

Under the Inquiries Act 2013
In the matter of the Royal Commission into Historical Abuse in State Care and in
the Care of Faith-based Institutions

Education Review Office: Brief of Evidence of Nicholas John Pole for Institutional Response Hearing

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Brief of evidence of Nicholas John Pole

I, **Nicholas John Pole** of Wellington, Public Servant, state:

1 Introduction

- 1.1 I am the Chief Executive Officer and Chief Reviewer for the Education Review Office (ERO). I was appointed to this role in June 2017, and my term ends in June 2024.
- 1.2 Prior to my appointment, I held senior policy and operational roles within the Ministry of Social Development and Ministry of Education. This included Deputy Chief Executive at the Ministry of Social Development and Head of Special Education Services at the Ministry of Education. Between 2012 and 2015, I also worked in Australia, where I was Deputy Secretary of the Victoria Department of Education and Training. In that role, I was responsible for maternal and child health services and school operations. Prior to my work in Australia, I led the educational response to the 2011 Christchurch Earthquake. I hold a Diploma in Teaching, a Bachelors Degree in Education and a MBA.
- 1.3 My experience means that I have expertise in the following areas: education policy, practice, evaluation and research and organisational management. I acknowledge that there may be others within ERO with more detailed knowledge of particular areas of concern to be addressed by the Commission. For that reason, the following representatives from ERO will also be available to give evidence to supplement the evidence I can give, to the extent necessary.
 - (a) **Jana Lee**, Deputy Chief Executive (Review and Improvement Services). Jana has been with ERO for 14 years; this has included eight years as a review officer and two years as Deputy Chief Executive, National Manager of Projects, and Regional Review Services Manager with oversight of school and early learning service reviews.
 - (b) **Lynda Pura-Watson**, Deputy Chief Executive (Evaluation and Review Māori). Lynda has been a Deputy Chief Executive since 2018, involved in evaluation, review and research – in particular in Kaupapa Māori, Māori-medium, and te reo Māori. She has worked in ERO for 24 years. She liaises with peak bodies and iwi on behalf of ERO. Prior to this, she was Deputy Chief Review Officer for the Central North Island and National Māori Medium.

2 Education Review Office position statement

- 2.1 Before responding to the topics and questions identified by the Commission for the Institutional Response hearing, I wish to make some overarching comments about the Royal Commission.
- 2.2 Having had a long career in education, I am deeply distressed and saddened by what witnesses who have presented to this Royal Commission have told you about the abuse they have suffered from those working in or connected with their education. I want to acknowledge the survivors for their bravery in coming forward and opening the door on atrocities which for too long have been kept hidden. This harm has come from some who have exploited their positions and

failed in their duty and their moral and professional obligation to support and protect.

- 2.3 This Commission provides us with an opportunity to acknowledge the shadows of our past, to provide redress for our failings, and to reflect on our current settings to ensure that we learn and strengthen our systems of protection, so such events do not happen again.

3 Scope of evidence

- 3.1 ERO has been asked to comment on the following topics by the Commission:

- (a) Te Tiriti o Waitangi
- (b) Priority Groups (Māori, Pacific, and disabled people)
- (c) Monitoring, Oversight, and Safeguarding
- (d) Provision of care
- (e) State and faith
- (f) Complaints, Referrals and Criminal Justice

- 3.2 Several of these topics are discussed in ERO's response to the Commission's Notice to Produce (NTP) 449. I do not propose to recite that information in full, but where appropriate, I will summarise the key aspects as they relate to each topic.

- 3.3 The purpose of my brief is to provide current information about ERO, including our role and operations, and the changes we have made and are continuing to make to improve the care and protection of children, and ensure that every learner receives a quality education. Where this brief discusses matters that I have not been directly involved in, I have relied on information provided to me, including documents provided to the Royal Commission. There may still be gaps in the information that I can provide, especially in relation to historical practices, but I will endeavor to assist the Commission to the best of my knowledge.

4 Role of the Education Review Office

- 4.1 I first wish to briefly explain the role that ERO fulfils within New Zealand's education system and the extent of our mandate. I understand that Iona Holsted, the Secretary of Education, has addressed the education regulatory framework more generally.
- 4.2 Our prime emphasis revolves around ensuring the quality of education provision, understanding learners' achievement and progress, and the underlying conditions that contribute towards these outcomes. Our *whakataukī*, *Ko te Tamaiti te Pūtake o te Kaupapa*, places the child at the heart of the matter.
- 4.3 We were established as a government department in October 1989. Prior to this, the responsibility for school review (or inspection as it was called) rested with the former Department of Education. In assuming this role, ERO extended

the inspection mandate, adopting a more rigorous and systematic approach to school review and assessment.

- 4.4 The Department of Education had operated its inspection process with few guidelines, and the primary function was the grading of teachers and overall school assessment. For that reason, there was little focus by the Department on specifically ensuring protections were in place for child welfare or safety. Although parents were directed to the District Senior Inspector when they had a complaint about the operation of the school, these inspectors were expected to work complaints through with the school principal.
- 4.5 Today, ERO's mandate is provided by the Education and Training Act 2020. The Act empowers me, as Chief Review Officer, to initiate reviews, report and publish findings on the provision of education and the care for children and young people in New Zealand. In practice, ERO fulfils this mandate through two core functions: institutional reviews, and a significant programme on system-wide inquiry, evaluation and research.
- 4.6 The institutional reviews are conducted by the approximately 135 review officers that I assign in my capacity as Chief Review Officer.
- 4.7 Education Review Officers come from senior leadership and management roles in the education sector. They work in a range of schools and receive extensive training in review and evaluation. Review Officers have substantial management oversight, and their work is per reviewed and quality assured in an ongoing way.
- 4.8 They review and report on education delivered by early learning, kōhanga reo, puna reo, schools and kura throughout New Zealand. This wide spectrum of education providers reflects breadth of ERO's work across paradigms. They also review and report on the care provided by school hostels.
- 4.9 There are currently 2400 schools and 5400 early learning services, which are generally reviewed on a three-to-five-year cycle by ERO. Our focus is on the quality of education provision, and our recent shifts in approach aim to work alongside a school in support of continuous improvement.
- 4.10 By performing this role, we provide one element in the protective layers aimed at ensuring children and young people are safe and that their welfare is supported while at school.
- 4.11 Our other primary function is to maintain a national programme of research and inquiry into features of the education system. This work programme is either determined by me as Chief Review Officer, or at the request of ERO's Minister.
- 4.12 We also operate in and undertake research and evaluations in both Māori medium and English medium education settings, which look at broader issues in respect of system performance. As part of this programme ERO has periodically looked at education provision for:
- (a) those in residential care and youth justice settings;
 - (b) learners with disabilities;
 - (c) the safety of students in hostels and schools;

- (d) alternative education;
 - (e) teen parent units; and
 - (f) bullying in schools.
- 4.13 Over recent years, ERO has also developed an extensive programme of research into Māori medium education provision and the delivery of te reo Māori.
- 4.14 ERO is not mandated to deal with complaints, resolve disputes or to provide an advocacy function. We do not have powers to direct or enforce compliance or action by individual entities. Where we identify concerns, our obligation is to report on these and to raise them with the appropriate entity. We equally do not have a policy or resourcing function in the system.

5 Te Tiriti o Waitangi

- 5.1 Education outcomes for Māori have long been a concern for the Education Review Office. In our response to NTP 449, we have outlined ERO’s journey in respect of supporting kaupapa Māori education system. ERO currently has a substantial work programme in support of its Te Tiriti o Waitangi (**Te Tiriti**) obligations¹.
- 5.2 Key elements of this programme include:
- (a) Partnership with Māori medium education providers supporting a “by Māori for Māori” in te reo Māori approach to review.
 - (b) Placing Māori educational outcomes at the core of our conversations with all schools.
 - (c) Since 2020, reviewing the extent to which the school gives effect to Te Tiriti o Waitangi, including by — “... (i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and (ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and (iii) achieving equitable outcomes for Māori students²
 - (d) A dedicated body of work supporting the revitalisation of te reo Māori, and a programme of research exploring factors that contribute to Māori success as Māori.
 - (e) Internally, a commitment to supporting ERO to develop as a bicultural and bilingual organisation through our own Māori Strategy (He Taura Here Tangata: The braided threads that bind us) and to ensure that ERO’s people contribute to productive Māori – Crown relationships and through this better support enhanced educational outcomes for Māori.
- 5.3 ERO is also committed to an evaluation approach framed by Te Tiriti. This includes specifically the concepts of *whakawhanaungatanga* (supporting each other to grow and learn), *mahi tahi* (doing the best for each other) and

¹ It is noted that the Kaupapa inquiry on Education services and outcomes is scheduled to be heard by the Waitangi Tribunal.

² Obligations of Boards of Trustees as a consequences.

poutokomanawa (high-quality trusted evaluation for improvements). These values underpin the way ERO seeks to work with schools and communities.

6 Priority groups

Tāngata whenua

- 6.1 ERO's focus and work on the education of Māori learners is already addressed in our response to NTP 449 and I have summarised the key elements above.

Pacific peoples

- 6.2 When ERO undertakes a review programme with a school, we will explore the extent to which Pacific learners are succeeding. This includes the conditions that the school is operating under to ensure culturally responsive practices, and that the culture and identity of Pacific students is integral to their education. A recent study³ by ERO highlights the need of the sector to prioritise Pacific education outcomes in the light of the disproportionate impacts of COVID-19 on this community. Conversations related to Pacific learner outcomes are maintained in an ongoing way through our review work in schools.

Disabled people

- 6.3 In our 2010 research report, ERO evaluated how well schools included students with high needs. The results showed that approximately half of the schools in the study demonstrated inclusive practice, while 30 per cent had 'pockets of inclusive practice' and 20 per cent had few inclusive practices. Schools that had an ethical, committed, innovative, informed and coordinated approach to including students with high needs provide the examples of good practice for others to follow.
- 6.4 A further report was completed in 2015 and our latest exploration of education provision for disabled learners will be published at the start of September 2022. ERO continues to identify major concerns with our system in its capacity to support disabled learners and continues to recommend better coordination of supports and resources, and the strengthening of teachers' skills and confidence in the adaptation of teaching to meet the needs of these learners.
- 6.5 ERO is in the process of establishing a specialist team who will work specifically in the review of special schools.

LGBTQIA+

- 6.6 We note that this group of students has not been included among the priority groups considered by the Commission. Our own work, particularly into school bullying, would highlight this group of learners as being particularly vulnerable. We would suggest that the Commission also give consideration of the needs, support and protection of this group of young people within the care and education settings going forward.

³ *Learning in a Covid-19 World: A guide for supporting Pacific learners*

7 Monitoring, oversight and safeguarding

- 7.1 Over the time in which ERO has operated there have been substantial changes in legislative and regulatory settings (see Appendix 1) aimed at enhancing the welfare and protections for children and young people attending schools and early learning services.
- 7.2 Much of what I describe here has taken place during the past two decades. These changes have been accompanied by increases in professionalism, a strengthening of systems and practices operated by early learning services and schools, and increases in the breadth and range of wellbeing and welfare programmes. Supports operating within schools have also developed to place a stronger focus on learner welfare and wellbeing. There has also been a continued deinstitutionalisation of welfare institutional settings.
- 7.3 ERO provides monitoring and oversight of education providers through our institutional review process. This process differs between state and state-integrated schools, and registered private or independent schools.
- 7.4 Our assessment is now being done every three years. ERO's new operating approach (described below) means a Review Officer maintains an ongoing relationship with a school. This provides greater opportunity for us to inquire into areas of concern that might come to our attention at any time, and for staff, parents, and students to raise concerns with us.
- 7.5 ERO holds regular liaison meetings with the Ministry of Education (typically at a regional level), where we discuss the support and progress that schools are making in relation to compliance and any other matters or concern. The Ministry may also raise any concerns that we need to be aware of. As a result, ERO takes an active role in ensuring that key issues are addressed. However, we cannot direct or force agencies to act.

State and state-integrated schools (including Māori medium schools)

- 7.6 As part of ERO's review process, a school Board of Trustees (**Board**) attests through the *School Self Audit Statement and Assurance Statement* that their school has the systems and processes in place to ensure that they remain compliant with their obligations as a school, and that there is an active process of monitoring their statutory obligations and ensuring the safety and welfare of learners.
- 7.7 Our review process looks at whether the Board has the requisite health and safety policies, procedures, guidelines and practices linked to physical and emotional health of students, child abuse prevention and reporting, guidance counselling, prevention of sexual harassment and anti-bullying programmes. Our reviews extend to include hostels and Boarding facilities attached to or associated with a school.
- 7.8 There are six areas that ERO examines in these reviews,⁴ one of which is Health, Safety and Welfare. Within this category, ERO examines:

⁴ Compliance areas covered include: i) Board Administration, ii) Curriculum, iii) Health Safety and Welfare, iv) Personnel, v) Finance, vi) Assets.

- (a) whether the school provides a safe physical and emotional environment for students;
- (b) policies and procedures in respect of child abuse and child protection;
- (c) behavioural management;
- (d) discipline procedures;
- (e) records management and the administration of medicines;
- (f) corporal punishment, seclusion and physical restraint;⁵
- (g) cultural awareness;
- (h) managing complex parent arrangements;
- (i) complaints management;
- (j) bullying and sexual harassment;
- (k) first aid management; and
- (l) education outside the classroom (EOTC).

7.9 A school's attestation will then be verified, on site, by review officers who look at the required documentation and records held by the school, and assess whether they represent good practice. Where this is not the case, ERO will draw the school's attention to the appropriate requirements and guidelines.

7.10 ERO also looks at evidence that the school's practices are in line with their own policy and follows good practice guidelines. This is supported and further assessed through interviews with the Board, senior leadership in the school, staff, parents and students. This allows us to triangulate the evidence that is reported to us from a schools Board and management. ERO's new approach, *Te Ara Huarau*, means we can revisit the implementation of policies at any time, as opposed to once every three to five years. This allows us to better respond to any concerns about how schools operate and help ensure they meet their legislative requirements.

7.11 Key elements that ERO looks for in our reviews include:

- (a) the policy in relation to child protection under the Children's Act 2014 is readily available to the school community;
- (b) that the Board is regularly assured by the principal on the implementation of the policy and agreed procedures;
- (c) that the Board regularly reviews the policy in line with new information, changes in contexts or learnings at least once every three years;

⁵ ERO's focus on restraint and seclusion have been enhanced since 2017. At that time Parliament's expectations were clarified by prohibiting the use of seclusion rooms or practices by schools, and the Ministry of Education issued restraint guidelines.

- (d) schools should be explicit in regards of their expectations of how staff manage their relationships with students; and
- (e) that the school operates appropriate safety checking procedures, which include:⁶
 - (i) Identity confirmation.
 - (ii) Criminal convictions and police vetting.
 - (iii) Risk Assessment – processes for making professional judgements about the employment of a staff member with students’ best interests in mind. This may involve taking steps to seek further evidence if necessary.
 - (iv) Verification of work history, registration, qualifications and referee checking.
 - (v) Ensuring periodic safety checking including re-vetting on a 3-year cycle.

Private and independent schools

- 7.12 ERO’s reviews of private and independent schools follow a different process to our reviews of state and state-integrated schools. The legislative requirements for private and independent schools differ and they have the freedom to choose their own appropriate curriculum.
- 7.13 Accordingly, our reviews of these schools are directed at assessing whether they fulfil the criteria for registration as a private school, as set out in the Education and Training Act 2020. Private school management attest through a separate *Private School Assurance Statement and Self-Audit Checklist*. This criteria generally pertains to premises, staffing, equipment and tuition standards. However, the criteria was amended in May 2019 to include the requirement that the school is a physically and emotionally safe place for students.
- 7.14 There are ten areas that ERO examines in these reviews,⁷ including Staffing and Health and Safety. Within these categories, ERO examines:
 - (a) whether the school has reported to the Teaching Council in compliance with the mandatory reporting requirements;
 - (b) Police vetting of staff;

⁶ The Education Standards Act 2001, provided for mandatory police vetting every three years for all teachers, non-teaching employees and contractors and their employees who worked in schools during the hours of instruction. The Teacher’s Council was responsible for managing vetting.

Safety checking requirements under the Children’s Act (2014) were progressively introduced from 1 July 2015 (all core workers starting in a new role, 1 July 2016 for all new non-core children’s workers, 1 July 2018 for all existing, core children’s workers, and 1 July 2019 where they are now required for all existing, non-core children’s workers.

⁷ Compliance areas covered include: i) Premises, ii) Students, iii) Staffing, iv) Equipment, v) Curriculum, vi) Tuition standards, vii) Health and Safety, viii) Privacy, ix) Managers, x) International students

- (c) safety checking of children's workers;
- (d) that no seclusion is used;
- (e) child protection policy/procedures under the Children's Act 2014;
- (f) compliance with the Physical Restraint Rules 2017; and
- (g) internet safety policy regarding cyber bullying.

7.15 Whether the school is a physically and emotionally safe place is assessed with reference to the Ministry of Education's definition of a safe place, and using ERO's judgement. A safe place is one in which risks to student safety are regularly assessed and evaluated with a view to eliminating, or at least reducing, harm. It is a place where clear policies exist and are acted upon to eliminate or minimise harm. Our assessment is based on the quality, intent and regular review of a school's policies and procedures.

7.16 A private school's attestation will then also be verified on site. Review officers will look at the physical environment of the school, observe teaching and learning and read documents and records to evaluate whether the school meets the criteria for registration.

School hostels

7.17 ERO also conducts reviews of school hostels, to evaluate if students are living in a safe emotional and physical environment that supports their learning. We complete this through discussions, reading documentation and observation.

7.18 Among the documents that ERO may review are:

- (a) records of ongoing monitoring of student well being;
- (b) accident and illness records;
- (c) reports provided to the Board of trustees, proprietors and parents;
- (d) complaints files;
- (e) records of staff safety checks including Police vets;
- (f) records of signing in and out systems; and
- (g) staff schedules showing who is responsible day to day and at night.

7.19 The outcome of a school hostel review is included in the school's ERO report. Standalone hostel review reports are published separately as they are not linked to a particular school.

Te Ara Huarau – ERO’s new approach to School Review in State and State Integrated Schools

- 7.20 From 2020, ERO has shifted from event-based external reviews (on average visiting the school once every three years) to a more developmental approach to evaluation, supporting each school’s improvement over time.
- 7.21 Review Officers now operate as an ERO evaluation partner who works alongside each school. The evaluation partner builds a professional evaluation relationship that connects with each school’s strategic planning and reporting cycle as part of an ongoing improvement journey. ERO is supporting schools to build and sustain high-quality evaluation as part of their planning for improvement. ERO can now adapt the frequency and intensity of visits and contacts.
- 7.22 ERO will work in collaboration with each school to strengthen its systems, plans and practices through evaluation. Through a more flexible and targeted approach more resource can be directed into working with the schools that will benefit most.
- 7.23 This more differentiated approach reflects an individual schools’ context, culture and needs. It aims to strengthen the capability of all schools through embedding a continuous improvement approach, strengthening schools’ own engagement with and accountability to whānau.
- 7.24 This will typically mean that ERO is engaged with the school at least annually, although schools with greater need may see us working in the school in an intense way almost every term.

Abuse recognition and reporting

- 7.25 ERO expects that all school staff have professional development and support in respect of abuse recognition and reporting (best practice).
- 7.26 That there is an explicit obligation by the school on all staff, contractors and volunteers to report abuse of a child or young person, whether this disclosure has come through observation, or through physical or behavioural signs (best practice).
- 7.27 These obligations includes:
 - (a) maintenance or records;
 - (b) providing support but not to interview or investigate;
 - (c) informing their designated child protection staff member;
 - (d) treating disclosures as a matter of urgency; and
 - (e) making a Report of Concern to OT or Police.
- 7.28 There should be protections and support for those making a report of concern, and the provision of ongoing support to the student ensuring that they remain safe and supported at school.

Seclusion and physical restraint

- 7.29 The use of seclusion in schools has been prohibited since 2017. Seclusion refers to the practice of placing a child or student alone in a room involuntarily, from which they cannot freely exit, or believe they cannot freely exit.
- 7.30 Schools continue to use time-out, which will be assessed by ERO as part of its review work in a school. Time out is a student behaviour management approach. Time out means:
- (a) a student voluntarily takes themselves to an agreed space; or
 - (b) a teacher prompts a disruptive student to work in another space; and
 - (c) the child is monitored by a staff member.
- 7.31 It is important for teachers to be very clear when using time out that the child or student is free to come out of the space whenever they choose.
- 7.32 ERO's *Guidelines for Boards Assurance Statement and Self-Audit Checklists (Jan 2022)*, provided for schools to assist them in completing the attestation documents states:
- Sections 99 to 101 (Education and Training Act 2020) create a legal framework for the use of physical force in schools. This makes it clear to teachers and authorised staff members how and when they can use physical force, and puts safeguards in place to prevent physical force being used unreasonably or disproportionately.”⁸
- 7.33 When checking the attestation made by the school in terms of restraint, ERO verifies on site that the school has:
- (a) Ensured that a teacher or authorised staff member does not physically restrain a student, unless the conditions set out in s 99(2) are met.
 - (b) Followed the practice and procedure prescribed by the Ministry of Education's Rules under section 100.
 - (c) Guidelines on the use of physical restraint and behaviour management under s101 of the *Education and Training Act 2020*.
 - (d) Guidelines issued by the MOE on the practice and procedure are in place to be followed in relation to physical restraint by authorised staff⁹.
 - (e) The names and position of authorised staff are recorded¹⁰.
- 7.34 ERO also checks that the school Board has taken appropriate steps:

⁸ The code of Professional Responsibility/Nga Tikanga Matatika issued by the Teaching Council is also relevant.

⁹ *Guidelines for Registered Schools in New Zealand on the use of Physical Restraint* – MOE August 2017.

¹⁰ Clause 4.

- (a) To ensure parents/caregivers are notified if physical restraint is an element in a student's Individual Behaviour Plan and how physical restraint will be applied in accordance with the Guidelines.
- (b) To notify parents/caregiver as soon as possible on the same day about any incident of physical restraint, including how it was managed in accordance with the Guidelines¹¹.
- (c) To ensure that for any student who has been physically restrained and for any staff member who used physical restraint, their physical and psychological wellbeing is monitored for the rest of the school day following the incident of physical restraint.
- (d) That records kept under clause 9 are analysed so that trends can be identified.
- (e) Checked that documentation about each incident is complete.¹²
- (f) The Board reported every incident of physical restraint to the Ministry of Education.

7.35 ERO verifies that the Board has policies and procedures in place to ensure compliance with the prohibition of corporal punishment and seclusion in schools, and that they support the correct use of time out spaces, in line with the Ministry of Education guidelines. This only permits the use of time out where:

- (a) a child or student voluntarily takes themselves to an agreed space or unlocked space to calm down, or
- (b) a teacher prompts a child or student to work in another space; and
- (c) the child or student is free to come out of the space whenever they choose.

8 State and faith

8.1 Faith-based schools fall into two categories: schools which are integrated into the state system (state-integrated schools) and those which may be registered as private schools.

8.2 As I have previously explained, ERO has different processes for reviewing private schools and state-integrated schools.

8.3 When reviewing registered private schools ERO reports about whether the school is meeting the criteria for registration under the Education and Training Act 2020. The criteria were amended in May 2019 to include a provision that the school is a physically and emotionally safe place for students.

8.4 This requirement did not exist for registered private schools prior to this amendment. ERO has previously reviewed private schools under section 35A of

¹¹ Clause 6.

¹² Clause 7.

the Education Act 1989, which used the criteria that the registered schools were “efficient”.

- 8.5 The definition of ‘efficient’ included the school having suitable premises, staffing, equipment, and curriculum; and giving students tuition of a standard no lower than that given to students enrolled at primary, secondary and special schools of same class. Ensuring that the school was providing a physically and emotionally safe place for learners was not part of ERO’s mandate.
- 8.6 ERO reviews state-integrated schools using the same review methodology it uses for reviewing state schools. ERO’s review methodology has changed over time but it has remained the case that state-integrated schools are reviewed as per ERO’s current methodology for schools. Our evaluation judgements are informed by its evaluation indicators – *School Evaluation Indicators: Effective Practice for Improvement and Learner Success*.

9 Provision of care

Boarding facilities and hostels

- 9.1 In the late 1990s, ERO undertook a specific review into the provision of a safe physical and emotional environment for students in hostels and school boarding facilities. Our view was that students were at increased risk in these settings and there was no disclosure mechanism operating in many of these facilities.
- 9.2 Our inquiry, *Safety, abuse, bullying at Boarding schools* (1997), drew attention to undesirable and possible illegal activities in some Boarding schools, including sexual abuse and harassment, threatening behaviour, physical and verbal assault, and bullying. In response to this inquiry ERO recommended that the Education Act or the school’s charter be modified to clarify responsibilities and strengthen safeguards.
- 9.3 After this inquiry the Ministry of Education released *Circular 1997/12 (The Responsibilities of Boards of Trustees for the Personal Safety of Students in Schools)*. The Education (Hostels) Regulations were subsequently introduced in 2005¹³. These regulations prescribe a system for licensing for hostels, set out minimum standards that apply to hostel premises and facilitate a code of practice relating to the management of hostels. Students are prohibited from Boarding at non-licensed hostels.
- 9.4 ERO currently reviews all hostels once every three years to assure that they are complying with these requirements. Our reviews assess adherence to the safeguarding procedures and include interviews with all stakeholders: the associated school, hostel operators, parents, and students.

¹³ ERO’s role with respect to the Review of Hostels is provided for in s.470 of the Education and Training Act (2020). The Chief Review Officer— (a) may carry out reviews (which may be general or in relation to particular matters) of the provision of a safe physical and emotional environment that supports learning for students accommodated in hostels, and must carry out those reviews when directed by the Minister to do so; and (b) must administer the preparation of reports to the Minister on the undertaking and results of the reviews; and (c) must give the Minister any other assistance and advice that the Minister requires on the provision of a safe physical and emotional environment that supports learning for students accommodated at hostels.

- 9.5 Where a hostel is found to be failing to comply with its obligations, ERO reports to the Minister of Education under section 470 of the Education and Training Act 2020, and the Secretary for Education who has the authority under the Education (Hostel) Regulations 2005 to give a formal direction relating to the area of non-compliance or cancel the hostel's licence.

10 Complaints, Referrals and Criminal Justice

Complaints at schools and hostels

- 10.1 State and state-integrated schools are largely responsible for their own complaints processes. Their Boards are independent Crown entities and legally responsible for the governance and operation of their school. Functions and powers of State and state-integrated schools are set out in sections 118 to 137 of the Education and Training Act 2020. These provisions do not apply to manager(s) of registered private schools, who can be an individual or company or any other body corporate. The governance and management of registered private schools therefore occur under their own rules.
- 10.2 A key element of their governance for State and state-integrated schools is the provision of a safe physical and emotional environment for those in their care.
- 10.3 Boards of Trustees are accordingly required to operate a transparent, published, complaints policy and procedures to address complaints that may come from the school community, including students, parents or staff. It should include complaints and allegations in respect of staff members, students, parents, the principal Board members, and others (such as volunteers, contractors, or visitors to the school). Schools are also required to operate complaints register.
- 10.4 Schools are provided with advice and guidance in addressing complaints by the New Zealand School Trustees Association (NZSTA) and through their local Ministry of Education office.
- 10.5 Through the complaints process, the school and Board are required to ensure that the school maintains a safe environment for students and staff, that the complaint is dealt with appropriately and impartially, and that the process of inquiry or investigation maintains the privacy and rights of those concerned. The school and Board must also have processes to ensure that resolution or agreed solutions are implemented and working.
- 10.6 Good practice arrangements have a named senior manager or Board member, usually the Principal and Chair of the Board, and concerns, complaints or serious allegations should be raised with them. Complainants should be kept informed through the complaint process, including timelines and outcomes.
- 10.7 Upon receiving a complaint, we expect the school to take a decision regarding jurisdiction and whether the complaint justifies a formal investigation. Referral agencies may include: Oranga Tamariki, Police, or under the mandatory reporting requirements to the Teaching Council if the complaint is against a registered teacher. The NZSTA is usually engaged by a school in providing advice on the most appropriate course of action.

- 10.8 If a formal investigation is required it should be subject to privacy, confidentiality, and any other ethical and legal requirements, including the provision of appropriate representation and support.
- 10.9 A full documentary record of any formal investigation should be completed and held confidentially. ERO will also review Board committee notes and records in respect of a Board's determination in relation to their management of a complaint.
- 10.10 It is ERO's intention, where possible and appropriate, that the school or service will resolve a complaint directly with the complainant and reflect on and review their policies and practices in the light of issues that might arise.
- 10.11 ERO itself is not mandated to investigate individual complaints or allegations, nor do we have powers of enforcement. ERO only reports on its findings from a school review. If a school's complaints processes are assessed to be poor, we will cover this in our reporting.
- 10.12 However, if ERO receives a complaint that is deemed high risk, and the complainant is dissatisfied with the school's response, we may consider further action, including:
- (a) contacting the Ministry of Education (or other relevant agencies);
 - (b) changing the nature and intensity of the ongoing relationship ERO may have with the school;
 - (c) scheduling a special review of the school with a focus on the specific areas of concern; and
 - (d) forwarding the complaint on to an appropriate agency for their action.
- 10.13 ERO has the option of carrying out a review of a school at any time, particularly in the light of a complaint that relates to serious concerns about the health, safety, and welfare of students. In the case of private schools, any such review is more limited as the review and reporting of registered private schools by ERO is confined to the school meeting the criteria for registration under clause 9, Schedule 7 of the Education and Training Act 2020.
- 10.14 ERO examines the existence of and operation of a school's complaints policy and procedure every three years.
- 10.15 We also consider the nature of complaints received, key themes, and their resolution as part of our review approach.
- 10.16 A consequence of this may include a deeper exploration of these issues with the Board, or recommendations to the Board, Minister or Secretary for Education.
- 10.17 We also look to see that the school's Board is regularly reviewing and updating its policy and procedures, and that their procedures are published and available to all stakeholders.

Hostels

- 10.18 ERO is one of several external agencies that complainants may choose to appeal under regulation 70 of the Education (Hostel) Regulations 2005 in the case of Boarding hostels, if a student or their family believes that their complaint has not been resolved satisfactorily by the owner of the hostel. ERO has not received an appeal from a complainant in the past five years.

Disclosure of abuse

- 10.19 Where ERO becomes aware of complaints or information involving allegations of abuse of children or young people, these are raised with the Board and Ministry of Education, and may be referred directly to the Police, Oranga Tamariki and/or the Teaching Council, depending on the nature of the concern.

Seclusion and physical restraint

- 10.20 If ERO receives a complaint in respect of seclusion or inappropriate use of physical restraint, these matters will be followed up with the board to ensure that they are adequately addressed. They may also be referred on to the Ministry for action.

11 Concluding remarks

- 11.1 Since the introduction of Tomorrow's Schools in 1989, local governance and oversight of schools in the state system (including faith based integrated schools) has also worked to strengthen community involvement and oversight of local school provision, reducing substantially the social distance between the central bureaucracy and the operation of schools within their communities. This governance has increased the accountability of practitioners working in schools by opening schools up to greater scrutiny from their communities. ERO has played a major part in this, driving up accountability and ensuring that Boards focus on those things that matter most – the care and protection of children, and ensuring that every learner receives a quality education.
- 11.2 In saying this, self-management has also seen many struggle to fully understand their obligations, introduced differences in interpretation, and there has been a lack of understanding of the intent of central guidelines and legislative obligations by some. Many schools continue to work in isolation, with little opportunities for lateral support (from colleague schools) or assistance. ERO notes that the recent establishment of Te Mahau within the Ministry of Education and our own changes start to address this issue.
- 11.3 The establishment of ERO; changes in legislative and regulatory settings; greater teacher professionalisation; and the strengthening of systems and practices in child safety and wellbeing have over recent decades contributed to an increase in awareness of the health, safety and welfare of children and young people who participate in school and early learning settings.
- 11.4 ERO continues to shine a light on good practice in the system and equally highlights poor practice in areas that require improvement, or places of learning that may contribute to the harm of tamariki. Our focus is to ensure schools and early learning services have in place policies, systems, practices, and the checks

that contribute to safe outcomes for those in their care. Over time, extensions to ERO's mandate has strengthened this focus¹⁴.

- 11.5 A major emphasis in our approach is on entities' own self review systems for monitoring and evaluation, ensuring strong within school accountability, rigorous procedures for monitoring and accountability to the communities they serve. Most importantly a school's capacity to learn, strengthen and adapt their systems as new evidence comes to light or their contexts change is critical.
- 11.6 In addition, the Education and Training Act 2020 places significantly greater expectations on schools and early learning services with the introduction of the National Education and Learning Priorities (NELPs)¹⁵ and their obligation to Te Tiriti o Waitangi, Te ao Māori, Te reo Māori, Tikanga and Mātauranga Māori.¹⁶
- 11.7 As important, certain education settings have had added new layers of protection for children with the tightening of systems across agencies, information sharing, and in particular the Children's Act 2014 ensuring a stronger and systematic safety checking and vetting process for those working with children.
- 11.8 The *Code of Professional Responsibility for the Teaching Profession (2017)* further strengthened the expectations of the workforce, highlighting the obligations teachers have to Te Tiriti o Waitangi and expected behaviour of members of the profession. It further provides for professional scrutiny and the potential for discipline in the event of non-ethical behaviour and practices.

Moving forward

- 11.9 ERO has adopted a new approach to school review: ERO's new approach moves away from the one-off review event every 3 to 5 years and aims to establish an ongoing relationship with the school. It is much more strongly oriented at school improvement. The attestation by the school (through the School Self-Audit Statement and Assurance Statement and assessment) is now three yearly. Previously some schools may have waited as long as five years between reviews. Given that ERO works with a school on an ongoing basis, concerns which may surface at any time can be explored more quickly. Greater familiarity with ERO's Review Officers may also see staff and students more likely to raise concerns with us.
- 11.10 Equally, ERO's reviews of school hostels, including the accommodation of international students, has been shifted onto a three-year cycle. In this work we are looking at how we can further strengthen the voice of students in Hostel assessments.

¹⁴ Changes to the Education Act in 2019 provide a major extension to ERO's focus in Private schools with the addition of expectations that registration for such schools includes the provision of a safe physical and emotional environment. Equally ERO has recently gained the power of entry into private dwellings where these provide Home Based Education and Care.

¹⁵ NELP Objective 1 requires early learning services and schools to: "Ensure places of learning are safe, inclusive and free from racism, discrimination and bullying" .

¹⁶ <https://www.education.govt.nz/our-work/overall-strategies-and-policies/the-statement-of-national-education-and-learning-priorities-nelp-and-the-tertiary-education-strategy-tes/> .

11.11 ERO continues to evolve and adapt its methodologies, areas of focus and tools that support both internal self-assessment by schools themselves along with those that support the practice of our own staff.

Recommendations

11.12 ERO has identified the following potential areas for strengthening of the child protection layers in the education system:

- (a) A mandatory reporting requirement for education workers.
- (b) The further development of national child protection guidelines for schools and early learning services.
- (c) A national register of education workers.
- (d) The capacity to place statutory monitors in private schools.
- (e) The establishment of an independent complaints service for parents and students.
- (f) Enhancing obligations on agencies to share information.
- (g) Strengthening the definition, assessment, and monitoring of a “fit and proper person” as it relates to private schools.

Date: 8 August 2022

Signed

Nicholas John Pole

Appendix 1 – Changes in Legislative Settings aimed at strengthening protections for children and Young people

- New Zealand Bill of Rights Act (1990).
- S. 139A Education Amendment Act 1990 prohibited the use of force or corporal punishment
- Human Rights Act (1993).
- The reference to 'Education Review and Audit Agency' in the Education Act 1989, no 80 was amended to 'Education Review Office' in the State Sector Act 1988.
- Education Standards Act 2001 provided for mandatory police vetting every three years for those working in schools.
- Education (Hostels) Regulations 2005.
- The Children's Act (2014) and, associated Children's Regulations 2015 which introduce safety check and the vetting of children's workers and a requirement on schools and early learning services to have in place and operate a child protection policy.
- Education (Pastoral Care of International Students) Code of Practice 2016.
- Teaching Council – The Code of Professional Responsibility for the Teaching Profession (June 2017).

Substantial strengthening of the processes operated by the Teachers Registration Board and subsequently the Teaching Council in regards of the registration and discipline of teachers. This includes the registration of all trained teachers', oversight of a code of professional practice and teaching standards.

Commitment 2 of the Code (Commitment to Learners) requires that registered teachers "... work in the best interests of learners by:

1. Promoting the wellbeing of learners and protecting them from harm.
2. Engaging in ethical and professional relationships with learners that respect professional boundaries.
3. Respecting the diversity of the heritage, language identity and culture of all learners.
4. Affirming Māori learners as tangata whenua and supporting their educational aspirations.
5. Promoting inclusive practices to support the needs and abilities of all learners.
6. Being fair and effectively managing my assumptions and personal beliefs.

In granting registration the Teaching Council must be satisfied that a teacher is of good character, fit to be a teacher, satisfactorily trained to teach and have satisfactory recent teaching experience.

1 From 1997 it became an obligation of private schools to employ registered teachers. From 2004, disciplinary matters have been referred to the Teachers Disciplinary Tribunal. The Tribunal can cancel a teacher's registration or place conditions on a registered teacher if is satisfied that a teacher does not meet the requirements of a registered teacher. S.92 of the E&T Act prevents schools from the employment of unregistered teachers or those who have their licence cancelled.

- The Health and Safety at Work Act (2015) and associated regulation.
- 2017 Education and Training Act s.139AB, outlawed the use of Seclusion and the introduction of regulation to guide the use of physical restraint.

- Changes to the Education Act 1989 in 2019 which extended ERO's role with respect to whether the private school is a "physically and emotionally" safe place for students (clause 2, Schedule 7 to the Education and Training Act 2020).
- Changes introduced through the Education and Training Act 2020 place stronger obligations on Boards and education agencies to give effect Te Tiriti o Waitangi, Te ao Māori, mātauranga Māori and te reo Māori, provides for National Education Learning Priorities.
- Statements of National Education and Learning Priorities were released in 2020.
- Conversion Practices Prohibition Legislation Act 2022.
- Protected Disclosures (Protection of Whistleblowers) Act 2022.