachically wrong but he did not know this at the time.<sup>403</sup> He further gave evidence that the emails were a debate and he no longer adhered to the views he had expressed in any event.<sup>404</sup>

221 Rabbi Yosef Feldman told the Royal Commission that sometime on either 25 or 26 July 2011, some of the email exchange between the rabbis was leaked to the press resulting in public discussion and criticism.<sup>405</sup>

<sup>393</sup> Exhibit 22-0023, IND.0214.001.0179 at 0180\_R (Tab 50).

<sup>394</sup> Exhibit 22-0023, IND.0214.001.0179 at 0181\_R (Tab 50).

<sup>395</sup> Exhibit 22-0023, KAA.0001.001.0071 at 0075\_R (Tab 55).

<sup>396</sup> Transcript of Y Feldman, C6444: 10-11 (Day C64).

<sup>397</sup> Exhibit 22-0023, KAA.0001.001.0102\_R at 0109\_R (Tab 51).

<sup>398</sup> Transcript of Y Feldman, C6444: 54-C6445: 14 (Day C64).

<sup>399</sup> Transcript of Y Feldman, C6445:18-20 (Day C64).

<sup>400</sup> Transcript of Y Feldman, C6445:20-25 (Day C64).

<sup>401</sup> Transcript of Y Feldman, C6445:27-42 (Day C64).

<sup>402</sup> Transcript of Y Feldman, C6457:5-8 (Day C64).

<sup>403</sup> Transcript of Y Feldman, C6472:44-C6473:5; C6480:25-38; C6481: 1315; C6481:38-47 (Day C64).

<sup>404</sup> Transcript of Y Feldman, C6444:45 – 6445:14 (Day C64); C6472:23 – 42 (Day C64), C6476:42- 6477:45 (Day C64), C6489:44 -6490:11 Exhibit 22- 0025 Stat.0468.002.0001.

<sup>405</sup> Transcript of Y Feldman, C6507:45-C6508:5 (day C65).

- 222 The Royal Commission received into evidence a statement made by Rabbi Yosef Feldman to the Australian Jewish News on 26 July 2011 in response to the leaked emails.<sup>406</sup> Rabbi Yosef Feldman said:

*Over the past few days there has been an internal Halachic debate amongst the Rabbinate of Australia relating to the serious and reprehensible issues of child abuse and the appropriate response.*

*Notwithstanding the complex Halachic nuances and varied opinions, the Rabbinate of NSW under my Presidency has unanimously endorsed the attached RCV resolution from 2010 on this matter.*

*I would like to unequivocally publicise my support and encouragement of the adoption of that resolution within the NSW Rabbinate and the wider Jewish community.*<sup>407</sup>

- 223 Rabbi Yosef Feldman's statement to the Australian Jewish News included a copy of the 2010 RCV Resolution which said that the prohibition of mesirah did not apply in cases of abuse and in fact it is halachically obligatory to make such reports.<sup>408</sup> Rabbi Yosef Feldman asked the Australian Jewish News to print his statement in full.<sup>409</sup>
- 224 In his evidence before the Royal Commission, Rabbi Yosef Feldman sought to rely on his statement to the Australian Jewish News as evidence of his actual views on responding to child sexual abuse as at 26 July 2011.<sup>410</sup> Rabbi Yosef Feldman told the Royal Commission that he wanted in to be known in the community that he unequivocally published his support for the adoption of the 2010 RCV Resolution by the rabbinate and the broader Jewish community.<sup>411</sup>
- 225 The Royal Commission received into evidence email correspondence between Rabbi Yosef Feldman, Rabbi Moshe Gutnick and Rabbi Kluwgant dated 27 July 2011.<sup>412</sup>
- 226 In those emails, Rabbi Yosef Feldman said to Rabbi Moshe Gutnick, that he had heard the Beth Din was going to issue a public statement '*to report abuse*'.<sup>413</sup> Rabbi Yosef Feldman expressed to Rabbi Moshe Gutnick his concern that a friend of his, David Cyprys was having his life ruined '*for no good reason*' even though he had done '*Tshuva*' (repentance).<sup>414</sup>
- 227 Rabbi Kluwgant responded to Rabbi Yosef Feldman and told him that he should '*back off and let this be*' and that if he continued his campaign '*we would all be losers*

<sup>406</sup> Exhibit 22-0026, IND.0236.001.0001\_R.

<sup>407</sup> Exhibit 22-0026, IND.0236.001.0001\_R.

<sup>408</sup> Exhibit 22-0026, IND.0236.001.0001\_R at 0004\_R.

<sup>409</sup> Exhibit 22-0026, IND.0236.001.0001\_R at 0002\_R.

<sup>410</sup> Transcript of Y Feldman, C6509: 7-9 (Day C65); Exhibit 22-0026, IND.0236.001.0001\_R.

<sup>411</sup> Transcript of Y Feldman, C6512:2-6 (Day C65).

<sup>412</sup> Exhibit 22-0023, KAA.0001.001.0022\_R (Tab 60).

<sup>413</sup> Exhibit 22-0023, KAA.0001.001.0022\_R at 0023\_R (Tab 60).

<sup>414</sup> Exhibit 22-0023, KAA.0001.001.0022\_R at 0023\_R (Tab 60).

here.’<sup>415</sup> Rabbi Kluwgant continued that the Jewish leaders could not be seen ‘*IN ANY WAY supporting the covering up of such crimes – telling people not to go to the police but to come to us first so we can decide whether they should go or not was wrong.*’<sup>416</sup>

228 Rabbi Yosef Feldman replied to Rabbi Moshe Gutnick and Rabbi Kluwgant and said:

*Anyway my main issue was not so much for the victims themselves but also and mainly that hearsay allegations that we must report i.e. in loshoin of the act reasonable risk of significant harm, if in doubt, should be first determined by a Rabbi who would also do his utmost not just for the victim but also keeping in mind messiro in any gray area that the authorities in conjunction with an expert wouldn’t consider.*<sup>417</sup>

229 It is submitted that the views and arguments set out in Rabbi Yosef Feldman’s 27 July 2011 emails are not consistent with the views of a person who unequivocally accepted the 2010 RCV Resolution, and his evidence at the public hearing to the contrary should not be accepted.

230 It is submitted that Rabbi Yosef Feldman expressed the same views in the 21-25 July 2011 emails and in the emails of 27 July 2011 and this leads to the inference that the public statement made by him on 26 July 2011 to the Australian Jewish News was a public relations exercise and was not a true statement of his views at that time on how to respond to child sexual abuse.

231 It is submitted that at the time of making his statement to the Australian Jewish News on 26 July 2011, the opinions set out by Rabbi Yosef Feldman in his emails of 21-25 and 27 July 2011 represent his true views about the reporting and handling of allegations of child sexual abuse within the Jewish community.

#### **Available findings on Yeshiva Bondi: Rabbi Yosef Feldman’s views on child sexual abuse in July 2011**

F11 Rabbi Yosef Feldman’s public statement on 26 July 2011 that he unequivocally accepted the 2010 RCV Resolution that there was a halachic obligation to report all allegations of abuse to the police, was not a true statement of his beliefs but an exercise in public relations to seek to mitigate damage to his reputation following public dissemination of the 21-25 July 2011 emails and the controversial views he expressed in the emails about child sexual abuse.

F12 As at 26 July 2011, Rabbi Yosef Feldman, then President of the Rabbinical Council of NSW, held a view that the prohibition of mesirah was relevant when considering whether or not to report allegations of child sexual abuse made against a Jewish person to the authorities.

<sup>415</sup> Exhibit 22-0023, KAA.0001.001.0022\_R (Tab 60).

<sup>416</sup> Exhibit 22-0023, KAA.0001.001.0022\_R (Tab 60).

<sup>417</sup> Exhibit 22-0023, KAA.0001.001.0022\_R (Tab 60).

F13 As at 26 July 2011, Rabbi Yosef Feldman held a view that allegations of child sexual abuse should in the first instance be reported to a rabbi who should investigate the complaint and determine whether or not to report to the authorities. Rabbi Yosef Feldman believed that a relevant consideration for a rabbi in deciding whether or not to report an allegation was when the abuse was committed and whether the perpetrator had repented or changed.

F14 As at 26 July 2011, Rabbi Yosef Feldman's views were in part motivated by his friendship with David Cyprys who was then being investigated for historical allegations of child sexual abuse.

### **Yeshiva Bondi: Response to the charging of Daniel Hayman and Rabbi Yosef Feldman's contact with AVB in 2013**

232 AVB gave evidence to the Royal Commission that in November 2013 Daniel Hayman was charged in relation to child sexual assaults committed against underage teenage boys from Yeshiva Bondi.<sup>418</sup>

233 On 4 November 2013, Rabbi Yosef Feldman sent an email to Rabbi Moshe Gutnick and copied to Rabbi Pinchus Feldman, Rabbi Mordechai Gutnick and Rabbi Yoram Ulman in which he asked whether Rabbi Moshe Gutnick was '*happy that your strong statement to musser*' may result in Daniel Hayman going to jail for a crime he committed 25 years earlier.<sup>419</sup> Rabbi Yosef Feldman explained his actions at the public hearing, saying the following:

*The reality is I wasn't happy about it, him ending up in jail. Someone who has done Teshuvo, ending up in gaol for many years I didn't think is a good thing.*<sup>420</sup>

234 In his email to Rabbi Moshe Gutnick on 4 November 2013, Rabbi Yosef Feldman said:

*My thoughts on the matter...was that the idea of going to a rabbi should be seriously considered mainly for such instances where the offence was committed decades ago as a young person and now the person has certainly changed.*<sup>421</sup>

235 Rabbi Yosef Feldman explained that as at November 2013, he had heard that Daniel Hayman had an assessment, that Hayman had not offended in the last 25 years and that it was highly unlikely that Hayman would reoffend.<sup>422</sup>

<sup>418</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [95].

<sup>419</sup> Exhibit 22-0027, IND.0236.004.0001\_R.

<sup>420</sup> Transcript of Y Feldman C6556:44-47 (Day C65).

<sup>421</sup> Exhibit 22-0027, IND.0237.004.001\_R.

<sup>422</sup> Transcript of Y Feldman, C6553:38 –C6556: 47 (Day C65).

- 236 On 6 November 2013, AVB received an email from Rabbi Yosef Feldman in which Rabbi Yosef Feldman told AVB that he had heard AVB was a victim of Daniel Hayman and that he had been told that AVB had *'reported it to the police and this was the basis of him being arrested'*.<sup>423</sup>
- 237 Rabbi Yosef Feldman told the Royal Commission that Daniel Hayman was a friend of his.<sup>424</sup> Rabbi Yosef Feldman said that following Daniel Hayman's arrest, he asked Daniel Hayman who had made the complaint against him because he had heard some information about who may have made the complaint and Rabbi Yosef Feldman wanted to confirm who it was.<sup>425</sup> Rabbi Yosef Feldman said that Daniel Hayman confirmed to him that the complainant was AVB.<sup>426</sup>
- 238 Rabbi Yosef Feldman told the Royal Commission he called and then emailed AVB.<sup>427</sup>
- 239 In his email to AVB, Rabbi Yosef Feldman asked AVB whether *'The Rabbinical Council's statements and specifically the position of ORA and of [his] uncle Rabbi Moshe Gutnick was a contributing factor for [AVB] to have known that it was Halachically essential for [AVB] to report it'* and whether the statements were a factor that gave AVB the courage to go to the police.<sup>428</sup> Rabbi Feldman also asked AVB if he felt *'that if [Hayman] is convicted and jailed it will heal any emotional damage caused?'*<sup>429</sup> Rabbi Feldman also told AVB *'Just by the way he also told me that he was shocked that it was you as he thought that he had worked things out with you'*.<sup>430</sup>
- 240 AVB replied asking who had disclosed his identity.<sup>431</sup> Rabbi Yosef Feldman responded that Hayman had told people who Rabbi Yosef Feldman had heard from.<sup>432</sup> In the emails to AVB, Rabbi Yosef Feldman said that for him to name the people who told him it would be *'loshoin horo and is Rechilus'*.<sup>433</sup>
- 241 When asked during his examination if he thought such contact with a survivor was appropriate, Rabbi Yosef Feldman said he *'didn't think it's much of an issue'*;<sup>434</sup> however, admitted *'it may be something which in retrospect is a bit insensitive.'*<sup>435</sup>
- 242 Rabbi Yosef Feldman argued that the issue regarding Daniel Hayman *'was an issue which was very relevant to [himself] and [his] involvement in the past and [he] was just interested to hear what [AVB] had to say about it.'*<sup>436</sup>

<sup>423</sup> Exhibit 22-0028, IND.0214.004.0001\_R at 0004\_R.

<sup>424</sup> Transcript of Y Feldman, C6543:11 (Day C65).

<sup>425</sup> Transcript of Y Feldman, C6543:21-31 (Day C65).

<sup>426</sup> Transcript of Y Feldman, C6543:33-36 (Day C65).

<sup>427</sup> Transcript of Y Feldman, C6543:46 (Day C65).

<sup>428</sup> Exhibit 22-0028, IND.0214.004.0001\_R at 0004\_R.

<sup>429</sup> Exhibit 22-0028, IND.0214.004.0001\_R at 0004\_R.

<sup>430</sup> Exhibit 22-0028 IND.0214.004.0002.\_R; Transcript of Y Feldman, C6559:43 -6560:10 (Day C65).

<sup>431</sup> Exhibit 22-0028, IND.0214.004.0001\_R at 0004\_R.

<sup>432</sup> Exhibit 22-0028, IND.0214.004.0001\_R at 0004\_R.

<sup>433</sup> Exhibit 22-0028, IND.0214.004.0001\_R at 0002\_R.

<sup>434</sup> Transcript of Y Feldman, C6545:6 (Day C65).

<sup>435</sup> Transcript of Y Feldman, C6548:2-3 (Day C65).

<sup>436</sup> Transcript of Y Feldman, C6550:46-47; C6551:1-2 (Day C65).

- 243 Rabbi Yosef Feldman said he was unhappy that Daniel Hayman had been charged for an offence committed 25 years ago and he believed it was wrong that Daniel Hayman might go to jail, particularly as the offence had happened ‘some time ago’ and he had heard that Daniel Hayman had done teshuvo.<sup>437</sup>
- 244 At the time Rabbi Yosef Feldman contacted AVB, Rabbi Yosef Feldman knew that AVB had been a victim of child abuse perpetrated by Daniel Hayman.<sup>438</sup> It is submitted that Rabbi Yosef Feldman’s decision to contact AVB by email was not done to offer his support as a rabbi to AVB but was done instead to question why AVB reported his abuse by Hayman to the police rather than to a rabbi.
- 245 The evidence establishes that Rabbi Feldman was motivated to contact AVB because he was angry that public pronouncements of rabbinical leaders were encouraging victims to report abuse that had happened many years earlier and where the abuser might have ‘changed’.<sup>439</sup> It is submitted that as at November 2013, Rabbi Yosef Feldman had a belief, as set out in his email of 4 November 2013 to Rabbi Moshe Gutnick, that historical child abuse complaints should be reported to a rabbi who should decide if the matter should go to the police and that a relevant consideration for the rabbi when deciding to permit someone to report to the police is whether, in the rabbi’s opinion, the perpetrator had changed.<sup>440</sup>

#### **Available findings on Rabbi Yosef Feldman’s contact with AVB in 2013**

F15 Rabbi Yosef Feldman’s decision in 2013 to contact a victim of child sexual abuse, AVB, was not to offer his support to AVB as a rabbi but was instead to question why AVB reported the abuse perpetrated against him to the police rather than to a rabbi.

F16 Rabbi Feldman was motivated to contact AVB because he was angry that his friend Daniel Hayman had been charged and might go to jail for an offence of child sexual abuse against AVB. When Rabbi Feldman contacted AVB, Rabbi Feldman knew that Daniel Hayman had abused AVB.

F17 As late as November 2013, Rabbi Feldman held the opinion that child abuse complaints should first be reported to a Rabbi to decide if the matter should be reported to the police. Rabbi Feldman believed a relevant consideration for a Rabbi deciding whether to permit a complaint of abuse to go the police, was the question of whether- in the Rabbi’s opinion- the perpetrator had changed since the time of the offence.

<sup>437</sup> Transcript of Y Feldman, C6555:39 -6559:4 (Day C65).

<sup>438</sup> Transcript of Y Feldman, C6559:43-6560:23 (Day C65).

<sup>439</sup> Exhibit 22-0027, IND.0236.004.0001\_R.

<sup>440</sup> Exhibit 22-0027, IND.0237.004.001\_R.

## Yeshiva Bondi: Response to the conviction and sentencing of Daniel Hayman

246 On 12 May 2014, Daniel Hayman emailed his friends and family letting them know that his court case was scheduled for that morning and *'God willing all would go well'*.<sup>441</sup> Rabbi Yosef Feldman received this email and replied saying words to the effect of *'may God grant you a real victory in all respects.'*<sup>442</sup>

247 On 27 May 2014, a group email was sent prompting people to do *'something constructive'* for Daniel Hayman.<sup>443</sup> Also on 27 May 2014, Daniel Hayman sent a further group email advising that it was the final day in court.<sup>444</sup> Rabbi Yosef Feldman was copied in to both these group emails.

248 A number of emails went back and forward among the group email commenced by Daniel Hayman.<sup>445</sup> Various views were expressed, including:

- that *'Gug has no recollection of the incident so we are relying on a 12 year old's memory'*;<sup>446</sup>
- that the truth could not be found in the court as Daniel Hayman had to *'cut a deal'*;<sup>447</sup>
- that Daniel Hayman was innocent and that the allegations were similar to the *'orchestrated testimony'* against Rabbi Glick;<sup>448</sup> and
- that a man in his 50s should not be punished for allegations made about his youth.<sup>449</sup>

249 Rabbi Yosef Feldman was asked about these emails during his examination at the public hearing.<sup>450</sup> Rabbi Yosef Feldman accepted that at the time he received these emails he knew that Hayman had reached an agreement with AVB accepting responsibility for the assault against AVB.<sup>451</sup> However, Rabbi Yosef Feldman did not counter the views expressed in the emails. Rabbi Yosef Feldman explained to the Royal Commission that:

*...when it comes to public emails like this, for me to be able to start writing "there are victims", "there aren't victims" and "I know that there are victims", and this and that, I could get vilified. So I didn't want to comment at all on that issue. You have to remember I'm writing to a group of people*

<sup>441</sup> Exhibit 22-0023, YSV.0016.001.0004\_R (Tab 215); Transcript of Y Feldman C6573:4-12 (Day C65).

<sup>442</sup> Exhibit 22-0023, YSV.0016.001.0004\_R (Tab 215); Transcript of Y Feldman C6573:26-28 (Day C65).

<sup>443</sup> Exhibit 22-0023, YSV.0016.001.0001\_R (Tab 217).

<sup>444</sup> Exhibit 22-0023, YSV.0016.001.0008\_R (Tab 218).

<sup>445</sup> Exhibit 22-0023, YSV.0016.001.0008\_R (Tab 218).

<sup>446</sup> Exhibit 22-0023, YSV.0016.001.0001\_R (Tab 217).

<sup>447</sup> Exhibit 22-0023, YSV.0016.001.0008\_R (Tab 218).

<sup>448</sup> Exhibit 22-0023, YSV.0016.001.0008\_R (Tab 218).

<sup>449</sup> Exhibit 22-0023, YSV.0016.001.0008 at 0013\_R to 0014\_R (Tab 218).

<sup>450</sup> Transcript of Y Feldman C6574:4-C6581:2 (Day C65).

<sup>451</sup> Transcript of Y Feldman C6576:45-C6577:2 (Day C65).

*who are very sympathetic to the Gug situation, and I didn't want to start a whole debate about that.*<sup>452</sup>

- 250 When a participant called the discussion *'shameful'*, stating that no one had considered the victims or their families, Rabbi Yosef Feldman said nothing.<sup>453</sup>
- 251 On 10 June 2014, Hayman received a suspended sentence for his assault of AVB.<sup>454</sup> Rabbi Yosef Feldman gave evidence that on 11 or 12 June 2014, the sentence was reported in the Australian Jewish News and in the article, the ORA was quoted as applauding the survivors who had come forward.<sup>455</sup>
- 252 On 12 June 2014, Daniel Hayman emailed Rabbi Yosef Feldman saying that he had read the article and that Rabbi Moshe Gutnick was *'a disgrace to the Sydney Rabbinate'* and that he does not know how Rabbi Moshe Gutnick *'considers himself a Lubavitcher'*.<sup>456</sup> Rabbi Yosef Feldman replied to Daniel Hayman telling him the President of the ORA was Rabbi Kluwgant and that he, Rabbi Yosef Feldman, had told Rabbi Kluwgant *'to be careful with his words in these issues.'*<sup>457</sup> Rabbi Yosef Feldman said he would not disagree with Daniel Hayman about Rabbi Moshe Gutnick.<sup>458</sup>
- 253 It is submitted that the views expressed by Rabbi Yosef Feldman in the emails of 12 June 2014, show that as late as 2014, Rabbi Yosef Feldman continued to hold an opinion that rabbinical organisations should not uniformly encourage people to report allegations of child sexual abuse to the authorities. Further, it is submitted that it is reasonable to infer that he still held a view that historical allegations of abuse should not be reported to the police.
- 254 AVB told the Royal Commission that on 1 July 2014, the Yeshiva Centre-Chabad NSW HQ held a community event to celebrate Gimmel Tammuz, a day to commemorate the death, and celebrate the life and work, of the Lubavitch Rebbe.<sup>459</sup> AVB said that it was brought to his attention that Daniel Hayman was listed as a sponsor of the event.<sup>460</sup> A program of the event was tendered into evidence and that program gives thanks to all of the sponsors, including the Daniel Hayman family.<sup>461</sup>
- 255 AVB expressed his upset that Yeshiva Bondi would continue to honour a man just convicted of a child sexual abuse offence.<sup>462</sup>

<sup>452</sup> Transcript of Y Feldman C6578:36-43 (Day C65).

<sup>453</sup> Exhibit 22-0023, YSV.0016.001.0008\_R at 0012\_R – 0013\_R (Tab 218).

<sup>454</sup> Exhibit 22-0023, IND.0214.001.0110\_R (Tab 165).

<sup>455</sup> Transcript of Y Feldman, C6582:33-46 (Day C65).

<sup>456</sup> Exhibit 22-0023, YSV.0016.001.0005\_R (Tab 220).

<sup>457</sup> Exhibit 22-0023, YSV.0016.001.0005\_R (Tab 220).

<sup>458</sup> Exhibit 22-0023, YSV.0016.001.0005\_R (Tab 220).

<sup>459</sup> Transcript of AVB C6252:24-30 (Day C62).

<sup>460</sup> Transcript of AVB, C6252:32-33 (Day C62).

<sup>461</sup> Exhibit 22-0031 IND.0236.002.0001.

<sup>462</sup> Transcript of AVB, C6252:32-C6253:5 (Day C62).

- 256 Rabbi Yosef Feldman explained that Daniel Hayman had been a large financial contributor to Yeshiva Bondi in the past totalling hundreds of thousands of dollars and was still making donations at or about the time of his charge and conviction.<sup>463</sup>
- 257 It is submitted that in listing Daniel Hayman as a sponsor of the event and expressing its thanks for his patronage, Yeshiva Bondi disregarded the nature of Hayman's crime and disregarded AVB's experience as a survivor of child sexual abuse perpetrated by Hayman at a camp run by Yeshiva Bondi for which Hayman had been sentenced only three weeks prior.
- 258 AVB told the Royal Commission that despite Hayman pleading guilty to what he had done to AVB, neither Rabbi Pinchus Feldman nor anyone Yeshiva Bondi has apologised to him for what Hayman did to him at a camp Yeshiva Bondi ran.<sup>464</sup> At the public hearing, Rabbi Pinchus Feldman issued a general apology to victims that Yeshiva Bondi had failed to protect.<sup>465</sup>

#### **Available findings on Yeshiva Bondi's response to the conviction and sentencing of Daniel Hayman**

F18 On 1 July 2014, just 19 days after the sentencing of Daniel Hayman for an offence of child sexual abuse perpetrated in connection with the activities of Yeshiva Bondi, leaders of Yeshiva Bondi held a function to celebrate the life and work of the Lubavitcher Rebbe and listed Daniel Hayman as a sponsor of the event and thanked him for his patronage. In so doing, Yeshiva Bondi demonstrated an insensitivity to and a disregard for AVB's experience as a survivor of child sexual abuse perpetrated by Hayman at a camp run by Yeshiva Bondi.

F19 After Daniel Hayman's conviction, leaders of the Yeshiva Centre did not reach out to AVB as a survivor of abuse perpetrated by Daniel Hayman.

F20 As late as July 2014, Rabbi Yosef Feldman was of the opinion that rabbinical organisations should not encourage people to report all allegations of child sexual abuse to the authorities.

F21 As late as July 2014, Rabbi Yosef Feldman did not accept there was a halachic obligation for any allegation of child sexual abuse, whenever committed, to be reported to the authorities.

#### **Yeshiva Bondi: Rabbi Yosef Feldman's current views on child sexual abuse**

- 259 During his examination before the Royal Commission, Rabbi Yosef Feldman expressed various views in relation to the nature, incidence and appropriate responses to child sexual abuse.

<sup>463</sup> Transcript of Y Feldman, C6572:3-19; C6647:16- 26 (Day C65).

<sup>464</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [100].

<sup>465</sup> Transcript of P Feldman, C6380: 18-26; C6384: 7-12 (Day C63).

260 When asked about the importance of age in determining the veracity of allegations of child sexual abuse, Rabbi Feldman said the following:

*I haven't investigated this sort of thing, but I could imagine that there could be false accusations with regards to teenagers, who are not so innocent.*<sup>466</sup>

261 This statement is without a social science research basis, but is rather based on Rabbi Yosef Feldman's 'common sense',<sup>467</sup> because 'a person is his own individual' at the age of 13 and is therefore more likely to make false allegations.<sup>468</sup>

262 Rabbi Yosef Feldman did not know that grooming was a crime,<sup>469</sup> nor did he understand its nature, saying the following:

*I understand grooming means just talking to the child and trying to get close to him. I don't know what this grooming that you are referring is punishable. If someone talks to a child a few times —*<sup>470</sup>

263 Rabbi Yosef Feldman told the Royal Commission that he believes that his lack of knowledge is unimportant as child sexual abuse is uncommon, saying the following:

*The answer is that there are many issues of life, and child sex abuse - I didn't believe it was something that's very common at all, and even now I don't believe it's common - it happens - and whether because not knowing about child sex abuse and what constitutes child sex abuse, I would say since it's very uncommon that to say, 'You are unfit because you didn't know about it,' I'm not sure whether I would go to that extent, but I can see why it should go to that extent.*<sup>471</sup>

264 Rabbi Yosef Feldman said that child abuse was uncommon; and his understanding of what was common is something that happens at the rate of 5-10%.<sup>472</sup> This statistic is not based on empirical research, but rather was calculated by Rabbi Feldman 'based on things [he has] read about it and [his] understandings.'<sup>473</sup> He says that child sexual abuse is uncommon because he 'didn't hear of it much.'<sup>474</sup>

265 Rabbi Yosef Feldman argued for the consideration of repentance in the charging and sentencing of paedophiles, saying that he would lobby the government to be more lenient on offenders from a long time ago if they have not reoffended and are psychologically recovered.<sup>475</sup> Rabbi Yosef Feldman stated that he knows 'a few

<sup>466</sup> Transcript of Y Feldman, C6600:26-28 (Day C65).

<sup>467</sup> Transcript of Y Feldman, C6600:40 (Day C65).

<sup>468</sup> Transcript of Y Feldman, C6601:4-7 (Day C65).

<sup>469</sup> Transcript of Y Feldman, C6606:17 (Day C65).

<sup>470</sup> Transcript of Rabbi Y Feldman, C6606:18-21 (Day C65).

<sup>471</sup> Transcript of Rabbi Y Feldman, C6437:32-40 (Day C64).

<sup>472</sup> Transcript of Rabbi Y Feldman, C6438:3-5 (Day C64).

<sup>473</sup> Transcript of Rabbi Y Feldman, C6438:8-10 (Day C64).

<sup>474</sup> Transcript of Rabbi Y Feldman, C6604:36-37 (Day C65).

<sup>475</sup> Transcript of Y Feldman, C6524:44-C6525:6 (Day C65).

*paedophiles [that] have been suspected and they have committed suicide*<sup>476</sup> which is *'a terrible thing.'*<sup>477</sup> This caused him to conclude that paedophiles who have repented *'deserve a bit more respect.'*<sup>478</sup>

- 266 It is submitted that in approaching the issue of child sexual abuse, Rabbi Yosef Feldman fails to understand the position of the victim. In his evidence to the Royal Commission Rabbi Yosef Feldman often approached the issue of child sexual abuse thinking about the effect of the allegations on the perpetrator, the unfairness of a conviction for a perpetrator who has repented, and the potential for false allegations to be made. It is submitted that Rabbi Yosef Feldman had a tendency to approach matters of child sexual abuse from the perspective of the perpetrators. Rabbi Yosef Feldman qualified his statements of support for victims with concern for perpetrators and false allegations.<sup>479</sup>
- 267 Rabbi Yosef Feldman told the Royal Commission he has not undertaken any formal training on child sexual abuse, or any training on how to recognise child sexual abuse.<sup>480</sup> Rabbi Yosef Feldman said that he believes that *'all rabbis should receive training in how to identify, handle and report sexual abuse'*<sup>481</sup> and yet he has not undertaken any formal training himself.<sup>482</sup> He said he believes that it is not pressing as he views it *'as common sense.'*<sup>483</sup> Rabbi Yosef Feldman said his reason for not undertaking formal training on the nature, incidence, and appropriate response to child sexual abuse is that he is busy being a Rabbi and caring for his own ten children.<sup>484</sup> It is submitted that Rabbi Yosef Feldman's evidence demonstrates a lack of commitment to understand the issue of child sexual abuse.
- 268 In his statement to the Royal Commission dated 6 February 2015, Rabbi Yosef Feldman said that he *'agree[s] without qualification that it is obligatory to immediately report all allegations of sexual abuse to the police'* and that he *'agree[s] that such an obligation arises whenever that sexual abuse is alleged to have occurred and whatever the form of that sexual abuse,'*<sup>485</sup> and also that, after reporting incidents of child sexual abuse, no survivor should be *'subjected to shunning or bullying or being labelled a moser.'*<sup>486</sup>
- 269 Rabbi Yosef Feldman said during questioning that he now accepts that all allegations of child sexual abuse, even historical allegations, should be reported to the authorities.<sup>487</sup>

<sup>476</sup> Transcript of Y Feldman, C6525:45-46 (Day C65).

<sup>477</sup> Transcript of Y Feldman, C6525:47 (Day C65).

<sup>478</sup> Transcript of Y Feldman, C6526:34 (Day C65).

<sup>479</sup> Transcript of Rabbi Y Feldman, C6513:2-35 (Day C65).

<sup>480</sup> Transcript of Y Feldman, C6438:22-23 (Day C64).

<sup>481</sup> Exhibit 22-0025, Statement of Y Feldman, STAT.0468.002.0001.

<sup>482</sup> Transcript of Rabbi Y Feldman, C6438:22-23 (Day C64)

<sup>483</sup> Transcript of Y Feldman, C6439:15-16 (Day C64).

<sup>484</sup> Transcript of Y Feldman, C6440:8-16 (Day C64).

<sup>485</sup> Exhibit 22-0025, Statement of Y Feldman, STAT.0468.002.0001.

<sup>486</sup> Exhibit 22-0025, Statement of Y Feldman, STAT.0468.002.0001.

<sup>487</sup> Transcript of Rabbi Y Feldman, C6514:24-25 (Day 65).

- 270 However, it is submitted that the evidence before the Royal Commission demonstrates that Rabbi Yosef Feldman expressed opposite views in 2011,<sup>488</sup> 2013<sup>489</sup> and 2014.<sup>490</sup> It is submitted that the views expressed by Rabbi Yosef Feldman at the public hearing about the consequences for paedophiles whose crimes were committed many years before and who had since ‘repented’ leads to a conclusion that the views set out in his statement of 6 February 2015 should be approached with some scepticism.
- 271 It is submitted that Rabbi Yosef Feldman’s behaviour and the views expressed in his emails over the years are incapable of being rationalised with his insistence that he believes that any allegation should be reported to the police immediately. It is submitted that the views set out by Rabbi Yosef Feldman in his statement of 6 February 2015, should be seen as statements made to rehabilitate his reputation publicly rather than an expression of his true beliefs on the appropriate and halachically obligated response to allegations of child sexual abuse.

#### **Available findings on Rabbi Yosef Feldman’s current attitudes to child sexual abuse**

F22 The views articulated by Rabbi Yosef Feldman in his supplementary statement to the Royal Commission dated 6 February 2015 are not a true representation of his views on the issue of child sexual abuse but an attempt to rehabilitate his public reputation.

F23 The views expressed by Rabbi Yosef Feldman in 2011, 2013, 2014, and at the public hearing, demonstrate that he often approaches the issue of child sexual abuse from the perpetrator’s perspective, rather than from the child’s perspective.

### **Yeshiva Bondi: Current policies, training and the 2015 statement for Chabad NSW**

#### **Yeshiva Bondi: Formal child protection policies**

- 272 The Royal Commission received into evidence a letter dated 7 November 2014 from Rabbi Pinchus Feldman. In that letter, Rabbi Pinchus Feldman explained that all camps and courses that are operated under his aegis, whether operated through the Yeshiva Centre, Yeshiva College Bondi, Chabad Youth or otherwise, are conducted under the umbrella of Yeshiva College Bondi.<sup>491</sup>
- 273 The Royal Commission also received into evidence a Staff Handbook for employees of Yeshiva College Bondi dated 1 November 2014.<sup>492</sup> The Yeshiva College Bondi Staff

<sup>488</sup> Exhibit 22-0023, IND.0214.001.0179\_R (Tab 50); Exhibit 22-0023, KAA.0001.001.0102\_R (Tab 51); KAA.0001.001.0002\_R (Tab 52); Exhibit 22-0023, KAA.0001.001.0091\_R (Tab 53); Exhibit 22-0023, KAA.0001.001.0082\_R (Tab 54); Exhibit 22-0023, KAA.0001.001.0071\_R (Tab 55); Exhibit 22-0023, KAA.0001.001.0119\_R (Tab 56); Exhibit 22-0023, KAA.0001.001.0061\_R (Tab 57); Exhibit 22-0026, IND.0236.001.0001\_R; Exhibit 22-0023, KAA.0001.001.0022\_R (Tab 60).

<sup>489</sup> Exhibit 22-0027, IND.0236.004.0001\_R.

<sup>490</sup> Exhibit 22-0023, YSV.0016.001.0005\_R (Tab 220).

<sup>491</sup> Exhibit 22-0023, YSV.0005.001.0013 at 0014 (Tab 181).

<sup>492</sup> Exhibit 22-0023, YSV.0008.001.0001 (Tab 179).

Handbook outlines the formal child protection policies of the school and the procedures for staff to report serious incidents.<sup>493</sup>

- 274 Rabbi Pinchus Feldman explained that Yeshiva College Bondi also has an Abridged Staff Handbook Essentials that is provided to all paid and volunteer staff who have a supervisory role with children.<sup>494</sup> Rabbi Pinchus Feldman said that if they become full time staff members they receive the lengthy staff manual.<sup>495</sup>
- 275 Rabbi Pinchus Feldman said that the NSW Department of Education and Communities guidelines call for *'in service'* staff training on child sexual abuse issues to be conducted at least once every two years but that it is the policy of Yeshiva College Bondi to do so once every year.<sup>496</sup>
- 276 The Royal Commission received into evidence an email that contains Yeshiva Bondi's proposed rules for use of the mikveh dated November 2014.<sup>497</sup> The email states that the proposed rules will be sent to all mikveh and Yeshiva Shul members, be put up at the mikveh and contemplates a further discussion about the installation of external CCTV and restriction of access by installation of a card system for members and coin option for guests.<sup>498</sup> The following rules are proposed:
- children twelve years and under must be accompanied by a parent/guardian;
  - teenagers thirteen to seventeen years must provide written permission by a parent/guardian;
  - if there are concerns about any inappropriate or unlawful behaviour that has occurred in the mikveh it is to be immediately reported to a nominated person and/or notified to the relevant law enforcement authority.<sup>499</sup>
- 277 The Yeshiva Gedola provides education and training to young men seeking ordination as rabbis.<sup>500</sup> Rabbi Yosef Feldman told the Royal Commission that Yeshiva Gedola students volunteer as assistant teachers at the Yeshiva Centre and help in running youth camps as a part of their rabbinical training.<sup>501</sup> He explained that rabbinical students at the Yeshiva Gedola are trained and housed at the Yeshiva Centre and Yeshiva College Bondi site.<sup>502</sup>
- 278 Rabbi Pinchus Feldman gave evidence that the Yeshiva Gedola does not have its own formal policies for responding to and reporting allegations of child sexual abuse.<sup>503</sup>

<sup>493</sup> Exhibit 22-0023, YSV.0008.001.0001 at 0006-12 and 0063 (Tab 179).

<sup>494</sup> Exhibit 22-0023, YSV.0005.001.0013, at [4] (Tab 181).

<sup>495</sup> Exhibit 22-0023, YSV.0005.001.0013, at [4] (Tab 181).

<sup>496</sup> Exhibit 22-0023, YSV.0008.001.0001 at 0011-0012 (Tab 179) YSV.0005.001.0001 at 0007 (Tab 197).

<sup>497</sup> Exhibit 22-0023, YSV.0005.001.0023 (Tab 180).

<sup>498</sup> Exhibit 22-0023, YSV.0005.001.0023 (Tab 180).

<sup>499</sup> Exhibit 22-0023, YSV.0005.001.0023 (Tab 180).

<sup>500</sup> Exhibit 22-0025 Statement of Y Feldman STAT.0468.001.0001\_R.

<sup>501</sup> Transcript of Y Feldman, C6408:2-33 (Day C64).

<sup>502</sup> Transcript of Y Feldman; C6406:38-41 (Day C64).

<sup>503</sup> Transcript of P Feldman, C6342:31 (Day C63).

Although all rabbinical students who work with children are subject to a Working with Children Check,<sup>504</sup> they are not required to undertake any formal child sexual abuse training.<sup>505</sup>

- 279 Rabbi Pinchus Feldman told the Royal Commission that a Working with Children Check is performed on all rabbinical students before they undertake any supervisory or other work with children.<sup>506</sup> It is submitted that given the young age of rabbinical students and the fact that many come from interstate or overseas, the protection afforded by any Working with Children Check is limited.
- 280 It is submitted that the absence of formal written policies and training on the policies at Yeshiva Gedola is of particular concern given the evidence on the early complaints made to Rabbi Lesches against Daniel Hayman and Rabbi Yosef Feldman's response to AVL. The evidence in relation to both situations is that neither rabbi documented the complaints nor actions taken in response to the complaints<sup>507</sup> and there were no written policies that guided how leaders and employees of the Yeshiva Gedola should respond to complaints or follow up on complaints.<sup>508</sup> It is submitted that it is not sufficient for the Yeshiva Gedola to rely on the policies of Yeshiva College Bondi.

#### **Yeshiva Bondi: Training of rabbis**

- 281 Both Rabbi Pinchus Feldman, the Dean of Yeshiva College Bondi and the spiritual leader of Yeshiva College Bondi, and Rabbi Yosef Feldman, the Rabbinic Administrator of the Yeshiva Gedola, gave evidence that they have had no formal training about child sexual abuse matters.<sup>509</sup> Rabbi Pinchus Feldman gave evidence that the rabbis who are trained at the Yeshiva Gedola do not undertake any study or receive training about recognising and responding to child sexual abuse.<sup>510</sup>
- 282 Rabbi Pinchus Feldman acknowledged that it would be helpful for all rabbis to undertake formal training in recognising and responding to complaints of child sexual abuse.<sup>511</sup>

#### **Yeshiva Bondi: Rabbi Pinchus Feldman's 2015 Statement for Chabad NSW**

- 283 Rabbi Pinchus Feldman read out a statement before the Royal Commission in which he said that the Yeshiva Centre was *'deeply sorry that [victims had] suffered abuse and that the Yeshiva Centre in New South Wales failed in protecting [them]'*. He said the Yeshiva Centre vows *'to do everything in our power both to protect the children in our care and to support those who have suffered'*.<sup>512</sup>

<sup>504</sup> Transcript of Y Feldman, C6409:27-29 (Day C64).

<sup>505</sup> Transcript of P Feldman, C6363:25 (Day C63).

<sup>506</sup> Transcript of P Feldman, CS6331:22 – C6332:8 (Day C63).

<sup>507</sup> Transcript of P Feldman, C6362:16-31 (Day C63); Transcript of Rabbi Y Feldman, C6432:11-15 (Day C64).

<sup>508</sup> Transcript of P Feldman, C6342:16-23 (Day C63).

<sup>509</sup> Transcript of P Feldman, C6363:12 (Day C63) and Transcript of Y Feldman, C6438:22-C6439: 8 (Day C64).

<sup>510</sup> Transcript of P Feldman, C6363:22-25 (Day C63).

<sup>511</sup> Transcript of P Feldman, C6363:27-37 (Day C63).

<sup>512</sup> Transcript of P Feldman, C6384: 7 - 12 (Day C63).

284 He also said:

*As head of Chabad in New South Wales and on behalf of the entire movement I would like to say to the victims: we are sorry that you suffered; it breaks my heart personally and it breaks all of our hearts. We are sorry that you continue to suffer from the ramifications of how those experiences have affected your life, and we give you our solemn commitment that absolutely everything in our power is being done and will continue to be done to ensure that others don't ever go through the same suffering.<sup>513</sup>*

285 Rabbi Pinchus Feldman further said in his statement to the Commission:

*I would like to now publicly state as not just a position of Jewish law but the official policy of the Chabad movement in New South Wales: the reporting of cases of abuse to the authorities is not just 'permitted' but an 'obligation', a holy obligation that will keep our children safer and our communities healthier.<sup>514</sup>*

286 Rabbi Pinchus Feldman gave evidence that this statement was a ruling by him as to the official position for Chabad in New South Wales that it is a halachic obligation for all complaints to be reported to the police.<sup>515</sup> He accepted that there is no obligation on any person to take a complaint to a rabbi for the rabbi to decide whether the complaint to police should be made or what should be done in relation to the complaint.<sup>516</sup> He accepted that victims of sexual abuse should always be able to speak out about their abuse and seek for there to be accountability both by the perpetrator or others who may have failed to protect them without being subject to ostracisation, shunning and bullying.<sup>517</sup>

287 Rabbi Pinchus Feldman gave evidence that:

- his statement would be circulated to all of the members in Chabad New South Wales;
- he would undertake to give consideration to putting in place a formal document that encapsulates the position articulated in his statement and ensures that it is circulated and adhered to by the emissaries appointed by him in NSW;
- his position in relation to the official response by himself and those within Chabad New South Wales remains precisely the same no matter when the abuse occurred.<sup>518</sup>

<sup>513</sup> Transcript of P Feldman, C6380: 18 – 26 (Day C63).

<sup>514</sup> Transcript of P Feldman, C6384: 7 - 12 (Day C63).

<sup>515</sup> Transcript of P Feldman, C6385: 12-17 (Day 63).

<sup>516</sup> Transcript of P Feldman, C6385:19-23 (Day C63).

<sup>517</sup> Transcript of P Feldman, C6385:26-32 (Day C63).

<sup>518</sup> Transcript of P Feldman, C6385:34-C6386:22 (Day C63).

### **Available findings on Yeshiva Bondi: Formal child protection policies, training and policy statement for Chabad NSW**

F24 As at 2015, Yeshiva College Bondi has formal child protection policies in place including training for staff and processes for reporting allegations of abuse. Yeshiva Bondi has policies in place to regulate children's use of the Mikveh.

F25 As at 2015, the Yeshiva Gedola (rabbinical college) does not have formal child protection policies for responding to child abuse issues, even though the Gedola's rabbinical students are routinely involved in working with children and live on the same premises from which the school, Yeshiva College Bondi, operates.

F26 The Yeshiva Gedola curriculum for students who seek ordination as rabbis does not include any formal training on how Rabbis should respond to issues of child sexual abuse. Neither Rabbi Pinchus Feldman nor Rabbi Yosef Feldman has received any formal training on recognising and responding to child sexual abuse.

F27 At the public hearing, Rabbi Pinchus Feldman issued a formal statement setting out the official policy of the Chabad movement in New South Wales that reporting of cases of abuse to the authorities is not just 'permitted' but an 'obligation', a holy obligation.

## **Part 4 Institutional Responses of Yeshivah Melbourne**

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### **4.1 David Cyprys' sexual abuse of Yeshivah College students**

288 The Royal Commission heard evidence from four victims of abuse perpetrated by David Cyprys, three of whom were abused by David Cyprys in connection with the activities of Yeshivah Melbourne. These witnesses: AVA, Manny Waks and AVR gave evidence that their abuse occurred on Yeshivah Centre premises or in connection with activities run for Yeshivah College students or facilitated by the Yeshivah Centre or conducted with its permission.<sup>519</sup> The evidence of these witnesses is set out above.

#### **The relationship between David Cyprys and the Yeshivah Centre**

289 The evidence before the Royal Commission is that David Cyprys was a student of the Yeshivah College from the early 1970s until 1985.<sup>520</sup>

290 The evidence is that from 1986 Cyprys acted as a martial arts instructor or aide instructing students after school, he attended Gan Israel youth camps until the early 1990s, acted variously as a caretaker, security guard or locksmith from as early as 1987.<sup>521</sup>

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<sup>519</sup> Transcript of AVA C5988:33 – C5990:21 (Day C60); Transcript of M Waks C6005:6 – C6007:16 (Day C60); Transcript of AVR C6567:8 – C6568:27 (Day C65).

<sup>520</sup> Exhibit 22-0023, YSV.0001.001.0655\_R at [7] (Tab 88).

<sup>521</sup> Exhibit 22-0001, Statement of AVA STAT.0461.0001.0001\_R at [7]; Exhibit 22-0003, Statement of M Waks STAT.0460.001.0001\_R at [25]. Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [7]; Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R.

- 291 AVA and Manny Waks told the Royal Commission they met David Cyprys when he was working as an instructor's aide or an instructor as part of after school martial arts classes, some of which were conducted at the Yeshivah Centre.<sup>522</sup> Rabbi Glick said that after-hours activities were conducted by Chabad Youth: they were classified as clubs, some of their activities were held in the Yeshivah classrooms and that information about after school activities and clubs were probably distributed to students through the school.<sup>523</sup>
- 292 AVR told the Royal Commission that he met David Cyprys when Cyprys was introduced to him by Rabbi Glick as the caretaker of Yeshivah and described to AVR as someone AVR should call if he had any issues. AVR said he was told he should call Cyprys rather than calling Rabbi Glick or the Yeshivah.<sup>524</sup>
- 293 Several witnesses gave evidence that he appeared to have keys to the Yeshivah Centre premises and buildings and witnesses gave evidence of observing him as the security guard at the Centre in 1996, 1998 and early 2000s.<sup>525</sup> AVA and Manny Waks each gave evidence that Cyprys had keys for the entire Yeshivah Centre property.<sup>526</sup> Rabbi Glick said that he knew that Cyprys had keys to rooms at the Yeshivah and it was possible he knew this in the 1990s.<sup>527</sup>
- 294 It is submitted that the evidence establishes that David Cyprys had wide-ranging access to the Yeshivah Centre premises during the period of his offending.
- 295 It is submitted that the evidence shows that Cyprys was able to meet children through his activities for the Yeshivah Centre and in or about Yeshivah Centre premises. It is submitted that he was able to continue his abuse because of his affiliation with the Yeshivah Centre.
- 296 The Commission issued a summons for production to the Yeshivah Centre for records of services provided by David Cyprys. Mrs Bendet was responsible for answering the Royal Commission's summons to produce issued to the Yeshivah Centre. Mrs Bendet gave evidence of the enquiries and searches she undertook to produce documents in answer to the summons and the systems for recording information at the Yeshivah Centre.<sup>528</sup>

<sup>522</sup> Exhibit 22-0001, Statement of AVA STAT.0461.0001.0001\_R at [7]; Exhibit 22-0003, Statement of M Waks STAT.0460.001.0001\_R at [25].

<sup>523</sup> Transcript of A Glick T7020:14-44 (Day C68).

<sup>524</sup> Exhibit 22-0029, Statement of AVR STAT.0471.001.0001\_R at [7].

<sup>525</sup> Exhibit 22-0001, Statement of AVA STAT.0461.001.0001\_R at [7] - [12]; Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18], [20], [43]-[44], [49] - [53]; Exhibit 22-0005, Statement of Z Waks at [31]; Exhibit 22-0013, Statement of AVC at [8]; Exhibit 22-0029, Statement of AVR at [7]- [9]; Exhibit 22-0023, YSV.0001.001.0655\_R at [7], [8], [10] (Tab 88).

<sup>526</sup> Exhibit 22-0001, Statement of AVA STAT.0461.0001.0001\_R at [12]; Exhibit 22-0003, Statement of M Waks STAT.0460.001.0001\_R at [18].

<sup>527</sup> Transcript of A Glick T7017:38-7018:24 (Day C68), T7020:46-7021:4 (Day C68).

<sup>528</sup> Transcript of N Bendet, C6721:32-47, C6725:2-4, C6736:35-C6737:16; C6740:20-6741:11, C6741:39-6744:14, C6754:38 – 6755:4 (Day C66); and C6766:15-37 (Day C67).

- 297 Yeshivah Centre produced a single document: a ‘creditor’s invoice inquiry’ for Shomer Security.<sup>529</sup> Mrs Bendet gave evidence that Shomer Security was David Cyprys's trading name.<sup>530</sup> The document records a number of invoices spanning the period 16 May 2000 to 19 December 2003 and a single later invoice entered for a date of 18 May 2007.<sup>531</sup>
- 298 Mrs Bendet said she believes that it may have been in the late 1990s that the Yeshivah Centre converted from keeping records manually to keeping records on a computerised database.<sup>532</sup> Mrs Bendet told the Royal Commission that apart from the creditors invoice inquiry she was not aware of the existence of any other documents recording services provided by Shomer Security or David Cyprys to the Yeshivah Centre.<sup>533</sup>
- 299 Mrs Bendet gave evidence that David Cyprys was not an employee of Yeshivah Centre, so he would not have had a personnel file.<sup>534</sup> Mrs Bendet said she made enquiries with the ‘HR’ department of Yeshivah Centre as to whether there was any record of David Cyprys being an employee or ever being paid by the Yeshivah Centre; she said she was told that there was not and that he was paid through creditors as a contractor for a period of time while he was a locksmith and security guard in the period 2000 until September 2003.<sup>535</sup>
- 300 Mrs Bendet told the Royal Commission that Cyprys was not an employee of Yeshivah Centre but rather was a contractor whose services were terminated in 2003.<sup>536</sup> In a brief dated 18 July 2012 addressed to Robert Richter QC and prepared by Mrs Bendet<sup>537</sup> on behalf of the Yeshivah Centre it was asserted that:
- Cyprys was not employed by Yeshivah College. However, in or around 2000 until 12 September 2003, he was an independent contractor carrying out security and locksmith duties at the Yeshivah Centre, which included Yeshivah College.*<sup>538</sup>
- 301 For the reasons that follow, the Commission should not accept the propositions of Mrs Bendet set out above.
- 302 First, it is submitted that the Commission could not be satisfied that the single creditor ledger accurately reflects the nature of services provided by David Cyprys to Yeshivah Centre or that it reflects the period during which the services were provided. Mrs

<sup>529</sup> Exhibit 22-0023, YSV.0001.001.0013 (Tab 88).

<sup>530</sup> Transcript of N Bendet, C6741:46 – C6742:1 (Day C66).

<sup>531</sup> Exhibit 22-0023, YSV.0001.001.0013 (Tab 88); Transcript of N Bendet: C6736:35-6737:16, C6740:20- 6741:7, C6741:39- 6744:14 (Day C66).

<sup>532</sup> Transcript of N Bendet, C6742:16- 6743:3 (Day C66).

<sup>533</sup> Transcript of N Bendet, C6742:7-10 (Day C66).

<sup>534</sup> Transcript of N Bendet, C6736:39-6737:2 (Day C66).

<sup>535</sup> Exhibit 22-0023, YSV.001.001.0655\_R at [9] (Tab 88); Exhibit 22-0023, YSV.0001.001.0013 at 0015 (Tab 88).

<sup>536</sup> Transcript of N Bendet, C6736:39-C6737:2, C6740:20- C6741:7 (Day C66).

<sup>537</sup> Transcript of N Bendet, C6744:5-11 (Day C66).

<sup>538</sup> Exhibit 22-0023, YSV.001.001.0655\_R at [9] (Tab 88); YSV.0001.001.0013-0015 (Tab 88); Transcript of N Bendet, C6736:39-6737:2, C6740:20- 6741:7 (Day C66).

Bendet accepted that the integrity of the ledger depended on whether manual records kept before the 'computerisation' process were complete and, even if complete, that all records that predate the computerisation process, that is all manual invoices, were entered on the database.<sup>539</sup> Mrs Bendet was not involved in the transition to computerised records or the data entry and could not say what process was taken or what invoices were entered in the computerised database.<sup>540</sup>

- 303 Secondly, the evidence is that David Cyprys' invoices were not arriving on a regular basis and were difficult to decipher.<sup>541</sup> The original invoices are no longer available for consideration.<sup>542</sup> It is submitted that even where a date is recorded in the ledger as the date of the corresponding invoice, this does not mean that the invoice necessarily relates to services provided in a time period proximate to the date of the invoice.
- 304 Thirdly, the evidence of numerous witnesses is that they observed David Cyprys providing services to the Yeshivah Centre or involved in activities run by the Yeshivah Centre or on its premises from as early as 1986 up to the mid 2000s.<sup>543</sup> Manny Waks gave evidence of discussing his abuse by Cyprys with Rabbi Groner in 1996 and raising his concern that Cyprys should be operating as a security guard.<sup>544</sup> Mr Waks stated that he had observed Cyprys still acting in a security role at the Centre and Cyprys' business signs 'Shomer Security' displayed on the Yeshivah Centre premises.<sup>545</sup> Mr Waks further stated after his return to Australia in 2000, he continued to see Cyprys as the security guard at the Yeshivah Centre and that this continued to the mid 2000s.<sup>546</sup> Mr Manny Waks gave further evidence that in the early 2000s he had a second discussion with Rabbi Groner expressing his concern about David Cyprys still providing security services the Yeshivah Centre.<sup>547</sup> Manny Waks' evidence suggests Cyprys was acting as a security guard from 1996 until the mid 2000s and he was not challenged in this evidence.
- 305 Mrs Bendet gave evidence that she terminated David Cyprys' services in 2003.<sup>548</sup> However, Mrs Bendet was unable to contradict a suggestion that David Cyprys may have continued to act as a security guard from this date until as late as 2011: albeit, it may have been that he was providing those services as a volunteer through the Community Security Group (CSG) and his services may have been co-ordinated externally.<sup>549</sup> Mrs Bendet told the Royal Commission that the Yeshivah Centre

<sup>539</sup> Transcript of N Bendet, C6754:38-6755:16 (Day C66).

<sup>540</sup> Transcript of N Bendet, C6753:26-29 and C6754:43-6755:16 (Day C66).

<sup>541</sup> Transcript of N Bendet, C6756:34- 6757:2 (Day C66).

<sup>542</sup> Transcript of N Bendet, C6742:12-14 (Day 66).

<sup>543</sup> Exhibit 22-0001, Statement of AVA STAT.0461.001.0001\_R at [7]- [12]; Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18], [20], [43]-[44], [49]-[53]; Exhibit 22-0005, Statement of Z Waks at [31]; Exhibit 22-0013, Statement of AVC at [8]; Exhibit 22-0029, Statement of AVR at [7]- 9]; Exhibit 22-0023, YSV.0001.001.0655\_R at [7], [8], [10] (Tab 88).

<sup>544</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [42]-[44].

<sup>545</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [44].

<sup>546</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [48]-[53].

<sup>547</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [51]-[52].

<sup>548</sup> Transcript of N Bendet C6756:34 -6757:2 (Day C66).

<sup>549</sup> Transcript of N Bendet C6738:22- 6739:30 (Day C66).

retained CSG to supply security services to the Yeshivah Centre for ‘*a few years*’.<sup>550</sup> Mrs Bendet said that CSG provided voluntary security services but explained there was an arrangement between Yeshivah Centre and CSG by which the Yeshivah Centre collected a \$10 levy on each seat in the shule which it then paid to CSG.<sup>551</sup> Mrs Bendet could not say when an arrangement with CSG started.<sup>552</sup> Documents examined establish that for a period of time, David Cyprys contracted his services to CSG.<sup>553</sup> In any event, it is not necessary to inquire into and make findings of the precise nature of the relationship, if any, between the Yeshivah Centre and David Cyprys after 2003.

- 306 It is submitted that the evidence also supports a conclusion that Cyprys provided locksmithing, security and or caretaking services to the Yeshivah Centre from 1986 until the early 2000s.
- 307 For the purpose of this inquiry, it is not necessary to articulate the precise legal relationship between David Cyprys and the Yeshivah Centre. Rabbi Glick accepted that whether someone was an employee, a volunteer or contractor, did not alter the obligation of the Yeshivah Centre or those in charge to act on information they received that suggested such a person was a risk, or potential risk, to children attending Yeshivah Melbourne.<sup>554</sup> Rabbi Glick agreed that anyone within the Yeshivah Centre leadership or management who had information that a person who regularly attended the Yeshivah Centre might present a risk of harm to children of the Yeshivah Centre, needed to act.<sup>555</sup>
- 308 It is submitted that the Commission should find that between 1986 and the mid 2000s David Cyprys provided various services to the Yeshivah Centre and on Yeshivah Centre premises including at different times attending Gan Israel camps for students, acting as a martial arts instructor for students of Yeshivah College after school and as the Yeshivah Centre’s caretaker, locksmith and security guard.<sup>556</sup>

#### **Available findings on the connection between Yeshivah Melbourne and David Cyprys**

F28 Between 1986 and the mid 2000s David Cyprys provided various services to the Yeshivah Centre and on Yeshivah Centre premises including at different times attending Gan Israel camps for students, acting as a martial arts instructor for students of Yeshivah College after school and as the Yeshivah Centre’s caretaker, locksmith and security guard.

<sup>550</sup> Transcript of N Bendet C6738:22- 6739:28-30 (Day C66).

<sup>551</sup> Transcript of N Bendet C6739:22-30 (Day C66).

<sup>552</sup> Transcript of N Bendet C6739:22-30 (Day C66).

<sup>553</sup> Exhibit 22-0023, CSG.0001.001.0054\_R (Tab 17).

<sup>554</sup> Transcript of A Glick, C7003:25- 7004:11 (Day C68).

<sup>555</sup> Transcript of A Glick, C7003:2 -7004:6 (Day C68).

<sup>556</sup> Exhibit 22-0001, Statement of AVA STAT.0461.001.0001\_R at [7]- [12]; Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18], [20], [43]-[44], [49]-[53]; Exhibit 22-0005, Statement of Z Waks at [31]; Exhibit 22-0013, Statement of AVC at [8]; Exhibit 22-0029, Statement of AVR at [7]- 9]; Exhibit 22-0023, YSV.0001.001.0655\_R at [7], [8], [10] (Tab 88); R Glick 7001:29 -7003:18 (Day C68), 7017:38 - :44 (Day C68), C7048:15 -42 (Day C68).

F29 Whether David Cyprys was an employee, a volunteer, or contractor, did not alter the obligation of the Yeshivah Centre or those in charge to act on information they received that David Cyprys was abusing children attending Yeshivah Melbourne, or that suggested he was a risk to commit child sexual abuse.

## Early complaints of abuse by David Cyprys

### The 1984 complaint

- 309 Evidence before the Royal Commission is that in April 1984, David Cyprys engaged in conduct amounting to child sexual abuse involving two very young victims aged 7 and 8.<sup>557</sup> Cyprys was convicted of offences for that conduct.<sup>558</sup> In the reasons for sentence, Wischusen J states that a week after the abuse, one of the victims told his father who took him to see Rabbi Groner.<sup>559</sup>
- 310 Ron Tatarka gave evidence to the Royal Commission by way of a written statement.<sup>560</sup> He states that in 1982, he was employed as the head of Chabad Youth, a division of Yeshivah College, and that he held that position for about four and a half years.<sup>561</sup>
- 311 Mr Tatarka says that one afternoon the father of a boy then aged between 5 and 10 years old approached him and insisted that Mr Tatarka go with him straight away to meet Rabbi Groner.<sup>562</sup> Mr Tatarka states that he asked why and the father said that something had happened to the child and that he would tell him what it was when they saw Rabbi Groner.<sup>563</sup> Mr Tatarka said that they immediately travelled to Rabbi Groner's home, were told that Rabbi Groner was asleep and said they needed to speak to him urgently.<sup>564</sup> Mr Tatarka says that Rabbi Groner met them in the study and he heard the father tell Rabbi Groner that something had happened to his son and that Rabbi Groner then asked Mr Tatarka to leave the room.<sup>565</sup>
- 312 Mr Tatarka says he did not hear the person tell Rabbi Groner anything about sexual abuse allegations.<sup>566</sup> He says he does not know what else the person said, if anything, that led Rabbi Groner to ask him to leave.<sup>567</sup> Mr Tatarka said he waited outside the study and did not hear any further conversation until Rabbi Groner called him back into the room and said words to the effect that he would deal with the issue but did not tell him what the issue was.<sup>568</sup> He says he left the house with the man and the

<sup>557</sup> Exhibit 22-0023, OPP.3017.011.0026\_R (Tab 141).

<sup>558</sup> Exhibit 22-0023, OPP.3017.011.0026\_R (Tab 141).

<sup>559</sup> Exhibit 22-0023, OPP.3017.011.0026\_R (Tab 141) at OPP.3017.011.0035\_R.

<sup>560</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R.

<sup>561</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [4]-[6].

<sup>562</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [8]-[11].

<sup>563</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [11].

<sup>564</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [12].

<sup>565</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [12].

<sup>566</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [12].

<sup>567</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [12].

<sup>568</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [13].

child and he asked the person what had happened and he would not tell him anything other than that Rabbi Groner was dealing with it.<sup>569</sup>

- 313 Mr Tatarka said that it was not until 2012 that he came to find out that the child had spoken to Rabbi Groner about David Cyprys sexually abusing him.<sup>570</sup>
- 314 Manny Waks gave evidence that he had spoken to two victims who had told him that complaints in relation to Cyprys' conduct against them were reported to Mr Tatarka and Rabbi Groner.<sup>571</sup> Manny Waks said he later attended a meeting at Rabbi Laibel Wolf's home where Mr Tatarka was present.<sup>572</sup> Manny Waks says that at that meeting Mr Tatarka acknowledged that what the victims had told Manny Waks had in fact occurred.<sup>573</sup>
- 315 Mr Tatarka states that he attended a meeting with Manny Waks at Rabbi Laibel Wolf's home in 2012.<sup>574</sup> Mr Tatarka states that he told Manny Waks that he remembered attending a meeting with a father and a child at Rabbi Groner's home and that after the meeting Rabbi Groner told him that he was dealing with it.<sup>575</sup> Mr Tatarka says that that at the meeting with Rabbi Laibel Wolf he did not tell Manny Waks that abuse allegations were revealed to him during or around the time of the meeting with Rabbi Groner; Mr Tatarka believes that Manny Waks misunderstood what he said at the meeting with Rabbi Laibel Wolf as amounting to an admission that Mr Tatarka had known of allegations since the time of the meeting with Rabbi Groner.<sup>576</sup>
- 316 It is submitted that the evidence establishes that Mr Tatarka was involved in conveying a father and child to Rabbi Groner where they made a complaint of child sexual abuse by David Cyprys and it is likely this complaint was made in 1984, but does not establish that Mr Tatarka was aware of the nature of the complaint that was made to Rabbi Groner.
- 317 It is submitted that the Commission should find:
- in 1984, a father and child complained to Rabbi Groner that the child then aged between 5 and 10 had been sexually abused by David Cyprys (the 1984 complaint);
  - the 1984 complaint put Rabbi Groner on notice that David Cyprys was a risk to children;
  - as Rabbi Groner was the head of the Yeshivah Centre,<sup>577</sup> Rabbi Groner's notice was notice to the Yeshivah Centre; and

<sup>569</sup> Exhibit 22-0043, Statement of R Tatarka STAT.0487.001.0001\_R and [14].

<sup>570</sup> Exhibit 22-0043, Statement of Ron Tatarka, STAT.0487.001.0001\_R at [17]-[18].

<sup>571</sup> Transcript of M Waks, C6033: 19-C6034: 12 (Day C60).

<sup>572</sup> Transcript of M Waks, C6032:41-C6033:2 (Day C60).

<sup>573</sup> Transcript of M Waks, C6032: 29-C6033: 20 (Day C60).

<sup>574</sup> Exhibit 22-0043, Statement of Ron Tatarka, STAT.0487.001.0001\_R at [21].

<sup>575</sup> Exhibit 22-0043, Statement of Ron Tatarka, STAT.0487.001.0001\_R at [21].

<sup>576</sup> Exhibit 22-0043, Statement of Ron Tatarka, STAT.0487.001.0001\_R at [22].

<sup>577</sup> Exhibit 22-0034, Statement of Don Wolf, STAT.0453.002.0001\_R at [4].

- therefore the Yeshivah Centre was on notice from 1984 that David Cyprys was a risk to children.

### **AVQ's 1986 complaint**

- 318 AVA gave evidence that one day in 1986, on a Saturday or a Sunday, AVA was walking to his mother's house with his older brother.<sup>578</sup> AVA says he would have been about 14 at the time. AVA said his brother noticed that AVA had extra money. When asked about this, AVA told his brother that Cyprys had been paying him to expose himself. AVA did not tell his brother the extent of the abuse.<sup>579</sup> AVA said that when they arrived home, AVA's brother immediately told his mother what AVA had said.<sup>580</sup> AVA said his mother sent AVA to his room and rang Rabbi Groner, the head of the Yeshivah Centre.<sup>581</sup> AVA says he felt like he was in trouble and no one told him what was happening.<sup>582</sup> AVA states that when he returned to school on the Monday he was called to Rabbi Groner's office.<sup>583</sup> He said he believed he was sent to see Rabbi Groner by Rabbi Glick.<sup>584</sup> Rabbi Glick was the headmaster of the Yeshivah College. Rabbi Groner was described by AVA as an imposing man and a large figure in the community and being called to his office was not something that students like AVA took lightly.<sup>585</sup>
- 319 AVA said he does not remember the exact words that Rabbi Groner said to him during the meeting, but Rabbi Groner advised AVA that he would '*look after*' the situation with Cyprys.<sup>586</sup> No offer was made of counselling or other assistance.<sup>587</sup> AVA recalled returning to his classroom and apologising immediately to Cyprys' brother who was in his class in the belief that by reporting the matter he had got Cyprys in trouble.<sup>588</sup> AVA said that reflecting on this apology now, many years later, still makes AVA feel sick.<sup>589</sup>
- 320 AVA's mother, AVQ, also gave evidence of these events.<sup>590</sup> Her evidence was given by way of statement. Her evidence is corroborated in material respects by the evidence of her son AVA who gave oral evidence and was available for questioning. AVQ was ill at the time of the hearing and was unable to attend to give her evidence in person.<sup>591</sup>
- 321 AVQ said that she first became aware of Cyprys when her elder son said something like, '*mum I think there is something going on that is not right*'.<sup>592</sup> She said she could not now recall the exact words and cannot remember whether it was AVA or her other

<sup>578</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [13].

<sup>579</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [13].

<sup>580</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [13].

<sup>581</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [14].

<sup>582</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [14].

<sup>583</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [17].

<sup>584</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [17].

<sup>585</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [17].

<sup>586</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [18].

<sup>587</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [18].

<sup>588</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [19].

<sup>589</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [19].

<sup>590</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R.

<sup>591</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [4].

<sup>592</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [8].

son who said that it was David Cyprys who was acting sexually with AVA, but she learned this by speaking with one or other of her sons or both of them.<sup>593</sup> She could not recall the exact date but believes it would have been about 1986.<sup>594</sup>

- 322 AVQ stated that as a result of speaking with her sons on the day that she refers to, she rang Rabbi Groner.<sup>595</sup> She said that she remembered the conversation with Rabbi Groner clearly.<sup>596</sup> She said she believes he took her call because her late father was known to Rabbi Groner.<sup>597</sup> She said to Rabbi Groner, *'It has come to my attention that David Cyprys has done something sexual towards my son'* (AVQ's 1986 complaint).<sup>598</sup> Rabbi Groner is said to have responded, *'Oh no, I thought we cured him'* and *'Don't worry about it, I will take care of it, it will be fine'*.<sup>599</sup>
- 323 AVQ said that she believed Rabbi Groner would do something about it and she did not think she needed to do anything else about it.<sup>600</sup> She said she also understood from her conversation with Rabbi Groner that Cyprys must have sexually abused someone before and Rabbi Groner must have known about it because he used the expression, *'I thought we had cured him'*.<sup>601</sup> Before that day she had not heard of David Cyprys.<sup>602</sup>
- 324 The evidence establishes that in 1986, Rabbi Groner was told by AVQ that David Cyprys had done something sexual to her son, AVA. It is submitted that it is reasonable to infer from Rabbi Groner's response to AVQ *'Oh no, I thought we cured him'* that at the time of AVQ's 1986 complaint, Rabbi Groner was already on notice of David Cyprys' behaviour.
- 325 It is submitted that as a result of AVQ's 1986 complaint, Rabbi Groner was on notice of additional information that David Cyprys posed a risk to children. There is no evidence that Rabbi Groner acted to restrict David Cyprys' access to the Yeshivah Centre and to children attending the Centre.
- 326 AVA says he does not think anything was done in response to AVQ's 1986 complaint because David Cyprys was still around at Yeshivah and he continued to have Kung-Fu lessons with David Cyprys.<sup>603</sup> David Cyprys would continue to abuse AVA for a further 2 years until AVA was approximately 17 years old.<sup>604</sup> Cyprys met and continued to abuse AVA through his activities as a Kung-Fu instructor, an activity most likely organised by Chabad Youth for students of Yeshivah College.<sup>605</sup>

<sup>593</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [8].

<sup>594</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [8].

<sup>595</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>596</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>597</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>598</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>599</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>600</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>601</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>602</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [9].

<sup>603</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [20].

<sup>604</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [22].

<sup>605</sup> Transcript of A Glick T7020:14-44 (Day C68).

327 Whatever steps were taken by Rabbi Groner and or the Yeshivah Centre, it is evident that those actions did not restrict Cyprys' access to the Yeshivah Centre or its buildings, nor did they prevent Cyprys continuing to act as a Kung-Fu instructor for students at Yeshiva College. Notwithstanding the 1984 complaint or other pre-1986 knowledge and AVQ's 1986 complaint, Cyprys was able to have ongoing entry and access to the Yeshivah Centre and continue to provide Kung-Fu lessons to AVA and other students.

### 1987 to 1990

328 Manny Waks gave evidence that from 1987 to 1990, when Manny Waks was about 12 years old until he was 14 years old, Cyprys sexually abused him.<sup>606</sup> Manny Waks said that Cyprys was approximately 20 years old and was teaching karate classes that he attended.<sup>607</sup> During this time Manny Waks was a student at Yeshivah College.<sup>608</sup> Cyprys appeared to Manny Waks to be doing security and locksmithing at the Yeshivah Centre.<sup>609</sup> Manny Waks told the Royal Commission that Cyprys perpetrated his abuse while teaching karate and also in the mikveh, on the Yeshivah Centre premises.<sup>610</sup>

### 1991 complaint

329 AVR gave evidence that one day in the playground at Yeshivah he was crying and a child took him home.<sup>611</sup> AVR said he believed he may have told that child's mother what had happened with Cyprys and he was certain that the mother rang AVR's mother and told her to come to Melbourne.<sup>612</sup> AVR gave evidence that his mother travelled to Melbourne and collected AVR and AVR told his mum that Cyprys had been sexually abusing him.<sup>613</sup> He said he did not tell her the full extent of the abuse as she was ill and he did not want to '*push her over the edge*'. That night, he said, his mother rang Rabbi Groner and had a conversation with him about Cyprys sexually abusing AVR.<sup>614</sup> AVR says the following day he travelled to the Yeshivah with his mother and saw Rabbi Groner standing out the front speaking to other people.<sup>615</sup> He said he introduced his mother to Rabbi Groner and said they wanted to speak to Rabbi Glick.<sup>616</sup> AVR said that when he and his mum approached Rabbi Glick, his '*mum told him what happened with Cyprys abusing*' AVR.<sup>617</sup> He said further that he and his mother wanted to find out what was happening with the situation as AVR wanted to stay at the school; AVR said Rabbi Glick told them that AVR's scholarship had been cancelled.<sup>618</sup>

<sup>606</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18]-[28].

<sup>607</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18].

<sup>608</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [17].

<sup>609</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18].

<sup>610</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [18]-[28].

<sup>611</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [11].

<sup>612</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [11].

<sup>613</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [12].

<sup>614</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [12].

<sup>615</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [13].

<sup>616</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [13].

<sup>617</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [13].

<sup>618</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [13].

- 330 Rabbi Glick said he had no recollection of receiving a complaint from AVR's mother and no recollection of AVR being a student at Yeshivah.<sup>619</sup> Counsel representing the Yeshivah Centre and College, however, did not question AVR to directly challenge his evidence.
- 331 Rabbi Glick accepted that through his tenure as principal, from time to time, he had contact with parents who wished to send their children from interstate to study at the school and Rabbi Glick said he would facilitate that process or tell them how it might be arranged.<sup>620</sup> Rabbi Glick accepted that he was known to students of the school and their parents as someone they could go to as the Principal to discuss issues of concern.<sup>621</sup>
- 332 AVR gave evidence at the public hearing that he stayed at the Yeshivah College after travelling from interstate; however at the trial of David Cyprys, AVR gave evidence that he stayed in the dormitory of the Rabbinical College (the Gedola).<sup>622</sup> Rabbi Glick said in his evidence that Yeshivah College did not have a dormitory but the Gedola did.<sup>623</sup> Initially, Rabbi Glick gave evidence that he did not think Yeshivah College students stayed at the Gedola but later corrected his evidence.<sup>624</sup> Ultimately, Rabbi Glick's evidence was that the Gedola did permit interstate students from the College to reside there.<sup>625</sup> Rabbi Glick ultimately agreed that he was unable to say anything to counter the evidence given by AVR of the period in which he resided at the Gedola.<sup>626</sup> Rabbi Glick also gave evidence of another student who had come from interstate and resided at the Gedola.<sup>627</sup>
- 333 Rabbi Glick said that David Cyprys was never the caretaker at the Yeshivah Centre.<sup>628</sup> Rabbi Glick disagreed that in 1990 David Cyprys was someone who did various things around the Yeshivah Centre that could be interpreted as acting in the role of caretaker.<sup>629</sup>
- 334 Rabbi Glick gave evidence that he was first informed of allegations against David Cyprys in 2004, when Rabbi Groner told him in a discussion about a then adult male, that the male had been a victim of David Cyprys 20 years earlier.<sup>630</sup>
- 335 AVR gave unchallenged oral evidence at the hearing and it is submitted he was clear in the evidence he gave.<sup>631</sup> AVR confirmed in oral evidence that he went to Yeshivah Centre with his mum on the day following his disclosure of the abuse, that he was

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<sup>619</sup> Transcript of A Glick, C7031:25-27 (Day C68).

<sup>620</sup> Transcript of A Glick, C6991:37-45 (Day C68).

<sup>621</sup> Transcript of A Glick, C6992:13-31 (Day C68).

<sup>622</sup> Transcript of AVR, C6567:6-22 (Day C65).

<sup>623</sup> Transcript of A Glick, C7014:41-C7015:1 (Day C68).

<sup>624</sup> Transcript of A Glick, C7017:23-31; Transcript of A Glick, C7019:17-31 (Day C68).

<sup>625</sup> Transcript of A Glick, C7017:23-31; Transcript of A Glick, C7019:17-31 (Day C68).

<sup>626</sup> Transcript of A Glick, C7020:1-5 (Day C68).

<sup>627</sup> Transcript of A Glick, C7020:7-12 (Day C68).

<sup>628</sup> Transcript of A Glick, C7015:25-33.

<sup>629</sup> Transcript of A Glick, C7015:45-C7016:9 (Day C68).

<sup>630</sup> Exhibit 22-0039, Statement of A Glick, STAT.0452.002.0001\_R at [28]-[29].

<sup>631</sup> Transcript of AVR, C6565:36-C6571:34 (Day C65).

present with his mother when she spoke with Rabbi Glick, and that his mother told Rabbi Glick that Cyprys had been abusing him.<sup>632</sup> AVR's evidence of his mother attending Yeshivah College after finding out about his abuse is corroborated by Manny Waks, who said he recalled AVR's mother approaching him and telling him that Cyprys had been abusing her boy.<sup>633</sup>

- 336 AVR gave evidence his scholarship was terminated after the complaint.<sup>634</sup> There was no direct challenge to AVR's evidence. Rabbi Glick said that such a response would have been out of character.<sup>635</sup> Whether or not the response was out of character is not the issue. Given the absence of direct challenge to AVR's evidence, the issue is how the Commission should resolve the conflict between AVR's evidence of what he said occurred in 1991 and Rabbi Glick's evidence that he could not recall such a conversation. For the reasons that follow, it is submitted the Commission should prefer AVR's evidence.
- 337 First, Rabbi Glick said could not recall AVR as a student. Manny Waks corroborated AVR's evidence that he was a student at Yeshivah College in 1991.
- 338 Secondly, Rabbi Glick initially gave evidence that he did not think interstate students stayed at the Yeshivah Gedola,<sup>636</sup> but ultimately corrected that position and said there was a period when interstate students could reside at the Gedola. AVR's description of where he resided and the lack of other students there over the summer break, was otherwise corroborated by Rabbi Glick's evidence.<sup>637</sup> In those circumstances, the Commission would accept AVR's evidence that when he travelled to Melbourne to study at the Yeshivah College, he initially lived for a period at the Yeshivah Gedola.
- 339 Thirdly, Rabbi Glick gave evidence of a conversation he had with Rabbi Groner in which Rabbi Groner asked whether he knew anything about an interstate student who had been abused by David Cyprys in 1991.<sup>638</sup> Rabbi Groner was said to have called Rabbi Glick and told him that he had met with the mother of a former Yeshivah College student, from interstate, who told him that her son had been abused by David Cyprys in 1991, when her son was a student at Yeshivah, and that the police had investigated it at the time and David Cyprys had been charged. Rabbi Groner was said to have asked Rabbi Glick if he knew anything and Rabbi Glick told Rabbi Groner that he did not. Rabbi Glick believed this conversation took place in 2008. Were it not for the year 2008, the matters articulated in the conversation between Rabbi Groner and Rabbi Glick match the facts of AVR's complaint in 1991 as AVR did make a complaint to Victoria Police and, in 1992, David Cyprys pleaded guilty to the indecent assault of AVR. However, if this conversation took place in 2008, the mother could not have

<sup>632</sup> Transcript of AVR, C6570:7-41 (Day C65).

<sup>633</sup> Transcript of M Waks, C6007: 37-C6008:32 (Day C60).

<sup>634</sup> Exhibit 22-0029, Statement of AVR, STAT.0471.001.0001\_R at [13].

<sup>635</sup> Transcript of A Glick C7031:29-41 (Day C68).

<sup>636</sup> Transcript of A Glick C7017:14 - :31 (Day C68).

<sup>637</sup> Transcript of A Glick, C7052:5 – 7052:37 (Day C68).

<sup>638</sup> Exhibit 22-0039, Statement of A Glick STAT.0452.002.0001\_R at [30], Transcript of A Glick, C7031:44 - 7034:6, C7050:32 -7051:46 (Day C68).

been AVR's mother, because she died in 1995.<sup>639</sup> Given Rabbi Glick's difficulties in recalling AVR as a student and about arrangements for interstate students to stay at the Yeshivah Gedola, it may be that Rabbi Glick has an incorrect memory of the year in which the conversation took place.

340 Finally, Rabbi Glick said that, other than the 2004 discussion with Rabbi Groner, and the conversation about the mother which he said took place in 2008, Rabbi Groner did not discuss any complaints of child sexual abuse against David Cyprys with him.<sup>640</sup> He agreed with the suggestion that most people hearing that evidence would find it 'incredible'.<sup>641</sup> Rabbi Glick said that although he had once described the Chabad community as being '*so small you can't sneeze without everyone knowing about*' there were some exceptions to this, including knowing anything about or hearing anything about David Cyprys' conduct with children because he believed that children did not discuss this with adults except in very limited cases.<sup>642</sup> Yet, AVB gave evidence that after he had moved to Melbourne his father said he had heard '*bad things*' about Cyprys and warned AVB to stay away from him.<sup>643</sup> It is difficult to accept Rabbi Glick's evidence that he did not know or hear anything about Cyprys in a community that was '*so small you can't sneeze without everyone knowing about*'.<sup>644</sup>

341 Having regard to all of the evidence, it is submitted that Rabbi Glick's evidence that he did not know of complaints about Cyprys prior to 2004 is not persuasive. It is submitted that the evidence of AVR should be accepted and the Commission should find that in 1991, AVR and his mother met with Rabbi Glick, AVR's mother told Rabbi Glick that David Cyprys was abusing her son and as a result of AVR's mother's complaint, the Yeshivah Centre terminated AVR's scholarship to attend Yeshivah College. Rabbi Glick's evidence to the contrary should not be accepted.

### **1996 complaint**

342 Manny Waks gave evidence that in 1996, he spoke with Rabbi Groner and told Rabbi Groner about his earlier abuse by David Cyprys.<sup>645</sup> Manny Waks said it was clear to him that Rabbi Groner was aware of the circumstances, and so there was little to say.<sup>646</sup> Rabbi Groner told Manny Waks that the Yeshivah Centre was dealing with Cyprys, and that Manny Waks should not do anything about the abuse.<sup>647</sup>

343 Notwithstanding the 1984 complaint, AVQ's 1986 complaint, the 1991 complaint and Manny Waks' 1996 conversation with Rabbi Groner, Cyprys continued to attend and have access to the Yeshivah Centre premises and to act as the security guard and locksmith for the Yeshivah Centre with access to keys for the rooms on the premises where much of the abuse he had perpetrated had occurred.

<sup>639</sup> Transcript of A Glick, C7051:40-43 (Day C68).

<sup>640</sup> Exhibit 22-0039, Statement of A Glick STAT.0452.002.0001\_R at [28]-[32].

<sup>641</sup> Transcript of A Glick C7013: 16-22 (Day C68).

<sup>642</sup> Transcript of Z Waks, C6161: 15-16 (Day C61); Transcript of A Glick, C7009:27 – C7010:10 (Day C68).

<sup>643</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [32].

<sup>644</sup> Transcript of Z Waks, C6161: 15-16 (Day C61); Transcript of A Glick, C7009:27 – C7010:10 (Day C68).

<sup>645</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [43].

<sup>646</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [43].

<sup>647</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [43].

### Available findings on complaints of sexual abuse by David Cyprys

F30 In 1984, Rabbi Groner received a complaint of conduct by David Cyprys amounting to child sexual abuse that put Rabbi Groner, Head of Yeshivah College and Yeshivah Melbourne, on notice that David Cyprys may pose a risk to children.

F31 Notwithstanding the 1984 complaint about David Cyprys, David Cyprys was permitted to continue to act as an assistant martial arts instructor in after school student activities organised by Chabad Youth for Yeshivah College students.

F32 In 1986, AVQ, mother of AVA, a student at Yeshivah College, complained to Rabbi Groner that David Cyprys was abusing AVA. Even though Rabbi Groner told AVQ and AVA that he would take care of the situation, David Cyprys was permitted to have ongoing access to the Yeshivah Centre premises. Cyprys continued to abuse AVA for a further 12-18 months after AVQ's 1986 complaint and much of the abuse occurred on the Yeshivah Centre premises.

F33 In the period 1987 to 1990, Cyprys met and abused Yeshivah College student, Manny Waks. David Cyprys was teaching karate lessons to Manny Waks. David Cyprys abused Manny Waks on Yeshivah Centre premises.

F34 In late 1990/1991, David Cyprys met and subsequently abused AVR, then a Yeshivah College student. Much of the abuse occurred on Yeshivah centre premises.

F35 In 1991, AVR's mother complained to Rabbi Groner and Rabbi Glick that David Cyprys was abusing AVR. Rabbi Glick immediately terminated AVR's scholarship. This was an inappropriate response to a student who has complained that he has been abused by Cyprys.

F36 David Cyprys continued to attend the Yeshivah Centre for a further 10 years after Rabbi Groner and Rabbi Glick received AVR's complaint.

### Rabbi Groner's views on child sexual abuse

344 AVA said he first learnt of the detail of AVQ's 1986 conversation with Rabbi Groner in or about 2002 when he spoke with AVQ about the possibility of reporting to the police.<sup>648</sup> AVA said that AVQ told him that when she spoke with Rabbi Groner in 1986 to complain about Cyprys' behaviour with AVA, Rabbi Groner told her at the time that they thought that they had fixed David Cyprys.<sup>649</sup> AVA said he told his mother that the abuse had continued after AVQ's 1986 complaint.<sup>650</sup>

345 AVQ gave evidence that in or about 2002, she called Rabbi Groner and told him that the sexual abuse by David Cyprys of AVA had gone on after her earlier complaint and said to him *'You promised me you would take care of the matter and you didn't and my*

<sup>648</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [25].

<sup>649</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [15] and [25].

<sup>650</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [25].

*son is suicidal*'. She said Rabbi Groner responded by asking if AVA was *'going to the police'* AVQ said she responded, *'probably'* and Rabbi Groner then said *'Well what do you need me for?'*<sup>651</sup>

- 346 Manny Waks said of his 1996 conversation with Rabbi Groner, that Rabbi Groner told him that Yeshivah was dealing with Cyprys and that Manny Waks should not do anything of his own accord.<sup>652</sup> Manny Waks said that when he spoke to Rabbi Groner in the early 2000s to specifically discuss why Cyprys was still doing security at the Yeshivah, Rabbi Groner told Manny Waks that he was dealing with it and told him adamantly that Manny Waks should not raise it elsewhere and pleaded with Manny Waks not to pursue the matter.<sup>653</sup> Manny Waks said Rabbi Groner further told him that David Cyprys was getting professional help and according to the professionals was making improvements.<sup>654</sup>
- 347 It is submitted that having regard to the evidence of AVQ's conversation with Rabbi Groner and Manny Waks's 1996 and early 2000s conversations with Rabbi Groner, it is apparent that Rabbi Groner held a view that he himself could take care of David Cyprys' offending.

#### **Available findings on Rabbi Groner's attitude to child sexual abuse**

F37 In 1996, Manny Waks told Rabbi Groner that David Cyprys had sexually abused him. Rabbi Groner urged Manny Waks not to report the abuse and told him that Cyprys was getting professional help and was making improvements.

#### **Child protection issues: 1986 - 2007**

- 348 Rabbi Glick gave evidence that he has been an employee of the Yeshivah Centre since 1970 and, between 1970 and 2007, has held various roles at the Yeshivah College:<sup>655</sup> including between 1970 and 1974 a teacher and director of youth activities at the Yeshivah Centre; between 1974 and 1986 Head of Jewish Studies at the Yeshivah College; and, relevantly, between 1986 and 2007 Principal of the Yeshivah College.
- 349 Rabbi Glick explained that, as principal, he reported to both Rabbi Groner and the Committee of Management.<sup>656</sup> He said that while he had a letter of appointment, he was not certain that he had a written contract of employment<sup>657</sup>.

<sup>651</sup> Exhibit 22-0002, Statement of AVQ, STAT.0470.001.0001\_R at [10].

<sup>652</sup> Exhibit 22-003, Statement of M Waks, STAT.0460.001.0001\_R at [43].

<sup>653</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [51].

<sup>654</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [51].

<sup>655</sup> Transcript of A Glick, C6986:12-33 (Day C68).

<sup>656</sup> Transcript of A Glick, C6987:41-47 (Day C68).

<sup>657</sup> Transcript of A Glick, C6989:12-18 (Day C68).

- 350 Rabbi Glick accepted that as the principal of the Yeshivah College he had responsibility for being alive to and responding to issues that posed a risk to the safety of children at the school.<sup>658</sup>
- 351 Rabbi Glick said that from the time he commenced working as a teacher at the Yeshivah College and including the period during which he was the principal of the Yeshivah College, he worked very closely with Rabbi Groner.<sup>659</sup> From 1986 to 2007, Rabbi Glick as the principal of Yeshivah College worked with Rabbi Groner to run Yeshivah College.<sup>660</sup>
- 352 Save for the pre 1986 abuse committed by Cyprys, all of the child sexual assaults perpetrated by Cyprys and Kramer considered by this public hearing were perpetrated against students of the Yeshivah College during the time that Rabbi Glick was the principal.
- 353 Save for the pre 1986 complaint to Rabbi Groner, and Manny Waks' later disclosure to Rabbi Groner, each of the complaints of abuse against Cyprys and Kramer were made during the period in which Rabbi Glick was the principal of Yeshivah College.
- 354 Rabbi Glick accepted that a number of students of the school suffered abuse in various circumstances under his watch.<sup>661</sup> Cyprys's abuse of AVA, AVR and Manny Waks, and Rabbi Kramer's abuse of primary school students all occurred during the time Rabbi Glick was principal.<sup>662</sup>
- 355 Rabbi Glick said that together with Rabbi Groner, as principal of the school, he had overall responsibility for the management of the Yeshivah College.<sup>663</sup>
- 356 Rabbi Glick accepted that as principal he had primary responsibility to the students to deal with issues affecting the children at school and part of that responsibility, in theory, was to in principle to be alive to and respond to issues that posed a risk to the safety of children at the school.<sup>664</sup>
- 357 Rabbi Glick said that Rabbi Groner dealt with many sensitive issues, that he dealt with them in strict confidence and discretely but Rabbi Glick could not explain why Rabbi Groner did not tell him of complaints that he received.<sup>665</sup> Rabbi Glick agreed that to people hearing his evidence, the proposition that Rabbi Groner would not have told the principal of the school of information that posed a risk to the safety of the students, was '*incredible*'.<sup>666</sup> Rabbi Glick accepted that a situation where the principal of the school and the head of the Centre were not communicating about issues of child

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<sup>658</sup> Transcript of A Glick, C6991:16-22 (Day C68).

<sup>659</sup> Transcript of A Glick, C6987:36-39 (Day C68).

<sup>660</sup> Exhibit 22-0039, Statement of A Glick STAT.0452.002.0001\_R at [9].

<sup>661</sup> Transcript of A Glick, C7038:8-13 (Day C68).

<sup>662</sup> Transcript of AVA, C5989:45 – C5990:5 (Day C60); Transcript of M Waks C6063:39-42 (Day C60); Transcript of AVR, C6567:7-36 (Day C65).

<sup>663</sup> Transcript of A Glick, C6987:36-39; C6989:20-25 (Day C68).

<sup>664</sup> Transcript of A Glick, C6989:43-C6990:27; C6991:1-22 (Day C68).

<sup>665</sup> Transcript of A Glick, C7013: 8-22 (Day C68).

<sup>666</sup> Transcript of A Glick, C7013: 8-22 (Day C68).

sexual abuse was an entirely unacceptable position in terms of fulfilling the obligations to students.<sup>667</sup>

- 358 It is submitted that if Rabbi Groner received complaints of abuse of students of Yeshivah College in connection with the activities of the school or the Yeshivah Centre a risk was raised for students of Yeshivah College, and that information should have been conveyed to the principal of Yeshivah College.
- 359 Rabbi Glick accepted that complaints received by him or by Rabbi Groner should have been conveyed to the Committee of Management.<sup>668</sup> The evidence suggests this was not routinely done.<sup>669</sup>
- 360 Rabbi Glick accepted that all complaints of child sexual abuse should have been documented and Mr Wolf accepted that not documenting complaints was a problem from a governance perspective.<sup>670</sup>
- 361 Rabbi Glick gave evidence that he had no training in child sexual abuse, including in recognising its nature or incidence, until 2007.<sup>671</sup> Rabbi Glick explained to the Royal Commission that Yeshivah College did not have a formal policy on responding to child sexual abuse complaints until 2007.<sup>672</sup> Mandatory reporting was introduced in Victoria in 1994, some 13 years earlier.<sup>673</sup>
- 362 The leaders of the school, Rabbi Groner and Rabbi Glick, did not routinely discuss the issue of child sexual abuse.<sup>674</sup> While Rabbi Glick was the principal, teachers received no training on child sexual abuse,<sup>675</sup> and students received no sex education or education about the dangers and nature of child sexual abuse.
- 363 The evidence suggests that in the period 1984 to 2007, the Yeshivah Centre lacked a framework to recognise and respond to child sexual abuse issues: key staff received no training; Yeshivah College had no formal child protection policies; and informal practices to regulate a response to child abuse complaints did not exist because the issue was not routinely discussed by leaders of the Yeshivah Centre.
- 364 Rabbi Smukler, who has been principal of Yeshivah College since August 2010, accepted that in the past, the Yeshivah College was a less than safe place in terms of best practice in child protection.<sup>676</sup> In relation to the institutional response to incidents child sexual abuse prior to his involvement at the Yeshivah-Beth Rivkah Colleges, he agreed that:

<sup>667</sup> Transcript of A Glick, C7036:42 – 7037:1 (Day C68).

<sup>668</sup> Transcript of A Glick, C7037:29 -39 (Day C68).

<sup>669</sup> Exhibit 22-0034, Statement of D Wolf, STAT.0453.002.0001\_R at [9]-[10]; Statement of A Glick, STAT.0452.002.0001\_R at [6]; Transcript of A Glick, C7013: 8-22 (Day C68).

<sup>670</sup> Transcript of A Glick, C7037:41-43; Transcript of D Wolf, C6866:11-C6868:6 (Day C67).

<sup>671</sup> Transcript of A Glick, C7040:39- 40 (Day C68).

<sup>672</sup> Transcript of A Glick, C6988: 21-29 (Day C68).

<sup>673</sup> Transcript of A Glick, C7036:3 -5, *Children, Youth and Families Act 2005* (Vic).

<sup>674</sup> Transcript of A Glick C7005:22-43 (Day C68).

<sup>675</sup> Transcript of A Glick, C7045:40 – 45 (Day C68).

<sup>676</sup> Transcript of Y Smukler, C7229:26-32 (Day C69).

- a) the lack of written policies was problematic because it failed to clearly articulate what was expected of staff and leaders and managers who respond to information;<sup>677</sup>
- b) having a central person deal with all of the complaints without oversight was a problem;<sup>678</sup>
- c) failing to act to remove access to children or access to premises, where there was knowledge that a person posed a risk to children, was a problem;<sup>679</sup>
- d) counselling does not remove the obligation as the principal or even the head or a leader to take a person away from having access to children following the receipt of information suggesting they pose a risk.<sup>680</sup>

#### **Available findings on Yeshivah Centre: child protection issues 1984 – 2007**

F38 In the period 1984 to 2007, Yeshivah College was a less than safe place from the perspective of best practice in child protection as it lacked a framework to recognise and respond to child sexual abuse issues.

F39 Yeshiva College developed policies to respond to mandatory reporting in 2007, but mandatory reporting had been introduced 13 years earlier in Victoria in 1994.

#### **4.2 The response of the Yeshivah Centre to the 1992 complaints against Rabbi David Kramer**

365 In 1992, leaders of the Yeshivah Centre received complaints by several parents that Rabbi David Kramer had abused their children.<sup>681</sup> The evidence heard and documents examined reveal that various leaders of the Yeshivah Centre were involved in responding to the complaints including Rabbi Groner, Rabbi Glick, Rabbi Pincus Ash (Principal of the Primary School), and Hersh Cooper, then Chair of the Committee of Management.<sup>682</sup>

366 Zephaniah Waks said that after the complaints the school refused to remove Rabbi David Kramer from his teaching position at the school and did not do so until further pressure and action by parents.<sup>683</sup> Rabbi Glick says that, in the wake of the complaints, he was told by either Hersh Cooper or Rabbi Ash that Hersh Cooper had instructed

<sup>677</sup> Transcript of Y Smukler, C7228:15-25 (Day C69).

<sup>678</sup> Transcript of Y Smukler, C7228:33-39 (Day C69).

<sup>679</sup> Transcript of Y Smukler, C7228:41-47 (Day C69).

<sup>680</sup> Transcript of Y Smukler, C7229:12-18 (Day C69).

<sup>681</sup> Exhibit 22-0039 Statement of A Glick at [17]-[26]; Exhibit 22-0005 Statement of Z Waks at [11]-[15]; Exhibit 22-0023 at Tab 78.

<sup>682</sup> Exhibit 22-0039 Statement of A Glick at [17]-[26]; Exhibit 22-0005 Statement of Z Waks at [11]-[15]; Transcript of Z Waks T6081:38- 6082:28 (Day C61); Transcript of Z Waks T6090:28 -6092:24 (Day C61); Exhibit 22-0023 at Tab 78; Exhibit 22-0023 at Tab 38.

<sup>683</sup> Transcript of Z Waks, C6081:38- C6092:21 (Day C61)

Rabbi Ash to remove Rabbi Kramer from the classroom, which was done.<sup>684</sup> Rabbi Groner and Hersh Cooper then undertook all further investigations and decision-making about how to respond. Parents were concerned to remove Rabbi Kramer from the School.<sup>685</sup>

- 367 Zephaniah Waks gave evidence that Rabbi Glick told him that Rabbi Kramer had partly admitted to what had happened.<sup>686</sup> Documents examined at the public hearing include a police statement from Professor Ramon Lewis<sup>687</sup> in which Professor Lewis told police that a member of the Yeshivah Centre asked him to interview Rabbi Kramer about the allegations. Professor Lewis asked Rabbi Kramer if he had any sexual involvement with the boys and Rabbi Kramer made a number of disclosures including an admission that he had touched the boys. Professor Lewis reported the disclosures made by Rabbi Kramer back to that member.<sup>688</sup> There is insufficient evidence to identify who asked Professor Lewis to speak to Rabbi Kramer and to whom Professor Lewis made the report.
- 368 Zephaniah Waks gave evidence that a meeting was proposed to be held by parents to discuss whether police were to be involved; the parents intended to tell the leaders of the Yeshivah Centre that the parents would go to the police if Rabbi Kramer was not fired.<sup>689</sup> Mr Cooper was involved in various meetings and communications to respond to parents' concern about Rabbi Kramer and the school's response.<sup>690</sup> Zephaniah Waks says that Harry Cooper later called him advising him that the meeting could be cancelled as Rabbi Kramer was removed.<sup>691</sup>
- 369 The Commission received into evidence a police statement taken from Harry Cooper, then on the executive of Yeshivah College and its 'unofficial chairman'.<sup>692</sup> In his police statement, Mr Cooper said that there were complaints made by 3 or 4 parents, and that he discussed those complaints with the parents, Rabbi Groner, Rabbi Ash and Rabbi Glick.<sup>693</sup> Mr Cooper said that after discussing the matter at length, Rabbi Groner decided to act 'immediately' to remove David Kramer from class as requested by the parents. After this, Mr Cooper instructed Rabbi Ash to dismiss Rabbi Kramer. Mr Cooper said that Rabbi Kramer advised him that he would fight the 'unfair dismissal' and that Mr Cooper then gave Rabbi Kramer a choice: to either stay and fight or the school would pay for his ticket back to Israel if he left immediately.<sup>694</sup> Mr Cooper said further that within a day or two, Rabbi Kramer was gone and he believed that the Yeshivah Centre paid for Kramer's plane ticket.<sup>695</sup> Some time later, a school

<sup>684</sup> Exhibit 22-0039, Statement of A Glick STAT.0452.002.0001\_R at [18].

<sup>685</sup> Transcript of Z Waks, C6099:13-36; Exhibit 22-0039, Statement of A Glick STAT.0452.002.0001\_R at [20].

<sup>686</sup> Exhibit 22-005, Statement of Z Waks STAT.0469.001.0001\_R at [13].

<sup>687</sup> Exhibit 22-0006, police statement of R Lewis.

<sup>688</sup> Exhibit 22-0006, police statement of R Lewis.

<sup>689</sup> Transcript of Z Waks C6088:5-18 (Day C61).

<sup>690</sup> Exhibit 22-0023, OPP.3016.001.0113\_E\_R at [7], [10]-[16] (Tab 78).

<sup>691</sup> Transcript of Z Waks, C6092:6- 18 (Day C61).

<sup>692</sup> Exhibit 22-0023 OPP.3016.001.0113\_E\_R at [3] (Tab 78).

<sup>693</sup> Exhibit 22-002, OPP.3016.001.0113\_E\_R at [4], [6], [7]-[11] (Tab 78).

<sup>694</sup> Exhibit 22-0023, OPP.3016.001.0113\_E\_R at [14]-[16] (Tab 78).

<sup>695</sup> Exhibit 22-0023, OPP.3016.001.0113\_E\_R at [18] (Tab 78).

for Northern Israel called to enquire about Kramer as a prospective teacher and Mr Cooper said the school was told not employ Kramer as *'he had left Melbourne under a cloud.'*<sup>696</sup> Mr Cooper did not give evidence at the public hearing.

- 370 The Commission also received into evidence a police statement taken from Rabbi Pincus Ash<sup>697</sup> who told police that at or about the same time as he was informed of the complaint he was instructed to remove Rabbi Kramer from the classroom, which he then did.
- 371 A satisfactory explanation of what assistance was or was not given to Rabbi David Kramer in leaving Australia was not given, leaving open to question the circumstances of Rabbi David Kramer's departure.
- 372 Rabbi David Kramer would ultimately move to the United States, where he would later be found guilty of a sexual misconduct involving a 12-year-old child and sentenced to 4 years imprisonment.<sup>698</sup>
- 373 In 2011, Rabbi Kramer was charged by Victoria Police with offences committed at Yeshivah College and extradition to Australia was granted in October 2012.<sup>699</sup> On 24 July 2013, Rabbi Kramer was sentenced in relation to the allegations that first arose in 1992.<sup>700</sup> Rabbi Kramer was given a total effective sentence of three years and four months imprisonment with a non-parole period of 18 months.
- 374 The evidence of Zephaniah Waks is that the Yeshivah Centre did not immediately remove Rabbi Kramer from the school and that they did not do so until after parents organised a meeting to discuss reporting the allegations to the police.<sup>701</sup> The Commission received into evidence police statements from Rabbi Ash and Harry Cooper but neither gave evidence at the public hearing. It is submitted that it is not necessary to resolve any conflict between the evidence of Zephaniah Waks and the matters set out in the police statements of Rabbi Ash and Harry Cooper.
- 375 It is submitted that the Commission should accept the following:
- In 1992, parents of students at Yeshivah College complained to Rabbi Groner, Rabbi Glick and Rabbi Pincus Ash that Rabbi David Kramer, a teacher, was sexually abusing children;
  - Within a short period of time, Rabbi Kramer was stood down from his teaching position;

<sup>696</sup> Exhibit 22-0023, OPP.3016.001.0113\_E\_R at [19] (Tab 78).

<sup>697</sup> Exhibit 22-0023, OPP.3016.002.0108\_E\_R (Tab 38).

<sup>698</sup> Exhibit 22-0023, YSV.0010.001.0042 (Tab 123).

<sup>699</sup> Exhibit 22-0023, YSV.0010.001.0042 (Tab 123).

<sup>700</sup> Exhibit 22-0023, YSV.0010.001.0042 (Tab 123).

<sup>701</sup> Transcript of Zephaniah Waks C6088:5-6092:38 (Day C61).

- Someone at the Yeshivah Centre asked Professor Lewis to speak to Rabbi Kramer about the complaints and Professor Lewis later advised the Yeshivah Centre that Rabbi Kramer had admitted some improper conduct;
- Within days of the complaints, Rabbi Kramer left Australia on an airline ticket paid for by the Yeshivah Centre.<sup>702</sup>

376 The evidence suggests that none of the employees of the Yeshivah Centre involved in responding to the 1992 complaints made a contemporaneous record of the complaints or the actions taken to respond to the complaints.<sup>703</sup>

#### **Available findings on the response of the Yeshivah Centre to 1992 complaints against Rabbi David Kramer**

F40 In 1992, parents of students at Yeshivah College complained to Rabbi Groner, Rabbi Glick and Rabbi Pincus Ash that Rabbi David Kramer, a teacher, was sexually abusing children. Within a short period of time, Rabbi Kramer was dismissed from his teaching position. Within days of the complaints Rabbi Kramer left Australia on an airline ticket paid for by the Yeshivah Centre.

### **4.3 The Response to the Police Investigation into Historical Allegations of Child Sexual Abuse at Yeshivah College**

#### **The Response to the police investigations into Rabbi Kramer and David Cyprys**

377 In or about 2009, the police commenced investigations into the historical abuse alleged against Rabbi David Kramer.

378 The evidence before the Royal Commission shows that in or about March 2011, police contacted Mrs Bendet to request her assistance in relation to the extradition of Rabbi Kramer to Melbourne and, at or about the same time, sought the assistance of the Yeshivah Centre to contact former students of Yeshivah College who may have been taught by Rabbi David Kramer.<sup>704</sup>

379 Mrs Bendet said she took various steps to try to ascertain the names and contact details of former students, but acknowledged that the then computer records did not readily identify the years in which Rabbi Kramer taught, or the names of his students, and that it was necessary to access a database of old collegians.<sup>705</sup> Mrs Bendet would

<sup>702</sup> Transcript of Z Waks, C6093:1-9 (Day C61); Exhibit 22-0023, Statement of Harry Cooper, OPP.3016.001.0113\_E\_R at [16]-[19].

<sup>703</sup> Transcript of A Glick C7006:9-25 (Day C68); Transcript of D Wolf, C6866:45-C6867:10 (Day C67); Transcript of N Bendet, C6766:15-37 (Day C67).

<sup>704</sup> Exhibit 22-0023, YSV.0001.001.0417 (Tab 32).

<sup>705</sup> Transcript of N Bendet C6742:16-6743:18, C6752:16- 6753:7 (Day C66).

ultimately provide a list of students to Victoria Police that she believed was a complete list of students taught by Rabbi Kramer. However, Mrs Bendet acknowledged the possibility that the list was not complete as it depended on whether or not Mrs Bendet had been able to ascertain the correct years in which Rabbi Kramer taught, and whether or not the old collegian database contained the names and contact details of all former students.<sup>706</sup>

- 380 At or around this time, AVB became aware of the police investigation.<sup>707</sup> AVB gave evidence that in May 2011 he reported his abuse by David Cyprys and Daniel Hayman to Victoria Police.<sup>708</sup> AVB said that he was in regular contact with Victoria Police over the coming months and they commenced to investigate David Cyprys.<sup>709</sup>
- 381 In early June 2011, Victoria Police issued a notice titled 'Public Assistance Requested' advising former students of the Yeshivah College that they were investigating sexual assaults that may have been committed at the Yeshivah College between 1989 and 1993 and that the police were seeking their assistance.<sup>710</sup>
- 382 Rabbi Telsner told the Royal Commission that this was a time of sensitivity for the community.<sup>711</sup>
- 383 Leaders of the community, including the Committee of Management, Rabbi Telsner and Rabbi Kluwgant said they were aware there was likely to be ambivalence and uncertainty about co-operation with the police.<sup>712</sup> Rabbi Telsner said he was aware that there was cultural reticence by some members of the community to deal with an external secular authority.<sup>713</sup>
- 384 Rabbi Kluwgant told the Royal Commission that he brokered a meeting between the Yeshivah and the police.<sup>714</sup> It was agreed that Rabbi Telsner would erect a notice outside the shule to tell parents to co-operate with authorities.<sup>715</sup> A letter dated 16 June 2011 to that effect was erected at or about this time on the noticeboard outside the shule.<sup>716</sup> This evidence demonstrates that community leaders recognised the central role of Rabbi Telsner in the community in that some members would look to him for guidance on how they should respond to the police investigation into the allegations of abuse against Rabbi Kramer.
- 385 When the Yeshivah Centre later resolved to deny David Cyprys entry to the Yeshivah Centre, Mrs Bendet asked Rabbi Telsner to write to David Cyprys restricting his access

<sup>706</sup> Transcript of N Bendet C6753:9 -6754:36 (Day C66).

<sup>707</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [42].

<sup>708</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [43].

<sup>709</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [47].

<sup>710</sup> Exhibit 22-0023, IND.0214.001.0172 (Tab 36A).

<sup>711</sup> Transcript of Z Telsner, C7077:33-40 (Day C68).

<sup>712</sup> Transcript of Z Telsner, C7079:41 - C7080:21 (Day C68); Transcript of M Kluwgant, C7203: 8-13 (Day C69).

<sup>713</sup> Transcript of Z Telsner, C7080: 11-16 (Day C68).

<sup>714</sup> Transcript of M Kluwgant, C7187:19-27 (Day C69).

<sup>715</sup> Transcript of M Kluwgant, C7186:37-44 (Day C69).

<sup>716</sup> Exhibit 22-0009, Letter from Rabbi Telsner to Parents, YSV.0001.001.0268\_R.

to the Yeshivah Centre.<sup>717</sup> This evidence also demonstrates the central role played by the Head Rabbi in the community.

- 386 As at June 2011, community leaders recognised that many members of the Yeshivah community might be ambivalent about reporting abuse to the police or co-operating with the Victoria Police investigation into Rabbi David Kramer. Community leaders were aware that some members of the community would look to Rabbi Telsner for guidance about whether or not to co-operate with the police investigation. On or about 16 June 2011, Rabbi Telsner erected a notice on the noticeboard outside the Shule that parents should co-operate with the police request for assistance in their investigation.

#### **Available findings on the response to community attitudes to the police investigation in 2011**

F41 On or about 16 June 2011, Rabbi Telsner erected a notice on the noticeboard outside the Shule that parents should co-operate with the police request for assistance in their investigation.

#### **AVB's email of 17 June 2011**

- 387 AVB gave evidence that in June 2011, a member of Victoria Police told him that they had requested the Yeshivah Centre provide a list of the names and addresses of former students in order to contact them about the investigation into Rabbi Kramer.<sup>718</sup> AVB said he was shown the list of students' names provided by the Yeshivah Centre and, when he saw the list provided, he noticed that his name and the names of other students were not on the list.<sup>719</sup>
- 388 On 17 June 2011, AVB sent an email to his contacts within the Yeshivah Community about the letter sent by Victoria Police about '*sexual assaults that may have been committed at Yeshivah College*'.<sup>720</sup> AVB's email urged members of the community to confront and accept the right and obligation of Victoria Police to investigate allegations of sexual abuse that may have been committed at Yeshivah College.<sup>721</sup> AVB said in his email that it was important that the '*community confront this issue*' and that '*many in the community have been aware of these allegations for an extended period of time*'. AVB attached to the email a copy of the 2010 RCV Resolution and urged recipients to remember that there was a positive halachic obligation not just for the victims to come forward but those who were aware as friends of the victims or persons of authority to also come forward and report to the police.

<sup>717</sup> Exhibit 22-0023, VRQA.3001.008.0018\_R (Tab 46).

<sup>718</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [48].

<sup>719</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [48].

<sup>720</sup> Exhibit 22-0015, YSV.0001.001.0512\_R.

<sup>721</sup> Exhibit 22-0015, YSV.0001.001.0512\_R.

- 389 AVB said that the email was sent to all of his friends and contacts within the Yeshivah Community.<sup>722</sup> Those contacts included Nechama Bendet, Rabbi Telsner and Rabbi Kluwgant.<sup>723</sup>
- 390 Rabbi Telsner, Rabbi Kluwgant, Rabbi Glick and Rabbi Mordechai Gutnick all agreed the content of the email was appropriate and there was no justification for any criticism of its content.<sup>724</sup>

### The sermon of 18 June 2011

- 391 Rabbi Telsner gave evidence that on 18 June 2011, he delivered a sermon in the Yeshivah Centre synagogue during which he preached against slander and gossip and in which he compared the use of electronic media and sending emails to promote slander and gossip to the story of the spies referred to in that week's Torah reading.<sup>725</sup> AVB explained that the story of the spies' negative report of their reconnaissance trip to the land of Israel resulted in the Jews being punished and wandering in the desert for 40 years. He explained that the story is considered to be one of the most tragic episodes in the Torah and is often cited as a warning against the dangers of gossip and slander.<sup>726</sup>
- 392 AVB told the Royal Commission that he was not present at synagogue that morning; however, later that afternoon a fellow congregant told AVB '*because of you the sermon was an extra 10 minutes long today*'.<sup>727</sup> AVB's evidence is that multiple people further told him that Rabbi Telsner's sermon compared his email with the slander and gossip of the spies.<sup>728</sup>
- 393 Mr Wolf said that he did not attend synagogue that morning but did hear murmurings some days after the sermon about the sermon and heard different versions of what was said. He says he did not have clarity as to what precisely was said because many different versions were going around.<sup>729</sup> He said that he had heard that Rabbi Telsner had '*come out very strongly*' about the *loshon horo*, against slandering people and sending emails around, and that people do not have the right to do that and anything that needs to be reported, to report it to the authorities. This was the first time that Mr Wolf had heard of a problem with a sermon from Rabbi Telsner (who had been at the Yeshivah Centre since 23 March 2007).<sup>730</sup> Don Wolf said that sermon of 18 June 2011 caused a reaction amongst congregants.<sup>731</sup>

<sup>722</sup> Transcript of AVB, C6219:29-45 (Day C62).

<sup>723</sup> Transcript of N Bendet C6757:26-30 (Day C66); Transcript of Z Telsner C7080:33-42 (Day C68); Transcript of M Kluwgant C7186:14 -17 (Day C69).

<sup>724</sup> Transcript of M Gutnick C6979:5-9 (Day C68); Transcript of M Kluwgant C7186:7-C7189:11 (Day C69); Transcript of Z Telsner C7081: 1-4 (Day C68); Transcript of A Glick C7041:14-24 (Day C68).

<sup>725</sup> Transcript of Z Telsner, C7091:19-7083:46 (Day C68).

<sup>726</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [55].

<sup>727</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [55].

<sup>728</sup> Transcript of AVB, C6223:21 (Day C62).

<sup>729</sup> Transcript of D Wolf, C6854:31- 46 (Day C67).

<sup>730</sup> Transcript of D Wolf, C6855:9-11 (Day C67); Exhibit 22-0040, Statement of Rabbi Zvi Hersh Telsner at [2].

<sup>731</sup> Transcript of D Wolf, C6854:31- 6855:7 (Day C67).

- 394 It is reasonable to conclude that members of the Yeshivah community who had just the day before received AVB's email in the context of the police investigation would infer that Rabbi Telsner was talking about AVB and his email. AVB said that some members of the congregation did draw this conclusion and told AVB this; others would later confirm this was their understanding.<sup>732</sup> AVB said that on Saturday 18 June 2011, he spoke to then President of the RCV, Rabbi Yaakov Glasman, to complain about Rabbi Telsner's sermon.<sup>733</sup> AVB gave evidence that Rabbi Glasman would later tell AVB that he made his own enquiries and that people had told Rabbi Glasman that they understood the sermon was aimed at AVB and his email.<sup>734</sup>
- 395 Rabbi Telsner said he did give the sermon and did preach against the sending of emails. He said, however, that he was not referring to AVB's email of 17 June 2011 when he delivered that sermon.<sup>735</sup>
- 396 When asked whether he read AVB's email or when he became aware of the email, he initially said he did not recall when he had read it.<sup>736</sup> Rabbi Telsner suggested that he might not have read the email until after the Sabbath; he said he did not recall but acknowledged the email was received on Friday, 17 June 2011. Ultimately, he accepted, it was quite possible that he had read AVB's email before he delivered his sermon.<sup>737</sup>
- 397 Rabbi Telsner also said that he had delivered sermons on previous occasions in which he had discussed the use of emails and people's use of electronic media and compared the use of those forms and communication to slander and gossip on other occasions.<sup>738</sup>
- 398 Rabbi Telsner gave evidence that the fixed portion of the Torah reading for 18 June 2011 was the reading on the negative report of the spies.<sup>739</sup> This evidence was given in support of Rabbi Telsner's assertion that the sermon of 18 June 2011 was not about AVB's email.
- 399 Whether it was the content or the manner of delivery, the Royal Commission heard evidence that this sermon had such an impact on the community that word of the sermon filtered through to the then Chairman of the Committee of Management, and others would approach AVB to tell him what had been said.
- 400 The evidence about the timing and content of the sermon of 18 June 2011 suggests that Rabbi Telsner was preaching about AVB's email of 17 June 2011 and members of the community certainly drew that conclusion.

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<sup>732</sup> Transcript of AVB, C6671:41-C6672:13 (Day C66).

<sup>733</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [55].

<sup>734</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [56].

<sup>735</sup> Transcript of Z Telsner, C7081:12-C7084:20 (Day C68).

<sup>736</sup> Transcript of Z Telsner, C7080:33-38, C7081:6-10 (Day C68).

<sup>737</sup> Transcript of Z Telsner, C7144: 5-11 (Day C69).

<sup>738</sup> Transcript of Z Telsner, C7083:40-46 (Day C68).

<sup>739</sup> Transcript of Z Telsner, C7082:19-47 (Day C68).

- 401 AVB approached the RCV to complain about the sermon and asked them to take against Rabbi Telsner.<sup>740</sup> When Rabbi Telsner was asked whether he had delivered a sermon about emails and who it was about he replied that he had delivered an email preaching against sending emails and that if you are an individual doing the activities he was talking about, then Rabbi Telsner means he was talking about you.<sup>741</sup> When Rabbi Glasman asked Rabbi Telsner if his sermon of 18 June 2011 was directed to AVB, Rabbi Telsner responded that his sermon was directed to those sending emails and making trouble and, *'If that's what AVB understood that it was in relation to him, then it was in relation to him'*.<sup>742</sup>
- 402 It is submitted that Rabbi Telsner's response that the sermon was directed at anyone who was sending emails, where the sermon was delivered on the day after AVB's email of 17 June 2011 supports a conclusion that Rabbi Telsner was indeed preaching against AVB's email of 17 June 2011, when he preached against the sending of emails the following day. Save for the evidence at the public hearing, Rabbi Telsner has never issued any public statement that the sermon was not about AVB, even though he knew some in the community and AVB himself believed the sermon was about AVB.<sup>743</sup> His failures to clarify what he says was a 'misconception', and his response to the RCV support a finding that the sermon of 18 June 2011 was directed to AVB's email of 17 June 2011.
- 403 AVB's email said that many in the community had long known of the allegations of child sexual abuse.<sup>744</sup> As Rabbi Groner was head of the Yeshivah community at the time of the complaints against Rabbi Kramer, he would have been one of members of the community who knew of such allegations. When Rabbi Telsner was giving his evidence at the public hearing, it was evident he had some difficulty with any criticism of Rabbi Groner's legacy in child protection.<sup>745</sup> Rabbi Telsner gave evidence that anyone saying that Rabbi Groner had failed to prevent child abuse or that he had been negligent in his care of children, was besmirching Rabbi Groner and engaging in loshon horo.<sup>746</sup> He said, however, he did not regard the statements in AVB's email as loshon horo.<sup>747</sup> AVB said that he saw the sermon as a contradiction of the 2010 RCV Resolution as it sought to criticise someone who had acted to promote the views expressed in the 2010 RCV Resolution.<sup>748</sup>
- 404 The 2010 RCV Resolution recognised the need for halachic and pastoral leadership and support, direction and affirmation for abuse survivors, their families and advocates.<sup>749</sup> Rabbi Telsner was a member of the RCV at the time it resolved to issue the 2010 RCV

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<sup>740</sup> Transcript of Z Telsner C7098:3-25 (Day C69).

<sup>741</sup> Transcript of Z Telsner C7098::3-30 (Day C69).

<sup>742</sup> Transcript of AVB, C6673:18-33-C6674:10 (Day C66).

<sup>743</sup> Transcript of Z Telsner C 7100:14-36 (Day C69); C7102:20-26 (DAY C69).

<sup>744</sup> Exhibit 22-0023, YSV.0001.001.0512\_R (Tab 36).

<sup>745</sup> Transcript of Z Telsner, C7132:43 –C7134:4 (Day C69).

<sup>746</sup> Transcript of Z Telsner, C7132:43 –C7133:46 (Day C69).

<sup>747</sup> Transcript of Z Telsner, C7145:28-C7146:6 (Day C69).

<sup>748</sup> Transcript of AVB, C6675:40 – C6676:5 (Day C66).

<sup>749</sup> Exhibit 22-0016, YSV.0002.001.0008.

Resolution; he gave evidence that affirmed and approved the 2010 RCV Resolution.<sup>750</sup> Rabbi Telsner accepted that if the Commission found that his sermon of 18 June 2011 was a response to AVB's email then it constituted a failure of his leadership to endorse and abide by the 2010 RCV Resolution to provide pastoral and halachic leadership, support, direction and affirmation to abuse survivors and their families and advocates.<sup>751</sup>

- 405 It is submitted that the evidence supports a conclusion that Rabbi Telsner's 18 June 2011 sermon preaching against the sending of emails was directed at AVB's 17 June 2011 email and that it was critical of AVB's decision to send the email of 17 June 2011. It is further submitted that Rabbi Telsner's sermon of 18 June 2011 was a breach of commitment to principles set out in the 2010 RCV Resolution to provide pastoral leadership, support, direction and affirmation for abuse survivors, their families and advocates.
- 406 In a community already sensitive to a police investigation, the sermon of 18 June 2011 may have caused some members of the community to fear being stigmatised if they spoke up about the issue of child sexual abuse and may have caused some members of the community to be critical of AVB's decision to send his email of 17 June 2011.

#### **Available findings on AVB's email of 17 June 2011 and the sermon of 18 June 2011**

F42 On 17 June 2011, AVB sent an email to his contacts in the community saying that some in the community had long known of the child sexual abuse allegations and urging his contacts to co-operate with the police investigation. On 18 June 2011, Rabbi Telsner delivered a sermon in which he criticised people sending emails. Rabbi Telsner's sermon was a response to AVB's email and was critical of AVB's decision to send the email of 17 June 2011.

F43 Rabbi Telsner's criticism of AVB's email was a breach of the commitment made by Rabbi Telsner to the principles set out in the 2010 RCV resolution to provide pastoral and halachic leadership, support, direction and affirmation to abuse survivors and their families and advocates.

#### **Response to AVB's email of 17 June 2011: the discussion with Rabbi Klwugant on 20 June 2011**

- 407 The Royal Commission heard evidence that on Monday 20 June 2011, Rabbi Klwugant spoke to AVB and told him that he should not have sent his email.<sup>752</sup> AVB told the Royal Commission that Rabbi Klwugant was known to him as a rabbi and an employee of the Yeshivah Centre.<sup>753</sup>

<sup>750</sup> Transcript of Z Telsner, C7154:20-42 (Day C69).

<sup>751</sup> Transcript of Z Telsner, C7154:44-C7155:12 (Day C69).

<sup>752</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [56]-[59]; Transcript of M Klwugant C7186:7-23 (Day C69).

<sup>753</sup> Exhibit 22-0053, Statement of AVB STAT.0463.001.0001\_R at [56]-[59]; Transcript of AVB C6224:29 -36 (Day C62).

408 During his conversation with AVB, Rabbi Klwugant told AVB that he was a chaplain to Victoria Police and had been *'heavily involved for several months'*.<sup>754</sup> AVB explained to Rabbi Klwugant the reason why he had sent the email.<sup>755</sup> AVB says he felt intimidated by Rabbi Klwugant's response and viewed the reference to his role as a police chaplain as an *'implied threat'*.<sup>756</sup> AVB had the impression that Rabbi Klwugant's opinion was that AVB had no right to send the email and that he *'must remain silent'*.<sup>757</sup>

409 AVB emailed Rabbi Klwugant later that morning telling him that he felt intimidated by Rabbi Klwugant's comment.<sup>758</sup> AVB conveyed to Rabbi Klwugant that:

*I viewed your statement ...as a form of intimidation and an implied threat.....you made the explicit point of stating you were the 'Police Chaplain' and 'heavily involved for several months' and thus by inference, you were speaking in that capacity, and thus asserting the authority of Victoria Police and the investigation, not a Rabbi or communal leader. You made clear that in your opinion I had no right to send the email, and that I must remain silent.*<sup>759</sup>

410 AVB reiterated in his email what he had told Rabbi Klwugant earlier that morning: that he had not received the letter from Victoria Police and neither had most, if not all, of his friends and peers in the same age bracket and that he thought it *'imperative'* that everyone was made aware of the investigation and given the opportunity and encouragement necessary to come forward.<sup>760</sup>

411 AVB set out in the email that Rabbi Klwugant had earlier told him that even though he had not received the letter, and nor had others, that AVB *'still should NOT have sent the email, rather perhaps advise the school if the letter was not received'*.<sup>761</sup>

412 At the end of his email, AVB urged:

*In closing, I ask that you have the dignity and courage, to respect the right of former students of the Yeshivah College to encourage and support victims and witnesses of sexual abuse at Yeshivah College to come forward and discuss these matters in any manner they feel fit, without fear of sanction or intimidation.*<sup>762</sup>

<sup>754</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [57]-[59].

<sup>755</sup> Exhibit 22-0023, IND.0214.003.0728\_R (Tab 209).

<sup>756</sup> Exhibit 22-00 53, Statement of AVB, STAT.0463.001.0001\_R at [59].

<sup>757</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [57]-[59].

<sup>758</sup> Exhibit 22-0023, IND.0214.003.0728\_R at 0728\_R – 0729\_R (Tab 209).

<sup>759</sup> Exhibit 22-0023, IND.0214.003.0728\_R (Tab 209).

<sup>760</sup> Exhibit 22-0023, Tab 209, IND.0214.003.0728\_R (Tab 209).

<sup>761</sup> Exhibit 22-0023, Tab 209, IND.0214.003.0729\_R (Tab 209).

<sup>762</sup> Exhibit 22-0023, IND.0214.003.0729\_R (Tab 209).

413 Rabbi Kluwgant emailed AVB by way of reply and said '*Certainly no intimidation or threats (implied or otherwise) from my end. Just an informed opinion that is different to yours*'.<sup>763</sup>

414 When giving his evidence, Rabbi Kluwgant said that while he agreed with the content of the email, he believed in '*a single voice from the Yeshivah without having other voices at the same time or emails coming out at the same time, that a single voice would have the most profound impact*'.<sup>764</sup>

415 Rabbi Kluwgant was a rabbi and an employee of the Yeshivah Centre, being a minister for Chabad Institutions of Australia.<sup>765</sup> When speaking to AVB, Rabbi Kluwgant was aware that there were sensitivities in the community and for the Yeshivah Centre about how to respond to the issue of child sexual abuse and to the then police investigation:<sup>766</sup>

- he had become involved as a liaison to ensure that there was cooperation between the Yeshivah and Victoria Police in gathering information as he could '*see there were issues*';
- there had not been a lot of communication between the Committee of Management and members of the community; this was a significant issue for the Yeshivah community and the Yeshivah Centre;
- he was aware there may have been a reluctance to engage with the police and this was new territory for the Yeshivah Centre and for the entire Jewish community of Victoria.

416 Rabbi Kluwgant also said that he was aware that there were issues in the community about what was going on, and around getting information to the people that the police needed to contact, and he knew this from chatter within the community.<sup>767</sup> Rabbi Kluwgant said that he agreed with the content of AVB's email, but that he also believed in there being one voice from Yeshivah to have the most profound impact; he went on to say that if he had known at the time that AVB was also a victim he probably would have taken a different approach.<sup>768</sup> Rabbi Kluwgant accepted that this was a community in which there had been very little engagement by the Committee of Management and the community; he said that '*in hindsight*' it was entirely understandable that AVB would send his email given the perceptions that this investigation would meet some resistance.<sup>769</sup>

417 Rabbi Kluwgant said that he told AVB he should not have sent the email because he was concerned it would have a '*consequential impact on the work that I had done to*

<sup>763</sup> Exhibit 22-0023, IND.0214.003.0728\_R (Tab 209).

<sup>764</sup> Transcript of M Kluwgant, C7190:32-41 (Day C69).

<sup>765</sup> Transcript of M Kluwgant, C7179:13-14 (Day C69).

<sup>766</sup> Transcript of M Kluwgant, C7186:27 – C7187:27; C7188:7- C7190:31 (Day C69).

<sup>767</sup> Transcript of M Kluwgant, C7188:7-36, (Day C69).

<sup>768</sup> Transcript of M Kluwgant, C7190:23-46 (Day C69).

<sup>769</sup> Transcript of M Kluwgant, C7190:32 - C7191:14 (Day C69).

*date ... working together with the Yeshivah*'.<sup>770</sup> This evidence can only be understood as Rabbi Kluwgant having a perception that AVB's email might impact on the work he had done to work on co-operation between the Yeshivah Centre and Victoria Police.

- 418 It is submitted that Rabbi Kluwgant referred to his role as a police chaplain and having been '*heavily involved for several months*'<sup>771</sup> in order to add the weight of 'authority' to his criticism of AVB and to imply that he had by virtue of his position or involvement some official capacity or authority to make this criticism. This conclusion is reinforced by Rabbi Kluwgant's email reply to AVB on 20 June 2011, where he referred to his view on the matter as '*an informed opinion*' that was different to AVB's opinion. It is, therefore, reasonable to infer that Rabbi Kluwgant was attempting to convey to AVB that his opinion on the inappropriateness of AVB's email was 'informed' by his experience as a police chaplain and his heavy involvement in the issue for several months.
- 419 Rabbi Kluwgant explained that his role as police chaplain was to provide support to Jewish members of Victoria Police and that it expanded in providing support to a number of police, including the sexual assault team in Moorabbin.<sup>772</sup> Beyond that, Rabbi Kluwgant did not have any official relationship with Victoria Police in relation to the investigation of child sexual assault offences. Rabbi Kluwgant's statements to AVB had the effect of conveying to AVB that he should not involve himself in the police investigation by sending an email about the investigation and urging others to go to the authorities.<sup>773</sup> It is submitted that Rabbi Kluwgant made the comments regarding his role as police chaplain in order to seek to influence AVB to leave communication about the police investigation to the Yeshivah Centre.

#### **Available findings on Rabbi Kluwgant's response to AVB's email 17 June 2011**

F44 On 20 June 2011, when Rabbi Kluwgant told AVB that he should not have sent his email of 17 June 2011, Rabbi Kluwgant was trying to stop AVB speaking up publicly in support of the police investigation into allegations of child sexual abuse at the Yeshivah Centre.

F45 Rabbi Kluwgant's statement was a breach of his commitment to the principles in the 2010 RCV Resolution to provide halachic leadership and support to victims of child sexual abuse and advocates.

<sup>770</sup> Transcript of M Kluwgant, C7186:25 - C7187:11 (Day C69).

<sup>771</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [59].

<sup>772</sup> Transcript of M Kluwgant, C7188:1-5 (Day C69).

<sup>773</sup> Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [59].

### The Age article of 8 July 2011

- 420 On 8 July 2011, an article appeared in The Age, titled ‘Jewish Community leader tells of sex abuse’.<sup>774</sup> The article discussed Manny Waks’ abuse while a student at the Yeshivah College. In the article, Manny Waks discussed how he believed his troubled youth was likely linked to his sexual abuse at the Yeshivah College.
- 421 Manny Waks said he had been ‘*repeatedly molested by a trusted figure of authority at the school who had unfettered access to the young boys*’, and that the ‘*man was in a position of power and authority, who was trusted by the school and who repeatedly took advantage of his position in preying on young boys*’. He said ‘*he wanted to hold to account the alleged perpetrators of the crimes and the Yeshivah Centre, which runs the college and which he says betrayed victims by persuading them to remain silent.*’
- 422 The article discussed that the Yeshivah Centre was accused of covering up the David Kramer scandal and that as a result of their failure to report David Kramer, he had later travelled to the United States where he sodomised a 12 year old boy. Manny Waks was said to be ‘*furiously that Yeshivah College did not take action at the time*’. Manny Waks outlined how he had approached Rabbi Groner to confront him about David Cyprys continuing to work at the Yeshivah notwithstanding what he knew. Manny Waks said of that encounter with Rabbi Groner ‘*In my attempt to seek justice and closure I felt like I was working against an entrenched culture and system of covering up these crimes at any cost*’.

### Zephaniah Waks’ email of 11 July 2011

- 423 On 11 July 2011, Zephaniah Waks emailed Mrs Bendet asking her to send out an email to the Yeshivah mailing list stating that Yeshivah did not blame a victim, his son Manny Waks, for going public. Zephaniah Waks explained in the email that he and his family were being accused on various blogs of being involved in or responsible for Kramer’s investigation and being accused of trying to bring down Yeshivah.<sup>775</sup> The email had the subject line ‘*please make sure this email gets to whoever it should*’. He angrily sought the assistance of Mrs Bendet, then General Manger of the Yeshivah Centre, to send out an email to the complete Yeshiva mailing list, letters to the community and notices on the website, that the Yeshivah Centre does not blame Manny Waks for going public, that they want people to co-operate, ‘*in a way that is believable that you mean it*’.<sup>776</sup>
- 424 Zephaniah Waks asked the Yeshivah Centre for help because he and his son, Manny Waks, were being attacked in the community and on blogs and Zephaniah Waks was being blamed for Manny Waks’ decision to speak to the press. Zephaniah Waks was being accused of trying to bring down the Yeshivah.<sup>777</sup>

<sup>774</sup> Exhibit 22-0041, MED.0004.001.0001.

<sup>775</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0427\_R (Tab 44).

<sup>776</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0428\_R (Tab 44).

<sup>777</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0428\_R (Tab 44).

- 425 The email chain in evidence before the Royal Commission shows that on the same day, Mrs Bendet forwarded the email to Rabbi Glick, Rabbi Telsner, Don Wolf and variously, other members of the Committee of Management.<sup>778</sup>
- 426 On 12 July 2011, Don Wolf replied by email indicating that while the allegations were being investigated, it is inappropriate for the College to comment further.<sup>779</sup>
- 427 On the same day, Zephaniah Waks replied to Don Wolf and Nechama Bendet telling them that while he agreed they might be prevented from speaking about the police investigation, he was seeking something else. He talked about the need for inspired leadership by the Yeshivah Centre on the issue. He sought a public statement that the Yeshivah Centre did not blame Manny Waks for going public, encouraging others and addressing the fact that Zephaniah Waks was being attacked.<sup>780</sup>
- 428 On 12 July 2011, Mr Wolf replied that the College would soon send a letter to parents.<sup>781</sup> On 13 July 2011, the Yeshivah College wrote to parents of students at the College in the wake of the investigation confirming discussions with the police about the investigation.<sup>782</sup> In relation to the article in The Age, on 8 July 2011, the College wrote *'the school has been advised by the Police that the allegations ...do not relate to a member of staff'*.<sup>783</sup> While the College *'expresses its sympathy to those who may have been affected in any way and we continue to offer counselling and provide support to anyone who feels this would be of benefit to them, at this time'*<sup>784</sup> it did not address any of Zephaniah Waks' concerns.<sup>785</sup>
- 429 The letter was sent from the College's perspective to comfort parents that the College was doing all it could and to let them know that The Age article and the allegations in it and the investigations from it did not relate to a member of staff. It was sent to 911 people,<sup>786</sup> which is likely to have been to parents and perhaps old collegians. It was not sent to the community at large.<sup>787</sup> It did not address Zephaniah Waks' concerns.<sup>788</sup>
- 430 Neither Rabbi Glick nor Rabbi Telsner responded to Zephaniah Waks' email of 11 July 2011.<sup>789</sup>
- 431 The evidence before the Royal Commission does not explain why, on or about 12 July 2011, the Yeshivah Centre could not write to the broader Yeshivah community to assure it that the Yeshivah Centre did not blame Manny Waks or Zephaniah Waks and

<sup>778</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0427\_R (Tab 44).

<sup>779</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0427\_R (Tab 44).

<sup>780</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0426\_R (Tab 44).

<sup>781</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0425\_R – 0426\_R (Tab 44).

<sup>782</sup> Exhibit 22-0023, YSV.0001.001.0339 (Tab 43).

<sup>783</sup> Exhibit 22-0023, YSV.0001.001.0339 (Tab 43).

<sup>784</sup> Transcript of Z Waks, C6136:4-C6137:34 (Day C61).

<sup>785</sup> Exhibit 22-0023, YSV.0001.001.0339 (Tab 43).

<sup>786</sup> Exhibit 22-0052, IND.9999.001.0051.

<sup>787</sup> Exhibit 22-0052, IND.9999.001.0051; Transcript of N Bendet C6792:36 – 6794:3 (Day C67).

<sup>788</sup> Transcript of Z Waks, C6136:4 – C6137:34 (Day C61).

<sup>789</sup> Transcript of N Bendet C6792:36 – C6794:3 (Day C67); Transcript of A Glick C7059:34 – 7061:27 (Day C68); Transcript of Z Telsner, C7113:27 – C7116: 24 (Day C69).

neither should the community, and tell the community that the Yeshivah Centre welcomed the investigation and urged the community to co-operate with it.

- 432 The Yeshivah Centre did eventually write to the community at large, by letter dated 20 August 2012;<sup>790</sup> the letter was signed by Rabbi Telsner, Rabbi Smukler and Don Wolf, on behalf of the Committee of Management. In the letter the Yeshivah Centre urged the community to support victims and ensure that allegations are referred to the police and other authorities. The evidence before the Royal Commission suggests that this letter is the first time that the Yeshivah Centre responded positively to the investigation, welcoming what might come, *'if mistakes were made in the past, they must be dealt with'*. It extended to victims a form of apology, *'We understand that and appreciate that there are victims who feel aggrieved and we sincerely and unreservedly apologise for any historical wrongs that may have occurred'*. It did not, however, address Zephaniah Waks' specific concerns and in particular, did not endorse Manny Waks' decision to publicly discuss his abuse, and it did not ask the community to support the victims' families.

#### **Available findings on Zephaniah Waks' email of 11 July 2011**

F46 The Yeshivah Centre failed to provide support to victims of child sexual abuse, advocates and their families, when it failed to respond to Zephaniah Waks' request in his email of 11 July 2011, for assistance in dealing with the attacks on him and his family as a result of the police investigation and The Age article of 8 July 2011 on his son, Manny Waks.

F47 Rabbi Telsner and Rabbi Glick did not respond to Zephaniah Waks' email of 11 July 2011. They could have provided halachic and moral leadership and support for Manny Waks and Zephaniah Waks, but they did not.

#### **The sermon of 16 July 2011**

- 433 Zephaniah Waks' email of 11 July 2011 put the Committee of Management, Rabbi Telsner and Rabbi Glick on notice that community members were blaming Zephaniah Waks for the police investigation into Rabbi Kramer's abuse and for The Age article of 8 July 2011 in which Manny Waks went public about his abuse and criticised the Yeshivah Centre and Rabbi Groner's response to the issue of child sexual abuse.
- 434 Zephaniah Waks gave evidence that on 16 July 2011, Rabbi Telsner delivered a sermon from the pulpit of the main Yeshivah Centre synagogue for which both Zephaniah Waks and his wife were present.<sup>791</sup> Zephaniah Waks gave evidence that Rabbi Telsner delivered a sermon that talked about the evils of talking to those outside the Yeshivah Centre community about matters which might besmirch the Yeshivah Centre

<sup>790</sup> Exhibit 22-0023, YSV.0001.001.0343 (Tab 93).

<sup>791</sup> Transcript of Z Waks, C6140:38-C6141:11 (Day C61).

community and in particular, Rabbi Groner.<sup>792</sup> Zephaniah Waks gave evidence that Rabbi Telsner asked the audience, *'Who gave you permission to talk to anyone? Which Rabbi gave you permission?'*

- 435 Zephaniah Waks told the Royal Commission that Rabbi Telsner talked about the powers of rabbis to take action against people when they disobey rabbis.<sup>793</sup> He said that Rabbi Telsner described various actions that the Rabbi might take against a person, actions which Zephaniah Waks described as akin to different types of 'excommunication', including the complete exclusion of a member.<sup>794</sup> Zephaniah Waks gave evidence that Rabbi Telsner also said, *'The worst sin is besmirching the name of Rabbi Groner'*. Zephaniah Waks said he walked out of the synagogue and approximately eight women walked out with his wife in support of her.<sup>795</sup>
- 436 On the same day, Zephaniah Waks wrote an email to Sergeant Scott Dwyer from Victoria Police, setting out details and quotes from the sermon because he believed that the sermon was an attempt on the part of Rabbi Telsner to obstruct justice.<sup>796</sup> This email was received into evidence by the Royal Commission. The email was sent on the day the sermon was delivered and Zephaniah Waks referred to the sermon in similar terms in his evidence in the public hearing.
- 437 Rabbi Telsner agreed that he delivered a sermon in which he said *'which Rabbi gave you permission to speak'*.<sup>797</sup> Rabbi Telsner gave evidence that at the beginning of his sermon he told congregants that anyone with information should go directly to the police and that he then went on to discuss different methods of publications, emails, Facebook, blog sites and websites where allegations and slander and loshon horo were being spread and the gist of this sermon was *'who gave them permission to spread this loshon horo and slander throughout all these methods'*.<sup>798</sup> Rabbi Telsner told a journalist that in the sermon he was saying that you needed a rabbi's permission before you sent emails and other things like that that involved criticism and slander.<sup>799</sup>
- 438 Rabbi Telsner said, however, that the sermon was not directed at Manny Waks.<sup>800</sup> For the reasons that follow, it is submitted that the Commission should reject that evidence.
- 439 Rabbi Telsner acknowledged that the sermon was delivered in response to press coverage on the issue of child sexual abuse and in particular following the article in The Age on 8 July 2011 featuring Manny Waks.<sup>801</sup> He accepted that the loshon horo that he was warning the congregants against was the spreading of false rumours or

<sup>792</sup> Transcript of Z Waks, C6140:38-C6141:11 (Day C61).

<sup>793</sup> Transcript of Z Waks, C6140:38-C6141:11 (Day C61).

<sup>794</sup> Transcript of Z Waks C6146:13-6147:20 (Day C61).

<sup>795</sup> Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R at [38]-[39].

<sup>796</sup> Exhibit 22-0012, YSV.0001.001.0465\_R.

<sup>797</sup> Transcript of Z Telsner, C7098:24-27 (Day C69).

<sup>798</sup> Transcript of Z Telsner, C7087:31-47 (Day C69).

<sup>799</sup> Transcript of Z Telsner, C7101:2-22 (Day C69).

<sup>800</sup> Transcript of Z Telsner, C7096:8-16 (Day C69) ; Transcript of Z Telsner C7102:2- 18 (Day C69)

<sup>801</sup> Transcript of Z Telsner, C7088:9-24 (Day C69).

degradations of people and institutions including the Yeshivah Centre and Rabbi Groner. He agreed the sermon was referring to loshon horo about the Yeshivah Centre and the legacy of the late Rabbi Groner in connection with the allegations of child sexual abuse and the suggestions that Rabbi Groner had not acted on complaints of child sexual abuse or had covered it up.<sup>802</sup> They were all matters discussed in the 8 July 2011 Age article where Manny Waks had discussed cover-ups and failures to act on child abuse complaints and had been critical of Rabbi Groner's response to child sexual abuse matters.<sup>803</sup>

440 Rabbi Telsner said he was aware that the police investigation in 2011 concerned historical allegations of abuse that had happened at a time when Rabbi Groner had been the head of the Centre.<sup>804</sup> Rabbi Telsner acknowledged that this was a difficult and stressful position for him to be in because Rabbi Groner was his father-in-law.<sup>805</sup> Rabbi Telsner was aware that one of the issues of the investigation was whether the sexual abuse had occurred under the school's watch, that is, under Rabbi Groner's watch.<sup>806</sup> Rabbi Telsner agreed that if the investigation looked at the school's decision to send Rabbi Kramer out of the country following the complaints, that this was also a situation that may not look good and people would be asking, '*Is that the right thing or the wrong thing to do?*'<sup>807</sup> It is reasonable to infer that a newspaper article in which Manny Waks' expressed criticism of Rabbi Groner's response on child sexual issues would cause Rabbi Telsner some distress.

441 When Rabbi Telsner was asked if he said in his sermon that the worst sin to be committed was besmirching the name of the late Rabbi Groner, he said he did not recall mentioning Rabbi Groner's name at all in the sermon of 16 July 2011.<sup>808</sup> Zephaniah Waks said that Rabbi Telsner delivered a sermon in which he said that the worst sin was to besmirch the name of Rabbi Groner.<sup>809</sup> On 16 July 2011, the same day as the sermon, Zephaniah Waks sent an email to the Victoria Police setting out a summary of what Rabbi Telsner had said.<sup>810</sup> This contemporaneous note, recorded the Rabbi as saying that the worst sin was besmirching the name of the late Rabbi Groner. Mrs Bendet gave evidence of hearing talk about a sermon delivered by Rabbi Telsner.<sup>811</sup> Some of that talk included people raising with her that Rabbi Telsner had made comments about '*besmirching the name of Rabbi Groner*'.<sup>812</sup> Rabbi Telsner's evidence that on 16 of July 2011 he did not mention Rabbi Groner's name at all<sup>813</sup> should be rejected.

<sup>802</sup> Transcript of Z Telsner, C7089:26-C7090:13 (Day C69).

<sup>803</sup> Exhibit 22-0041 MED.0004.001.0001.

<sup>804</sup> Transcript of Z Telsner, C7078:12-21 (Day C68).

<sup>805</sup> Transcript of Z Telsner, C7078:23-33 (Day C68).

<sup>806</sup> Transcript of Z Telsner, C7078:38-C7079:6 (Day C68).

<sup>807</sup> Transcript of Z Telsner, C7079:8-13 (Day C68).

<sup>808</sup> Transcript of Z Telsner, C7087:3-12 (Day C69).

<sup>809</sup> Transcript of N Bendet, C6733:10-18 (Day C66).

<sup>810</sup> Exhibit 22-0012, YSV.0001.001.0465\_R.

<sup>811</sup> Transcript of N Bendet C6731:6-33 (Day C66).

<sup>812</sup> Transcript of N Bendet, C6731:6-33 (Day C66).

<sup>813</sup> Transcript of Z Telsner, C7087:3-6 (Day C69).

- 442 The timing and content of the sermon of 16 July 2011 lead to strong inferences that the sermon was a direct response by Rabbi Telsner to Manny Waks' decision to speak to the press and the 8 July 2011 article in *The Age*.
- 443 Further, Rabbi Telsner gave evidence that he knew his sermon had upset people in the community, that Zephaniah Waks and a number of women had left the synagogue during the sermon, that Zephaniah Waks had complained about the sermon to the Yeshivah Centre and that Manny Waks believed the sermon was directed at him.<sup>814</sup> Notwithstanding his knowledge of those matters, Rabbi Telsner did not ever speak publicly to correct what he says were misconceptions and to tell people he was not speaking about Manny Waks.<sup>815</sup> The fact that Rabbi Telsner did not act to counter people's perception that the sermon was about Manny Waks that he did not do so because he was talking about Manny Waks.<sup>816</sup>
- 444 On 17 June 2011, AVB sent an email,<sup>817</sup> and on 18 June Rabbi Telsner delivered a sermon preaching against the dangers of emails.<sup>818</sup> On 8 July 2011, an article appeared in *The Age* in which Manny Waks discussed his abuse and the suggestion that the Yeshivah Centre had covered up reports of child sexual abuse.<sup>819</sup> On 16 July Rabbi Telsner delivered a sermon which he accepts was directed to people spreading gossip about and degrading institutions including the Yeshivah Centre and the legacy of the late Rabbi Groner and in which he criticised speaking out without the permission of the rabbi.
- 445 It is submitted that Rabbi Telsner's evidence that those events were co-incidental is not convincing and should be rejected. The evidence suggests a pattern of Rabbi Telsner using the pulpit to preach to the community about the way they should conduct themselves in response to the police investigation.
- 446 It is submitted the evidence leads to a conclusion that the sermon of 16 July 2011 was directed to Manny Waks' decision to speak publically to *The Age* about his abuse at the Yeshivah Centre. The sermon of 16 July 2011 was a means by which Rabbi Telsner conveyed to the community his disapproval of Manny Waks' decision to speak publicly about his abuse and to criticise Rabbi Groner and the Yeshivah Centre.
- 447 It is submitted that in a community where the head rabbi had a central place in the community, and given that the community was already sensitive to the police investigation of the child abuse allegations, the sermon of 16 July 2011 is likely to have encouraged some members of the community to be critical of Manny Waks and to ostracise Manny Waks and his family. By publicly criticising Manny Waks' decision to speak out about his abuse, the sermon is likely to have caused other members of the community to fear being stigmatised or suffering other consequence if they spoke out about their abuse.

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<sup>814</sup> Transcript of Z Telsner C7096:41-7097:30 (Day C69).

<sup>815</sup> Transcript of Z Telsner C7104:1-30 (Day C69).

<sup>816</sup> Transcript of Z Telsner C7104:19-45 (Day C69).

<sup>817</sup> Exhibit 22-0015 YSH.0001.001.0512\_R.

<sup>818</sup> Transcript of Z Telsner, C7083:2-4 (Day 68).

<sup>819</sup> Exhibit 22-0041 MED.0004.001.0001.

- 448 Rabbi Telsner accepted that if his sermon was found to have been directed at Manny Waks, this was a breach of his commitment to the principles of the 2010 RCV Resolution to provide halachic leadership and support to survivors of abuse, their families and advocates.
- 449 Rabbi Moshe Gutnick explained that in his experience the more people came forward, the more publication occurred about the nature of abuse. Further, the availability of the means to report that abuse and the more that people expressed their support for victims and their families coming forward, the more other victims were encouraged to speak up and report to authorities.<sup>820</sup> He said that the process of speaking up, reporting to authorities and seeing parts of the community stand behind victims and their families serves as an aid to displace the shame and abuse away from the victims back onto the perpetrator and/or the institutions that failed to act to protect the children, and that a culture of silence only serves to keep the victim ashamed and protects the abuser.<sup>821</sup>

#### **Available findings on the Age article of 8 July 2011 and the sermon of 16 July 2011**

F48 Rabbi Telsner's sermon of 16 July 2011 was a response to the article in The Age on 8 July 2011 in which Manny Waks disclosed his abuse by Cyprys and criticised the response of the Yeshivah Centre and Rabbi Groner on the issue of child sexual abuse.

F49 In the sermon, Rabbi Telsner conveyed to the community his disapproval of Manny Waks' decision to speak publicly about his abuse and his public criticism of Rabbi Groner and the Yeshivah Centre.

F50 Rabbi Telsner's sermon of 16 July 2011, was a breach of the commitment made by Rabbi Telsner to the principles set out in the 2010 RCV Resolution to provide pastoral and halachic leadership, support, direction and affirmation to abuse survivors and their families and advocates.

#### **Witness experience of being criticised and shunned**

- 450 AVB, AVC, Manny Waks and Zephaniah Waks gave evidence of criticisms, attacks and ostracisation they have experienced since the police investigation became public in or about 2011, the events that followed and their involvement in the criminal process.<sup>822</sup>

<sup>820</sup> Transcript of M D Gutnick, C6279:32 - 6280:4 (Day C62); Exhibit 22-0023, IND.0233.001.0001 (Tab 128).

<sup>821</sup> Transcript of M D Gutnick, C6274:29-44 (Day C62); C6279:38-40 (Day C62).

<sup>822</sup> Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R; Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R; Transcript of Z Waks C6109:36-6111:6 (Day C61), Exhibit 22-0013, Statement of AVC, STAT.0467.001.0001\_R; Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R.

- 451 AVB and Zephaniah Waks said that people who spoke up about the issue of abuse were sometimes accused of attacking or trying to ‘*bring down*’ the Yeshivah.<sup>823</sup> The Royal Commission heard evidence that as late as 2015, Rabbi Kluwgant was telling others that they should ignore Zephaniah Waks because he was ‘*attacking Chabad*’ and was a ‘*lunatic on the fringe*’.<sup>824</sup> AVB, Zephaniah Waks and Manny Waks asserted that they were not seeking to destroy the Yeshivah, rather they were only seeking accountability and change.<sup>825</sup>
- 452 AVB said he believes that his ostracisation was contributed to by Rabbi Telsner’s sermon of 18 June 2011 or that the sermon condoned the behaviour.<sup>826</sup>
- 453 Zephaniah Waks said that some members of the community blamed him for the police investigation into the Rabbi Kramer allegations and for Manny Waks’ decision to speak publicly about his abuse.<sup>827</sup> Zephaniah Waks has said that many younger members of the community had been very supportive of Manny Waks’ decision to speak out but that the older members of the Yeshivah community had not vocalised support.<sup>828</sup> Zephaniah Waks said that Rabbi Telsner’s sermon of 16 July 2011 caused some in the community to ostracise him and his family.<sup>829</sup>
- 454 AVB and Zephaniah Waks both described being denied religious honours or aliyah in the shule.<sup>830</sup> Rabbi Moshe Gutnick said that the refusal of aliyah was a rare thing and that refusing to give someone an aliyah is a form of showing disapproval.<sup>831</sup> There was no direct challenge to AVB’s evidence that he was refused aliyah. Rabbi Telsner said the refusal of aliyah to Zephaniah Waks was a means of expressing disapproval of the actions of Zephaniah Waks<sup>832</sup> and AVB.
- 455 The Commission heard evidence from AVB and Zephaniah Waks that your standing in the community meant a great deal and could affect your prospects of employment, marriage and even your children’s prospects in those areas.<sup>833</sup> If the refusal of aliyah is a rare occurrence, and when used is a means by which the rabbi can express disapproval of the acts of a congregant, it is reasonable to infer that members of the

<sup>823</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0428 (Tab 44); Transcript of Z Waks C6170: 26-32 (Day C61); Exhibit 22-0004, IND.0199.014.001\_R; Transcript of AVB, C6236: 3-11 (Day C62); Exhibit 22-0013, Statement of AVC, STAT.0467.001.0001\_R at [12]-[24]; Transcript of M Kluwgant, C7197:29-44 (Day C69).

<sup>824</sup> Transcript of M Kluwgant, C7197:29-44 (Day C69).

<sup>825</sup> Exhibit 22-0023, YSV.0001.001.0425\_R (Tab 44); Transcript of M Waks, C6043: 31-43; C6064: 19-30 (Day C60); Transcript of AVB, C6200:39-42, C6251: 33-45 (Day C62); Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R at [63]-[66].

<sup>826</sup> Transcript of AVB, C6672:26-34 (Day C66).

<sup>827</sup> Transcript of Z Waks C6111:27-6114:44 (Day C61), C612237 -:6123:31 (Day C61), C6125:19-30 (Day C61);

<sup>828</sup> Transcript of Z Waks C6126:21 – 46 (Day C61).

<sup>829</sup> Transcript of Z Waks C6143:23-6144:40 (Day C61).

<sup>830</sup> Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R at [44]-[48]; Exhibit 22-0053, Statement of AVB, STAT.0463.001.0001\_R at [138].

<sup>831</sup> Transcript of M D Gutnick, C6292:14-20 (Day C62).

<sup>832</sup> Transcript of Z Telsner, C7053: 13-15 (Day C69).

<sup>833</sup> Transcript of AVB, C6021: 46- C6022: 25; C6054: 46-C6055: 33 (Day C60); Transcript of Z Waks, C6087: 9-11 (Day C61); Transcript of AVB, C6213: 20-23 (Day C62); Exhibit 22-0013, STAT.0467.001.0001\_R at [14].

community who observed or became aware of the refusal of aliyah would understand that the rabbi disapproved of Zephaniah Waks and AVB.

- 456 If a person's standing in the community has the capacity to affect the standing of members of their family, disapproval of AVB or Zephaniah Waks would in turn cause some to disapprove of members of their families. This not only affects social standing but marriage and economic prospects as well. Rabbi Telsner gave evidence that he knew that as the head rabbi he was uniquely placed to provide direction and moral guidance to his congregants.<sup>834</sup>
- 457 Rabbi Telsner said that the Shule Committee had refused Zephaniah Waks aliyah but it is submitted that his evidence was clear that he was aware of the decision and the decision was based on discussion between him and others about what Zephaniah Waks was or was not doing.<sup>835</sup>
- 458 The evidence before the Royal Commission is that Rabbi Telsner and the Yeshivah Shule assert they refused Zephaniah Waks' aliyah because he was showing disrespect to Rabbi Telsner including by walking out on his sermons.<sup>836</sup> Zephaniah Waks agreed that he had walked out of the sermon on 16 July 2011, but said this was out of protest at hearing Rabbi Telsner preach against his son's public disclosure of his abuse. Zephaniah Waks said that he was walking out of other sermons because this is what had previously been agreed with Rabbi Telsner.<sup>837</sup>
- 459 While the evidence suggested there were many reasons advanced as to why Zephaniah Waks had been refused aliyah, it is also evident that the reasons included Rabbi Telsner's disapproval of Zephaniah Waks walking out of his sermon of 16 July 2011 and of information being reported to him that Zephaniah Waks was sending out emails criticising the inactivity of the Yeshivah Centre in responding to allegations of abuse in and from 2011.<sup>838</sup> On 11 July 2011 (5 days before the sermon), Zephaniah Waks had asked the Committee of Management for help to deal with the community blaming him for the police investigation and for Manny Waks' disclosures to the Age article of 8 July 2011. Rabbi Telsner was aware of Zephaniah Waks' email of 11 July 2011.<sup>839</sup>
- 460 On 14 July 2011, Zephaniah Waks emailed the Committee of Management again to tell them he had been verbally attacked in the Synagogue.<sup>840</sup> It is apparent from those emails that Zephaniah Waks was of the opinion that the Committee of Management was not responding quickly enough to quell community disquiet about Manny Waks' publicly speaking up about his abuse and his criticism of Rabbi Groner and the Yeshivah Centre. It is evident from the emails that Zephaniah Waks wanted the

<sup>834</sup> Transcript of Z Telsner, C7080:18-31 (Day C69).

<sup>835</sup> Transcript of Z Telsner C7121:1-7124:19 (Day C69).

<sup>836</sup> Exhibit 22-0023, YSV.0001.001.0442\_R (Tab 105).

<sup>837</sup> Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R at [48]; Exhibit 22-0023, YSV.0001.001.0443\_R (Tab 106).

<sup>838</sup> Transcript of Z Telsner C7121:1-7124:19 (Day C69).

<sup>839</sup> Exhibit 22-0010 at YSV.0001.001.0425\_R.

<sup>840</sup> Transcript of Z Waks C6134:46 -6135:41 (Day C61), Exhibit 22-10, at YSV.0001.001.0425\_R.

Committee of Management to publicly endorse Manny Waks' decision and Zephaniah Waks' support of his son.<sup>841</sup>

- 461 In those circumstances, it is submitted that Rabbi Telsner directed or acquiesced the refusal of aliyah being granted to Zephaniah Waks. It is also submitted the he did so first, because of Zephaniah Waks' support for his son Manny Waks' public disclosure of abuse and his calls for accountability. Second, because Zephaniah Waks spoke up to seek an urgent response by the Committee of Management to the police investigation, and to criticise the response of the Yeshivah Centre to the allegations in the wake of the police investigations.
- 462 The reasons for the refusal of aliyah to AVB were not explored in depth in the evidence at the public hearing. However, the evidence shows that the refusal of aliyah occurred at a time subsequent to AVB's email of 17 June 2011 and the sermon of 18 June 2011, which it is submitted was directed to and critical of AVB's email. AVB complained to Rabbi Glasman, of the RCV, about the sermon and the refusal of Aliyah.<sup>842</sup> The fact that the refusal of aliyah is a rare occurrence and aliyah were refused to both Zephaniah Waks and AVB in the wake of the police investigation, both of whom spoke out about the investigation, suggests that AVB was refused aliyah because of his actions in response to the police investigation.

### **Response of the Committee of Management**

- 463 Zephaniah Waks told the Committee of Management that many in the community blamed him for the police investigation into Kramer and for the 8 July 2011 Age article on Manny Waks.<sup>843</sup> Zephaniah Waks said that people were blaming him for what his son Manny Waks was doing.<sup>844</sup> The evidence before the Royal Commission is that the Committee of Management itself sought to investigate the possibility of recouping the deferred school fees owed by Zephaniah Waks, when Manny Waks issued a civil action against the Yeshivah Centre seeking damages for his sexual abuse.<sup>845</sup>
- 464 The evidence shows that Zephaniah Waks asked the Committee of Management for help to rectify what was happening and that both Rabbi Glick and Rabbi Telsner were aware of the request.<sup>846</sup> When the Committee of Management did write to the community at large, more than a year later, it did not expressly address Zephaniah Waks' concern.<sup>847</sup> Zephaniah Waks requested a meeting with the Yeshivah Centre to put an end to the tension he was feeling between his family and the Centre and asked an intermediary to seek to broker a meeting, but it was reported back to him that 'they were not interested'.<sup>848</sup>

<sup>841</sup> Transcript of Z Waks C6134:46 -6135:41 (Day C61), Exhibit 22-10, at YSV.0001.001.0425\_R.

<sup>842</sup> Exhibit 22-032 EXH.022.032.0001\_R.

<sup>843</sup> Exhibit 22-0023, YSV.0001.001.0425\_R (Tab 44).

<sup>844</sup> Exhibit 22-0023, YSV.0001.001.0425\_R (Tab 44).

<sup>845</sup> Exhibit 22-0023, YSV.0001.001.0417 at 0421 (Tab 32); Transcript of N Bendet, C6802: 1-13 (Day C67); Transcript of D Wolf, C6897:7-20 (Day C67). See also Transcript of Z Waks, C6172: 2-32 (Day C61).

<sup>846</sup> Exhibit 22-0023, YSV.0001.001.0425\_R (Tab 44).

<sup>847</sup> Exhibit 22-0023, YSV.0001.001.0343 (Tab 93).

<sup>848</sup> Transcript of Z Waks C6144:42 -C6146:11 (Day C61).

465 The evidence at the public hearing did not explore all of the factors or circumstances that may have contributed to the tensions in the community or to the tensions between the Committee of Management and Zephaniah Waks, and indeed between the Committee of Management and AVB. However, it is submitted that the evidence did identify that some of the tensions stemmed from a desire to protect the reputation of Rabbi Groner, Rabbi Glick and the Yeshivah Centre in their responses to the child sexual abuse allegations being investigated by the police. As already discussed, on 11 July 2011 Zephaniah Waks asked the Committee of Management to write to the community to publicly support victims and specifically Manny Waks' decision to speak out about his abuse.<sup>849</sup>

466 The Committee of Management did not immediately write in support of victims and their families. Evidence shows that the Committee of Management sought advice from Robert Richter QC about the potential criminal liability of Rabbi Glick or others in respect of the David Cyprys allegations and whether or not the Committee of Management should contact victims<sup>850</sup> before writing to the community at large on 12 August 2012 to publicly support victims and their families.<sup>851</sup> The Committee of Management would not meet with Manny Waks or Zephaniah Waks despite their requests to meet to seek to sort out the tensions that had developed between them.<sup>852</sup> AVB asked the Committee of Management to dispel community misconceptions that he was responsible for the allegations of abuse made against Rabbi Glick but they did not act to dispel those incorrect beliefs.<sup>853</sup>

467 Rabbi Moshe Gutnick said:

*When any religious institution forgets that its ultimate purpose must always be to serve the individual-and instead it is prepared to sacrifice the individual for the sake of the institution –that is when everything goes wrong. It doesn't matter which institution or religion it is. The terminology may be different. The doctrine and dogma may be different. But the disease is the same. When leaders forget that they are there to serve the people and instead when challenged they circle the wagons in order to protect the 'institution' they have failed their G-d and abused their purpose.*<sup>854</sup>

468 AVB and Zephaniah Waks described witnesses who spoke up as later being accused of attacking or trying to 'bring down' the Yeshivah.<sup>855</sup> AVB, Zephaniah Waks and Manny Waks asserted that they were not seeking to destroy the Yeshivah only to seek

<sup>849</sup> Exhibit 22-0023, YSV.0001.001.0425\_R (Tab 44).

<sup>850</sup> Exhibit 22-0023, YSV.001.001.0655\_R at [9] (Tab 88); YSV.0001.001.0013-0015 (Tab 88); Transcript of N Bendet, C6736:39-6737:2, C6740:20- 6741:7 (Day C66).

<sup>851</sup> Exhibit 22-0023, YSV.0001.001.0343 (Tab 93).

<sup>852</sup> Transcript of Z Waks C6144:42 –C6146:11 (Day C61), Transcript of M Waks C6024:14-C6025:22(Day C60).

<sup>853</sup> Transcript of AVB (T6676:46-6673:23 (Day C66).

<sup>854</sup> Exhibit 22-0019, Supplementary Statement of M D Gutnick, STAT.0458.003.0001 at [5].

<sup>855</sup> Exhibit 22-0023, YSV.0001.001.0425\_R at 0428 (Tab 44); Transcript of Z Waks C6170: 26-32 (Day C61); Exhibit 22-0004, IND.0199.014.001\_R; Transcript of AVB, C6236: 3-11 (Day C62); Exhibit 22-0013, Statement of AVC, STAT.0467.001.0001\_R at [12]-[24]; Transcript of M Kluwgant, C7197:29-44 (Day C69).

accountability and change.<sup>856</sup> The Royal Commission heard evidence that as late as 2015, Rabbi Kluwgant was telling others that they should ignore Zephaniah Waks because he was *'attacking Chabad'* and was a *'lunatic on the fringe'*.<sup>857</sup>

- 469 Rabbi Glasman said in relation to what needed to be done to ensure victims of abuse do not suffer stigma or shame:

*The best way obviously to prevent it is to eradicate the abuse in the first instance. But if, God forbid, the abuse does occur, the second best option is for the community to show in a unanimous voice that it supports those victims for coming forward and that they should not feel stigmatised and that the stigma and the shame should be assigned only to the perpetrators.*<sup>858</sup>

- 470 It is submitted that there were many opportunities for the Yeshivah Centre, the Committee of Management and Rabbi Telsner to unanimously support victims, advocates and their families, for instance:
- a) Rabbi Telsner could have spoken out in support of AVB's email of 17 June 2011, and applauded his message, but he did not;
  - b) Rabbi Telsner could have spoken out in support of Manny Waks' decision to discuss his abuse and in support of Zephaniah Waks' decision to support his son but he did neither;
  - c) Rabbi Telsner could have spoken out and supported Manny Waks' call for current Yeshivah and past leaders to be accountable for any failures to act, but he did not;
  - d) Rabbi Telsner could have spoken up to correct any misconceptions about his views towards AVB, Manny Waks or Zephaniah Waks, but he did not;
  - e) Rabbi Telsner could have preached to his community to support victims who come forward like AVB and Manny Waks, and beseech them to support them and their families, but he did not;
  - f) the Committee of Management could have acted on Zephaniah Waks' request for assistance in his email 11 July 2011 and subsequently, but they did not. They did not write to the community at large until 20 August 2012 and even then, did not specifically address Zephaniah Waks' concerns;<sup>859</sup>
  - g) Rabbi Telsner could have immediately acted to correct any misconception about the purpose of his sermon of 16 July 2011, but he did not;
  - h) the Committee of Management could have met with Manny Waks to discuss how the Yeshivah Centre were responding to the child sexual abuse investigations and to discuss a way to resolve things developing between them and Manny Waks, but

<sup>856</sup> Exhibit 22-0023, YSV.0001.001.0425\_R (Tab 44); Transcript of M Waks, C6043: 31-43; C6064: 19-30 (Day C60); Transcript of AVB, C6200:39-42, C6251: 33-45 (Day C62); Exhibit 22-0005, Statement of Z Waks, STAT.0469.001.0001\_R at [63]-[66].

<sup>857</sup> Transcript of M Kluwgant, C7197:29-44 (Day C69).

<sup>858</sup> Transcript of Y Glasman, C7175:37-44 (Day C69).

<sup>859</sup> Exhibit 22-0023, YSV.0001.001.0343 (Tab 93).

the evidence is that the Yeshivah Centre would not engage even after Manny Waks' repeated approaches;<sup>860</sup>

- i) the Committee of Management could have acted, as requested by AVB, to dispel community misconceptions that AVB was involved in the complaint against Rabbi Glick, but they did not.

471 On each of those occasions, the Yeshivah Centre, the Committee of Management and Rabbi Telsner had an opportunity to unequivocally show their support for the victims of child sexual abuse, advocates and their families, but they did not. It is submitted that their omissions implicitly condoned the actions of others in the community who criticised and shunned the victims, advocates and their families.

#### **Available findings on witness experiences of criticism and shunning**

F51 AVB, AVC, Manny Waks, Zephaniah Waks and his family have all experienced criticism and shunning by some members of the Yeshivah community by virtue of having been victims of child sexual abuse or their advocacy on the issue of child sexual abuse in the community. This has resulted in their feeling cast out of the Yeshivah community.

F52 Rabbi Telsner's sermons of 18 June 2011 and 16 July 2011, and the refusal of aliyah to AVB and Zephaniah Waks, were means by which Rabbi Telsner could publicly express his disapproval of actions taken by AVB, Manny Waks and Zephaniah Waks in response to the police investigation of child sexual abuse allegations at the Yeshivah Centre. The refusal of aliyah was a means of religious shunning. The Rabbi's disapproval of AVB, Manny Waks and Zephaniah Waks encouraged some members of the community to disapprove of AVB, Manny Waks and Zephaniah Waks and their families, who experienced silencing, shunning and ostracisation as a result. This in turn contributed to Manny Waks and his family as well as Zephaniah and Haya Waks moving overseas.

F53 The Committee of Management were aware of community tensions about the police investigation and towards Manny Waks and Zephaniah Waks from as early as 11 July 2011. The Committee of Management did not write to the community at large to publicly support victims and their families until 20 August 2012.

#### **The response of the Committee of Management**

472 Since the 1980s the affairs of the Yeshivah Centre have been managed by three incorporated associations and Committees of Management have been responsible for managing those associations.<sup>861</sup> For a significant period of time there has in effect been a single Committee of Management.<sup>862</sup> The Committee of Management is responsible for managing the legal affairs and obligations of each association<sup>863</sup>

<sup>860</sup> Transcript of D Wolf, C6896:12-15 (Day C67); C6905: 31-38 (Day C67); Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [75]-[77].

<sup>861</sup> Transcript of D Wolf C6848:34 – 47 (Day C67).

<sup>862</sup> Transcript of D Wolf C6850:15-:18 (Day C67).

<sup>863</sup> Transcript of D Wolf C6848:11-21 (Day C67).

including overseeing the activities of key employees of the associations.<sup>864</sup> Legally, this included a responsibility to oversee the activities of Rabbi Groner<sup>865</sup> who was employed by one of the associations.<sup>866</sup> Don Wolf accepted that the Committee of Management had a legal responsibility to oversee the activities of key employees, like Rabbi Groner, and it either met that responsibility or it did not.<sup>867</sup>

473 Evidence from numerous witnesses described Rabbi Groner as a large figure in the community; he was both the community's spiritual head and 'in charge' of the Yeshivah Centre and its operations.<sup>868</sup> Don Wolf, former chairman of the committee of Management of the Yeshivah Centre from 1998-2014, said that Rabbi Groner oversaw the affairs of all Yeshivah Centre entities on a day to day basis, he was the Rabbi, CEO and decision maker and while he may have discussed or asked his Committee of Management for their input from time to time as he saw fit, he was definitely in absolute control.<sup>869</sup> Rabbi Groner was revered by his community. Rabbi Glick explained that Rabbi Groner was admired for his personality, dedication, compassion and for the things he had achieved at the Yeshivah Centre. The Royal Commission heard that he was liked, feared and respected.<sup>870</sup>

474 When asked whether Rabbi Groner was an employee of one of the associations, Don Wolf provided the following response:

*Rabbi Groner preceded all of the committees. He set up the organization, virtually, or built it. He asked people like myself and others to come and other volunteers or employees work for him. So in fact Rabbi Groner was paid a wage from the institution, but I'm not sure that the right characterisation is – he was an employee legally, but in practice he was the employer and everybody else was the employee.*<sup>871</sup>

475 It is submitted that the evidence leads to the following position: Rabbi Groner as an employee was accountable to the Committee of Management but given his influence and various roles was also in charge of the Yeshivah Centre. Rabbi Groner had the power to respond personally and to influence the response of others to information that became known about child sexual abuse at the Yeshivah Centre. Given his role and his position of influence and power in the community, the Committee of Management did not, in practice, exercise any oversight of Rabbi Groner's response to child sexual abuse complaints. It is reasonable to infer that members of the Committee of Management took their instructions directly from Rabbi Groner.

<sup>864</sup> Transcript of D Wolf C6852:8-16 (Day C67).

<sup>865</sup> Transcript of D Wolf C6849:45 – 6850:9 (Day C67).

<sup>866</sup> Transcript of D Wolf, T6848:39-T6849:5 (Day C67).

<sup>867</sup> Transcript of D Wolf C6849:45-6850:9 (Day C67), C6851:2 - :20 (Day C67).

<sup>868</sup> Exhibit 22-0001, Statement of AVA, STAT.0461.001.0001\_R at [17]; Exhibit 22-0003, Statement of M Waks, STAT.0460.001.0001\_R at [7]; Exhibit 22-0040, Statement of Z Telsner, STAT.0456.002.0001\_R at [6].

<sup>869</sup> Exhibit 22-0034, Statement of D Wolf at [9] –[10].

<sup>870</sup> Exhibit 22-001, Statement of AVA STAT.0461.001.0001\_R at [17], Transcript of M Waks C6056:42-C6057:1 (Day C60); Transcript of Y Feldman C6445:18 - 24 (Day C64); Transcript of A Glick, C6996.33- 6997:6 (Day C68).

<sup>871</sup> Transcript of D Wolf C6848: 15-22 (Day C67).

- 476 It is submitted that Rabbi Groner's role as 'Rabbi, CEO and decision maker'<sup>872</sup> also leads to a conclusion that knowledge of complaints of sexual abuse by Rabbi Groner was de facto knowledge of the Committee of Management and the various institutions managed by the Committee.
- 477 When Rabbi Glick was the Principal of Yeshivah College he reported primarily to Rabbi Groner and had minimal interaction with the Committee of Management although he met with them as required.<sup>873</sup> In practice, the process of reporting to the Committee of Management was that he '*would occasionally be called to a meeting with the board, that is the executive it was called at the time, and deliver a report, and give a report*'.<sup>874</sup> It is submitted that it is reasonable to infer that the Committee of Management left it to Rabbi Groner to work with and, if necessary, to oversee Rabbi Glick. Rabbi Glick said he would not argue with Rabbi Groner, he would express a different view about something (if he had it) but, ultimately, he would accept Rabbi Groner's ruling on an issue.<sup>875</sup>
- 478 The evidence shows Rabbi Groner advised the Committee of Management of the complaints received in 1992 against Rabbi David Kramer. As Rabbi Groner is deceased, and the public hearing did not call all past and present members of the Committee of Management, it is not possible to make any submission about whether or not Rabbi Groner actually advised any members of the Committee of Management of complaints he received about Cyprys.
- 479 Of the Committee members called, Mrs Nechama Bendet and Mr Don Wolf both denied hearing or knowing anything about David Cyprys' offending until reading about it in the media.<sup>876</sup> Rabbi Smukler gave evidence that good governance requires that any complaint received by the Rabbi or any key employee be reported to the Committee of Management.<sup>877</sup> Rabbi Smukler said this course should be followed not only where there was a complaint against a member of staff of one of the schools, but in any serious matter that would require police or DHS involvement.<sup>878</sup>
- 480 It is submitted that the evidence establishes that the Committee of Management did not oversee how Rabbi Groner and Rabbi Glick responded to child sexual abuse complaints.

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<sup>872</sup> Statement of D Wolf Exhibit 22-0034 at [9]-[10].

<sup>873</sup> Statement of A Glick, Exhibit 22-0039 at [5].

<sup>874</sup> Transcript of A Glick, C6988:5-13 (Day C68).

<sup>875</sup> Transcript of A Glick, C6997:43-47 (Day C68).

<sup>876</sup> Exhibit 22-0033, Statement of N Bendet, STAT.0455.002.0001\_R at [15]; Exhibit 22-0034, Statement of D Wolf, STAT.0453.002.0001\_R at [17].

<sup>877</sup> Transcript of Y Smukler, C7220:27-32 (Day C69).

<sup>878</sup> Transcript of Y Smukler, C7220:34-37 (Day C69).

### **The Committee of Management: difficulties experienced by victims and their families with dealing with their complaints about Rabbi Telsner**

- 481 This public hearing heard evidence from witnesses AVB and Zephaniah Waks, who said that they experienced difficulty in seeking to have their complaints about the conduct of the Rabbi Telsner or the Committee of Management addressed and resolved.<sup>879</sup>
- 482 Rabbi Glasman gave evidence that the majority of synagogues in Melbourne would have contractual agreements between the rabbi and the community, this would ensure the rabbi is accountable to the board of management and that the board of management is accountable to the members of the synagogue.<sup>880</sup> Rabbi Glasman explained that the members democratically elect a board and the board then takes on the mantle of responsibility in ensuring the governance of the congregation. If issues arise in relation to the rabbi or mishandlings at the hands of the rabbi, the rabbi is then accountable to them.<sup>881</sup> He explained that this ensured transparency and accountability.<sup>882</sup> Rabbi Glasman explained that his synagogue has a policy that provides for members of the board to declare conflicts of interest at every meeting.<sup>883</sup>
- 483 Mr Wolf gave evidence that to his knowledge there is no documented dispute resolution process published by the Yeshivah Centre for members of the congregation who might have a dispute, but that it would be useful to have one.<sup>884</sup> AVB said he would have been assisted by there being a documented dispute resolution process within the Yeshivah Centre for members of the community and others aggrieved with the actions of an employee.<sup>885</sup> AVB said that any such process would need to address conflicts, familial or otherwise, that might arise in this community.<sup>886</sup>

### **No formal redress policy**

- 484 Both Mrs Bendet and Mr Wolf told the Royal Commission that during their time on the Committee of Management, consideration was not given to the establishment of a formal redress policy.<sup>887</sup> AVA said the following about redress:

*Seeking redress is something that I thought long and hard about. It's not about the money. It's about making the Yeshivah Centre and the Yeshivah College feel it where it hurts. I hold David responsible for molesting me. He is broken and he will never change, but the Yeshivah Centre and the Yeshivah College knew that David was molesting me and it went on for*

<sup>879</sup> Statement of Z Waks Exhibit 22-0005 at [37], [46]–[58], Exhibit 22-0023 at Tab 44; Evidence of Z Waks C6111:27–C6140:31 (Day C61), C6144:42–C6146:19 (Day C61); Transcript of AVB C6671:41–6673:16 (Day C66), C6676:41–6680:7 (Day C66).

<sup>880</sup> Transcript of Y Glasman, C7173:1–21 (Day C69).

<sup>881</sup> Transcript of Y Glasman, C7173:1–21 (Day C69).

<sup>882</sup> Transcript of Y Glasman, C7172:42–C7173:21 (Day C69).

<sup>883</sup> Transcript of Y Glasman, C7173:23–42 (Day C69).

<sup>884</sup> Transcript of D Wolf, C6871:30–37.

<sup>885</sup> Transcript of AVB, C6678:24–C6679:41 (Day C66).

<sup>886</sup> Transcript of AVB, C6680:10–21 (Day C66).

<sup>887</sup> Transcript of N Bendet, C6782:17–25 (Day C67); transcript of D Wolf, C6868:33–38 (Day C67).

*another two years after they were told. They had a duty of care to me and I believe they are responsible for failing to prevent that abuse.*<sup>888</sup>

485 AVA made the following additional comment about the need for institutions to fear the financial and other impacts of their actions. He said, *'At the end of the day, an institution needs to be responsible for what it or didn't do to protect children'*.<sup>889</sup>

### **Apology**

486 On 24 July 2013, the day that Kramer was sentenced, a second apology was emailed by Rabbi Smukler to parents of students of Yeshivah Beth-Rivkah Colleges.<sup>890</sup> Manny Waks told the Royal Commission that it was not addressed to him or to the other victims of Cyprys or Kramer.<sup>891</sup> The Yeshivah Centre was unable to advise the Royal Commission how widely the letter of 24 July 2013 was circulated.<sup>892</sup>

487 Manny Waks said he has never received a direct apology of any kind from the Yeshivah Centre or College and that no one from the Yeshivah Centre or College has contacted him to offer him any form of support or assistance.<sup>893</sup> Manny Waks said that on 20 August 2012, the Yeshivah Centre sent a letter to the Yeshivah community.<sup>894</sup> The letter was signed by Rabbi Telsner on behalf of the Yeshivah synagogue, Rabbi Smukler on behalf of the Yeshivah College and Don Wolf on behalf of the Committee of Management. The letter said they, *'Unreservedly apologise for any historical wrongs that may have occurred.'*<sup>895</sup> Mr Waks felt this was a qualified apology, in particular the use of the word *'may'*. He considered it a slap in the face.<sup>896</sup>

488 At the public hearing, there was no formal acknowledgement by the Yeshivah Centre of any failure in its management of the Yeshivah Centre, the College or their responses to child sexual abuse complaints.

### **Available findings on the Committee of Management of Yeshivah Melbourne**

F54 The Committee of Management did not oversee the response of Rabbi Groner and Rabbi Glick to child sexual abuse complaints.

F55 There was a lack of effective governance and leadership by the Committee of Management. This was contributed to by familial, personal or financial conflicts of interest in the Yeshivah Melbourne community. A transparent and formal process is needed to address these conflicts.

<sup>888</sup> Transcript of AVA, C5995:23-31, (Day C60).

<sup>889</sup> Transcript of AVA, C5996:7-14, (Day C60).

<sup>890</sup> Exhibit 22-0023, YSV.0001.001.0353 (Tab 124).

<sup>891</sup> Transcript of M Waks, C6026:16-20 (Day C60).

<sup>892</sup> Exhibit 22-0052, IND.0248.001.0051.

<sup>893</sup> Transcript of M Waks, C6025:24-27 (Day C60).

<sup>894</sup> Transcript of M Waks, C6025:29-35 (Day C60).

<sup>895</sup> Exhibit 22-023, YSV.0001.001.0343 (Tab 93).

<sup>896</sup> Transcript of M Waks, C6025:24-38 (Day C60).

F56 The Yeshivah Centre did not have an internal dispute resolution process to respond to disputes between the community and Yeshivah Centre leaders and employees.

#### 4.4 Yeshivah Centre: Current child protection policies and practices

489 Although the Yeshivah Centre does not have a child protection policy itself, institutions under its umbrella, namely the Yeshivah-Beth Rivkah Colleges and Chabad Youth, both have current policies.

##### Yeshivah-Beth Rivkah Colleges

490 In his statement dated 22 December 2014, Rabbi Joshua (Yehoshua) Smukler, Principal of Yeshivah-Beth Rivkah Colleges, outlined the current policies and procedures of the schools for child protection.<sup>897</sup> Rabbi Smukler said that in 2010, when he became principal of the Yeshivah-Beth Rivkah Colleges, he revised the existing policy to make it shorter and clearer. The 'Policy - Child First – Child Protection' was reviewed in June 2014 and will be revised in June 2015.<sup>898</sup> Rabbi Smukler said that he in-services all staff in the policy each year and it is part of the induction process for new staff.<sup>899</sup>

491 Rabbi Smukler stated that in the event of a report of child abuse within the school, it is his responsibility to action and manage the matter.<sup>900</sup> Rabbi Smukler stated that in addition to notifying the police and the Department of Human Services, as a school governance issue he would immediately also inform the executive of the Committee of Management.<sup>901</sup> Rabbi Smukler gave evidence that upon receiving a complaint, the identity of the relevant persons and the subject matter of the complaint is documented in writing.<sup>902</sup>

492 Rabbi Smukler said he and his staff have developed a child protection staff code of conduct, which forms part of all employee agreements.<sup>903</sup> Rabbi Smukler explained that he took it from a few American models and it was further fine-tuned and upgraded after he workshopped it with his head staff.<sup>904</sup> Rabbi Smukler stated that staff who held pre-existing agreements were notified of the variation and that, by continuing to be employed by Yeshivah-Beth Rivkah Colleges, they agreed to be bound by the code of conduct.<sup>905</sup> Rabbi Smukler believes that Yeshivah-Beth Rivkah Colleges are one of the first schools in Victoria to adopt such a code of conduct. Rabbi Smukler says that he is able to ensure awareness of, and compliance with, the code of conduct with the assistance of staff members.<sup>906</sup>

<sup>897</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [55]-[93].

<sup>898</sup> Exhibit 22-0023, YSV.0001.001.0271 (Tab 159).

<sup>899</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [60].

<sup>900</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [7(a)].

<sup>901</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [7(b)].

<sup>902</sup> Transcript of Y Smukler, C7221:14-19 (Day C69).

<sup>903</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [61].

<sup>904</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [63].

<sup>905</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [61].

<sup>906</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [86].

493 In his statement, Rabbi Smukler outlined the approach to child protection at Yeshivah-Beth Rivkah Colleges, which he said is embodied in the code of conduct and the related training and implementation. He says that there is a key premise and four elements to the approach that drives the code of conduct:

*The key premise that is that: where there are children there are people that are a threat to children. And it is our obligation and the obligation of every single adult in the community to keep children safe; it is not the obligation of the child to keep themselves safe, although you can instill in a child certain behaviours that make it a lot more difficult for anyone to take advantage of them. But that never abrogates the adults' responsibility to actively take care of children.*<sup>907</sup>

494 He said there are four elements of the schools' approach to child protection: staff, parents, the children themselves and community partnerships.<sup>908</sup>

### **Staff**

495 Rabbi Smukler said that all Yeshivah-Beth Rivkah Colleges staff have working with children checks and are registered with the Victorian Institute of Teaching.<sup>909</sup> Before hiring staff, Rabbi Smukler said he and his head of staff conduct 'back door unofficial conversations' with fellow principals. He says that he will not hire a member of staff if 'there is even the faintest suggestion of a child protection concern'.<sup>910</sup> He said that there was one instance where they acted on information and a recommendation through such channels that the school not take on a potential staff member.<sup>911</sup>

496 Rabbi Smukler said that staff do an 'enormous amount of training', which includes:

- a) training the trainers, eight 'expert leaders' across the Yeshivah-Beth Rivkah College campuses, with responsibility for their campus;<sup>912</sup>
- b) training all heads of campus;<sup>913</sup>
- c) workshops with staff;<sup>914</sup> and
- d) bringing in child protection experts who help staff understand how to detect red flags, how to support a child through disclosure and how to support a family.<sup>915</sup>

497 Rabbi Smukler explained he has delegated welfare heads on each school campus, who are highly trained and aware of child protection related matters. They are the point of call on child protection matters on their campus and work closely with the principal.<sup>916</sup>

<sup>907</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [66].

<sup>908</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [67]-[85].

<sup>909</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [68(a)].

<sup>910</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [68(b(i))]; Transcript of Y Smukler, C7217:29-34 (Day C69).

<sup>911</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [68(b(ii))].

<sup>912</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [68(c(i))].

<sup>913</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [68(c(ii))].

<sup>914</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [68(c(iii))].

<sup>915</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [68(c(iv))].

<sup>916</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [78].

The team meets and revises all child protection workshops so that they do not cover the same thing every year and the material is updated as more information about child protection emerges.<sup>917</sup>

## Parents

- 498 In his statement, Rabbi Smukler said that Yeshivah-Beth Rivkah Colleges see it as their job to empower and educate the parents as part of their commitment to child protection. Rabbi Smukler noted that research and evidence demonstrates that conversations about sexuality, intimacy, sexual abuse and appropriate touching with children are the lynchpin of child protection and make a child more comfortable to talk.<sup>918</sup>
- 499 According to Rabbi Smukler, the school has run a number of education sessions for parents. Every year it has brought out top-level experts to talk to parents at the school.<sup>919</sup> This has included talks from:
- a) Dr Joe Tucci, head of the Australian Childhood Foundation (2014), who also participated in a question and answer panel with others;
  - a) Pauline Ryan, senior counsellor at the South East Centre Against Sexual Assault and the Gatehouse Centre at the Children's Hospital (2013); and
  - b) Dr David Pelcowitz, Professor of Psychology and Education at Yeshiva University, who provided sessions with parents, educators, welfare offices and school therapists (2013).
- 500 Rabbi Smukler said the school also sends out video workshops to parents from world class child protection experts prior to high risks times, such as summer camps and the festival season during school holidays.<sup>920</sup> However, he did not specify who these experts are.

## Children

- 501 In his statement, Rabbi Smukler said that the school aims to provide the children with protective behaviours through workshops every year up until year 12.<sup>921</sup> The workshops differ for the older and younger children. A team of internal therapist and educators work with an external expert consultant therapist to ensure the school is employing best practice.<sup>922</sup>
- 502 Rabbi Smukler conducts the workshops with the middle age boys and other facilities do other workshops with different groups.<sup>923</sup> The school trained approximately 8 staff who then go from classroom to classroom in pairs conducting the workshops, which

<sup>917</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [79].

<sup>918</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [71].

<sup>919</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [73].

<sup>920</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [73(e)].

<sup>921</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [75].

<sup>922</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [76(c)].

<sup>923</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [77].

include dramatic presentations, role-plays, PowerPoint presentations and a feedback session. There are always at least 2 staff members present for the workshops.<sup>924</sup>

### Community Partnerships

503 Rabbi Smukler said that the school works closely with law enforcement and the Department of Human Services.<sup>925</sup> The school also works, to varying degrees with the Jewish Taskforce Against Family Violence, Jewish Care, the Child and Family Information Referral and Support Team (also known as Child FIRST), the South East Centre Against Sexual Assault, local rabbis and community based social services.<sup>926</sup>

### Chabad Youth

504 Rabbi Moshe Kahn stated that the 'Chabad Youth Safeguarding Children and Young People Policy and Practice and Behaviour Guidelines'<sup>927</sup> were developed in or around 2007.<sup>928</sup> They cover a range of areas including policies to protect children from the threat of sexual abuse. Rabbi Kahn explained that the policies and procedures were prepared in consultation with leading authorities including the Jewish Taskforce Against Family Violence.<sup>929</sup>

505 Rabbi Kahn explained that these policies and procedures were implemented by providing all staff working at Chabad Youth with a copy as well as having member of the Jewish Taskforce attend to undertake onsite training for the staff.<sup>930</sup> Internally the policies and procedures are reviewed and updated to ensure they are current and reflect best practice. This includes:

- a) an annual review;
- b) regular formal staff training undertaken twice a year;
- c) provision of written documentation to staff members; and
- d) internal presentations to staff.<sup>931</sup>

506 Rabbi Kahn said that Chabad Youth has sought external recognition of its policies and procedures, which includes:

- a) accreditation by the Australian Childhood Foundation, an independent body dedicated to child protection, following an audit process spanning approximately 2 years. Chabad Youth is the first and only Jewish youth organisation to receive such accreditation; and
- b) provision of the policies and procedures to other Jewish organisations following the external presentations given by Chabad Youth.<sup>932</sup>

<sup>924</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [77].

<sup>925</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [81].

<sup>926</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [84].

<sup>927</sup> Exhibit 22-0023, STAT.0454.002.0036 (Tab 210).

<sup>928</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [12].

<sup>929</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [13].

<sup>930</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [13].

<sup>931</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [14].

<sup>932</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [14].

507 Rabbi Kahn said that the policies and procedures will continue to be reviewed and developed on an ongoing basis.<sup>933</sup> The current policy at Chabad Youth, is called 'Chabad Youth – Policies and Procedures 2015'.<sup>934</sup>

### **Aron Ezriel ('Ezzy') Kestecher**

508 The evidence set out below supports a conclusion that both the Yeshivah-Beth Rivkah Colleges and Chabad Youth utilised and adhered to their policies on child protection when dealing with a complaint involving Aron 'Ezzy' Kestecher, a casual employee at the Yeshivah-Beth Rivkah Colleges and an active volunteer with Chabad Youth. The incident shows an improvement in child protective communication across the institutions within the Yeshivah Centre.

### **Yeshivah-Beth Rivkah Colleges**

509 Rabbi Smukler gave evidence that during term one in 2011, Ezzy Kestecher ran a co-curricular choir with students in the boys' secondary school.<sup>935</sup>

510 Rabbi Smukler stated that on about 13 June 2011, Rabbi Smukler received a phone call from a community therapist advising him that she had received a disclosure of child sexual abuse relating to Ezzy Kestecher. He said the counsellor advised that she had contacted the police.<sup>936</sup> Rabbi Smukler said he then immediately contacted the head of teaching who coordinated the choir and told her to tell Ezzy Kestecher that the choir was not continuing.<sup>937</sup> Rabbi Smukler stated that the school also emailed all the affected parents to tell them that the choir had been temporarily cancelled.<sup>938</sup>

511 Rabbi Smukler said that shortly after this first incident, he was told that another student had made a disclosure regarding Ezzy Kestecher to Rabbi Glick.<sup>939</sup> Upon contacting Rabbi Glick, Rabbi Smukler said he was informed of the allegations and together he and Rabbi Glick called the Department of Human Services and contacted police about the allegation.<sup>940</sup> The allegation was of inappropriate touching that occurred outside school hours.<sup>941</sup> Rabbi Smukler said that Rabbi Glick had encouraged the family to go to the police and press charges but the family had chosen not to and the school did not want to pressure the boy and his family.<sup>942</sup>

512 The evidence before the Royal Commission is that on 1 July 2011, Rabbi Zvi Telsner sent Ezzy Kestecher a letter telling him that he was not allowed to have anything whatsoever to do with the school or the centre.<sup>943</sup> Rabbi Smukler explained that the

<sup>933</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [15].

<sup>934</sup> Exhibit 22-0023, STAT.0454.002.0008 at 0036 (Tab 225).

<sup>935</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [16].

<sup>936</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [18].

<sup>937</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [19].

<sup>938</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [20].

<sup>939</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [21].

<sup>940</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [21].

<sup>941</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [21].

<sup>942</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [22].

<sup>943</sup> Exhibit 22-0023, YSV.0001.001.0081\_R (Tab 39).

letter was formally sent by Rabbi Telsner as the rabbi in charge of the Yeshivah Centre, although Rabbi Smukler had some involvement in the initial drafting of that letter.<sup>944</sup>

- 513 Rabbi Smukler said that in July 2012 he received a letter dated 26 July 2012 from David Grace QC advising that Ezzy Kestecher had been cleared of all charges and requesting permission to attend the Yeshivah Centre Synagogue.<sup>945</sup> Rabbi Smukler said that the Yeshivah Centre did not remove the ban and Ezzy Kestecher never returned to the premises.<sup>946</sup>
- 514 The evidence before the Royal Commission is that on about 10 August 2012, Rabbi Smukler received a phone call from a parent advising that Ezzy Kestecher had been the bus driver for a grade 3 excursion.<sup>947</sup> Rabbi Smukler confirmed the report with Victorian Touring Coaches.<sup>948</sup> On 14 August 2012, Rabbi Smukler advised Victorian Touring Coaches that, until further notice, the Yeshivah Beth-Rivkah Colleges would not use the services of Ezzy Kestecher as a driver of buses hired for Yeshivah-Beth Rivkah Colleges.<sup>949</sup> Rabbi Smukler notified the heads of staff and youth organisations to ensure they were aware of the issue and would be vigilant.<sup>950</sup>

### Chabad Youth

- 515 Rabbi Kahn said that between 2005 and 2008, Ezzy Kestecher volunteered and was actively involved with Chabad Youth, including the summer camps run by Chabad Youth.<sup>951</sup> Rabbi Kahn said that Ezzy Kestecher was fully aware of, and otherwise helped formulate, the child protection policies under the supervision of Rabbi Kahn.<sup>952</sup> Rabbi Kahn stated that in 2008, he received a complaint that Ezzy Kestecher had fallen asleep on a teenage boy's bed at a summer camp.<sup>953</sup> After consulting with the Yeshivah Committee of Management, Rabbi Kahn says he drove approximately 5 hours to the boys' camp site and spoke with Ezzy Kestecher, a number of the teenage boys as well as the teenage boy's mother about the incident.<sup>954</sup>
- 516 Rabbi Kahn said that Ezzy Kestecher, the teenage boys and the particular teenage boy's mother all said that nothing untoward had occurred and denied that anything inappropriate had occurred, saying it was '*no big deal*'.<sup>955</sup> Rabbi Kahn said that nonetheless Ezzy Kestecher was asked to leave the camp and, after discussion with

<sup>944</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [23].

<sup>945</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [29]; Exhibit 22-0023, YSV.0001.001.0086 (Tab 89).

<sup>946</sup> Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [29].

<sup>947</sup> Exhibit 22-0023, YSV.0001.001.0087 (Tab 90); Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [30].

<sup>948</sup> Exhibit 22-0023, YSV.0001.001.0087 (Tab 90).

<sup>949</sup> Exhibit 22-0023, YSV.0001.001.0090\_R (Tab 91).

<sup>950</sup> Exhibit 22-0023 YSV.0001.001.0090\_R (Tab 91); Exhibit 22-0048, Statement of Y Smukler, STAT.0457.002.0001\_R at [31].

<sup>951</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [20], [22].

<sup>952</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [23].

<sup>953</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [24]-[25].

<sup>954</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [26]-[30].

<sup>955</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [29]-[30].

Chaim New and the Committee of Management, Ezzy Kestecher was asked to cease all volunteering and involvement with Chabad Youth.<sup>956</sup> Rabbi Kahn said that Ezzy Kestecher was also directed to see Mary Mass, a counsellor at the South Eastern Centre Against Sexual Assault.<sup>957</sup>

- 517 Despite recommendations from Ms Mass that Ezzy Kestecher be allowed to return to Chabad Youth on the basis that ‘in my professional opinion Ezzy is not a risk to himself or anyone else,’ Rabbi Kahn said he did not want to risk the safety of the children and as such did not allow him to return to Chabad Youth.<sup>958</sup>

#### **Available findings on the current policies and responses of Yeshivah Melbourne**

F57 Yeshivah-Beth Rivkah Colleges and Chabad Youth now have child protection policies in place with an aim to achieve best practice in child protection. Yeshivah Beth-Rivkah Colleges approach to child protection has four elements: staff, parents, the children themselves and community partnerships. The Colleges strives to empower and educate parents through information and education sessions. All staff receive training on the policies at least once annually. Extensive training is conducted for all staff and heads of campus.

F58 Current policies were appropriately followed in responding to recent complaints of alleged conduct amounting to child sexual abuse.

#### **Rabbi Kluwgant’s text about Zephaniah Waks on 3 February 2015**

- 518 The Royal Commission heard evidence that on 3 February 2015, Rabbi Kluwgant sent a text message to a journalist at the Australian Jewish News.<sup>959</sup> The text message was about Zephaniah Waks’ evidence in this public hearing. In his text message, Rabbi Kluwgant said ‘*Zephaniah is killing us. Zephaniah is attacking Chabad. He is a lunatic on the fringe, guilty of neglect of his own children*’.<sup>960</sup>
- 519 Rabbi Kluwgant agreed in questioning that the denigration of victims and their supporters is to be deplored.<sup>961</sup> He further agreed that it was destructive to ever seek to shift responsibility from the abuser and the institution within which a child is abused to a parent who has entrusted a child to that institution.<sup>962</sup>
- 520 In the text message Rabbi Kluwgant suggested that Zephaniah Waks was attacking Chabad. This suggests that the text message sought to shift the focus from shortcomings in the Yeshivah Centre’s response to the issue of child sexual abuse to a

<sup>956</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [31]-[32].

<sup>957</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [31], [33].

<sup>958</sup> Exhibit 22-0045, Statement of M Kahn, STAT.0454.002.0001\_R at [39]; Exhibit 22-0023, YSV.0001.001.0080 (Tab 31).

<sup>959</sup> Transcript of M Kluwgant, C7197:12-44 (Day C69).

<sup>960</sup> Transcript of M Kluwgant, C7197:12-44 (Day C69).

<sup>961</sup> Transcript of M Kluwgant, C7196:40-46 (Day C69).

<sup>962</sup> Transcript of M Kluwgant, C7197:1-10 (Day C69).

personal attack on Zephaniah Waks. This supports a finding that by sending such a text message Rabbi Kluwgant breached the principles set out in the 2010 RCV Resolution.

**Available findings on Rabbi Kluwgant's text of 3 February 2015**

F59 Rabbi Kluwgant's text to a reporter at the Australian Jewish News on 3 February 2015 was a breach of the principles set out in the 2010 RCV Resolution to provide halachic leadership and support to victims of abuse, their families and to advocates.

Maria Gerace

3 June 2015

#### 4.5 Summary of available findings

##### **Available findings on Yeshiva Bondi's knowledge of complaints against Daniel Hayman**

- F1 In 1986/1987, Rabbi Lesches, a senior employee of Yeshiva Bondi, received multiple complaints of alleged conduct amounting to child sexual abuse by Daniel Hayman. At the time, Daniel Hayman was permitted to frequently act as a volunteer youth worker at Yeshiva Bondi.
- F2 The complaints put Yeshiva Bondi on notice that Daniel Hayman may pose a risk to children who attended Yeshiva Bondi. The complaints were not documented or investigated further.
- F3 Notwithstanding the 1986/1987 complaints of conduct amounting to child sexual abuse by Daniel Hayman, during the summer holidays of 1987/1988 Yeshiva Bondi allowed Daniel Hayman to attend Camp Gan Israel as a volunteer, giving him unsupervised access to children attending the camp.
- F4 Notwithstanding the 1986/1987 complaints of conduct amounting to child sexual abuse by Daniel Hayman, in 1989 Rabbi Lesches arranged for a 12 year-old girl to live at Daniel Hayman's house, giving him unsupervised access to a child. Shortly afterwards, the 12 year old girl complained to Rabbi Lesches of sexually inappropriate conduct by Daniel Hayman. Rabbi Lesches expressed doubt about the girl's complaint and sought to discourage her parents from believing the girl's complaint.
- F5 In 1986/1987, Yeshiva Bondi did not have formal child protection policies that set out how staff of the Yeshiva Gedola should respond to complaints of child sexual abuse.

##### **Available findings on Yeshiva Bondi's response to the 2002 complaint of child sexual abuse by AVL**

- F6 On 24 July 2002, Rabbi Pinchus Feldman and Rabbi Yosef Feldman were both aware that a student at Yeshiva Bondi had made a complaint of child sexual abuse by AVL, a rabbinical student at the Yeshiva Gedola. Both Rabbi Pinchus Feldman and Rabbi Yosef Feldman failed to tell key employees involved in responding to the complaint or the authorities that AVL was thinking of leaving the country because of the complaint.
- F7 AVL left the country less than 24 hours after being informed of the allegation on a ticket paid for by the Yeshiva Gedola. AVL's rapid departure from Australia hindered the police investigation of the complaints made against him.
- F8 As at 24 July 2002, Rabbi Yosef Feldman lacked understanding of:
- conduct amounting to child sexual abuse;
  - the criminal nature of child sexual abuse; and
  - the obligations in NSW to report complaints of child sexual abuse to external authorities including the NSW Ombudsman.
- F9 As at 24 July 2002, Rabbi Yosef Feldman was a director of Yeshiva College Ltd which operated Yeshiva College, a director of STCA which ran Yeshiva Bondi and the Dean of Yeshiva Gedola, a rabbinical training college whose students were routinely involved in working with children. As a director and senior employee, Rabbi Yosef

Feldman should have had an understanding of what conduct amounted to child sexual abuse and that child sexual abuse was a crime. Rabbi Feldman should have been aware of the statutory reporting obligations for responding to child sexual abuse.

F10 William Conway, employee of Yeshiva College Ltd appropriately documented the complaint against AVL and reported the allegations made against AVL to the relevant authorities.

#### **Available findings on Yeshiva Bondi: Rabbi Yosef Feldman's views on child sexual abuse in July 2011**

F11 Rabbi Yosef Feldman's public statement on 26 July 2011 that he unequivocally accepted the 2010 RCV Resolution that there was a halachic obligation to report all allegations of abuse to the police, was not a true statement of his beliefs but an exercise in public relations to seek to mitigate damage to his reputation following public dissemination of the 21-25 July 2011 emails and the controversial views he expressed in the emails about child sexual abuse.

F12 As at 26 July 2011, Rabbi Yosef Feldman, then President of the Rabbinical Council of NSW, held a view that the prohibition of mesirah was relevant when considering whether or not to report allegations of child sexual abuse made against a Jewish person to the authorities.

F13 As at 26 July 2011, Rabbi Yosef Feldman held a view that allegations of child sexual abuse should in the first instance be reported to a rabbi who should investigate the complaint and determine whether or not to report to the authorities. Rabbi Yosef Feldman believed that a relevant consideration for a rabbi in deciding whether or not to report an allegation was when the abuse was committed and whether the perpetrator had repented or changed.

F14 As at 26 July 2011, Rabbi Yosef Feldman's views were in part motivated by his friendship with David Cyprys who was then being investigated for historical allegations of child sexual abuse.

#### **Available findings on Rabbi Yosef Feldman's contact with AVB in 2013**

F15 Rabbi Yosef Feldman's decision in 2013 to contact a victim of child sexual abuse, AVB, was not to offer his support to AVB as a rabbi but was instead to question why AVB reported the abuse perpetrated against him to the police rather than to a rabbi.

F16 Rabbi Feldman was motivated to contact AVB because he was angry that his friend Daniel Hayman had been charged and might go to jail for an offence of child sexual abuse against AVB. When Rabbi Feldman contacted AVB, Rabbi Feldman knew that Daniel Hayman had abused AVB.

F17 As late as November 2013, Rabbi Feldman held the opinion that child abuse complaints should first be reported to a Rabbi to decide if the matter should be reported to the police. Rabbi Feldman believed a relevant consideration for a Rabbi deciding whether to permit a complaint of abuse to go the police, was the question of whether- in the Rabbi's opinion- the perpetrator had changed since the time of the offence.

### **Available findings on Yeshiva Bondi's response to the conviction and sentencing of Daniel Hayman**

F18 On 1 July 2014, just 19 days after the sentencing of Daniel Hayman for an offence of child sexual abuse perpetrated in connection with the activities of Yeshiva Bondi, leaders of Yeshiva Bondi held a function to celebrate the life and work of the Lubavitcher Rebbe and listed Daniel Hayman as a sponsor of the event and thanked him for his patronage. In so doing, Yeshiva Bondi demonstrated an insensitivity to and a disregard for AVB's experience as a survivor of child sexual abuse perpetrated by Hayman at a camp run by Yeshiva Bondi.

F19 After Daniel Hayman's conviction, leaders of the Yeshiva Centre did not reach out to AVB as a survivor of abuse perpetrated by Daniel Hayman.

F20 As late as July 2014, Rabbi Yosef Feldman was of the opinion that rabbinical organisations should not encourage people to report all allegations of child sexual abuse to the authorities.

F21 As late as July 2014, Rabbi Yosef Feldman did not accept there was a halachic obligation for any allegation of child sexual abuse, whenever committed, to be reported to the authorities.

### **Available findings on Rabbi Yosef Feldman's current attitudes to child sexual abuse**

F22 The views articulated by Rabbi Yosef Feldman in his supplementary statement to the Royal Commission dated 6 February 2015 are not a true representation of his views on the issue of child sexual abuse but an attempt to rehabilitate his public reputation.

F23 The views expressed by Rabbi Yosef Feldman in 2011, 2013, 2014, and at the public hearing, demonstrate that he often approaches the issue of child sexual abuse from the perpetrator's perspective, rather than from the child's perspective.

### **Available findings on Yeshiva Bondi: Formal child protection policies, training and policy statement for Chabad NSW**

F24 As at 2015, Yeshiva College Bondi has formal child protection policies in place including training for staff and processes for reporting allegations of abuse. Yeshiva Bondi has policies in place to regulate children's use of the Mikveh.

F25 As at 2015, the Yeshiva Gedola (rabbinical college) does not have formal child protection policies for responding to child abuse issues, even though the Gedola's rabbinical students are routinely involved in working with children and live on the same premises from which the school, Yeshiva College Bondi, operates.

F26 The Yeshiva Gedola curriculum for students who seek ordination as rabbis does not include any formal training on how Rabbis should respond to issues of child sexual abuse. Neither Rabbi Pinchus Feldman nor Rabbi Yosef Feldman has received any formal training on recognising and responding to child sexual abuse.

F27 At the public hearing, Rabbi Pinchus Feldman issued a formal statement setting out the official policy of the Chabad movement in New South Wales that reporting of cases of abuse to the authorities is not just 'permitted' but an 'obligation', a holy obligation.

**Available findings on the connection between Yeshivah Melbourne and David Cyprys**

F28 Between 1986 and the mid 2000s David Cyprys provided various services to the Yeshivah Centre and on Yeshivah Centre premises including at different times attending Gan Israel camps for students, acting as a martial arts instructor for students of Yeshivah College after school and as the Yeshivah Centre's caretaker, locksmith and security guard.

F29 Whether David Cyprys was an employee, a volunteer, or contractor, did not alter the obligation of the Yeshivah Centre or those in charge to act on information they received that David Cyprys was abusing children attending Yeshivah Melbourne, or that suggested he was a risk to commit child sexual abuse.

### **Available findings on complaints of sexual abuse by David Cyprys**

F30 In 1984, Rabbi Groner received a complaint of conduct by David Cyprys amounting to child sexual abuse that put Rabbi Groner, Head of Yeshivah College and Yeshivah Melbourne, on notice that David Cyprys may pose a risk to children.

F31 Notwithstanding the 1984 complaint about David Cyprys, David Cyprys was permitted to continue to act as an assistant martial arts instructor in after school student activities organised by Chabad Youth for Yeshivah College students.

F32 In 1986, AVQ, mother of AVA, a student at Yeshivah College, complained to Rabbi Groner that David Cyprys was abusing AVA. Even though Rabbi Groner told AVQ and AVA that he would take care of the situation, David Cyprys was permitted to have ongoing access to the Yeshivah Centre premises. Cyprys continued to abuse AVA for a further 12-18 months after AVQ's 1986 complaint and much of the abuse occurred on the Yeshivah Centre premises.

F33 In the period 1987 to 1990, Cyprys met and abused Yeshivah College student, Manny Waks. David Cyprys was teaching karate lessons to Manny Waks. David Cyprys abused Manny Waks on Yeshivah Centre premises.

F34 In late 1990/1991, David Cyprys met and subsequently abused AVR, then a Yeshivah College student. Much of the abuse occurred on Yeshivah centre premises.

F35 In 1991, AVR's mother complained to Rabbi Groner and Rabbi Glick that David Cyprys was abusing AVR. Rabbi Glick immediately terminated AVR's scholarship. This was an inappropriate response to a student who has complained that he has been abused by Cyprys.

F36 David Cyprys continued to attend the Yeshivah Centre for a further 10 years after Rabbi Groner and Rabbi Glick received AVR's complaint.

### **Available findings on Rabbi Groner's attitude to child sexual abuse**

F37 In 1996, Manny Waks told Rabbi Groner that David Cyprys had sexually abused him. Rabbi Groner urged Manny Waks not to report the abuse and told him that Cyprys was getting professional help and was making improvements.

### **Available findings on Yeshivah Centre: child protection issues 1984 – 2007**

F38 In the period 1984 to 2007, Yeshivah College was a less than safe place from the perspective of best practice in child protection as it lacked a framework to recognise and respond to child sexual abuse issues.

F39 Yeshiva College developed policies to respond to mandatory reporting in 2007, but mandatory reporting had been introduced 13 years earlier in Victoria in 1994.

### **Available findings on the response of the Yeshivah Centre to 1992 complaints against Rabbi David Kramer**

F40 In 1992, parents of students at Yeshivah College complained to Rabbi Groner, Rabbi Glick and Rabbi Pincus Ash that Rabbi David Kramer, a teacher, was sexually abusing children. Within a short period of time, Rabbi Kramer was dismissed from his teaching position. Within days of the complaints Rabbi Kramer left Australia on an airline ticket paid for by the Yeshivah Centre.

### **Available findings on the response to community attitudes to the police investigation in 2011**

F41 On or about 16 June 2011, Rabbi Telsner erected a notice on the noticeboard outside the Shule that parents should co-operate with the police request for assistance in their investigation.

### **Available findings on AVB's email of 17 June 2011 and the sermon of 18 June 2011**

F42 On 17 June 2011, AVB sent an email to his contacts in the community saying that some in the community had long known of the child sexual abuse allegations and urging his contacts to co-operate with the police investigation. On 18 June 2011, Rabbi Telsner delivered a sermon in which he criticised people sending emails. Rabbi Telsner's sermon was a response to AVB's email and was critical of AVB's decision to send the email of 17 June 2011.

F43 Rabbi Telsner's criticism of AVB's email was a breach of the commitment made by Rabbi Telsner to the principles set out in the 2010 RCV resolution to provide pastoral and halachic leadership, support, direction and affirmation to abuse survivors and their families and advocates.

### **Available findings on Rabbi Kluwgant's response to AVB's email 17 June 2011**

F44 On 20 June 2011, when Rabbi Kluwgant told AVB that he should not have sent his email of 17 June 2011, Rabbi Kluwgant was trying to stop AVB speaking up publicly in support of the police investigation into allegations of child sexual abuse at the Yeshivah Centre.

F45 Rabbi Kluwgant's statement was a breach of his commitment to the principles in the 2010 RCV Resolution to provide halachic leadership and support to victims of child sexual abuse and advocates.

### **Available findings on Zephaniah Waks' email of 11 July 2011**

F46 The Yeshivah Centre failed to provide support to victims of child sexual abuse, advocates and their families, when it failed to respond to Zephaniah Waks' request in his email of 11 July 2011, for assistance in dealing with the attacks on him and his family as a result of the police investigation and The Age article of 8 July 2011 on his son, Manny Waks.

F47 Rabbi Telsner and Rabbi Glick did not respond to Zephaniah Waks' email of 11 July 2011. They could have provided halachic and moral leadership and support for Manny Waks and Zephaniah Waks, but they did not.

### **Available findings on The Age article of 8 July 2011 and the sermon of 16 July 2011**

F48 Rabbi Telsner's sermon of 16 July 2011 was a response to the article in The Age on 8 July 2011 in which Manny Waks disclosed his abuse by Cyprys and criticised the response of the Yeshivah Centre and Rabbi Groner on the issue of child sexual abuse.

F49 In the sermon, Rabbi Telsner conveyed to the community his disapproval of Manny Waks' decision to speak publicly about his abuse and his public criticism of Rabbi Groner and the Yeshivah Centre.

F50 Rabbi Telsner's sermon of 16 July 2011, was a breach of the commitment made by Rabbi Telsner to the principles set out in the 2010 RCV Resolution to provide pastoral and halachic leadership, support, direction and affirmation to abuse survivors and their families and advocates.

**Available findings on witness experiences of criticism and shunning**

F51 AVB, AVC, Manny Waks, Zephaniah Waks and his family have all experienced criticism and shunning by some members of the Yeshivah community by virtue of having been victims of child sexual abuse or their advocacy on the issue of child sexual abuse in the community. This has resulted in their feeling cast out of the Yeshivah community.

F52 Rabbi Telsner's sermons of 18 June 2011 and 16 July 2011, and the refusal of aliyah to AVB and Zephaniah Waks, were means by which Rabbi Telsner could publicly express his disapproval of actions taken by AVB, Manny Waks and Zephaniah Waks in response to the police investigation of child sexual abuse allegations at the Yeshivah Centre. The refusal of aliyah was a means of religious shunning. The Rabbi's disapproval of AVB, Manny Waks and Zephaniah Waks encouraged some members of the community to disapprove of AVB, Manny Waks and Zephaniah Waks and their families, who experienced silencing, shunning and ostracisation as a result. This in turn contributed to Manny Waks and his family as well as Zephaniah and Haya Waks moving overseas.

F53 The Committee of Management were aware of community tensions about the police investigation and towards Manny Waks and Zephaniah Waks from as early as 11 July 2011. The Committee of Management did not write to the community at large to publicly support victims and their families until 20 August 2012.

**Available findings on the Committee of Management of Yeshivah Melbourne**

F54 The Committee of Management did not oversee the response of Rabbi Groner and Rabbi Glick to child sexual abuse complaints.

F55 There was a lack of effective governance and leadership by the Committee of Management. This was contributed to by familial, personal or financial conflicts of interest in the Yeshivah Melbourne community. A transparent and formal process is needed to address these conflicts.

F56 The Yeshivah Centre did not have an internal dispute resolution process to respond to disputes between the community and Yeshivah Centre leaders and employees.

**Available findings on the current policies and responses of Yeshivah Melbourne**

F57 Yeshivah-Beth Rivkah Colleges and Chabad Youth now have child protection policies in place with an aim to achieve best practice in child protection. Yeshivah Beth-Rivkah Colleges approach to child protection has four elements: staff, parents, the children themselves and community partnerships. The Colleges strives to empower and educate parents through information and education sessions. All staff receive training on the policies at least once annually. Extensive training is conducted for all staff and heads of campus.

F58 Current policies were appropriately followed in responding to recent complaints of alleged conduct amounting to child sexual abuse.

**Available findings on Rabbi Kluwgant's text of 3 February 2015**

F59 Rabbi Kluwgant's text to a reporter at the Australian Jewish News on 3 February 2015 was a breach of the principles set out in the 2010 RCV Resolution to provide halachic leadership and support to victims of abuse, their families and to advocates.