

# Ministerial Inquiry

## Into the Employment of a Convicted Sex Offender in the Education Sector

Report to Hon Hekia Parata, Minister of Education

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The Hon Hekia Parata

Minister of Education

Dear Minister

On 5 March 2012 Cabinet noted that you, as Minister of Education, intended to announce a Ministerial Inquiry into the processes by which a convicted sex offender was able to be employed in the education sector in New Zealand.

You appointed me and soon after Dr Judith Aitken to undertake the Inquiry and report to you by 30 April 2012. Subsequently, for several reasons, including the fact that there were criminal proceedings before the Court, the reporting date was extended to 15 June 2012. An Interim Report was made to you on 30 April 2012.

We have concluded our Inquiry in accordance with the Terms of Reference directed to us and are now pleased to submit to you our Report and recommendations. We note the reference in the Cabinet Minute establishing this Inquiry that you will report to Cabinet on the findings from this Inquiry and any recommendations for further action.

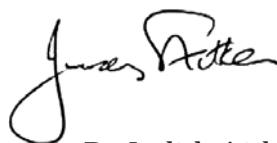
As noted in the Report we have received very full and helpful responses from the many individuals, including parents at the affected schools, and representatives of the government agencies and non-government organisations with whom we spoke and sought assistance. Again, as we have emphasised in our Report, all were in total accord with the view we have expressed that the safety and well-being of children in the education environment is paramount. We register our appreciation of their help.

We have had the benefit of particular assistance in carrying out this Inquiry and producing this Report from Mr Graeme Marshall. Mr Marshall's expert knowledge and his experience in the education sector have been of considerable value. We record our sincere appreciation of his assistance.

Whilst we have had the benefit of advice from a number of people and have appreciated the guidance we have received, the Report, its findings, and the recommendations in it are ours alone.



Mel Smith CNZM



Dr Judith Aitken

15 June 2012

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# PART ONE

## Introduction



01. On 5 March 2012 Cabinet noted that you, as Minister of Education, planned to announce a Ministerial Inquiry into the processes by which a convicted sex offender was able to be employed in the education sector in New Zealand. The matter had been referred to Cabinet by the Cabinet Committee on State Sector Reform and Expenditure Control (SEC), which had been authorised by the Prime Minister to have power to act. This referral followed consultation with the Prime Minister, the Minister for Tertiary Education, Skills and Employment, the Attorney-General and the Minister of Police and Corrections.
02. You appointed me to conduct the Inquiry, directed Terms of Reference to me, and required that I report my findings by 30 April 2012. Subsequently, for several reasons, including the fact that there were criminal proceedings before the Court involving the convicted sex offender, the reporting date was extended to 15 June 2012 with the requirement that an Interim Report be provided to you by 30 April 2012. The Terms of Reference are attached as **Appendix A**.
03. Subsequently Dr Judith Aitken was appointed to assist me with the Inquiry. Dr Aitken's experience and background in the education sector have been invaluable to the Inquiry.
04. The Inquiry presented an Interim Report to you on 30 April 2012. This Report provided initial responses to the various terms of reference and said:

*“The employment of a convicted sex offender in the education sector, which gave rise to the Inquiry, whilst of substantial and proper concern seems relatively simple in itself; the Inquiry has found that this is far from the case.”*
05. In the second stage of the Inquiry that has certainly proved to be the case. The complicated web woven by Miki, his accomplished lying and deceit, his assertive style and his apparent willingness to resort to serious criminal activity, including identity theft, to achieve his aims, presented those involved with him in the education sector, and in other agencies, notably the Department of Corrections, with serious problems. It appears that existing law and/or processes (including but not only recruitment and hiring) were either deficient, or failed to detect illegal or improper activity, or human error, failings, or administrative oversight, did result in a failure to recognise and deal with Miki's behaviour, criminal and otherwise. There seems no doubt that Miki possessed considerable brazen, flagrant and shameless skill in deceiving people who would normally be expected to detect and deal with such behaviour. As the presiding Judge commented during the sentencing hearing, “How could all this happen?”

06. This Report will cover some of the complexities and difficulties which the inquiry faced in its investigation. We have however decided that many of the “facts”, whilst of morbid interest, do nothing to contribute to our responses to the terms of reference directed to the Inquiry. Rather, we have focused on sufficient of the facts known to us to enable us to answer the terms, and provide useful recommendations that will either close off loopholes or enhance the law, practices and processes relating to the registration of teachers, inter-agency collaboration and the sharing of information, identity verification, validation and authentication issues, processes for vetting and providing identity confirmation at that point, the hiring and employment policies and practices required of school boards of trustees and principals, and the monitoring and review of those policies and practices.
07. In addition to education and identity authentication-focused law and processes, we referred in our Interim Report to the existence of an Extended Supervision Order imposed on Miki on 11 March 2010 in the High Court in Auckland. The extraordinary chain of events that saw Miki employed in a school at the time of the making of that order, and subsequently in two schools for a period of a little over two years, we saw as of particular concern, although certainly not the only matter of consequence to this Inquiry. Prior to that, Miki had been employed in other schools where his identity was questioned, but no, or insufficient, action was taken to avoid leaving Miki with the opportunity to gain appointments in other schools. The fact that this chain of events happened, and continued over a lengthy period, indicated to us a significant and potentially dangerous system failure in the supervision and management of a person in whom the Judge, in her judgement imposing the Extended Supervision Order, referred to the presence of sexual deviance and psychopathy, and the fact that the assessment identified a considerable range of factors that suggested an increased likelihood of sexual recidivism. We cover our views and conclusions about this aspect and the earlier involvement of Miki with the Department of Corrections and the police in our response to Term of Reference 1.b. in Part Three of our Report. In this Report we support changes to the management systems for persons such as Miki who may be subject to a court-imposed Extended Supervision Order, and the development and implementation of an electronic tracking system that will provide location data at various time intervals. With such a system in place, and with the recommended biometric photographic test for identity, Miki’s presence in a school would have been immediately detected.

08. Along with the Department of Corrections and police there were other government agencies, apart from the Ministry of Education, the Education Review Office and the New Zealand Teachers Council that had, and do have, a part to play in the overall process. These are the Ministry of Justice, Children, Young Persons and their Families Service (CYFS), and the Department of Internal Affairs. The functions of those agencies in respect of schools, teachers, and the safety and well-being of children, together with issues of proof of identity, and identity change for fraudulent purposes, are covered in the response to Term 1.b. in Part Three below.
09. At the time of writing the Interim Report, the name by which Miki had been employed in the two Auckland schools was suppressed, as were the names of the two schools at which Miki was most recently employed. On 17 May 2012 these suppression orders were made permanent. On the following day ie 18 May, Miki was sentenced on 12 various charges to four years one month and two weeks imprisonment.
10. As reported in the Interim Report the Inquiry considered it necessary to establish, as best it was able, the historical involvement of Miki, under various aliases, with and in the education system involving the employing schools (in whatever capacity he was employed), and the New Zealand Teachers Council. Similarly, to assist in analysing how Miki managed to avoid detection as a person without any teaching qualification, and with his extensive involvement in the criminal justice system over this period, it was necessary to establish, again as best the Inquiry was able, the involvement of the police, the Department of Corrections, the Department of Internal Affairs, the Teachers Council, and other government agencies, together with employing schools, during the time prior to Miki's stealing the identity of Person X. In this earlier time Miki had a role in four named education institutions<sup>1</sup> and three un-named schools. After that he obtained full employment, first at School A for more than two years and then at School B for a brief period before his arrest, by using the teacher registration and qualifications he stole from Person X.
11. The Inquiry repeats in its final Report the strongly made point in the Interim Report, that throughout this investigation we have considered and recognised the Government's concern for vulnerable children. A safe and protected school environment is central to those concerns. As you said in a recent speech for Budget 2012:

*“We entrust schools with our children and with the high expectations we have of and for them.”*

<sup>1</sup> Rangitahi College, Stratford Community Learning Centre, TKKM o Te Koutu, and Te Kura o Matapihi



12. It is essential to ensure that the law, and all practices and procedures, including recruitment and hiring, are designed, managed and administered to provide the utmost protection for children within the education system as well as the wider community environment. It is perhaps even more important that people involved throughout the education system, no matter in what capacity, see beyond the system itself, and its processes, and recognise that the safety and welfare of the children in the education system transcend all else.
13. We must say that all those to whom we have spoken within the wider education system, with principals and teachers, school boards of trustees, teaching unions and organisations, and parents, together with non-government organisations such as Child Matters, Rape Prevention Education and Child Alert, all strongly agreed with this view, and support the approach we indicated in our discussions that is now reflected in this Report.
14. We note also the very clear editorial opinion that has emerged since the report made last year to the Minister of Social Development and Employment relating to the Welfare, Safety and Protection of Children in New Zealand. As was stated in a very recent editorial, “The safety of children, not the rights of abusers, should be paramount.”
15. The Inquiry has therefore directed its investigation toward identifying and commenting on the management and effectiveness of processes within the education milieu, and the wider social environment relating to the supervision and management of offenders such as Miki, that may have an impact or influence on the overall quality of the education system and in particular on the welfare and safety of children attending schools such as:
  - registration providing an authority to teach, together with vetting arrangements
  - recruitment and hiring processes in schools of teachers and others who may be involved with children attending a school
  - disciplinary processes undertaken by the New Zealand Teachers Council
  - the monitoring and evaluation roles of agencies such as the Ministry of Education and the Education Review Office.
16. The Inquiry sees its role essentially to focus and report on:
  - the registration of teachers by the New Zealand Teachers Council in accordance with Parts 10 and 10A of the Education Act 1989, including the authorisation of a limited authority to teach

- policies and procedures established for those purposes, including vetting (Section 139AZD of the Education Act 1989)
  - the recruitment and hiring procedures employed by school boards of trustees and/or principals
  - processes for external monitoring of those procedures
  - the management and reporting by school boards of trustees and/or principals to the Teachers Council in accordance with the mandatory reporting requirements in Sections 139AK to 139AP of the Education Act 1989
  - the exercise of the New Zealand Teachers Council of the disciplinary functions relating to teacher misconduct and reports of teacher convictions
  - processes relating to complaints about teacher competence
  - inter-agency issues that appear to have played a significant part in Miki's ability to defraud the education and criminal justice systems
  - inter-agency co-operation, and information sharing between government agencies.
17. To set the scene it is noted that during his life Miki had three names registered under the Births, Deaths, Marriages and Relationships Act 1995. These are his birth name, Henry Te Rito Miki, then a name that is under a suppression order effected in the Office of the Registrar of Births, Deaths and Marriages on 7 November 2005. At that time Miki was 34 years old. The third name, also subject to a suppression order, was effected on 10 June 2009 in the Office of the Registrar of Births, Deaths and Marriages. This is the name he adopted when usurping the name and identity of Person X.
18. It is of course not unusual for people to use names other than that under which their birth was registered. The Inquiry has noted a report that in New Zealand nearly half a million people use aliases, a figure that has doubled in the past two years. A considerable number have multiple aliases. But over and above the names referred to in paragraph 17 above, Miki used a variety of names. It is thought that Miki throughout his life of deception had used some 53 different names, or names using a mixture of his registered and other names.
19. The use by Miki of the law and administrative processes to steal the identity of Person X, and the utilisation of that stolen identity, and with it the teaching qualifications held by Person X that enabled Miki to gain entry to the education system, provides an almost fictional scenario.

20. The process by which Miki stole the identity of Person X and an analysis of the opportunity this creates for criminal behaviour, activities contrary to the public good, and public policy consequences, is discussed in Part Three.
21. Whilst this Inquiry and our Report have identified what we see as deficiencies in the law, and in processes and practices, and criticisms have been made, it must be noted that the one and only person responsible for what has happened, and the costs that flow from that, both fiscal and personal, is Miki himself. Miki's absolute determination not to comply with court imposed obligations following his release from prison in April 2004, and the conditions that were imposed through both the District and High Courts in subsequent court appearances, including the Extended Supervision Order, reveal his lack of any civic responsibility and, most importantly, any understanding or acceptance of the risk his behaviour posed to children.
22. Inevitably in an inquiry such as this there will be criticisms of failures to act and of system deficiencies. During our Inquiry we have found what we believe to be deficiencies in the law, in practice and process, and of failure to act. Such deficiencies and failures have been found in the processes of a number of the agencies involved. We have not however approached our task as being one of laying blame. Rather we have taken the approach of analysing what appears to have happened and looking at what can be learned from the experiences of this case, and what steps need to be taken to, as best as can be, avoid such occurrences in the future.
23. The Inquiry records the very ready assistance and co-operation in providing information and in making people available for interviews by the government agencies involved. These agencies include the Ministry of Education, including the Auckland Regional Office, New Zealand Teachers Council, Department of Corrections, New Zealand Police, Education Review Office, Children, Young Persons and their Families Service, Department of Internal Affairs, Ministry of Justice, Office of the Auditor-General, Office of the Privacy Commissioner and the Office of the Human Rights Commissioner. We are also grateful to the Office of the Crown Solicitor in Auckland, Crown Law in Wellington, the New Zealand School Trustees Association, the NZEI, NZPPTA, a number of non-government organisations with an interest in child safety and well-being and child education, and, in particular, the parents, boards and staff of the several affected schools. The staff in all of these organisations were open, forthcoming and committed to developing more effective and hopefully foolproof systems, motivated particularly by the principle of protecting the safety and well-being of children within the education system.

# PART TWO

## The Role and Functions of the New Zealand Teachers Council

Term of Reference 1.a. i-iii



# Introduction

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The Inquiry has found that Miki's relatively easy entry to teaching positions was facilitated by several factors that stand apart from his personal duplicity and his theft of an associate's professional qualifications.

Some of these matters have been addressed in Part Three of this Report. They include information sharing, identity verification, the impact of name changes on the way identity is established, and the recording of name changes on official databases.

Of particular relevance are issues relating to the overall governmental system for reference and identity checking. We are reliably advised that for many jobs, reliance by the employer on any one single mode such as police vetting, which signals criminal convictions but neglects a wide range of other information, would be "woefully inadequate".<sup>1</sup> The risks of such reliance are important when a job applicant is going to have responsibility for financial and other resources but become acute where an employee could have unsupervised access to children or other vulnerable people.

Numerous official information sources have some relevance to paid employment in any occupation. For instance (premised on the applicant's informed consent) credit checks, traffic offences, or information about any past action that resulted in an applicant's appearance before a court or a tribunal may signal behaviours, attributes and experiences in which an employer could have a legitimate interest.

Other matters are more or less peculiar to the education sector. Examples of these are: the limitations of the statutory requirement that all potentially registered teachers be subject to a police vet; the provisions for those ineligible for registration to gain a limited authority to teach; the incentives for school boards and their principals, as employers, to test the qualifications, character and competence of applicants; the way the New Zealand Teachers Council (NZTC) and school boards test the authenticity of personal attestations, written references and other employment and registration documents; the scope for improving data sharing between the NZTC, the Ministry of Education (payroll administration) and school boards.

Our Terms of Reference directed us to comment on the capacity and capability of the NZTC and its registration and disciplinary roles. We were also interested in how the Council fulfils its statutory professional leadership and research functions, especially in relation to schools' employment responsibilities.

<sup>1</sup> Our advisor formerly followed the maxim "Trust – but verify", but does so no longer, preferring the far more accurate, "Don't trust – VERIFY!"

# Section 1

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## Governance and membership of the Council

01. As set out in Schedule 1, Part 2 of the Crown Entities Act 2004, the NZTC is an autonomous Crown entity. This means that its functions should be carried out “at arm’s length” from the government. The NZTC must have regard to government policy when directed by the responsible Minister but is not a Crown agent. Like all other Crown entities, the Council must maintain open communication with the Minister, who, as stated in the Cabinet Manual, has a strong interest in setting the Council’s direction, ensuring that it achieves its objectives, and observing the way the Council manages any risks to the Crown.
02. Given that currently there are some 100,000 teachers on the NZTC register, this is a significant risk to the Crown, not only as the major state sector employer and source of education policy and school resources, but as the politically mandated authority for overseeing the protection and well-being of children. For this reason alone, as discussed elsewhere in this Report, we propose a much higher legal threshold for children’s safety.
03. As required under the Education Act 1989, the composition of the Council’s governing body is explicitly mandated. Indeed, the whole of Part 10, Sections 139AC to 139AH is highly prescriptive. It is debatable whether or not this assists or detracts from the Council’s ability to manage the Crown risks in the education sector.
04. The work of the Council is overseen by an 11-person Council, plus, as prescribed in law:
  - two standing committees: Audit and Risk Management; and Professional Leadership
  - two mandatory advisory bodies – the Māori Medium Advisory group and the Early Childhood Education Advisory group
  - two statutory bodies charged with conduct and discipline management: the Complaints Assessment Committee and the Disciplinary Tribunal (DT).
05. As set out in Section 139AD of the Education Act 1989, the Council itself consists of:
  - three registered teachers elected from each of the early childhood, primary and secondary sectors
  - one principal elected by school principals

- two Ministerial appointees nominated by the two major school unions
- one Ministerial appointee nominated by the 2,500 future employers of registered teachers – school boards, as represented by the New Zealand School Trustees Association (to which most but not all boards belong)
- four other Ministerial appointees on whose attributes, skills or qualification the Act is silent.

One of these members is appointed from the membership by the Minister as Chair of the Council.

06. In our view the Act poorly distinguishes the governance role that belongs to any such Crown entity from the operational role that properly (and commonly, in both public and private sectors) belongs to the CEO and managers. Risks associated with the Council’s membership and key functions derive in part from its legislative framework, which is at once prescriptive and internally ambivalent. The dominance of union members and teachers on the Council vividly illustrates the imbrication of key players that characterises almost every aspect of education policy development and implementation in New Zealand. Certainly there is little legislative scope for community and parental interests, the interests of students, or the interests of future employers of school graduates, to be directly represented.<sup>2</sup>

The legislative framework

07. As stated in Part 10A Section 139AA of the Education Act 1989, the Council’s purpose as an autonomous Crown entity is “to provide professional leadership in teaching, enhance the professional status of teachers in schools and early childhood education, and contribute to a *safe and high quality teaching and learning environment* [emphasis added] for children and other learners”.
08. Registration requirements were established in 2002 when the NZTC replaced the Teacher Registration Board. The registration (and de-registration) functions of that earlier board were carried out by a staff of 14 and effectively mirrored the functions of the Director General of Education. They did not include the professional leadership, disciplinary, and research roles later entrusted to its successor.

<sup>2</sup> Such overlapping industrial and employee interests are much less common in other Crown entities. For instance, District Health Boards operate in similarly unionised service sectors, but do not have any legal provision for direct union representation or power to nominate the members of the board. In other regulatory agencies, Crown entities like the CAA and NZQA, appointment criteria that Ministers must take into account are attributes and experience that reflect the governance role of the board or council, as well as general knowledge and experience with the specific industry or service sector.



09. Parts 10 and 10A of the Education Act contain a complex mix of NZTC functions: registration, professional leadership, advocacy, programme approvals for other agencies and institutions, disciplinary and professional practice, standard setting, research, and any others conferred by the Minister. While no hierarchy is signalled, some of the thirteen functions set out in Part 10A Section 139AE take precedence in the Council's work.
10. As paraphrased by the Council in its 2010 *Annual Report*, its core business is:
- setting the standards for entering the teaching profession and maintaining on-going membership
  - setting the requirements for and approving initial teacher education programmes
  - carrying out processes for efficient registration of teachers
  - carrying out processes for investigating and dealing with issues of competence and conduct of teachers
  - commissioning or carrying out research to support quality teaching and the other functions of the Council
  - communicating with the profession to support teachers' knowledge and understanding of the standards and commitments of the teaching profession, including the Code of Ethics for Registered Teachers
  - consulting on policy developments.
11. Teacher registration is detailed in Part 10 Section 120–139. This regulatory function dominates the Council's organisation, expenditure, information "warehouse", education sector role, political reputation and public status. Some 47% of the Council's revenue goes to registration; 22% to professional standards, about half that to teacher education (programme approvals) and the remainder to policy and strategic planning.
12. While as a regulatory agency the NZTC has recently acquired the confidence of most key stakeholders in the school employment labour market, the same cannot be said for its three other key functions: professional leadership, discipline and research. Across the education sector, the NZTC's capacity and capability to address these three roles were the subject of anything from open scepticism to cautious ambivalence. We suggest that the forthcoming review of the NZTC address, inter alia, the merits of retaining dual approval by the NZTC for both professional education and registration standards for the teaching profession.



## Section 2

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### Registration

01. Registration for teachers was made compulsory in all state schools in 1996, followed by the same requirement in Kura Kaupapa Māori from 2005. The Teachers Council's statutory responsibility is embedded in Section 139AZD of the Education Act 1989. Inter alia, this explicitly requires the Council to establish a system for coordinating police vetting, in relation to:
  - (a) teacher registration and the issue of practising certificates
  - (b) the granting of limited authorities to teach.
02. The Council has a data sharing protocol with the Ministry of Education's payroll administration, and cross-referencing between the agencies allows them to check whether salaries and other payments have been made to legitimate school employees (ie registered teachers or persons with Limited Authority to Teach). Issues about the names listed on these two databases are discussed later.
03. No person is lawfully entitled to be employed to teach in any New Zealand school unless they have a current registration and practising certificate issued by the NZTC. *"Registration was established to ensure a minimum quality standard is applied to all teachers entering or currently teaching in the general education system of New Zealand."* (NZTC)
04. Provisional registration (ie initial registration) certifies that an appropriately trained person is of good character and fit to be a teacher, as defined in Part 1 Section 123 of the Education Act 1989. This means that a clean police vet has been obtained, plus any other matter the Council may take into account. While initially unlimited, provisional registration is now granted for five years but can be extended to a maximum of six.
05. In 2012 the Council published a policy document entitled *Good Character and Fit to be a Teacher Policy*. The introduction to this document states that:
  - a. the NZTC provides professional leadership in teaching, enhances the professional status of teachers and contributes to a *safe* [emphasis added] and high quality learning environment
  - b. the Council has a statutory responsibility under the Education Act 1989 to register suitable applicants to the teaching profession. To fulfil this obligation the *Council must be satisfied that an applicant is of good character and fit to be a teacher.* [emphasis added]

06. This Council policy states that requirements for good character and fitness to teach will have been met when:
- a. the applicant has a police clearance for criminal convictions from the Vetting and Validation section of the New Zealand Police or the national police in any country where the applicant has spent a year or more in the last 10 years
  - b. the applicant has made a written statement (not a statutory declaration) about any dismissal from teaching, or had registration refused or cancelled in any country
  - c. the applicant has no physical or mental health condition that would affect their ability to carry out a teaching role safely and satisfactorily
  - d. the applicant is not under investigation for any matters that may call into question whether they meet the Council's *Good Character and Fit to be a Teacher* policy.
07. An applicant for registration is expected to declare commitment to the NZTC Code of Ethics. We were disturbed to find that, unlike Crown employees in the rest of the State sector, there is currently no Code of Conduct for teachers, the need for which is advocated by the New Zealand School Trustees Association, which represents school employers, but which is hotly disputed by the unions. While acceptance of such a Code would scarcely have deterred Miki, it would nonetheless provide another threshold test for anyone working in schools with children. Statistics from the NZTC disciplinary bodies discussed later suggest that unacceptable conduct by teachers is inadequately constrained by proclaimed ethical values and would benefit from additional attention to the limits of acceptable behaviour.
08. Despite the fact that direct verbal and written communication is the common currency of a school's teaching and a child's learning, we were interested to find that only minimal proficiency in either English or Te Reo Māori is expected of a recently graduated applicant for registration as a teacher. This exemplifies the low thresholds that have to be crossed to enter the education labour market.
09. If a teacher reapplies for provisional registration and a practising certificate after two years employment as a teacher, they will need a "testimonial" from their professional leader or some acceptable reason for not meeting all the Registered Teacher Criteria after two years in a school.
10. To gain full registration, a teacher must have at least two years teaching experience and, as attested by the principal of the school and one other senior teacher, have successfully completed a mentoring and induction programme.

11. We were advised that this attestation is not invariably a rigorous process, and in general, we understand, school principals and senior staff members on whom the NZTC relies are highly likely, and generally for good reason, to report positively on the teacher concerned. Certainly, as with the original board or principal decision to hire a provisionally registered teacher or seek NZTC approval for an “unregisterable” person (like Miki) to be accorded Limited Authority to Teach, the incentives which inform a principal’s attestation appear to vary widely depending on:
  - a. the available supply of teachers and support staff for particular schools or subject areas
  - b. community and parent expectations as to the standards of children’s learning
  - c. the relatively uncritical pedagogical culture we observed in schools or specialist language-based units where cultural attributes such as competence in Te Reo and kapa haka are given high curriculum status
  - d. most notably, the intense sector-wide pressure on principals who cannot attract well qualified or experienced teachers but feel compelled to avoid leaving classes unsupervised.
12. There is no requirement for a new police vet (or any other “test” of good character) to be obtained when a person shifts from provisional to full registration (which could take up to six years, although in that time a mandatory vet would have been required for full registration to be renewed). On occasion the NZTC electronically-available teachers register may have a note beside a name, but the reason for this annotation is not stated. An inquirer looking for the reason is not able to obtain it from the Council but is advised to go directly to the person named on the register. This seems both clumsy and unhelpful.
13. A Limited Authority to Teach (a LAT) is approved when the NZTC is satisfied that all the requirements in Part 10 Sections 130A and 130B have been met. Although an applicant for a LAT must be of good character (with a clean police vet), be fit to teach, and likely to be a satisfactory teacher, they must not have all the qualifications and experience required for provisional registration. In other words, while they may have the dispositions to teach, they must not be registrable. If they are registrable – that is they are trained and qualified to teach – they must come through the Provisional Registration gateway.
14. The legal facility of LAT is intended to permit the employment, in a specific school, for a specified period of time, and for a particular role or subject(s), of a person who “has skills and experiences that are appropriate to advance the learning of a student or group of students in any particular institution”.

15. We understand that there are some 900 LATS in schools at present. As a device to prop up deficiencies in the school labour market, meet highly particular yet low-demand need, help schools fill hard-to-staff positions, and perhaps keep down the costs of school employment, this is a practical and popular measure. Miki provides an illustration of a LAT's other more personal attractions. With support from the helpful principal, a supportive family member's reference, and the silence of the relatively remote, rural school community in which he had been born, Miki was eventually granted a LAT. The authority of the physical document, and its inclusion in his work history provided him with another small but important means to persuade other employers of his merits as a teacher.
16. A separate registration category is "subject to confirmation". This is not relevant to Miki's case, but we expect that the forthcoming NZTC review will evaluate the adequacy of this entitlement, which we understand to be mainly for previously registered teachers seeking to re-enter the profession after a period out of teaching for whatever reason.

#### Vetting for "good character"

17. Under current law, and intended to establish "good character", a police vet must be obtained by the NZTC before any person is registered to teach, issued with a practising certificate, or granted a limited authority to teach.
18. Section 139AZD of Part 10 A of the Education Act 1989 states that the Teachers Council must "coordinate the police vetting" trusted to establish whether a person is of "good character".
19. This provision does not expressly invite the Council to include other reference checking systems among the tools available to it – indeed the directive to use the police vetting service is both exclusive and prescriptive. Part 10 Section 124B Subsection (1) explicitly requires the Teachers Council to obtain a police vet "for the purpose of determining whether a person is of good character and fit to be a teacher".
20. However, although this is the only specified test for such attributes, Subsection (1) does not preclude the Council's taking into account any other matters in determining character and fitness to be a teacher (Section 124B (2)). The national intelligence database managed by the police includes not only the names of persons with criminal convictions but other known names and, on occasion, it may signal that a person is "of interest", possibly because of some charge for which they were not convicted, or because the police have reason to note them as high risk persons. This information may be passed on to the Council when it requests a police vet.

21. The Council carries out vetting through the Licensing and Validation Service Centre (LVSC) of the New Zealand Police. Before February 2010 (the period during which Miki gained all but his last two school appointments) the process for all police vetting was paper based. Applicants for registration were asked to submit personal information relating to their identity and – most significantly as it later turned out – sign a consent form for the vet to be conducted and the vet information to be released to the Council.

22. We were advised that: *“Under the old paper based system, timing delays were inevitable, given the number of applications to the NZTC and the process could often take between 10-40 days to complete. These delays made it extremely difficult for the NZTC to run an efficient service and meet its timeliness targets. Weekly, even daily contact between the Council and the police was typically by post, telephone and email, and included NZTC staff members seeking advice on how to interpret vet data, who the Council could refer to in relation to Courts matters, and explanations for delays. On occasion NZTC staff would collect vet reports in person so as to reduce the timing delays.*

*The Director of the NZTC wrote to the Deputy Police Commissioner in July 2009 outlining the risks to both agencies from escalating delays in vet returns.*

*In 2009, when it had been established that the then-current system was not working well for both the NZTC and other agencies, an electronic system was piloted and the Council offered to participate. After a period of months the Council’s database was ready and informed by cross-agency work on how to establish secure electronic transfer of data. In late 2010 a pilot between the NZTC and the police was extended to other agencies and the format now in use was adopted.*

*The automated vetting process requires Council staff to input data provided by the applicant and check that the declaration section has been signed by the applicant, giving consent for the police vet to be carried out. These details are then sent electronically to the LVSC, the check conducted and the results returned to the Council – a process that can take from a few hours to up to a week.”*

23. In essence both the paper based system and its electronic successor, “QueryMe”, are subject to the same weaknesses as those exploited by Miki and produce much the same outcomes – though timing and cost are significantly improved with “QueryMe”. As discussed elsewhere, what is at issue is not whether one is better than the other but how to improve important elements in the identity verification and vetting systems across government as a whole.

24. A copy of the vet report must be given to both the person or body requesting it (eg an NZTC staff member) and the person being vetted, whose explicit consent **must** be obtained before the vet will be carried out by the police.

25. Procedures around this appear to be strictly – even dogmatically – observed by the police database administrators. The NZTC is a major client for the police intelligence database, and after a long period of professional association it might be thought that both formally and informally all staff in both agencies would be well briefed on the law (especially the scope as well as the limitations of the Privacy and Official Information Acts), and their mutual agency interests – especially in any situation where the safety of children could be at issue. In the case of Miki, alleged failure by the Council to provide evidence of Miki’s consent to be vetted, exacerbated by the police neglecting to promptly remind them of the correct and agreed steps, gave Miki one of several opportunities to escape detection and inter alia, breach his duty to avoid any contact with children under the age of 16.
26. Under Part 10 Section 139AZD (4) of the Education Act 1989, the Council must establish internal procedures for dealing with police vets requested for its own purposes. These must identify the person or office holder within the Council to whom the police vet must be sent and must ensure that strict confidentiality is observed for police vets.
27. The Council may not take adverse action in relation to a person subject to a police vet until the vet information has been validated by the person concerned, or the person concerned has been given a reasonable opportunity to validate the information but fails to do so within a reasonable period. (Section 139AZD (5) (a) and (b) of the Education Act 1989 refers to this point.)
28. Based on our view that the well-being of children should take priority over other interests, and particularly so in state and privately owned schools and kura, we are persuaded by other advice suggesting that in addition to police vets, inquiries should be made about traffic offences, credit checks and any other source including CYFS and the Inland Revenue Department (IRD).
29. On the one hand, Miki got through the police vets because he stole someone else’s identity, being prepared to risk exposure, re-capture by the police, and heavy court-generated sanctions. From the time he won his first job, none of the firms, institutions or agencies, including school boards, appear to have had the capacity or appropriate incentives to test his veracity, identity, or work entitlements. It was extraordinarily easy for him to change his name lawfully and to adopt numerous aliases and variations on a suite of similar names without exciting comment or official inquiry.



30. On the other hand, system failures opened the door for Miki to avoid the consequences of numerous criminal convictions and, later, gave him ongoing proximity to the very children with whom he had been forbidden to associate. For instance, there were failures to obtain and supply critical information about Miki:
- a. the NZTC failed to ensure that every request made for a vet to the police was consistently premised on the prior approval or consent by the person being vetted, as required in their protocol of agreement with the police
  - b. on at least two occasions, the police vetting system failed to identify and report Miki's criminal history when it was sought first by the NZTC and then by a diligent Tauranga constable (formerly a teacher) who in fact had located all the information needed to expose Miki, but was deterred by the absence of confirming vet information from her own agency
  - c. a newly appointed first-time school principal who was suspicious of Miki's identity and qualification to teach sought evidence of his criminal history from the Ministry of Justice – and was flooded with information not supplied only days later by the police from their national register of criminal convictions in response to a request from the NZTC.
31. These failures were exacerbated by opportunities for social collusion, the failure of knowledgeable individuals to advise relevant authorities of Miki's probable identity and criminal history, and the willingness of individuals to pretend ignorance as to his real and stolen identities. And, as quoted earlier, reliance on police vetting, however, accurate in terms of criminal convictions, is “woefully inadequate” as a means to test good character.

#### Issues associated with registration and vetting

32. We have already commented on NZTC's reliance on police vetting and data-matching protocols with the Ministry of Education and the fact that there is no access to the much more comprehensive CYFS databases (CYRAS) and no protocol permitting such interrogation of other similarly relevant data.
33. Perhaps constrained by lack of any serious research capacity, NZTC is apparently unaware of whether or not boards ever counter-check with their own vetting inquiries, as they are entitled to do when a candidate presents for a non-teaching (or other) position. If they did, they would almost certainly be rebuffed by the police, who deal directly with the NZTC on teacher-related matters. In some perverse ways, however, the absence of registration appeared to provide at least two principals with keener motivation to check on an employee about whom they had some doubts.

#### Code of conduct

34. On a separate front, in relation to the “good character” requirements for registration, the Inquiry was alarmed by the lack of any statutory or other requirement for the profession to be governed by a Code of Conduct as well as the mandatory NZTC code of ethics; and the reasons for what we understand to be industrial objections to the introduction of any such code of conduct.

#### Conflicts of interest

35. Moreover, we were concerned by the absence of any requirement for interests, or potential or demonstrated conflicts of interest, amongst applicants or referees, to be declared or considered by the NZTC or employing boards. We do not know whether either the Ministry of Education or the Education Review Office regularly monitors actual or potential conflicts of interest amongst school boards and/or staff. We recognise that in a small, inter-related society such as New Zealand’s, close family relationships may be commonplace in the education and other sectors. Nonetheless, we consider that there is a place for such reviews, in addition to checking on the frequency and effectiveness with which boards conduct their own checks on conflicts of interest amongst applicants and their referees.
36. In particular, the issue of whanaungatanga needs to be considered in this context. We suggest that although the threshold for entry to teaching in a Māori-intensive setting should be culturally appropriate, the risks that sexual predators and convicted fraudsters like Miki present to Māori tamariki are no different from those they present to any other children. If that is so, those risks may be exacerbated by well-meaning whānau-related sympathy, and misguided, demonstrably uncritical, even gullible goodwill at the board and senior staff levels of a school.

#### Fitness to teach

37. No thanks to the professional education and teacher training system (in which he took no part), Miki was not only adjudged fit to teach but in School A was deemed skilled, even gifted, by his unsuspecting employers and peers – at least at the outset. Some principals were suspicious of Miki from the beginning and responded very cautiously to his self-promoting style; others were either indifferent to risks they suspected or willing to overlook them in order to fill a staff gap. In other places he was never there long enough – one company sacked him because he couldn’t do the job for which he had been hired.



38. Under the NZTC system, an applicant for registration must be “satisfactorily trained” to teach; have not previously been registered as a teacher; or be “likely to be a satisfactory teacher.”
39. As set out in the Council’s February 2012 policy, “satisfactorily trained to teach” means the person has a tertiary qualification(s) that include sufficient elements of teacher education; and can demonstrate that they have met the *Graduating Teaching Standards* (or equivalent). These requirements will be met where the person has graduated from an approved initial teacher education programme (ITE) including meeting the entry requirements for graduate diploma programmes; or has an NZQA approved overseas qualification; or, where the Council exercises its discretion, has been accepted as “satisfactorily trained to teach”.
40. The NZTC requirement that an applicant be “likely to be a satisfactory teacher” means that the person is “likely to meet all of the *Registered Teacher Criteria*” once they have had the opportunity to be “meaningfully assessed” against them.
41. This is an important requirement since it is the one that leads to the initial allocation of provisional registration and a practising certificate. It is based on the graduation certificate from an approved training institution, making this document an almost assured ticket into the profession and the sector.
42. Our concerns over the “fitness to teach” requirements for registration include:
- a. the adequacy of the “fitness to teach” requirement
  - b. confusion that exists because of competing definitions as to what makes a high quality teacher and the complementarity between these and “fitness to teach”
  - c. how the agreed competencies, qualifications, skills and personal characteristics, and “fitness to teach” are verified, validated and authenticated.

#### Mandatory reporting to the Teachers Council

43. The Council is somewhat disempowered in respect to the “good character” of anyone it has registered to teach if other agencies fail to comply with their mandatory duty to report certain matters to the NZTC. Each of the failures we observed opened another gap through which Miki could escape detection and obtain employment in the face of court orders prohibiting his unsupervised proximity to children.

44. As discussed in more detail elsewhere, Part 10A Sections 139AK to 139AP of the Education Act 1989 contain explicit directions on who, and when, and to whom, breaches of law and offences **must** be reported to the Teachers Council. Reporting is mandatory when:
- a. a teacher is dismissed for any reason
  - b. a teacher has allegedly not reached the required level of competence
  - c. a teacher who resigns and, within the previous 12 months, had been advised in writing of the employer's dissatisfaction with the person's competence, conduct or "serious misconduct"
  - d. a complaint about a teacher's competence or conduct is received by a former employer within 12 months of the teacher's ceasing employment at the school.
45. There is a fine for failure to report, but Section 139A (2) of the Education Act 1989 provides a defence for a former employer who can prove that they believed, on reasonable grounds, that they were not required to report.
46. Reporting by the teacher concerned if that person has been convicted of an offence punishable by imprisonment for three or more months is mandatory. Furthermore, unless expressly ordered otherwise by the court, the Registrar of every court where any person the Registrar believes to be, or to have been, a teacher is convicted of an offence punishable by imprisonment for three or more months, must report this to the NZTC.
47. In relation to the Miki case, the NZTC had a legitimate complaint when in August 2009 none of those with a mandatory duty, including the Tauranga principal's board, did so. The principal's suspicions had been confirmed almost immediately by the Tauranga police who came to arrest Miki. Satisfied that he had been arrested and physically removed from the school, the principal erroneously assumed that this information would get to the NZTC via the police. She could recall nothing in her induction programme that emphasised mandatory reporting, and certainly her employer had given her no directions or advice on this matter, either before or after Miki's arrest.
48. The NZTC was entitled to be disappointed not only by this breach of the principal (see above) and board's duty, and by Miki himself, but also by the opportunity the judicial system offered him to escape the full consequences of his offending. As a (fraudulently) registered teacher Miki was bound by all the rules of registration, notably Section 139 AP3 of the Education Act 1989. Unsurprisingly, but nonetheless illegally, Miki failed to report to the NZTC.

49. After his arrest in Tauranga, Miki's future offending was encouraged by a soft probation report that failed to connect the character of his past offending, the conditions of his release from prison for those offences, the failed application for an Extended Supervision Order in February 2005, the reasons for that failure (Miki's absconding), and the fact that he was arrested while teaching in a primary school. The sole comment in the report was to the effect that Miki had once been a teacher. Nor were any of these mentioned in the judicial sentencing, so that his conviction was not reported to the NZTC by the Auckland Court Registrar as is required in law.
50. There appears to be a gap in the reporting system for those who have legitimate concerns but not enough hard evidence to meet the mandatory reporting threshold or make formal complaints to the NZTC and other authorities about someone's character or fitness to teach. Whistle blowing is a fraught process. It was clear in this Inquiry that potentially useful information about Miki (and similar persons) was lost because at least one concerned person (in one case an experienced and well-regarded principal) was put off by overly dogmatic bureaucracy and abandoned his tentative concerns when it appeared that they would be dismissed without NZTC follow up.

#### Guidance for boards on sensitive employment issues

51. The reality is that people who are not of "good character" get through the registration process – to some extent the Council's own modest statistics on complaints reported to its disciplinary bodies demonstrate this. But we did not find any systematic guidance for boards or principals on how to identify and manage risks of charismatic plausibility, pathological tendencies or poorly justified assessments of candidates' fitness to teach.
52. Nor was it obvious that the school sector had learned much from earlier cases similar to that involving Miki (eg Mahurangi High School, Rose City early childhood service) where information sharing was neglected or as in the case of Hebron Christian School, where the school made what could be regarded as questionable decisions about a convicted sex offender. We understand that there are available sources of experience and reputable expertise, such as Child Matters or Auckland's Rape and Violence Education Centre, to assist and advise boards and principals who seek support. Although this is not part of their key skill set, the school social workers recently placed in some low decile schools could also provide support for boards in assessing the psychological health of candidates.

## Risks and gaps

53. The Inquiry noted several registration-related matters that merit Council attention:
- a. the risks arising (most acutely in the current Miki case) when a name is changed on the register for any number of legitimate and fraudulent reasons, and the number is retained but any or all initial or earlier name(s) are expunged from the NZTC record
  - b. the reason for any name change sought or recorded on the register
  - c. educating school boards, principals and others on their obligations to report to the NZTC (Section 139AM of the Education Act 1989 refers)
  - d. substantial tightening up of the means by which the authenticity of academic qualifications from any tertiary provider (including overseas providers), written, telephonic or verbal or emailed attestations as to fitness to teach, good character, previous work history and teaching experience are validated and verified
  - e. the need for a more sympathetic route for concerns that have not quite reached the level of precision required in the law's mandatory reporting provisions to find their way to an appropriate authority.
54. At present the protections around mandatory reporting focus almost exclusively on the adults who might be adversely affected. We are clear that the interests of the child should take precedence. Furthermore, we consider that, with full regard for all citizens' rights, the risks to the safety and well-being of a child, rather than protection for the reputation and comfort of an adult, should become the signal for adult action to report known, possible or observed offences against a child to an appropriate authority.

## Section 3

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### Boards' capability and capacity

01. As we found, regardless of the adequacy of the pre-employment systems, some boards and their principals are simply not capable of assessing fitness to teach or the merits of pre-employment training.
  02. Some lay boards rely so completely on the expertise, knowledge and experience of their principal that they are in effect delegating their own statutory accountability to their CEO. Some local communities' tolerance for serious risks to children's well-being has been influenced by their own damaging experiences; others may be acutely sensitive to children's vulnerability but lack the confidence or ability to challenge the authority of their board, principal or senior staff.
  03. The employment of over 100,000 school staff (including some 55,000 full-time teacher equivalents) places a heavy onus on locally elected, lay boards and their principals. We question the capacity of many to carry such a load, especially with rising public expectations and sustained pressure to broaden the curriculum and extend the cultural experiences available to children.
  04. Miki was easily able to secure tutorial and relieving positions and gained a Limited Authority to Teach. This allowed employment as a registered teacher. System deficiencies and process failures at the government department and NZTC levels open the door for fraudsters – and worse – like Miki. In addition, poor quality employment decisions, the occasional influence of whanaungatanga, and inadequate responses to principals by other agencies, perfectly suited his opportunistic style.
- Finding where a teacher is working
05. Neither the police nor the Corrections Department found it easy to keep track of Miki, even when his aliases included similar names or the same names varied in terms of their order. This was complicated by the fact that the police and Corrections weren't looking for him in schools, and that teacher appointments are no longer published in the Education Gazette or any other public record. Appointments remain entirely private to the school.

06. In Miki's case, and even allowing for the aliases he adopted, this meant that principals (and other officials with this duty) had to do their own sleuthing. The NZTC register does not list teachers' places of school employment.
07. The NZTC itself is not advised of an appointment. Through the current data sharing agreement both the Council and the Ministry's payroll staff, who do know where a teacher works, can request confirming information of each other for data checking but this information is not readily accessible outside those agencies. The data sharing is carried out only to ensure that payroll is paying as teachers only those who are registered and have current practising certificates. It is of no concern or interest to the NZTC where a registered teacher is working. Many on the register are not currently teaching, for a number of reasons.

#### Giving reliable information to school principals

08. One of the numerous opportunities for Miki to gain employment arose when an NZTC official wrongly refused to provide information to a school principal. The inquirer, apparently impressed by the Council's authority, did not persist with this line of inquiry. Due process is of course important but so is commonsense and a willingness to respond helpfully to any request for assistance from a school principal. It seems highly unlikely that such a request would be mischievous or vexatious.

#### Verifying academic records

09. Both the NZTC and boards rely on documented information that universities or other training agencies are not required to verify, validate or authenticate. The term "certified qualifications" etc may provide more assurance than is justified. We suggest that this might be given attention in the forthcoming Teachers Council review.
10. We understand that all tertiary students are required to have a recent photograph on their university or college ID cards, but that the Teachers Council does not require these to be produced when trained graduates apply for registration. Although the Council frequently returns incomplete or out-dated documents to applicants for correction, at the end of the day both they and the employing boards accept written documents that are not accompanied by a formally attested, biometric, photographic proof of identity. A driver's licence carries no such weight of authenticity.

## Boards' non-transferable employment duties

11. Teachers Council policies, rules and processes shape the portal through which teachers enter the profession. The ramifications of school-wide confidence in these allow for no system or performance failures in the registration or disciplinary arrangements.
12. Employing boards are entitled to rely on information provided by the NZTC, but they are not entitled to neglect their own accountability for hiring staff. Yet typically they accept without question (or as in the case of Miki, may be persuaded by less than scrupulous advisers or referees) information provided by applicants.
13. This places a heavy onus on the NZTC. Although we think the Council has yet to find a sufficiently robust way to test for good character and fitness to teach, we do not consider it entirely fair that boards so complacently – or for whatever other reasons – fail to apply due diligence to their own employment or hiring practices.
14. In our considered view regardless of the usefulness of NZTC processes, school boards remain accountable in law and practice for their own employment decisions and are not justified in accepting without challenge or inquiry any application material, including evidence of registration, presented to them.
15. Furthermore, although somewhat outside the scope of our terms of reference, we consider that deficiencies in the NZTC system for employing school staff may be exacerbated by the structure of school governance in place, virtually undisturbed, for the past 25 years. While a more sophisticated suite of possible interventions is now available to both the Minister and Secretary of Education in cases of governance failure, the frequency of and reasons for their application suggest that this broader policy and structural matter be considered by the Minister.



# Section 4

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Professional leadership: a crowded market

01. The Council's predecessor was the Teacher Registration Board to whose functions others were added after 2002. The statutory obligation on the Council to provide professional leadership (Part 10A Section 139AE (a) of the Education Act 1989) made the new Teachers Council something of an interloper in a potentially crowded professional leadership market. When the law was passed it had not been established that the "first-nation" unions would be willing to cede their established professional leadership position, and indeed they have not done so.
02. Until the early 1990s the Department of Education and Education Boards provided for teachers an extensive range of advisory, support, training, inspection, employment, appointment, audit, education policy development, curriculum development, specialist assistance, review and other services.
03. Departmental inspectors were regarded as having been successful practitioners in whose guidance, leadership and experience teachers could have substantial confidence. In the primary sector they made decisions about the employment, deployment and promotion of teachers and then inspected them. In the secondary sector, teacher appointments were made by Boards of Governors and the performance of school employees was reviewed by departmental inspectors.
04. Those services virtually disappeared from 1990, and although some have been modestly reinstated by the Ministry at regional level, there is now a very different set of school–state relationships from those that had been in place for most of the 20th century. However, none of the needs and challenges facing schools – and those with a governance role – before 1990 disappeared after the advent of *Tomorrow's Schools*.
05. Into the vacuum created largely by the dis-establishment of Education Boards and removal of decentralised departmental activities moved two new actors – neither of which had (or has developed) a clear professional leadership role: The Education Review Office and the voluntary New Zealand School Trustees Association.



06. So by the early 1990s the old source of professional leadership (the inspectorate) had disappeared. The unions' role expanded in the vacuum. Principals had already formed their own associations, often belonging to two, and one of these has recently set up its own union to ensure representation on sector-wide issues.
07. In addition to their classic industrial functions, the unions, which teacher training students and all newly registered teachers are actively encouraged to join, have a critical and major role in professional leadership. They provide advice, guidance, support, protection and advocacy for senior staff and principals on a wide range of matters including but by no means limited to industrial issues.
08. No education sector policy of any significance is developed or implemented without their active involvement. In many school-based situations, as in the Miki case, they are the first port of call for principals. Their advice is highly regarded and, as illustrated during this Inquiry, taken.
09. They have a key role in determining professional and registration standards; competency criteria; the NZTC's disciplinary proceedings; ethical codes – in other words, most of the conventional accoutrements of a profession. The unions do not have a direct registration role (typically a key function in other professions) but their predominance on the Teachers Council governing body means that their views are taken into account on all matters of policy and rule-making.
10. In effect, this is a user-pays professional leadership service for the teaching profession separate from the NZTC. It might be argued that unless teachers themselves demand a new professional body that is more akin to those in place for lawyers, clinicians, architects etc, the political noise might outweigh any major gains from resourcing the NZTC to an effective level of leadership.
11. In our view, the NZTC currently lacks both the capacity (the means to achieve something) and capability (the ability to do, undertake or achieve certain things) to deliver its professional leadership and research functions in any internationally respected way.

# Section 5

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## Disciplinary function

01. The disciplinary function of the NZTC is set out in Part 10A Section 139AQ of the Education Act 1989. This provides for the establishment of two disciplinary bodies, both of which may have members who are not members of the Teachers Council, but must include at least one member of the Teachers Council. Both may operate in panels, and more than one panel can be operating at any one time.
02. Complaints of misconduct by a teacher must go in the first instance to the teacher's employer unless one of a list of exceptions set out in Section 139 AR subsection 2 (a)-(d) applies.
03. There is reliance on two sub-sets of the NZTC itself: the Complaints Assessment Committee (CAC) and the Disciplinary Tribunal (DT), both of which are dominated by teachers and their unions and offer no effective opportunity for community voice to be invited or considered.
04. We are concerned by statutory equivocation on the mandatory threshold for referral from the Complaints Assessment Committee to the Disciplinary Tribunal. About 10% of all complaints referred initially to the Complaints Assessment Committee were eventually referred to the Disciplinary Tribunal.
05. The reasons why relatively few serious matters progress immediately to the Disciplinary Tribunal are not clear, and we recommend that the Ministry of Education re-visit this part of the Education Act with a view to clarifying the distinction between more or less serious breaches of conduct, or competence issues, by school teachers. We suggest that, for any breach that could be prosecuted and result in imprisonment, the issue should immediately be referred from the Complaints Assessment Committee to the Disciplinary Tribunal.

**Letter from Peter Lind, CEO of the NZTC to *North & South* magazine, June 2012**

*Your June issue (Unchartered Territory) asked the question: who are bad teachers and their failures accountable to? Teachers are accountable to their employers (usually boards of trustees). Any issues of competence should initially be dealt with by the employer. If however, the teacher resigns or is dismissed during competence proceedings, or if the employer is satisfied that, despite undertaking competency procedures the teacher has not reached the required level of competence, then a mandatory report would be sent to the New Zealand Teachers Council.*

*The Council's role is two-fold. Firstly, the Council will carry out an investigation and determine whether the teacher meets the level of competence required to be a registered teacher. The teacher's competence is measured against the Registered Teacher Criteria.*

*If it is determined that there is an issue with a teacher's competence, the Council will develop an agreement with the teacher, designed to address specific areas where the teacher is not meeting the required level of competence. Such a programme usually includes a supervised advice and guidance programme for a period of at least six months or more. This means that the teacher is actively monitored on their agreement by an experienced mentor. The Council may also place specific conditions on a teacher's practising certificate to ensure that the teacher is teaching within specific guidelines.*

*If the Council is satisfied that a teacher cannot be rehabilitated to achieve full competence, or if a teacher does not comply with the conditions of their agreement, then the teacher's registration will be cancelled. Contrary to the implication of your article, the Council actively investigates all cases where the employer has provided a mandatory report outlining concerns about a teacher's competence.*

*Your article claims that, of the 174 competency cases referred to the Council between 2005 and 2010, only one teacher has had their registration cancelled. That is not an accurate picture.*

*Just over 33% of these teachers chose not to engage with the investigation and have not continued to teach. These teachers will not be issued a practising certificate until this matter is satisfactorily addressed. Approximately 50% had conditions placed on their practising certificates. At the time of writing this letter, only 17% are employed in a teaching position, mostly in a relief teaching position. So of the 174 cases considered by the Council, only 23 teachers' mandatory reports were dismissed as requiring "No further action" because of a lack of verifiable evidence.*

## Section 6

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Research: improving the evidential base for high quality teaching

01. Teacher registration, approval for initial teacher education programmes, and disciplinary matters dominate the Council's work. Professional leadership and research roles are underplayed and underfunded: the Council has modest financial capacity and few staff working in these areas. This is an important issue if only because of the role that principals play as employers, and the significance of good HR practice in enabling student learning achievement.
02. Accessible, customised research into the hiring of professional staff could assist principals and boards when they are employing teachers. Although the New Zealand School Trustees Association (NZSTA) has drawn our attention to a small assembly of relevant research neither NZSTA nor the Teachers Council is funded or staffed to undertake or commission practical, relevant research that could be drawn on by the hundreds of lay trustees on school boards, principals and senior school managers.
03. The research function that could provide the Teachers Council with a strong evidential base for its registration and disciplinary functions is similarly immature. Research is costly – but despite the Ministry of Education's recent efforts to encourage evidence-based practice, much New Zealand research is very cautious about a causal link between pedagogical practice and students' learning outcomes.
04. Failure to provide either respected professional leadership or internationally respected research exposes the Teachers Council to criticism. This becomes especially problematic if for any reason, and however infrequently, the registration process is found to be weak or inconsistent in quality.

## Section 7

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The relationship between the NZTC and school boards

01. The capacity and capability of boards to make optimal use of registration processes. School boards have the right to rely on the State's statutory, role-specific registration agency. Poor performing boards or those with limited understanding and experience in hiring teaching staff should be able to take comfort from the fact that if a person presents with evidence of official NZTC registration (provisional or full), that person will have had a clean police vet and met the minimum requirements for good character and fitness to teach.
02. High performing boards with experience in hiring professional staff should be able to use NZTC registration as the base on which to build their own school-specific employment requirements.
03. However, as this Inquiry has amply demonstrated, even a school blessed with ERO's commendations can fail very painfully if every aspect of the employment hiring task is not meticulously and carefully managed. The accountability of the principal for this is unmistakable, and all the more so where a board lacks experience and familiarity with governance matters.
04. Despite delegations to a principal, it is, nonetheless, boards that hire staff and are accountable for those choices, not NZTC and not the principal. Even where the Council's registration data and associated documentary information are reliable, responsibility for validation, verification and authentication of all the material supplied by an applicant still rests with the board.
05. For instance, interviews are not always conducted and we found extremely uneven performance amongst boards. We found no sound evidence (if any) of careful, thorough reference checks by the boards of schools that had employed Miki. Based on what we were told by NZSTA, ERO, other officials, the unions and principals' associations, we are not confident that this is well or consistently done throughout the school sector.
06. Nor did we find evidence that boards take up the opportunity provided when applicants consent to a wide search for references, beyond the two or three they may have named. Sometimes none or only one of the referees is consulted, and it is clear from this Inquiry that few if any efforts are made to authenticate the referee's suitability, honesty or reliable knowledge of the applicant.

07. Board members whose own children will be directly affected should be highly motivated to make high quality employment choices. Yet, as discussed earlier, we found near-complacent reliance on the Teachers Council, the recommendations of the principal, and any reference checking that may or may not been done when hiring teachers. We were struck by the weaknesses in this with regard to incentives for demonstrably improving the quality of teacher supply.
08. Boards are not active players in the pre-employment teachers' market and are virtually silent as a voice on the demand side of that market. As noted earlier, this means that their key leverage in terms of teaching quality comes when they employ a teacher. If this is not rigorous, critical and searching the board cannot be sure that the learning and well-being of their students – and other staff – will be advanced and protected.
- What is invested in improving board performance?
09. The Inquiry was advised by NZSTA that some \$200 per trustee is available per annum per capita to be spent on the training and performance improvement of boards. This nugatory sum helps explain the unpopularity of trusteeship, and appears to find its unsurprising reward in:
- a. the frequent failure of boards to manage their governance task
  - b. the frequency with which ministry intervention occurs
  - c. the numbers of commissioners appointed to take over from a struggling board
  - d. the frequent lack of public interest in standing for board election
  - e. the dominance of principals in the election process
  - f. the absence of informed decision making when hiring or retaining – principals whose strategic, curriculum leadership and professional excellence are demonstrably humdrum, but who have become valued members of the social community of the school
  - g. the disappointment and frustration that often faces parent-elected board members when they find that the business of running a school is in practice much less often about education matters than about coming to terms with financial spread sheets
  - h. the low level of return and community acknowledgement for the time invested by diligent board members.
10. If the Crown is serious about retaining a school governance system that is now in its 23rd year without any significant review or reform, then its own investment in these Crown entities, which are a critical element in the education labour market, should be promptly evaluated.

# Summary

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01. NZTC's registration and professional leadership roles are potentially powerful levers for alerting school employers to risks associated with hiring teaching staff and the likelihood that those employees will add demonstrable value to students' learning. These roles are not, however, substitutes for high quality school governance by a board or its principal. Registration opens the door to employment: it augments other critical information relevant to employment in a school, but ought not to be regarded as sufficient to enable official access to a school community.
02. Official registration by the Council is accorded enormous, rarely challenged confidence by school boards. Assuming that:
  - a. most people seeking to become teachers have appropriate personal attributes and are of good character
  - b. the standards set for pedagogical training and employment in New Zealand schools are adequate
  - c. school boards and their principals are consistently meticulous, well-informed and exacting in their employment processesthen this confidence could be justified.
03. On the other hand, this Inquiry has amply demonstrated three specific issues:
  - a. the current NZTC test of "good character" is necessary but far from sufficient as a means to protect children from the risks of exposure to persons such as Miki
  - b. without close independent monitoring of the way boards handle their hiring role, employment choices made by naïve, ill-prepared or inexperienced trustees and principals will easily trump an otherwise reliable registration and vetting system. This directly exposes children to a variety of unacceptable risks
  - c. without greatly improved cross-sector, cross-agency data and Information Sharing, system and process failures will continue to present real (albeit somewhat indirect) risks to the well-being of children in schools.

04. In our view, these risks can be mitigated in a cost-effective manner. We think that various steps, including law changes, could substantially improve system and governance deficiencies we – and earlier inquiries – have identified.
05. Although somewhat outside our terms of reference, based on our findings and current political interest in the merits of central and local governance structures, we suggest that after 25 years it could be timely to review the policies and structures around locally-elected school boards as major employers in the New Zealand labour market.



# PART THREE

## Inter-Agency Collaboration and Information Sharing

Term of Reference 1.b. and 1.d.



## Introduction

Part Three covers both Terms 1.b. i–iii and 1d. It consists first of a discussion on information sharing between agencies and includes recommendations to develop and provide more comprehensive and organised information sharing.

The second section analyses the involvement of several agencies involving issues of name change (Department of Internal Affairs), criminal justice (Department of Corrections and Police), Ministry of Justice, and the Child Youth and Family Service.

## Section 1

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- 01.* Inter-agency collaboration, particularly in respect of information sharing, is a serious problem of long standing. In spite of the best efforts of successive privacy commissioners, and of the efforts by individual chief executives of critical agencies, it remains a “work in progress”.
- 02.* As we said in our Interim Report, the sharing of information and open dialogue between the holders of information is a critical, if not the most critical, component of inter-agency and inter-professional liaison and cooperation. In our view this dimension becomes even more critical where the information could impact on the safety and welfare of children. This view has been demonstrated yet again in this case. Opportunities for appropriate, and indeed necessary interventions have been lost because no single agency has the comprehensive information within itself to provide evidence of risk, potential or otherwise. As a consequence, so it seems, the sharing of information, dialogue between holders of information, the existence or adequacy of appropriate documented arrangements between agencies, an understanding of agency functions and responsibilities for identity verification, validation and authentication, and inter-agency collaboration, are not, and were not, adequate in this case. This may be a systems issue, or, as alluded to in the Introduction to this Report, a mindset that is focused on process rather than taking an expanded view, including the essential concern for the safety and well-being of children.
- 03.* The Inquiry does not consider that in this case there was any deliberate act that gave rise to this situation. The unsatisfactory outcome and questions of process between the New Zealand Teachers Council and the police is somewhat different and is dealt with under Term of Reference 1.a. (Part Two above). But in relation to the issues of the sharing of information and

collaboration within wider government agencies, the situation revealed in this case is yet another example of a failure to comprehend in some agencies, that there are other agencies that have a legitimate and proper interest in the education and child safety and welfare environment, ie education agencies. These agencies have not been recognised as having such an interest by the major players who have a more direct function involving child safety and welfare, and law enforcement responsibilities.

04. In an earlier Ministerial Inquiry, also involving child safety and welfare, the issue of inter-agency collaboration and the sharing of information was a critical factor. In that report an extract from an earlier report was referred to. This extract said:

*“Protecting vulnerable children requires professionals from across a range of sectors to work together. To do this effectively, professionals from health, education and social service sectors, working for public, private and not-for-profit organisations, need trust and a shared commitment to common goals. There are pieces of the picture known to several agencies, but it is only with the benefit of a full review that a complete picture is revealed.”*

05. The sentiments expressed in that extract apply, mutatis mutandis, in this case. School boards of trustees and school principals must be seen as a critical part of the matrix.
06. It cannot be said that in this case, involving an individual with multiple names, full information disclosure and inter-agency cooperation would necessarily have resulted in an outcome that brought Miki back before the judicial system much earlier, or that his involvement within the education system would have been detected earlier than was the case. It does however need to be noted that, in the end, it was not knowledge and information exchange between critical agencies that resulted in Miki’s final arrest, but rather a report from a knowing member of the public.
07. Notwithstanding, there were gaps in inter-agency cooperation and information exchange that resulted in potential opportunities for Miki’s detection, including the exposure of the identity theft he relied on to gain access to full teaching positions in two schools.
08. As we said in our Interim Report, the sharing of information and open dialogue between the holders of information is a critical, if not the most critical, component of inter-agency and inter-professional liaison and cooperation. This view has been demonstrated yet again in this case. Opportunities for appropriate, and indeed necessary interventions, have

been lost because no single agency has the comprehensive information within itself to provide evidence of risk, potential or otherwise. As a consequence, so it seems, the sharing of information, dialogue between holders of information, the existence or adequacy of appropriate documented arrangements between agencies, an understanding of agency functions and responsibilities for identity verification, validation and authentication, and inter-agency collaboration, were not adequate.

09. Whilst the law rightly intends to preserve an individual's privacy, the law should not be used, and in our view it was never so intended to be used, as a barrier or prohibition to appropriate information sharing between agencies that have a legitimate interest in that information in carrying out their public service responsibilities. It is our clear view, as we have expressed throughout this Report, the safety and well-being of children given into the care of the education system must be paramount. Identified agencies that may be involved or concerned about people involved in the education system that may impact on the safety and well-being of children in the education system, should be able to share information to best ensure that no child is put at risk from within that system.
10. The Inquiry has no doubt that the education system, and all those within it who have a position of responsibility for the education or safety of a child whilst at school, are subject to a duty of care in respect of all children at a school, and that consequently there is a public duty aspect to the sharing of information where that information may protect a child from harm. The safety and welfare of children entrusted to the education system must be paramount and uncompromisingly so.
11. The answers to information sharing and inter-agency collaboration obligations and responsibilities lie in a clear direction that all of the agencies holding information that should be available within the education system, that may, as best able, ensure the safety and welfare of children in the education system, enter into protocols or memoranda of understanding to ensure that information sharing and inter-agency collaboration happens and that appropriate processes are in place for that. However, experience suggests that something more than that may be needed and a provision akin to that in Section 66 of the Children, Young Persons, and Their Families Act 1989 would provide clarity and direction. There is however another option discussed in the following paragraph.
12. The Privacy (Information Sharing) Bill now before Parliament, is intended to improve public service delivery by introducing two new mechanisms "for better and smarter information sharing". If passed, one of the provisions will allow the use and disclosure of personal information when there is a serious threat to public health or safety or the life or

health of an individual. Currently that threat must also be imminent for the information to be shared. The second provision in the Bill inserts a new mechanism to make provision for the approval of information sharing agreements by Order in Council. Approved information sharing agreements will enable the use and sharing of information between and within agencies delivering public services by modifying or clarifying the application of the information privacy principles.

13. The Inquiry has been informed that the Ministry of Education and the Child, Youth and Family Service of the Ministry of Social Development, are actively developing a Memorandum of Understanding to formalise those agencies' commitment to a collaborative working relationship to achieve the best possible safety and well-being outcomes for children. We commend the Ministry of Education and Child, Youth and Family Service for this initiative and note that such a development will document a process that has not hitherto been in place.
14. Likewise, we have been informed that the Ministry of Justice and the New Zealand Teachers Council are in discussions preliminary to developing a Memorandum of Understanding for information sharing. This is another initiative that is to be commended.
15. It is however the Inquiry's clear and strong view that there needs to be a more comprehensive mechanism between all of the agencies that may be able to contribute information held by individual agencies that could impact on the safety and well-being of children in the education system. We are attracted to the proposed mechanism outlined in paragraph 12 above.
16. The Inquiry therefore **strongly recommends** that, subject to the passing of the Privacy (Information Sharing) Bill, you seek a Ministerial direction that all of the agencies that may hold information that could be relevant to having knowledge about the safety and well-being of children in schools, including but perhaps not only, the Ministry of Education, New Zealand Teachers Council, New Zealand Police, Ministry of Justice, Department of Corrections, Ministry of Social Development, Child, Youth and Family Services and the Department of Internal Affairs, be convened under the chairmanship of an independent person, to develop an information sharing agreement, and that, subject to the requirements of the law, such an agreement be approved by Order in Council.
17. It is **further recommended** that if the recommendation in paragraph 16 above is not implemented because the Bill does not become law or for any other reason, you give consideration to making a provision in the Education Act 1989 similar in intent to that provided in Section 66 of the Children, Young Persons and Their Families Act 1989.

## Section 2

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Department of Internal Affairs

01. In the Interim Report of 30 April 2012 we referred to the third registered name of Miki which, at the time of our reporting, was subject to a Court suppression order. That name, which is now under permanent name suppression, was similar to, but not the same as, a name change from his birth name of Henry Te Rito Miki to yet another suppressed name and was registered with the Registrar of Births, Deaths and Marriages on 7 November 2005.
02. The third registered name is that by which Miki stole the identity of a real person (referred to throughout this Report as Person X). Person X appeared on the Teachers Register maintained by the New Zealand Teachers Council under the provisions of Parts 10 and 10A of the Education Act 1989. Person X was properly registered and held a teaching qualification enabling registration as a teacher. He first appeared on the Register in the year 2001.
03. As we reported earlier it is this fraudulent act, utilising the law and established administrative processes to enable it, that provided a seemingly bona fide opportunity for Miki to seek and obtain full teaching positions, first at School A in Auckland where he was on the teaching staff for two years, and then, for a brief period before his arrest, at School B.
04. This Report discusses in Part Four issues of recruitment, employment and hiring processes in schools, and particularly Schools A and B. The focus at this point however is on the law and processes that provided the opportunity for Miki to obtain bogus registration as a teacher by identity theft.
05. The Births, Deaths, Marriages, and Relationships Registration Act 1995 provides for the registration of a name change.
06. Section 1A provides that the purpose of the Act is:
  - (a) to require the recording and verification of information relating to births, deaths, marriages, civil unions, *name changes* (emphasis added) ... so as to provide –
    - (ii) an official record of births, deaths, marriages, civil unions, *and name changes, that can be used as evidence of those events and of age, identity, descent, whakapapa and New Zealand citizenship* (emphasis added) and

- (b) to regulate access to, and disclosure of, information recorded in respect of these matters
- (c) to regulate the provision and effect of certificates relating to information recorded in respect of births, deaths, marriages, civil union, *and name changes* (emphasis added).

Section 21 provides definitions for Sections 21A and 21B. These sections, which follow, provide for an application for registration of name change and the registration of that change. Section 21 says:

“In Sections 21A and 21B, **eligible person** means a person -

- (a) whose birth is registered; or
- (b) who is a New Zealand citizen.....”

Section 21A relates to an application for registration of name change. The relevant provisions say:

- “1. the following persons may apply for registration of a name change:
  - (a) an eligible person who is 18 years of age or older
- 2. An application for registration of a name change is made by paying the prescribed fee (if any) and depositing with the Registrar-General –
  - (a) A statutory declaration made, in accordance with Sub-section (3), by an eligible person on a form provided by the Registrar-General for the purpose
- 3. The eligible person must declare, in the statutory declaration –
  - (a) an intention to abandon (and to adopt some other names instead of) the names most recently included in the eligible person’s birth information.”

- 07. Section 21B requires the Registrar-General to register a name change as soon as practicable if the documents and fee are deposited with him. The Registrar-General must register a name change for an eligible person whose birth has been registered to include the new name in the person’s birth information if the birth is registered in New Zealand, (as was the case in respect of Person X). It is important to note that neither the law, nor any administrative process, requires any supporting or identifying documents with the application.
- 08. Miki obtained the necessary form (BDM122) “Application to register a Name Change” which he completed and lodged by post with the Office of the Registrar-General which was received in that Office on 25 May 2009. The document was incomplete and was returned from the Office of the Registrar-General addressed to Person X at a Rotorua address.



09. It is to be noted at this point that the incomplete document ie BDM122, is in the form of a statutory declaration. It was declared before a Deputy Registrar of the High/District Court at Rotorua to be accurate and complete notwithstanding the two defects in the form.
10. The declaration was corrected and returned to the Office of the Registrar-General with the defects corrected but, so it seems, without making any further declaration as to its accuracy.
11. The Registrar-General then acted on this declaration showing the given names of Person X and the date of that person's birth. The statutory declaration showed the applicant's usual occupation as "Teacher". Person X was of course a teacher registered with the New Zealand Teachers Council and held provisional registration pursuant to Section 123 of the Education Act 1989.
12. The "Name Change Statutory Declaration" (BDM120) is not a prescribed form. As has been indicated the form is required to be declared before a person authorised to take a statutory declaration but no other verification, validation or authentication is required by the person taking the statutory declaration. That person would simply ask the person presenting with the form if that was the person's name and signature and that the contents were accurate and complete and believed to be true by virtue of the Oaths and Declarations Act 1957.
13. As demonstrated in this case the form may then be sent by post, together with the prescribed fee, and, provided the form answers the questions, the application will be provided with the imprimatur of the Office of the Registrar-General and the name change effected; in this case from Person X to the name chosen by Miki ie the name under permanent Court suppression. Again, as at the point of making the declaration, this is effected without any verification, validation or authentication other than the statutory declaration received by post.
14. The consequences of this process are plain for all to see. The Inquiry is bound to say that it finds this system both surprising and of very serious concern. The birth certificate that was issued to Miki under the suppressed name can certainly not provide "evidence of identity" as stated in Section 1A (a) (ii) of the Act (see paragraph six above).
15. The process appears to have severe deficiencies in both the law and the processes to give effect to the law. It has consequences well beyond the immediate case.

<sup>1</sup> See: <http://www.minedu.govt.nz/theMinistry/PolicyAndStrategy/KaHikitia.aspx>

16. We spoke with the Registrar-General and are grateful for the information he has provided to the Inquiry. We were told at this meeting that the law providing for a change of name was amended in 1995 from the then existing deed poll system, by adding the present system as outlined above to “make things simpler”.
17. The Registrar-General provided the Inquiry with statistics showing the number of applications made for a name change under the provisions of the relevant sections in the Births, Deaths, Marriages, and Relationships Registration Act 1995. According to these supplied statistics the average annual number of applications filed in the 12 years 2000 to 2011 is 7,375.
18. There is no information about why people choose to change their registered name. People are not required to provide any reason. There is therefore no knowledge of how many such changes may or could have been intended for a fraudulent or improper purpose. It can reasonably be assumed that most such applications are made for a genuine and proper reason. There is however anecdotal information suggesting that the change of name process is used for the purpose of obtaining a passport in a completely new name to enable that person to leave New Zealand when they may otherwise be detained at the border for legal reasons, or to obtain some other advantage to which they would not be entitled. This of course differs from identity theft which occurred in this case, but nevertheless may be used to defeat the law or, as we have said, to obtain some other advantage, eg a benefit, to which that person is not entitled.
19. Identity theft is a matter of considerable concern in the general community and at governmental levels. It is also a matter of concern internationally. Use of the name change process for the purpose of defeating the law is a similar concern.
20. The Inquiry has concluded that the use of the name change process as now provided for creates a simple means for identity theft, or as a means of avoiding legal obligations. The process contains a significant identity-related risk.
21. In December 2009 the Department of Internal Affairs published an up-dated document titled *New Zealand e-Government Interoperability Framework*. Although the standards established in this document have been designed for online services that require confidence in the identity of the transacting parties, the publication contains very useful and appropriate guidance for other processes where it is necessary to establish and confirm the identity of individuals using government services.

22. This document says that the initial establishment of identity is an important means by which agencies can manage the risks to their business objectives that result from the incorrect attribution of identity. This is seen as a means to reduce the risk of identity crime occurring and any downstream criminal activity this facilities. It is also designed to protect individuals from others stealing and using their identity to access government services.
23. Both of these statements apply in this case. Identity crime certainly occurred in that the identity of Person X, as a person whose name was registered in the New Zealand Births Register and was not altered by that person, was stolen. The stolen identity was then used to access government services ie registration as a teacher with the New Zealand Teachers Council in the place of Person X, and the obtaining of documentation as a consequence that allowed Miki to obtain teaching positions for which he received appropriate remuneration.
24. The present processes for effecting a change of name appear to lack any means for the Registrar-General to confirm that the individual who is making an application for a name change is the same person whose birth registration is to be changed to a different name. This case is a graphic illustration of the absence of any process that allows confirmation and thereby ensures validation, verification and authentication.
25. Although the standards are concerned to protect the business objectives of the organisation there is of course a very important public policy issue that, in the view of the Inquiry, needs appropriate and urgent attention.
26. The Births, Deaths, Marriages, and Relationships Registration Act 1995, in Schedule 1A, sets out what government agencies are entitled to information, including name change information, to be provided by the Office of the Registrar-General. Neither the Ministry of Education nor the New Zealand Teachers Council is included as a specified agency in that schedule. Whilst their inclusion may not have avoided the consequences in this case, the Inquiry is of the view that both the Ministry and the Teachers Council should be included in that schedule and an information agreement entered into by the Department of Internal Affairs with those agencies. The wider issue of information sharing between government agencies is discussed in Section One of this Part.
27. The Inquiry has reported on the law and processes relating to changing a registered name and the deficiencies and problems it sees with the current process. It should not be inferred that these comments are critical of the Office of the Registrar-General. That office, so far as the Inquiry has

ascertained, follows the current law and administrative processes. This case has however thrown into stark relief the consequences of easy manipulation of the process for improper or illegal purposes. The Inquiry was informed that the “relative ease” by which a person can officially change their names in New Zealand reflects the common law position, and is consistent with Section 14 of the Bill of Rights Act 1990 protecting freedom of expression. That should not however be utilised to either defeat the law or allow identity theft to occur as has been established in this case.

28. The Inquiry appreciates the maxim that “hard cases make bad law” but has reached the considered view that the potential for criminal activity, which is made possible by the existing law and administrative processes for name change, is a significant public policy issue that calls for urgent consideration by Government.
29. It is not for this Inquiry to propose processes by which the name change law, and the administrative processes related to it, be changed to ensure, as best as is possible, that the mischief that can occur with the present process be avoided.
30. The Inquiry does however **recommend:**
  - (1) that you refer this issue to the Ministers of Internal Affairs and Justice and that, as a matter of urgency, a policy review of the law and processes is initiated; and
  - (2) that you request, through the Minister of Internal Affairs, that the Births, Deaths, Marriages, and Relationships Registration Act 1995 be amended to provide in schedule 1 for the Ministry of Education and the New Zealand Teachers Council to each become a specified agency, and that appropriate protocols be put in place to govern the process.
31. Related to the issue of name change legislation, the Inquiry, as part of its investigation, became aware that Person X whose identity was stolen by Miki, departed New Zealand for Australia on 10 April 2009. Person X obtained a passport on 14 January 2009 and ceased employment as a teacher in New Zealand on 9 April 2009, that is the day before departing for Australia. The registered name change from Person X to the suppressed name was effected on 10 June 2009.
32. Person X returned to New Zealand on 17 September 2009 using the passport issued to him on 14 January 2009 and departed New Zealand again on 25 September 2009. Person X then made six more return trips between Australia and New Zealand finally departing New Zealand so far as we are aware on 21 February 2012. This is the day before Miki was arrested and appeared in the Papakura Court.

33. Person X continued to use, as he was able, the passport issued to him in his registered birth name, even though from 10 June 2009 that registration had been changed to the suppressed name. Person X was able to travel internationally, so it would seem, without question.
34. The Inquiry was informed that the Office of the Registrar-General does not inform the Passport Office (a function of the Department of Internal Affairs), nor Customs or Immigration that a person holding a validly issued New Zealand passport under a particular name, has changed that name and is now registered under a different name. Interestingly the only notification of a change of name is made to the Registrar of Electors. This act is provided for by Section 94 of the Electoral Act 1993.
35. We understand that any passport issued in a name pre any change of name will remain valid for the currency of that passport and may be renewed by application and the production of further photographs.
36. It is a matter of conjecture but the Inquiry asks the question whether, if appropriate notification had been made to Customs and Immigration of the name change from Person X to the suppressed name, the questioning of Person X when he made his first return to New Zealand after the registration of the change of name ie 17 September 2009, should have revealed that the identity of the person named in the passport, ie Person X, had been legally (but by deception) changed and verification sought that the person named in the passport was one and the same as the suppressed name. It is reasonable to assume that such validation would not have occurred and the theft of identity would have become known and acted on at that time.
37. The Inquiry **recommends** that you refer the issue to the appropriate Ministers with the proposal that urgent consideration be given to require the Office of the Registrar-General to notify any registered change of name to the Passports Office, Customs Department and the Immigration Office of the Department of Labour and that appropriate protocols be put in place to govern that process.
- Ministry of Justice
38. The Ministry of Justice manages two functions that have relevance to this Inquiry.
39. The first of these is the compilation and management of a database of all convictions and sentences recorded in New Zealand Courts but does not include Youth Court decisions.

40. The usefulness of this database was demonstrated in this case when the principal of a school where Miki (under an assumed name) had applied for and in fact started very recent employment as a teacher. The principal, in the belief that she was following the police vet process, mistakenly went to the Ministry of Justice by electronic process and obtained the significant criminal history of Miki. The principal had been advised from an external source of that person's concerns about Miki. This person provided several aliases used by Miki and the principal provided those in her request to the Ministry of Justice.
41. The Ministry promptly provided a substantial record of Miki under various aliases that enabled the principal to challenge him. Coincidentally a police officer from Tauranga enquired of the principal whether a Te Rito Miki was employed at the school. The police subsequently attended the school and arrested Miki on an outstanding breach of probation charge. This charge led to Miki's conviction in the District Court in Auckland on 24 November 2009, the details of which will be commented on later in this section when discussing the involvement of the Department of Corrections.
42. The second function of the Ministry of Justice relates to the statutory obligation imposed by Section 139AP (3) of the Education Act 1989 requiring the mandatory reporting of convictions. This provision requires, inter alia, that the Registrar of every court must, unless the court expressly orders otherwise in a particular case, report to the Teachers Council when a person whom the Registrar believes to be, or to have been a teacher, is convicted of an offence punishable by imprisonment for three months or more.
43. At a meeting with the Chief Executive of the Ministry of Justice and two of his senior officers it was acknowledged that the requirement may not have always been observed. The Ministry had already initiated action to review the Ministry's internal processes to better ensure compliance, including an enhanced audit process. Additionally the Chief Executive has directed a review of the past three years of court records to ascertain whether there have been any relevant convictions involving a teacher, or where those records indicate that the convicted person may have been a teacher. Any such cases revealed by this review will be immediately notified to the Teachers Council.
44. The Inquiry commends the Ministry of Justice for these initiatives. It is noted that the Ministry will be one of the participants in the proposed development as contained in the recommendation in paragraph 16 of the section discussing inter-agency collaboration.



Child, Youth and Family Service (CYFS)

45. CYFS is part of the Ministry of Social Development. The part of CYFS in the saga of Miki is relatively small and historical and dates back to 2002 when Miki was employed (not in a teaching capacity) at Te Kura Kaupapa Māori o Otara in South Auckland. It was then that Miki was the subject of the complaint and the subsequent police investigation that resulted in his imprisonment on child sex abuse convictions.
46. The CYFS CYRAS database maintained in Auckland is a very comprehensive information system that has the record of Miki from that time. Given the focus of the CYRAS system on the safety and well-being of children, it is a system of critical importance and an essential tool as a store of relevant information for the assessment of people in schools, teachers and others, in determining their suitability for employment.
47. We have referred in paragraph 13 in Section One to the initiative currently being developed between the Ministry of Education and CYFS. As we said we applaud and support that initiative.
48. The Inquiry considers that the CYRAS system of the Child Youth and Family Service should form part of any comprehensive source of available data for sharing between approved agencies as we have discussed in paragraphs 12–17 in Part Three, Inter-Agency Collaboration and the recommendation in paragraph 16 of that section.
49. As we have noted in the introduction to the Report, and elsewhere throughout it, this Inquiry has, as a central motivation, the safety and well-being of children in the school environment. In that context we give our total support to the initiative of the Minister for Social Development and Employment to establish the appointment of an experienced social worker to a cluster of primary and intermediate schools. We are aware that a number of such appointments have already been made. Whilst the policy reason for that development was to identify children at risk of abuse outside the immediate school environment, the Inquiry is of the view that the presence of an experienced social worker in a school, and available to a principal, will assist in other areas where children may be at risk in the school.
50. The Inquiry supports that development and **recommends** that you discuss with the Minister of Social Development the enhancement of the policy of placing social workers in primary and intermediate schools.



## New Zealand Police

51. The New Zealand Police have a significant role in the vetting process for both teacher registration and the employment of non-registered teachers in schools and others who may have authorised access to school environs and possibly have unsupervised access to children. This aspect of police involvement is covered in Parts Two and Four of this Report.
52. In this case the police were also involved in their law enforcement role. This role was significant in bringing Miki before the Court as demonstrated by his criminal history but in particular in the context of this Inquiry, when he was arrested in January 2002 and, after 444 days on remand (the reason for which this Inquiry has not been able to ascertain), was sentenced on 29 April 2004 to two years imprisonment on a variety of charges, including three counts of indecent assault. As has been recounted elsewhere in this Report he was immediately released on conditions having become eligible by reason of the time already spent on remand in custody.
53. The section below outlining the involvement of the Department of Corrections provides a history of Miki's failure to observe the conditions of his release and attending to enable an Extended Supervision Order to be applied for. In spite of the engagement of a private investigator Miki managed to evade apprehension. As commented by Justice Ellis in imposing the 10-year Extended Supervision Order:
- "It appears that Mr Miki had frustrated efforts to locate him for over four years by frequently changing his address and also changing his name by deed poll (sic). The Court was advised that Mr Miki had used over 10 aliases during that time."*
54. There was however during all of the time until Miki's arrest at a Tauranga school on 4 August 2009, an outstanding warrant for a breach of release conditions.
55. During this time Miki had employment in four schools, the final school being the one near Tauranga from which he was arrested. Miki raised suspicions in each of these schools that he was not who he appeared to be or what he was in terms of teaching experience and qualifications. The Inquiry has been informed, but has not investigated further, that police may have been aware of Miki and his whereabouts, prior to his arrest in the Tauranga school.
56. In interviewing staff at one of the four schools referred to above, we were told by an administrator at a school who knew Miki, having actually been at secondary school with him, that on 10 September 2008, a local police constable had made enquiries of the school about a "Tane Rua or Te Rito Rua or Te Rito Miki". The administrator took school records to the police

that day and was able to identify Miki from several photographs of Miki taken over time. The administrator knew Miki as Tane Rua being the name he was known by when at school with the administrator.

57. So far as the Inquiry is aware no action occurred after that positive identification although the warrant following non compliance with release conditions was extant at that time. Subsequent to this Miki obtained employment at two schools, including the one from which he was finally arrested in 2009.
58. The Inquiry has also been informed about enquiries made by a constable at Mt Maunganui police and reported on 5 October 2009 to her senior officers. The report made available to the Inquiry indicates that the enquiring constable had been informed by another police officer that “a person by the name of Te Rito Henry Miki has some connection with (the Tauranga school). Miki has extensive history for sexual offending against young boys and also an extensive history for fraud.”
59. Following on from this Miki was arrested at the school after confirmation that there was an extant warrant and confirmed “by Probation that the warrant was still active”.
60. The constable retrieved documentation from the school including documents that, prima facie, indicated the theft of identity of Person X and that Miki was purporting to have a teaching qualification to obtain teaching positions that he did not in fact have.
61. The report of the constable was provided to the constable’s senior officers and provided to the Investigator Analyst at the National Intelligence Centre.
62. Following his arrest Miki was only charged with a breach of his release conditions (under the extant warrant from 24 February 2005) and was then sentenced in the Auckland District Court on 24 November 2009 to 125 hours of community work. At that time, as we have said elsewhere, Miki was already employed at School A as a teaching assistant and was subsequently appointed to a full teaching position.
63. Miki remained at large and teaching in schools quite contrary to the very clear conditions in the Extended Supervision Order (ESO) made on 11 March 2010, until his arrest on 22 February 2012. Miki was subsequently charged with four counts of breach of the ESO (brought by the Department of Corrections) and seven brought by the police relating to the use of documents for pecuniary advantage. It was on these charges to which he pleaded guilty and was sentenced on 18 May 2012. Among the charges of using a document for pecuniary advantage was one that

related to documents obtained by the police following Miki's arrest at the Tauranga school.

64. The question that occurs to us, but for which we have no answer, is, "What might have been the consequences had Miki been charged with the offence(s) relating to his obtaining employment in schools by the use of fraudulent documents when he was before the Court after his arrest on 4 August 2009?" Had he been so, it seems to us unlikely, with the Court being aware of his school involvement and his previous convictions for indecent assault involving children, that any sentence imposed would have allowed Miki to continue his subterfuge of teaching in School A and later at School B.
65. We emphasise however that we do not know the reason why there were no charges brought at that time although there were charges, based on the fact of the documents seized at the Tauranga school, and in respect of his employment in other schools previous to that, following his arrest some 30 months later.
66. The Inquiry **recommends** that you refer this Part of the Report to the Minister of Police for reference to the Commissioner of Police for his investigation.

#### Department of Corrections

67. The Department of Corrections had involvement with Miki over the period 2003 when he was sentenced in respect of child sexual abuse offences through to 18 May 2012 when he was sentenced to four years one month and two weeks after his conviction in the District Court in Auckland on four charges of breaching an Extended Supervision Order and seven charges of Take/Obtain/Use a Document for Pecuniary Advantage. The Department will continue to have responsibility for his custody whilst serving his sentence and at the time he may be released on parole and his subsequent supervision.
68. Although Miki had a history of prior offending, including in Australia where he served a term of imprisonment on various charges of fraud and was subsequently deported back to New Zealand, the saga with which this Inquiry is concerned began with Miki being sentenced in the High Court at Auckland on 29 April 2004. Miki had pleaded guilty to three charges of indecent assault, two charges of assault and one charge of breaching bail. Miki was sentenced on these charges to a total of two years imprisonment. In sentencing the Judge said:

*“Although you have the right to seek home detention in respect of a sentence of 2 years or less, there is futility in granting you leave to apply for home detention because of the time you have already spent in prison and the likelihood that the time spent will already have meant that you have served the sentence. I impose the standard conditions of parole on release. I do not require any special conditions to be imposed.”*

The effect of this was that Miki was immediately released on parole and subject to conditions.

69. Subsequently, and in short, the Department of Corrections, as part of its supervision of Miki whilst on parole following his release from prison on 29 April 2004, applied for an Extended Supervision Order on 4 February 2005. As part of this application Miki was referred for a Health Assessment Report in accordance with the requirements of Section 107F(2) of the Parole Act 2002.
70. Miki failed to attend for that assessment and had also breached his release conditions. A court warrant alleging breach of release conditions was issued on 24 February 2005 but Miki was not located by either the Department of Corrections or the police until his arrest by the Mt Maunganui Police at a school near Tauranga on 4 August 2009. In the intervening period Miki worked in at least three schools. It must be noted that following on the failed 2005 Extended Supervision Order process, a private investigator had been employed to locate Miki but had been unsuccessful.
71. Miki subsequently appeared following release on bail from the Rotorua District Court in the Auckland District Court and was sentenced on 24 November 2009 on one charge of breaching release conditions.
72. For reasons unknown to this Inquiry it appears as though the Court was not informed that Miki was arrested whilst in employment as a teacher at a primary school although the pre-sentence report did say, “Previously Mr Miki has worked as a teacher.” No mention was made of the fact that Miki in fact held no qualifications to teach and could not be registered to teach in any school.
73. Although the Court was informed that there was a current application before the High Court for an Extended Supervision Order there seems to be no mention of the proposed special conditions that were being applied for nor the standard conditions that would attach should the application be granted.

74. The pre-release report states “community work is considered an appropriate sentence”. After considering this Report and submissions made by Miki’s counsel the presiding judge imposed a sentence of 125 hours of community work. Interestingly, we have been informed that Miki did in fact complete that sentence even though (although unbeknown to the Department of Corrections) he was at that time a support teacher at School A.
75. On 11 March 2010, by which time Miki was employed under the name and with the qualifications that he had stolen, as a full teacher, Justice Ellis released her reserved decision making an Extended Supervision Order. Miki, who was represented by Counsel did not oppose the making of the order but opposed the life of the order. The Department applied for an order of 10 years duration. Miki sought only four years.
76. In the event the Judge imposed an order for 10 years. In an extensive decision Her Honour said, inter alia:
- “The present case is somewhat unusual in that the original application for the ESO was filed almost exactly five years ago, on 4 February 2005. That application followed Mr Miki’s release from jail in 2004.....Subsequently a warrant for Mr Miki’s arrest was issued but he was not in fact located until the end of August 2009 and it was only while appearing in Court on a charge of breaches from 2005 that he was served with notification of the ESO application. It appears that Mr Miki had frustrated efforts to locate him over four years by frequently changing his address and also by changing his name by deed poll. The Court was advised that Mr Miki had used 10 aliases during that time”.*
77. In her decision imposing an ESO of 10 years duration (which is the maximum provided under the legislation) after covering her concern that any reoffending by Miki was likely to be of a serious sexual nature and risked causing harm to vulnerable individuals, Justice Ellis outlined the process that the law required to be followed in relation to conditions attaching to the order, and then imposed the following special conditions:
- (a) the offender must reside at an address approved by a probation officer and must not stay away overnight from the address without prior written approval of the probation officer
  - (b) the offender must not undertake employment/training without the prior written approval of the probation officer.

78. We importantly note that, in addition to these special conditions imposed by the Court, there are a number of standard Extended Supervision Order conditions provided for in the Parole Act 2002. These apply to the order imposed on Miki. Of particular note are:
- (a) The offender must not engage, or continue to engage, in any employment or occupation in which a probation officer has directed the offender not to engage
  - (b) The offender must not associate with, or contact, a person under the age of 16 years, except in the presence and under the supervision of an adult who:
    - (i) has been informed about the relevant offending; and
    - (ii) has been approved in writing by the probation officer as suitable to undertake the role of supervision.
79. It is of course abundantly clear that Miki did not observe these conditions in that he engaged, and continued to engage, in employment as a teacher in schools with pupils under the age of 16 years without any approval. This serious breach of the conditions of his Extended Supervision Order continued until his arrest on 22 February 2012.
80. The Inquiry has been informed that on 16 March 2010, that is one week after the making of the Extended Supervision Order, Miki was inducted by his probation officer to the terms of the order and made aware of his obligations and requirements. It needs to be repeated that at this very time Miki had been appointed to a full teaching position and was employed by School A.
81. The decision of Justice Ellis, her clearly expressed comments and concerns, and the very clear conditions attaching to the Extended Supervision Order, all attest to the potential consequences of Miki remaining in a teaching position.
82. The Department of Corrections, through its Chief Probation Officer and on the direction of its Chief Executive, has undertaken a special review and has furnished a report that has been made available to this Inquiry. We subsequently met on two occasions with officers from the Department.
83. The report from the special review has said that the management of Miki met the required mandatory standards. It says contact was maintained at a higher level than required by the mandatory standards and that there was appropriate oversight of the special conditions. Risks, so the review report says, were assessed based on information provided. The report goes on to say:



*“The complexity of the offender, his intentional deception and false information provided to the probation officer meant it was difficult to ascertain the true nature of the offender’s daily activities.*

*The investigation has identified opportunities to improve practice to strengthen public safety in the management of offenders on Extended Supervision Orders, especially those who present with complex manipulative and deceptive behaviours.*

*Staff would benefit from practice development in working with aliases, working with intentionally manipulative and deceptive offenders as well as extra support focused on such high risk and complex cases.”*

84. This Inquiry is not able to make any professional judgement about the quality of the case work that enabled Miki to obtain and continue in daily work in schools over more than two years when he was subject to an Extended Supervision Order that expressly forbade such activities. It is acknowledged that, based on the information provided to us, there was a high level of contact by probation staff, psychologists and a bi-cultural therapy provider, and that this was more intensive than the prescribed mandatory standards.
85. In spite of the views expressed, and giving full weight to the content of the special report, together with an analysis of the case work undertaken in Miki’s supervision, this Inquiry is bound to say that in our view it is extraordinary that Miki was able to deceive experienced probation staff over such a period of time. We certainly do not suggest in any way that Corrections staff were less than diligent but we endorse the view expressed by the Judge when sentencing Miki, “How could all this happen?”.
86. Having said that we are also bound to note, and repeat the comments in the introduction to this Report, that Miki’s brazen, flagrant and shameless skills in deceiving people who would normally be expected to detect and deal with such behaviour, has been a matter of constant surprise and amazement to us throughout our Inquiry. Those he deceived were certainly not limited to staff in the Department of Corrections.
87. The Inquiry fully supports the **recommendations** of the special investigation report and itself recommends that the Minister of Corrections direct the Chief Executive of the Department to give priority to their implementation.
88. We are also aware that following Miki’s arrest and before his sentencing on 18 May 2012, the Department of Corrections applied to the Parole



Board to vary the terms of the Extended Supervision Order. In granting the application the presiding Judge said:

*“This variation is necessary to manage Mr Miki’s deception and reduce his risk of further sexual offending against children.”*

89. The Inquiry understands that the 10-year Extended Supervision Order made on 11 March 2012 remains extant and in abeyance during the time Miki is in prison serving his current sentence. Upon his release the order will be re-activated and will remain in force until 10 March 2022.
90. In our discussion with the Chief Executive of the Department of Corrections, the issue of the supervision of such orders where an offender possessed skills of deception and manipulation such as those possessed by Miki, was raised. It is clear to us, based not only on what happened with this case but with the absolute need to do all that can be done to ensure the safety and well-being of children in schools in the future, that some form of electronic supervision is essential.
91. We have been informed by the Chief Executive of a proposal for the development in New Zealand of a GPS tracking system. We presume that such a development would have legislative authority and be imposed by a judge as part of a sentence or a supervision order such as that imposed on Miki.
92. The Inquiry gives its full support to this development and **recommends** that you convey this support to the Minister of Corrections.

# PART FOUR

## Boards of Trustees as Employers

Term of Reference 1.c. i-iv



## Introduction: School governance in New Zealand

The Inquiry's Terms of Reference 1.c. i–iv direct us to investigate the process schools undertake with regard to vetting prospective employees, covering the legislative requirements, boards of trustees' policies, boards' capacity and capability to deliver those policies, and whether the Ministry of Education or the Education Review Office reviews such policies.

# Section 1

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### Governance by the community

01. New Zealand state schools are Crown entities, as set out in Schedule 3 of the Crown Entities Act 2004, and constituted as bodies corporate under the Education Act 1989.
02. Unlike the Crown's other major human service providers, District Health Boards, school boards are not Crown agents so are not "required to give effect" to government policy. Nonetheless, education sector boards must comply with (ie give effect or have regard to) directions given under their Minister's statutory power of direction (Section 114 of the Crown Entities Act 2004). We question whether this is sufficient ministerial authority when significant policies are to be implemented.

The Inquiry recommends that the Ministers of Education and State Services review the appropriateness of the categorisation of school boards of trustees as statutory Crown entities in terms of their ability to implement government policy and achieve national education goals for New Zealand children.

03. State schools are governed by locally elected boards of trustees constituted under Part Nine of the Education Act 1989. Board membership is augmented by one staff representative and, in secondary schools, one student representative.<sup>1</sup>

<sup>1</sup> Astonishingly, within four months of his appointment to a large metropolitan primary school in Auckland, Miki had been elected as the staff representative. While this reflects the uncritical support he enjoyed in his early days at the school, it does not necessarily represent the governance skills of staff representatives in other schools.

04. In a multi-billion dollar industry, some 14,500 locally-elected, non-professional trustees control the portal for over 2,500 points of institutional entry to many thousands of jobs in one of New Zealand's largest labour markets.
05. Some parts of that market experience very substantial demand and supply pressures – notably schools and kura seeking to enrich their students' familiarity with and skill in Te Reo and other aspects of Māoritanga. This proved to be material in the Miki case, and was one of the factors we took into account in reviewing the employment decisions of boards that had hired him.
06. The citizens on school boards are authorised to hire, without external influence or intervention and often without much guidance or appropriate support, about 110,000 teachers and support staff. In most cases their decisions enable skilled teachers and other staff to provide students with a good education. This Inquiry has highlighted some of the barriers to every student's enjoyment of such good experiences.
07. Trustees' decisions generate some two million payments annually by the central Ministry of Education for a multi-billion dollar bill for salaries and expenditure on support and other resources for teachers.
08. Given the fiscal impact of the school sector and its importance to New Zealand's prosperity, as well as the unique nature and overall size of the school labour market and associated service industries, it is noteworthy that New Zealand school governors are not required to have any particular knowledge, skills or governance experience in employing professional and other support staff. For the past 25 years the basic premise of New Zealand's internationally-unique school governance system has been that trustees' interest in their own and other local children will ensure their vigilance and critical attention to any matter likely to have significant impact – for good or bad – on the education and well-being of those children.
09. Trustees' governance ability ranges from those who may be functionally illiterate to others with senior management experience in large New Zealand corporates. Even in an industrial labour market that is very tightly constrained in terms of professional employment contracts, and the fact that the central state has retained direct ministerial control over teachers' salaries, the employment and management of professional staff represents a considerable challenge for lay people.

10. This is underlined by:
- a. the lack of any effective opportunity for boards to design, critique or determine the nature and quality of pre-employment education and training, or the quality of the 20 or more providers who train the teachers they will later employ
  - b. the critical role of the New Zealand Teachers Council as the sole gatekeeper for approved entry to teaching
  - c. the ambivalent professional-industrial role of the teachers unions
  - d. the statutory ability of boards to delegate employment and staff management to the principal.

The Inquiry recommends that the question of school boards' engagement in the design of entry standards for teacher trainees be considered as part of the forthcoming Teachers Council Review.

#### Boards' employees: professional teachers

11. Teaching staff see themselves, and are widely regarded as, belonging to a profession with national and international standing. The profession is recognised, registered, represented and promoted by the New Zealand Teachers Council (NZTC), two large unions and a number of other professional associations.
12. New Zealand teachers have a very strong industrial base in their two unions, one for primary teachers, the other covering the secondary sector. Both the NZTC and the unions are significant players in the scope boards of trustees have to hire, discipline or dismiss teaching staff. Industrially-negotiated employment contracts between the Ministry of Education and the unions incorporate professional performance criteria which boards are expected to take into account when hiring teachers.

#### Preparing teachers for employment

13. Pre-employment education and pedagogical training services for schools and kura are provided by some 20 different agencies, a remarkable – and fiscally indulgent – number, given New Zealand's relatively small population. There are seven specialist university faculties in the main urban centres of New Zealand, their programmes approved by the NZTC. There are 10 Private Training Establishments and three wananga (including Raukawa which uses Te Reo as the language of instruction) whose programmes are approved by the New Zealand Qualifications Authority (NZQA).

The Inquiry recommends that the Ministers of Education and Finance review the costs and value added to the school education system through the operations of up to 26 different teacher training institutions, in light of forecasts of training demand, as affected by the size of the New Zealand school population, changes in technology and teaching practice over the next 10–20 years.

14. In addition to meeting the NZTC's requirements, pre-employment teacher education and training programmes must also be approved by the Committee on University Academic Programmes (CUAP) or, for other training providers, the New Zealand Qualifications Authority.
15. The NZTC has developed policies to address the statutory requirement that all registered teachers be "satisfactorily trained to teach". The Council's current requirements, published in 2012, will be upgraded in 2015. The primary criterion for determining "satisfactorily trained to teach" will be evidence of graduation from an approved New Zealand training provider or comparable overseas source.
16. The Council has also promulgated a set of criteria – *Graduating Teacher Standards* – to guide tertiary education and training agencies in what will be required if their graduates are to be registered to teach. The policy states that for registration purposes a person seeking registration will have a tertiary level qualification "that includes sufficient elements of teacher education" and can demonstrate that they meet the Graduating Teacher Standards or their equivalent. The adequacy of this policy is one of the draft terms of reference for the forthcoming review of the NZTC.
17. In a draft report entitled *Assuring the Quality of Teaching in New Zealand Schools, 2012*, the Office of the Auditor General (OAG) notes that the dual role of approving both professional education standard and the standards for registration for entry to the profession is "not typically a component of the registration systems for other professions".

The Inquiry recommends that the forthcoming review of the Teachers Council evaluate the merits and disadvantages of retaining dual approval by the NZTC for both professional education and registration standards for the teaching profession.

18. In the same report, the OAG states that "the Council has an important role in ensuring that there is a strong connection between the standards it sets for registering teachers and the content and outcomes of the training courses that make up initial teacher education".

19. While we would not contradict the OAG as to the importance of this role, we doubt that currently the Council has the capacity to “ensure” that there is an auditable link between course content and its standards or, more importantly, teacher training outcomes. We question whether the Teachers Council should continue with its programme approval role, when its leverage could be more usefully focused on the standards and quality of outcomes that should be achieved by training providers.
20. We note that the NZTC’s monitoring processes, which are contracted either with the universities or with NZQA, include a six-yearly on-site review, and aim to keep track of how well approved programmes continue to meet their requirements. Furthermore, we understand that work is being done now by the NZTC to introduce six-yearly surveys of graduates once they are employed in schools.

The Inquiry recommends that as part of the forthcoming review, the NZTC’s current proposals for six-yearly surveys of teaching graduates be evaluated to test the sufficiency of assurance they would provide for the government, employers, school boards and other key stakeholders as to the quality of pre-employment teacher training.

21. As the OAG observed, however, the NZTC is not the only body charged with “ensuring” that graduate teachers are well equipped when they enter the classroom. Others include the Ministry of Education, the Tertiary Education Commission and NZQA.
22. We strongly agree with the OAG that “as with most systems of professional registration, the main formal control on quality is at the stage of entry to the profession”. It is at the point of a teacher’s entry to training, registration, certification and employment, that the Ministry of Education has the most effective opportunity to influence the quality of classroom teaching and school management, and school boards have their most significant opportunity to influence the well-being and educational experiences of their students. We consider that these opportunities should be strongly reinforced.



The Inquiry recommends that it should be within the Minister of Education's remit to determine the policies that govern and raise:

- a. the pre-entry standards required by teacher training provider institutions for applicants with other tertiary qualifications to undertake pedagogical training
- b. the pre-employment standards required by the New Zealand Teachers Council when assessing whether a "satisfactorily trained" person may be provisionally registered and entitled to apply for teaching positions
- c. the pre-certification standards required by the New Zealand Teachers Council to assess whether a provisionally registered teacher is entitled to a full practising certificate after his/her first year of employment as a teacher in a New Zealand school
- d. the employment standards required by state and state-integrated school boards of trustees in assessing the competence, suitability and other qualities of anyone applying for a teaching job (privately owned and charter schools would be excepted).

## Section 2

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Legislative requirements and board of trustee policies  
(Terms of Reference 1.c. i and ii)

The powers and responsibilities of boards of trustees as employers

01. Each school board includes the principal and parent-elected members, along with an elected staff representative and, in secondary schools, a student representative. The board may co-opt a member(s) if, for instance, it considers there is a need to supplement the skill set of the elected members.

National Administration Guideline (NAG) 3 is an official directive to boards:

“According to the legislation on employment and personnel matters, each board of trustees is required in particular to:

- a. develop and implement personnel and industrial policies, within policy and procedural frameworks set by the Government from time to time, which promote high levels of staff performance, use educational resources effectively and recognise the needs of students
- b. be a good employer as defined in the State Sector Act 1988 and comply with the conditions contained in employment contracts applying to teaching and non-teaching staff.”

02. In law, the board is responsible for the governance and control of the management of the school. It is the employer of all staff in the school, responsible for setting the school’s strategic direction in consultation with parents, staff and students, and for ensuring that its school provides a safe environment and quality education for all its students. Boards are also responsible for overseeing the management of personnel, curriculum, property, finance and administration.

03. The primary legislation relating to boards of trustees as employers is the Education Act 1989. Other relevant legislation includes:

- the State Sector Act 1988
- the Crown Entities Act 2004
- the Official Information Act 1982
- the Privacy Act 1993
- the Health and Safety in Employment Act 1992
- the Human Rights Act 1993
- the New Zealand Bill of Rights Act 1990.

Education Act employment provisions

04. Definition of the general role and functions of a board of trustees, vis-à-vis employment matters, as set out in the Education Act 1989, is relatively broad brush, but quite clear in respect to the employment of teachers: they must be registered and that registration must have been preceded by a police vet and other actions to ensure that the registered person is of “good character and fit to be a teacher”.
05. Provisions in Part 7 Sections 78C–78CD cover the requirement for a police vet for any non-registered teachers, other staff, contractors or other persons with unsupervised access to students.

Part 7 Section 65 Subject to Part 8A and Section 120A of the Education Act 1989, a board may from time to time, in accordance with the State Sector Act 1988, appoint, suspend, or dismiss staff.

Part 10 Section 120A covers Restrictions on appointment of teachers.

- (1) (a) An employer must not appoint to a teaching position any person (i) whose registration has been cancelled; and (ii) who has not since been registered again; or
- (b) any person whose practising certificate is suspended under Section 139AU or 139AW (1) (d); or
- (c) any person whose authorisation has been cancelled, and has not since (i) been authorised again; or (ii) been registered as a teacher; or
- (d) any person whose limited authority to teach is suspended under Section 139AU or 139AW (1) (d).
- (2) No employer shall permanently appoint to any teaching position any person who does not hold a practising certificate.

Section 120B covers Restrictions on continued employment of teachers.

- (1) as for 120A
- (2) no employer shall continue to employ in any teaching position any person who holds neither a practising certificate nor an authorisation (ie as listed by the NZTC), if that person is not under the general supervision of a person who holds a practising certificate, although an unauthorised person or a person without a practising certificate can be employed for not more than 20 half days (4) (a) or (any other number approved by the NZTC).

Section 123 sets out the requirements for a person to be provisionally registered, that such a person is to be registered as provisional only.

Section 122 sets out requirements for full registration. The NZTC must be satisfied that an applicant is of good character, is fit to be a teacher, is satisfactorily trained to teach and has satisfactory recent teaching. Sections 124A–125 set out how the Teachers Council is to determine that training has been satisfactory, a person is of good character and fit to be a teacher, and whether or not employment has been satisfactorily completed.

06. We note that, unlike non-registered persons working in schools, there is no legislative requirement for those who supervise the 27,000 students enrolled in the Correspondence School (Te Kura) to be vetted. There are at least two concerns here, the first only marginally related to the vetting issue. Firstly, Te Kura students who are identified through the Non-Enrolled Truancy Service (known as Netted) may be denied enrolment by mainstream schools. As a result, the Ministry of Education, unable to compel schools to the point of successful enrolment, may enrol these students (of whom there are some 600 annually) in Te Kura through the “alienation” gateway.
07. The second issue flows from the first but has wider implications – and directly goes to the substance of this Inquiry. When enrolling students with Te Kura, the Ministry of Education identifies the person who is to be the student’s supervisor. In most cases this will be a parent or other family relation. This supervisor is paid an annual allowance in two tranches: the first is up-front, the second dependent on the student returning completed scripts for assessment and so forth.
08. Prima facie it might be argued that these and all other students’ supervisors should, at least, be subject to police vet. In effect, this would require Te Kura students’ parents to be vetted, as are adults dealing with mainstream school students in an unsupervised situation. There might also be an argument to support a search for information in CYRAS, the database used by the Child, Youth and Family Service of the Ministry of Social Development.
09. While this might be politically controversial, there are alternatives we suggest for Ministry consideration. For instance, Te Kura might be required to obtain a vetting for all those supervisors who are in some sort of third party arrangement – that is, they provide supervisory services for parents or whānau who are for some reason unable to undertake this role themselves.
10. Other than referring our concerns to the Ministry, and reiterating our general preference for setting the safety and well-being of children above other interests, we do not intend to make any recommendation on this matter. Clearly there are policy and regulatory issues to be considered by the Ministry of Education and other agencies, as to the balance to be obtained between the right of children to be safe and the civil rights of adults.
11. It would not be expected, nor would it be good law, to specify in any more detail the actual processes and procedures that might be regarded as good practice in employment. In New Zealand, however:

- a. many board trustees have had no experience of employing staff (and in some cases no experience of being employed)
- b. boards are employing people to work in an agency where child well-being is a significant issue and
- c. the quality of the classroom teacher is regarded as the single most significant in-school influence on student learning.

Therefore it could reasonably be expected that boards' hiring practices would be accorded major importance by parents/whānau and all non-school agencies. As we discuss later, the Inquiry has not found evidence that this is the case.

#### State Sector Act employment provisions

12. State Sector Act 1988 relates to the Education services of the State Services and covers teachers as employees in state and state-integrated schools. Mirroring the provisions of the State Sector Act governing the employment and management of staff in the Public Service, there are general provisions in these parts of the Act governing school staff.
13. For example, boards must operate a personnel policy that complies with the principle of being a good employer. This is defined as an employer who “operates a personnel policy containing provisions generally accepted as being necessary for the fair and proper treatment of employees in all aspects of employment including good and safe working conditions, an equal employment opportunities programme, and the impartial selection of suitably qualified persons for appointment ie on merit”.
14. In addition to such requirements, in the teaching service each school board (the employer) “shall ensure that all employees maintain proper standards of integrity, conduct and concern for the public interest and the well-being of students attending the school”.
15. Section 77E of the State Sector Act 1988 states that “subject to the requirements of registration”, a board may appoint any staff deemed necessary for the efficient exercise of the functions, duties, and powers of the [school], and may, subject to any contractual conditions, remove any employee from employment in the school.
16. Section 76 of the State Sector Act 1988 makes it an offence for any person to influence a decision, in respect to those matters described in Section 77F above, of an employer or other person with the delegated powers ie the principal.

17. Section 77F of the State Sector Act 1988 specifically requires employers to act independently. This duty requires that “in matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, disciplining or the cessation of employment of any employee, or other matters) the employer shall act independently”.
18. It was suggested to the Inquiry by a senior ERO manager that Section 76 of the State Sector Act 1988 acts as a prohibition against ERO reviewers delving into boards’ hiring practice. We return later to the matter of how such a perceived “prohibition” may affect the way ERO carries out its field reviews and the documentary material they seek from schools as a vital element in ERO’s compliance monitoring.

## Section 3

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The capacity and capability of school boards of trustees  
(Terms of Reference 1.c. iii)

01. Trustees elected by parents are not required to have any particular experience in employing professional and other staff, and may only fortuitously possess this capability.
02. Therefore, in our view, the regulatory framework, systems and agencies responsible for advising, data-checking, data-sharing, supporting and monitoring board performance acquire more significance than in most other labour markets. This is reinforced by the fact that the “client group” most directly and indirectly affected by the choice of employees made by boards are children and young people.
03. In the time available it was not possible for the Inquiry to provide a comprehensive evaluation of the capability and capacity of some 2,500 school boards to deliver their legislative or employment policy obligations. Thus, for the purposes of this Inquiry, we have taken the following information as an indicative proxy for boards’ overall capability and capacity as employers:

- a. the generally available employment advice, guidance, training, monitoring and review tools provided for boards by a number of State agencies, contractors like the New Zealand School Trustees Association, and state-recognised bodies, notably the unions
  - b. comments made to us by experienced school principals and trustees and the heads of the national teachers' and principals' associations
  - c. any specific information on the employment processes and practices adopted in those schools that had employed Miki.
04. As discussed in more detail later, the Ministry of Education does not ordinarily provide training for boards in employment matters but contracts with the New Zealand School Trustees Association (NZSTA) for such services.
05. Apart from publication of the National Administration Guidelines (NAGs) and the National Education Goals (NEGs), advice and guidance from the Ministry on the hiring of school staff is minimal. Numerous guidelines, advisory publications and courses delivered via a Ministry of Education contract by NZSTA have come to be the stock business of that Association on behalf of its voluntary membership.
06. School boards have the right to rely on the State's statutory, role-specific registration agency. Poor performing boards or those with limited understanding and experience in hiring teaching staff should be able take some comfort from the fact that if a person presents with evidence of official NZTC registration, or has previously held a Limited Authority to Teach, that person will be of good character and fit to teach. High performing boards with proven experience in hiring competent professional staff should be able to use NZTC registration as the base on which to build their own school-specific employment requirements.
07. However, as we have observed, even a school praised by ERO for educational reasons can fail very painfully in hiring teachers if every part of the process is not meticulously managed and critical judgement continuously applied.
08. In this, the obligations of the principal as CEO are clear, and the accountability of the board unqualified. Irrespective of delegations to the principal, it is boards that hire staff and are accountable for those choices, not the NZTC and not the principal. Nonetheless, custom and practice, and the respect accorded principals in most communities, mean that very often neither the statutory power nor legal accountability of a statutory board is recognised.



09. Even if the NZTC's registration data and associated documentary information were ample and consistent, responsibility for validation, verification and authentication of all the material supplied by an applicant always rests with the board.
10. However, we found extremely uneven performance amongst boards. For instance, as exemplified in the Miki case:
  - a. candidate interviews are not always conducted and where they are, the appointing board/principal may overly rely on this tool, which best HR practice evidence shows to be quite inadequate
  - b. we found no sound evidence (if any) of consistently careful, thorough reference checks by the boards of schools that had employed Miki. Based on what we were told by NZSTA, ERO, other officials, the unions and principals' associations, we are not confident that this is well or consistently done throughout the school sector
  - c. nor did we find evidence that boards take up the opportunity provided when applicants consent to a wide search for references, beyond the two or three they may have named. Sometimes none or only one of the named referees is consulted, and it is clear from this Inquiry that few if any efforts are made to authenticate the referee's suitability, honesty, reliable knowledge of the applicant or any potential conflicts of interest that could affect the value of the reference.
11. As mentioned earlier, board members whose own children will be directly affected should be highly motivated to make high quality employment choices. Yet we found near-complacent reliance on the Teachers Council, the recommendations of the principal and only spasmodic interest in any reference checking that may (or may not) have been done.
12. We were struck by the weaknesses in this, not only with regard to incentives for demonstrably protecting the safety of children, but also for the likelihood of realising the government's interest in improving the quality of classroom teaching.
13. Boards are not active players in the pre-employment teachers' market and are virtually silent as a voice on the demand side of that market. As noted earlier, this means that their key leverage in terms of teaching quality comes when they employ a teacher. If this is not rigorous, critical and searching, the board cannot be sure that the learning and well-being of their students will be advanced and protected.

- How do boards establish that an applicant is of “good character and fit to teach”?
14. The job of finding out whether a job applicant is of good character, fit to teach and appropriately trained is not left to a school board alone. Part 10 of the Education Act 1989 delegates much of this to the Teachers Council.
15. Under Part 10 Section 123 (1), the NZTC may approve provisional registration, which immediately carries with it a teacher’s practising certificate, if satisfied that the applicant is not only of good character and fit to teach, but is satisfactorily trained to teach and either has not previously been registered or is likely to be a satisfactory teacher. In order to approve full registration, the Council must additionally be satisfied that the provisionally registered teacher has had satisfactory teaching experience (Section 122 (d)). No fresh police vet is required for a person to move from provisional to full registration unless that move coincides with the teacher’s triennial anniversary.
16. After induction, subject to the endorsement of the principal and the supervising teacher with whom they have been working, school boards are responsible for ensuring that provisionally registered teachers are mentored for two years in order to be eligible for full registration in terms of the Teachers Council’s Registered Teacher Criteria (adopted 2010). Although prima facie this system seems adequate, Miki’s case and advice we received from officials and professional leaders in the school sector are a warning that reliance on written attestations that are not independently validated carries its own risks.
17. Teachers must renew their full registration every third year, and this includes, inter alia, a fresh police vet. The risks here include name changes in the interim period, a matter addressed elsewhere in this Report.

#### Vetting and checking prospective school employees

18. The process for vetting prospective school employees is only one small but vital part of a complex school employment system.

Part 10 Section 139AZD of the Education Act 1989 covers police vetting of prospective school employees. Section 78C covers police vetting of non-teaching and unregistered employees at schools and Section 78CB specifies that anyone who has unsupervised access to students must have a police vet no more than two weeks after commencing employment.

19. The Teachers Council is one of a number of recognised vetting agencies, meaning that the Council is entitled to request that the police vet any teacher or Limited Authority to Teach who may have unsupervised access to their students. Vets for other non-teaching staff and contractors are referred by boards to the police.
20. Information on criminal convictions, and other sensitive information, is held by the police. In response to a request, a vet report from the police addresses the evidence (if any) of criminal conviction, though not of criminal charges. These reports are routinely stamped with a standard disclaimer: “Note: person is possibly identical”. Sometimes, the police report may include other sensitive information from their files.
21. Elsewhere in this Report we discuss our concerns over the reliance that can be placed on vet information provided by the police, and the much broader range of relevant data that could currently be accessed by, or may shortly be available to, school boards seeking to establish the good character and fitness to teach of applicants for teaching positions if appropriate protocols were entered into.
22. Across government as a whole, we were advised of the number and utility of departmental databases, often managed as though they contained information private to the organisation itself (eg benefit fraud, traffic offences, criminal convictions, payroll data, tax-related data, data about persons who may be contracted to provide foster care, births, deaths, marriage and passport registers etc). We were encouraged to learn of initiatives being taken now by different departments to eliminate silo effects, sometimes in response to what is already in the public arena about Miki’s case and the terms of reference for this Inquiry. We comment on these and other proposed developments in Part Three of this Report.
23. The New Zealand Teachers Council register is a list of the names of persons who have been provisionally registered subject to confirmation, or fully registered, or have been accorded a limited authority to teach. It must be correct and any errors must be corrected.
24. As discussed elsewhere, in June 2009, after stealing Person X’s identity and registration, Miki then sought and obtained official NZTC approval for the name changed officially by the Department of Internal Affairs (Births, Deaths and Marriages) to be entered on its register of teachers. A convincing and lawful copy (albeit unlawfully effected) of the official birth certificate held in the Department of Internal Affairs was supplied by

Miki when seeking teaching jobs between 2009-2011. The document dated 10 June 2009 shows how this transaction is recorded: the original birth name (Person X), his parents' names, date and place of birth, and the new name (permanently suppressed by court order in association with the last two schools in which he taught).

25. Unlike the Department of Internal Affairs records, however, in every case where a registered teacher effects a name change and asks this to be noted on the NZTC register, the original name is overlain on the register. The registration number, however, remains the same as that alongside the original name. In our view, a process that does not readily indicate all the known names and aliases of a registered teacher may facilitate identity theft or lead to other identity risks.
26. Section 128A of the Education Act refers to the matching of the Teachers Council's register information and the Ministry of Education's information about payment of teacher salaries at pay-rolled schools. We understand that achieving this arrangement for data-sharing took some time, and the delays were not only related to the sensitivity of data but also the cross-agency barriers (cultural and other) that we observed elsewhere in the education and criminal justice systems.

The purpose of Part 10 Section 128A of the Education Act 1989 is to facilitate the exchange of information between the Ministry and the Teachers Council for the purposes of enabling the Teachers Council, in regard to people employed in teaching positions, to identify the person's employer and the person's registration status; and the Ministry, in regard to regular teachers and relieving teachers in receipt of salaries at patrolled schools, to identify their salary entitlement or eligibility, if any, for an allowance on the basis of their registration, and sets out the categories of information that the Teachers Council may, in accordance with the Privacy Act previously agreed by the parties, provide the Secretary and compare that Ministry information with the Teachers Council register.

27. The NZTC register lists surname, first name, date of birth, gender, and registration information. Any change in name is overlain on the original, but other known aliases are not included on the Teachers Register. This is different from the Ministry of Education's payroll lists, where the original/initial name on the Ministry's payroll may be overlain with a new name (eg official name change), but in technical terms, all old names can be recovered. The person's payroll number remains the same throughout that person's payroll history.

28. We are strongly of the view that on the Teachers Register, if not other official lists of names, a biometric photograph should always be attached. Tertiary students almost always have an ID photograph that could be compared with one they are asked to submit during the NZTC registration process, which could later be compared with a photograph taken if they apply for a position in a school.
29. The Ministry of Education and NZTC systems mirrors the IRD system, but with some recently implemented differences. In the past, a person's IRD number remained attached to the person although a person might lawfully adopt any number of "new" names and obtain an IRD number for each, without questions being asked or reasons required. Since a recent case of serious benefit fraud, this practice has now changed and no one will be issued with a new IRD number unless he or she can prove their identity to IRD's satisfaction.
30. In Miki's case, we are concerned that no trigger or "red flag" was alerted when the name of the person attached to a specific NZTC register number was changed. While on its own the simple fact of a name change might not trigger an alert on the NZTC's register, all the people we talked to in and outside the education sector either volunteered or agreed, in principle at least, that some readily available digital form of biometric photographic identity is needed in this registration and school employment system.
31. This would be a substantial improvement if consistently used through all phases of the training-employment-appraisal processes. Officials in the identity fraud unit of the Ministry of Social Development were very clear that, given the risks to children's well-being and other legitimate reasons for employers and others to require proof of identity, a biometric digitalised photograph should be required at registration and thereafter at every re-registration.
32. Throughout the Inquiry, and most encouragingly amongst teachers, teachers' unions, principals' associations and parents, the idea of an identity photograph was supported as a practical, commonplace way for identity to be established. Some had clearly given this matter considerable thought, and emphasised that a photograph should be taken, with the applicant's coincidental consent, at the time of a selection interview, and compared with photographs held, say, on master file by the NZTC.

The Inquiry recommends that as a matter of some urgency, policies on proof of identity be considered by the Ministry of Education in consultation with key education sector stakeholders for introduction as soon as is feasible to all key points of entry to teacher training, teacher registration, the approval of practising certificates, and employment in schools.

In particular we recommend the use of biometric photographic evidence of identity at all phases of a person's entry to teaching.

#### Reference checking

33. Among the key tasks for a board when hiring any staff member, but especially when engaging a professional teacher, is reference checking. Although this Inquiry has paid particular attention to police vetting, as managed by the NZTC, almost as important at the board level are the reference checking processes that facilitate a person's employment in a school.
34. Serious questions arise here in respect to the general practice of school boards as employers. As in much of what is noted elsewhere in the Report, these questions turn on the importance of triangulation: validation, verification and authentication.
35. In any system or process where identity, performance or impacts cannot be objectively proved on the basis of incontrovertible and cost-effective evidence, it is internationally recognised as good practice to use a number of tools to validate, verify, and authenticate data and information.
36. NZTC registration processes provide boards with a useful base for assuring themselves about candidates presenting themselves for employment. However, although necessary, registration, which already includes police vetting, is not sufficient – as amply demonstrated in the Miki case. Nor do any of the documents presented to an employing board fully establish identity although as a package they may come close to offering such assurance.
37. Registration demonstrates that the person named on the documents before a board has been registered to teach. It does not mean that the person before the board is so registered. Tertiary qualifications may appear authentic, but may not lawfully belong to the applicant. They may be forged or purchased from an overseas source established to furnish bogus qualifications. Without even conventional photographic evidence, an applicant's identity is at best taken on trust.



38. The application form commonly in use provides a board with another source of confidence that the person named in the NZTC registration documents is likely to prove a satisfactory employee. But since the application is basically self-attestation, the board should take every practical step to test the self-reported data, in particular through the lawful means it already has for reference checking.
39. As noted elsewhere, the Inquiry particularly notes and strongly recommends the use of the application form template offered to school boards by the New Zealand School Trustees Association (which could itself be improved by amendment in line with what the NGO *Child Matters* recommends).
40. There is a widely and erroneously held view that a board should limit its inquiries about a prospective employee to those persons nominated as referees by the applicant on the application form. When questioned, boards may offer “Because Of The Privacy Act” (the BOTPA syndrome) as the basis for their belief.
41. In fact, as discussed elsewhere in this Part, the Privacy Commissioner actively encourages boards to make it plain to applicants that they will seek information on suitability for employment from the widest appropriate range of people. NZSTA and the Privacy Commissioner advise boards to make this explicit on the application form, emphasise it to all applicants, request the applicant to consent to the provision, and, if the applicant does not give such consent, seek an acceptable explanation as to why not.
42. In the Miki case, almost all reference checking over the years was weak at best. In some cases reference checking has not been taken seriously, possibly because its purpose was not well appreciated by trustees, and the concept of triangulation was treated as an optional extra – nice to have but not essential.
43. Issues raised during this Inquiry could usefully be explored in more detail in the forthcoming review of the NZTC and by ERO during its school reviews:
  - a. When and how does the Teachers Council satisfy itself that employing boards are following safe practices when recommending teachers for full registration or for renewal of registration?
  - b. If a board decides to interview a candidate for a teaching position, how do they satisfy themselves that the person before them is the same as the one who claims to have been registered by the Council?
  - c. How, why and when do boards decide to make reference checks; who makes reference checks – a board member, the principal, a staff member?



- d. What steps do boards take to satisfy themselves as to the appropriateness, impartiality, veracity and relevance of the named referee(s)?
  - e. What questions do boards or their representative(s) ask of referees? How frequently do boards go beyond checks with one or more of the named referees to make other inquiries?
44. We did not see any customised guidance for boards that pointed them to these matters, or assisted them in getting the answers. Nor did we find that this aspect of school employment had been reviewed or evaluated by ERO or other external authorities.
45. Within the scope of the relevant legislation, we had expected that, if consent had been given by an applicant, boards or principals would routinely consult their own colleagues and applicants' previous employers, as well as any other persons cited as referees by the applicant.
46. However, we found that even where consent for wide consultation had been agreed by the candidate, this largely informal "vetting" process varies widely across the country. At best it is characterised by collegial trust, and confidence born of professional association in the numerous networks that are part of the social fabric of this small country. At worst it simply does not happen.
47. Apart from the extraordinary duplicity of his conduct over the years, Miki's success in "getting in" to schools with significant interest in the education of Māori students is not unique. Supply shortages and the formal requirements of law and policy smoothed his way.
48. Employers are required by National Administration Guideline 1 (v) and the National Education Goals (NEGs) to give high priority to the "advancement of Māori education initiatives". Across all schools, but especially where there is a significant Māori community, boards and principals compete for very scarce skills in Te Reo and other pedagogical and cultural attributes that might enable them to support the achievement of Māori students.
49. ERO's sustained focus on improvement in Māori education, and its public rebuke or praise for this challenging aspect of governance, provide another strong incentive for boards to engage anyone who might contribute, especially if their whakapapa recommends them for work in a particular rohe.
50. Unscrupulous but personable candidates like Miki are rare but not unknown. Their confident presentational skills and assurances of experience and qualifications are understandably attractive to desperate employers in both populous urban settings and isolated rural areas. They

offer few incentives for meticulous reference checking. In the Māori world, whakapapa is the determinant of much social interaction, and the complexities of whanaungatanga do not readily lend themselves to formal audit tracking. In addition, the increasing use of social media and electronic exchanges of information are making it even more difficult to establish any conventional audit trail.

51. All this effectively mutes the perceived need for principals, who have often received no job applicants at all, to take proper care with an appointment. They avoid the risk of losing a teacher through time-consuming reference checking and other questions.

We doubt the current capacity of the school system to achieve the objectives of the government's NAGs and NEG's and related policies in respect to Māoritanga and the quality of Māori children's education. Therefore, we recommend that these policies and guidelines be revised to more realistically reflect:

- a. the state of the Māori labour market
- b. the intense general labour market competition for competent speakers of Te Reo and essential Māori cultural skills
- c. the perverse incentives to which they expose school employers.

How do boards handle sensitive issues and name changes?

52. Setting aside for the moment a board's statutory duty to report resignations, dismissals and other such matters to the Teachers Council, we were interested in whether there is any statutory directive or Ministry policy on a board's obligation to document a process for dealing with information about an applicant's or an employee's criminal convictions.
53. The Chief Review Officer (CRO) advised us that there is no such policy requirement. However, he stated that:
- a. it is among the requirements of the State Sector Act that employers will "operate a personnel policy that complies with the principle of being a good employer" and "ensure that all employees maintain proper standards of integrity, conduct, and concern for the public interest and well-being of students attending the institution"
  - b. this implies that a "prudent board could/should therefore be expected to have such policies in place as a matter of good practice".
54. The CRO added that although ERO does not focus especially on whether there are such voluntary policies when it reviews a school, nonetheless

it is ERO's experience that *“boards (remembering that a good percentage of the members will have children at [their] school) and principals try very hard to put in place and implement /operate good policies to get the best possible staff in their school ... [though this is not always possible, particularly relating to quality] in all schools where teaching and support staff are in short supply and applications are few and far between – remote, rural, unpopular urban, language immersion etc”*.

55. We were also interested in whether a board had any lawful discretion to employ a person with a criminal conviction. Again, we were advised that this is not a matter for formal policy but good practice and prudence on behalf of a board:

*“A board may not discriminate, so a past conviction for a minor offence that had absolutely nothing to do with teaching and the care of children ( maybe a driving offence or a fraud offence, for example) should not prevent a board employing someone in either a teaching or support role where the past offence had no relevance. On the other hand a conviction for a “relevant” offence (assault, child abuse or similar offence – what is called a ‘specific offence’ as defined in Section 4 of the Clean Slate Act) would certainly do so, and a prudent board operating good practice policies would make sure they did not knowingly employ anyone who did not pass that barrier.” (CRO, ERO 8 May 2012)*

We are not sure that this confidence is sufficiently justified by boards' performance as employers to leave such a policy matter up to their discretion and suggest that it might be reviewed by the Ministry of Education in consultation with NZSTA.

56. The Inquiry found that name change is a very common – and commonly accepted – feature of our society. The reasons and implications of this are discussed in Part Three of this Report. It is not known how many persons who have changed their original birth name or officially adopted more than one name change have been registered as teachers and employed in New Zealand schools. In fact, unless both the NZTC and Ministry of Education payroll retain all known names and aliases of any person registered or paid a salary, it is unlikely that this could ever be clarified.
57. A traditional reason for a teacher to request a change of name is because he or she has married or entered into a civil union. In modern times the motives are sometimes less honourable. In any case, the Inquiry is of the view that, even though it might not have helped Crown agencies to apprehend a determined fraudster like Miki, a police vet should be obtained whenever notification of a name change is provided for either the NZTC or the Ministry's payroll administrator.

58. On their own, no school boards could carry out the complex search processes that present large government departments with identity concerns. In Miki's case, the discovery by three school principals that he was not who he claimed to be and had a number of aliases was serendipitous, only coincidentally confirmed because of work by the police.
59. Part Three of this Report includes a number of recommendations that advocate cross-agency data sharing and identity matching processes that we believe will reduce school boards' susceptibility to fraud, theft and the deceptions effected by Miki in so many institutions.
- Practising certificates
60. Under Part 10, Section 130 of the Education Act 1989, the Teachers Council can issue a practising certificate if a person is registered and has had a satisfactory police vet within the past three years. The certificate expires when a holder's registration expires.
61. The Chief Review Officer of ERO, previously a very experienced principal in a large secondary school that employed many teachers, expressed to the Inquiry his concern at the ease with which a teachers' college or university graduate acquires a practising certificate. He observed that it is issued at the same time as provisional registration is approved by the Teachers Council, and immediately transfers to the novice graduate a substantial burden of responsibility for the well-being and education of children and young people. Unless the in-school supervision, oversight and mentoring of the newly authorised teacher is scrupulous, consistent and of high quality, the novice teacher's competence, character and fitness to teach may not be rigorously observed.
62. At present, the often attenuated process of according a practising certificate, provisional registration and subsequently full registration relies almost exclusively on the endorsement of the principal and other senior staff in the school where the teacher is employed. A new police vet is not required when a provisionally registered teacher applies to be fully registered, but in our view this should always be done.
63. The Chief Review Officer and others with comparable experience in the school sector have expressed the view that this endorsement process is generally routine, habituated and, more or less, a formality. It is fair to say that it is an exception-based process.

The Inquiry recommends that in the context of the forthcoming review of the Teachers Council, the Ministry of Education and the NZTC review the policy framework for practising certificates.

We suggest that it may be appropriate to look at other professionals where a graduate from, say, a specialist university programme (eg law or medicine) is then eligible to be provisionally employed on what is essentially an apprenticeship basis. They are supervised and mentored for a period before being granted a “practising certificate” or professional ticket, and, after further work experience, they are fully registered.

#### Limited Authority to Teach (LATs)

64. Part 10 Sections 130A to 130H of the Education Act allow for a person to be employed without registration as a teacher. This statutory provision is carefully detailed in Section Three of the NZTC’s 2012 Registration Policy document.
65. The Education Act 1989, Part 10 Section 130A and the sections following apply exclusively to an individual person or applicant for a particular type of vacancy in a particular school. A Limited Authority to Teach (a LAT) explicitly refers to an individual person and is peculiar to a specific position in a specific institution. Thus, apart from an exception when a LAT teacher like a music specialist is moving between schools, the LAT is not transferable.

Part 10 Section 130A and 130C allows the NZTC to consider favourably a request for a LAT “where any person has skills and experience that are appropriate to advance the learning of a student or group of students in any particular institution... [and] may not have a specific qualification normally associated with teaching” but is of good character (as attested by a clean police vet), fit to be a teacher and likely to be a satisfactory teacher. The Council will also “give weight” to the views of the professional leader of the school concerned and “any other relevant matters”.

66. In essence, the LAT provisions reflect labour market weaknesses. The policy is expressly in place to support the many school boards that cannot provide fully qualified teachers for their students.
67. There may be lengthy delays in the approval of a LAT, not least because the applicant (eg Miki) may have neglected to provide all the necessary documentation. Meantime, however, the “un-Latted” person continues in

the school's employ without confirmation as to character or fitness to be unsupervised with children, sometimes for as long as a school term.

68. In the case of Miki (for whom a LAT application was made at Murapara in 2007 and finally approved in 2008), there was a delay when the Teachers Council sought additional information concerning his qualifications. Miki himself assertively took over the (emailed) correspondence with the Council. With the support of the school principal and the silent acquiescence of the local community where he had been born, Miki handled the application as attaching personally to him, later citing NZTC's approval as though it had been a personal qualification.
69. We learned that it is usual practice for the communication to be between the individual and the NZTC as both parties work towards the approval of the LAT. The principal is not copied in to this discussion. Even if those engaged were more honourable than Miki and all the formal processes had been meticulously managed, we consider that in this and all future cases the principal should be actively engaged in LAT applications.
70. As it appears in Miki's case, there is much to reinforce the convenient view of the LAT holder (eg Miki) that this is a useful personal qualification of ongoing value, capable of adding credibility to an otherwise doubtful CV, even able to be cited in other job applications. Even the physical appearance of the LAT application and approval documents, including the individual LAT number handwritten on the forms, makes them look very like registration documents.
71. Nonetheless, the NZTC's policy is very clear: "LATs cannot be used to circumvent the purposes of the Act or the registration requirements in the Act" (as set out, for instance in Sections 120A (1) and (2)) and "are only to be used on a temporary basis by schools...". "Temporary" is defined as one, two or three years and the criteria for Council's approval are clearly specified.
72. As has been pointed out by a number of commentators, most recently the OECD 2011 report on *Evaluation and Assessment in Education* and in the 2012 draft OAG report, this is a high-trust system. For LATs as for other registration applications heavy reliance is placed by the NZTC on documentary attestations and written endorsements from referees. The NZTC registration policy states that a LAT can be approved for a "professional leader" for up to one year, and will be considered on a case-by-case basis.

What is invested in improving board performance?

73. The Inquiry was advised by NZSTA that the Ministry annually makes some \$200 (two hundred dollars) available for the training and performance improvement of each of approximately 14,500 school trustees. This nugatory sum appears to add another reason why trusteeship is not popular, and finds its unsurprising reward in:
- a. the frequent lack of public interest in standing for board election
  - b. the dominance of principals in the election process
  - c. the disappointment and frustration that often faces parent-elected board members when they find that the business of running a school is in practice much less often about education matters than about coming to terms with financial spread sheets
  - d. the low level of return and community acknowledgement for the time invested by diligent board members
  - e. the frequent failure of boards to manage their governance task
  - f. the frequency with which Ministry intervention occurs to replace or support a struggling board
  - g. the frequency with which unconfident or poorly-guided boards engage principals of low calibre because they are not really clear about their students' educational and other needs, or (despite scanty evidence) believe that the candidate will meet the aspirations of the board and its community
  - h. the absence of informed decision making when hiring (or retaining) principals whose strategic, curriculum leadership and professional excellence are demonstrably humdrum, but who have an accepted role in the school's social community.
74. If the Crown chooses to retain a school governance system that is now in its 23rd year without any significant review or reform, then its own investment in these Crown entities, which are a critical element in the education labour market, should be promptly evaluated.



During the course of this Inquiry we have noted and been advised of:

- a. persistent difficulties over past decades in eliminating the significant tail of under-achieving schools and under-qualified students and school-leavers
- b. persistent challenges in recruiting, training, employing and retaining consistently high quality teachers
- c. the demonstrated wish of all school stakeholders for enhanced pedagogical training and professional development to enable all teachers to work at a consistently high level across all curriculum areas
- d. the economic importance of the school sector.

We are also aware of structural reviews already undertaken or signalled by the government in both central and local government spheres, aimed at improved democratic processes, more rapid economic progress and more beneficial social outcomes.

Therefore, we recommend that to ensure the quality of school governance is sufficient to meet these challenges, the Ministers of Education and Economic Development initiate a review of the capacity and capability of the system for school governance established nearly 25 years ago.

We suggest that this review would commence after the current review of the NZTC, and be reported back to Ministers by mid-2013 at the latest, so that any approved policy or legislative changes might be considered for the 2014 legislative programme.

# Section 4

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Supporting, guiding and advising school trustees on staff employment

The Inquiry's focus

01. Within the overall context of employment in schools, we focused on the hiring process for two key reasons.
02. Firstly, international literature and other evidence promoted and used by the Ministry of Education, the Education Review Office (ERO), various education agencies, unions, and school boards themselves repeatedly emphasise the critical importance of the classroom teacher. It is commonly accepted in the New Zealand school sector – and strongly reflected in government policy – that the most significant in-school influence on a child's learning is the teacher. Therefore we assumed that:
  - a. the point at which a teacher is hired will be of critical governance importance
  - b. the diligence with which boards carry out this process will provide a significant focus for advice to boards, and when a board's performance is reviewed by an external agency.
03. Secondly, amongst the many roles and functions of a board, the process of hiring a principal or other teaching staff is the most critical point of leverage available to a board in respect to the way the curriculum will be delivered to students, and the safety, protection and well-being of children enrolled in the school.
04. Therefore, we assumed that the Miki case would be a near-unique anomaly and that:
  - a. boards of trustees and principals in schools where Miki worked would focus closely during the hiring processes to ensure only a satisfactorily trained person of good character and fit to teach would be employed
  - b. boards of trustees would rely on (and make good use of) all the statutory, formal and professional systems and advice set up to support them when they hired people to work in their schools.

05. In the event, as discussed in this Part, these assumptions were not wholly justified. We found that:
- a. although Miki is certainly an extreme case, many of the opportunities he exploited remain open to others
  - b. the hiring capability of boards is clearly constrained – not least by the fact that few trustees have extensive successful experience in employing professional staff
  - c. there is a relative lack of effective, appropriate, accessible training for trustees and principals in how to make good employment decisions.

The Inquiry recommends that the Ministry of Education, in consultation with boards of trustees, principals, the teachers unions and any other appropriate agency, review the adequacy of professional employment services and guidance needed by a diverse range of school employers (including principals) if they are to secure the safety and well-being of school students.

#### Advising and supporting boards as employers

What does the literature tell us about boards as employers?

06. The Inquiry was not able to identify any authoritative New Zealand-based research into how boards approach and conduct the process of hiring ordinary teaching staff. Although the Education Review Office has published almost a hundred national reports on a wide range of topics, it has never published an evaluation of the way boards of trustees go about hiring their professional teaching staff. No other government department has published any such material.
07. There is limited academic research into the qualities and engagement of principals, but virtually no reference whatsoever to hiring classroom teachers. For instance, a 2007 publication by the New Zealand Council for Educational Research into *School Governance in New Zealand: How is it Working?* neither contains nor cites any reference to hiring. It does, however, mention that “policy decisions, curriculum and personnel/ industrial relations take up relatively less” of a school board’s time and attention than financial matters and how the curriculum is delivered once teachers have been engaged.
08. Recent official publications from the OECD (*Reviews of Evaluation and Assessment in Education: New Zealand 2011*) and a draft 2012 OAG report entitled *Influencing Teacher Quality* do not mention hiring, or this vital point of entry by a teacher into a school.

09. Although NZSTA provides training for school trustees on a wide range of matters, including teachers' employment, it has never published an analysis of its experience over the past 20 years.
10. Quite apart from the opportunities that weak hiring practices give to a determined fraudster such as Miki, it is of concern to the Inquiry that, although there is extensive literature, government policy and official publications emphasising the quality of the teacher as the key element in the quality of a child's school-based learning, this lacuna exists in the evidential base on which trustees might draw for assistance on good hiring practice.
- Other sources of employment advice for boards of trustees
11. The legislative requirements for selecting school teaching staff are much broader than police vetting, and a raft of agencies, policies and practice guidelines have been established and designed more or less effectively to help boards ensure that their prospective employees are of "good character and fit to teach".
12. For instance, in addition to the New Zealand Teachers Council, the Ministry of Education and the Education Review Office, at least 14 other agencies have either a formal mandate or customary right to engage with, advise, support, inform, audit or monitor school boards' performance as employers. These include:
- The Office of the Auditor General
  - The Privacy Commissioner
  - The State Services Commission
  - New Zealand School Trustees Association (NZSTA)
  - The major unions: NZPPTA and NZEI
  - The three principals' associations: Secondary Principals' Association of New Zealand; New Zealand Secondary Principals' Council and the New Zealand Principals' Federation
  - The two Māori organisations: Te Runanganui o Nga Kura Kaupapa Māori o Aotearoa; Te Kura a Iwi o Aotearoa
  - The Association of Proprietors of Integrated Schools.

and, somewhat at arm's length, but occasionally involved in board business:

- The Ombudsman
- The Human Rights Commissioner
- The Children's Commissioner
- The Department of Labour
- Crown Law Office.

13. Other agencies whose activities affect school employment practices more indirectly include the Department of Internal Affairs (Births, Deaths and Marriages and Passports), justice-related agencies (whose role in the Miki case is reviewed elsewhere in this Report), the Department of Labour (immigration matters) and of course the news media.

The monitoring role of central government agencies

The Education Review Office (ERO)

14. The Inquiry was directed to report on the monitoring roles of ERO and the Ministry of Education, and we were interested in the advice and guidance offered to boards, over and above the broad provisions of the Education and State Sector Acts.
15. The powers and responsibilities of ERO are set out in Part 28 of the Education Act 1989. Under Section 325 the Chief Review Officer (CRO) can on their own initiative:
- a. administer reviews, either general or relating to particular matters, of the performance of [schools] in relation to the applicable services they provide
  - b. report to the Minister on the undertaking and results of such reviews.
16. Notwithstanding Section 32 of the State Sector Act 1988, the Chief Review Officer and reviewers authorised by them have wide powers, inter alia, to enter, request information, conduct inspections and inquiries, and request statements about any matter relating to an applicable service and inspect the work of any person.
17. There is wide scope and numerous opportunities for ERO to explicitly and closely question both a school's hiring practices and their confidence in police vets, other validating information, endorsements and references.
18. However, the Inquiry did not find that this happens except in very rare cases when, we were advised by the Chief Review Officer, the review team is alerted to some serious risk or process error in the board minutes, self-review documents or some other less formal intelligence.
19. It was suggested to the Inquiry that ERO reviewers are properly inhibited by the State Sector Act Sections 76 and 77 from challenging, ex-post, the way a board has hired its teachers. If the State Sector Act does carry any real exclusion power in relation to ERO's monitoring and evaluation of the way school staff are hired, which the Inquiry doubts, then we suggest that this be tested with the State Services Commission.

20. We thought that ERO's self-review and related self-auditing documents might seek from boards relatively detailed information about hiring staff and ask them to explain and justify any hiring decisions they had made since their last ERO review. In fact, however, the Inquiry has found that this rarely happens and it is recognised as a gap by the Chief Review Officer, a senior manager (ex-ERO) at the New Zealand Qualifications Authority (NZQA), and to some extent, the teachers' unions.
21. No national report has been published by ERO that focuses on the employment role of boards of trustees, or the due diligence they might apply, to any part of the hiring process.
- Guidance from ERO on Employing School Staff: ERO'S Handbook for Schools (July 2010)*
22. This extensive document is on the ERO website and includes practical advice on administration, staffing and personnel management. It is extensively detailed, accessible and practical. It covers protected disclosures, criminal records, teacher registration (drawn more or less explicitly from the Education Act) and mandatory reporting, drawn from both the Education Act and the New Zealand Teachers Council Rules. Section E4.6 of the Handbook, drawn from the State Sector Act 1988, includes the right to employ, the duty to act independently, appointment on merit, and obligation to fill vacancies.
23. Section E 4.7 on police vetting is drawn from the Education Amendment Act 2010. ERO cautions boards that police vets must be obtained no later than two weeks after the person begins work at the school, and every three years, whether there has been one earlier or not, for every person who may have unsupervised access to students. Section 78 CD warns boards that they must take no adverse action in relation to a person who is the subject of a police vet until the person has validated the vet information or has been given a reasonable opportunity to validate such information.
24. The generally useful Handbook is virtually silent, with almost no detail on the recruitment and appointment processes, reference checking, validation of attestations or other probes into candidates' good character and fitness to teach.

ERO's *Framework for School Reviews*

*“When it reviews schools ERO looks at the way in which the school's curriculum contributes to student achievement. This involves evaluating how effectively the school's programmes, processes and teaching promote student learning. Reviews also evaluate the school's strategies for reviewing its own performance and improvement.”*

25. In addition to the Handbook, in 2011 ERO published its updated review methodology: *Framework for School Reviews, 2011*. The Introduction states that ERO reviews focus on student achievement, and “build on existing processes of self-review” in each school. It might be expected that in this document and the associated self-review or self-audit documents, emphasis would be placed on the need for due diligence by boards when hiring teaching staff. This is not the case. There is no distinctive focus on the employment role of boards of trustees in this Framework. There are virtually no references to high quality hiring processes, practices and procedures that could encourage boards to take meticulous steps to exploit this most significant opportunity to enable and improve student learning and achievement – choosing a teacher.
26. ERO, like other education agencies, operates in a high trust environment. In a section entitled *The Board Assurance Statement (BAS) Including Student and Staff Health and Safety*, ERO states that “providing a safe and healthy learning and working environment and complying with statutory legislation and legal requirements are important responsibilities of schools. ERO places some reliance on reporting on compliance by schools themselves”.
27. The BAS and the accompanying Guidelines are for schools to use in self review and to provide assurance that they have taken all reasonable steps to meet their legal, health and safety requirements. When scoping and planning a review, ERO uses the boards’ own identification of non-compliance and actions taken from its attestation in the BAS and Self-Audit Checklists. During the course of school reviews, ERO checks boards’ compliance as attested in the BAS based on the Self-Audit Checklists. If the checking process indicates any significant problems, ERO may decide to investigate further. For most schools, ERO’s main interest in compliance is in the quality of their self-review.



28. A guideline for engaging a “Friend of the School” suggests that such a person could have “expertise in a specific area of importance to the school”, but this does not explicitly point boards towards what is arguably their most critical function: hiring and managing professional teachers.
29. We were concerned that the Framework is virtually silent on issues of compliance in relation to employment processes and actual hiring practice. Certainly in the many school reviews we have read – and notably in those for schools where Miki worked – there is almost no evaluative information on how the board conducted its hiring responsibilities.
30. We do not necessarily question the regulatory framework for employing teachers in schools. We do, however, question the extent to which departmental advice derived from this law is implemented in practice, and how closely even its own advice to trustees is monitored, evaluated and reported by ERO.

*Evaluation Indicators for School Reviews 2011*

31. ERO also publishes the evaluation indicators used by reviewers in conducting school reviews. We could find no focus on the critical employment or hiring role of boards of trustees and no indication of any standard of due diligence that ERO might look for when reviewing a school. Topics such as “leading and managing the school” and “governing the school” are silent on employment or hiring practices and performance, and there is no reference to the critical board role of hiring teachers. Nor is there any link between hiring teachers and the development of a safe and inclusive culture.

*ERO's Guidelines for Board Assurance Statement and Self-Audit Checklists (June 2011)*

32. ERO suggestions for schools preparing for a review emphasise an evidence-based approach to both external and self review, with guidance for boards preparing for a review and a self-review, self-audit checklist to be prepared in advanced by the school. ERO rightly emphasises that the checklist is not on its own sufficient, and that a thoughtful and analytical approach to self-review is recommended, so that, where appropriate, tightly focused compliance monitoring can be obviated during the course of a review.

33. The BAS and Self-Audit Checklists do not explicitly refer anywhere to the specific processes entailed in hiring teachers. Good employment practice is left undefined, except as set out in law.

*“Providing a safe physical and emotional environment ... for students at a school is one of the basic responsibilities of each BOT. However, it is also one of the requirements that is most difficult for boards to address both because there are so many factors that impact on student safety, and because safety issues do not always have clear solutions.*

*There are various legislative requirements relating to student safety and it is important that all schools familiarise themselves with these requirements and ensure they are appropriately addressed.” (BAS P 23)*

34. Clearly, managing the risks to student well-being is recognised as challenging for boards. This being said, it might be expected that official guidelines and aids for trustees would be quite explicit about the processes and procedures they should adopt at a most critical moment in employment: the decision to hire a teacher. This is not the case. In the BAS, a *Personnel Compliance Guide* cites various acts and some matters such as police vetting and mandatory reporting. To demonstrate compliance, boards are invited to answer yes/no/unsure to the following:
- a. developed and implemented policies and procedures for employment ... of staff
  - b. ensured that persons without a practising certificate are not permanently appointed to a teaching position
  - c. ensured that it does not continue to employ in any teaching position any person whose registration or LAT has been cancelled, has lapsed, or whose practising certificate or LAT has been suspended
  - d. received reports at least once a year in relation to the following and satisfied itself that they are correctly implemented
  - e. staff appointment process (as set out in the State Sector Act 1988)
  - f. teacher registration (including practising certificates and LATs)
  - g. good practice (re Sections 120–120B Education Act 1989)
  - h. established and implemented procedures for police vetting of employees (as required by the Education Act 1988 Sections 78C–78CD...).

35. There is no other reference to the employment process, nor to the specific task of hiring staff, in the document. This does not mean that the issue is not raised and discussed with boards and principals when reviewers are in the school. However, the Inquiry has not found any ERO school reports where the processes for the recruitment and hiring of teachers are referred to or evaluated in any specific manner.
36. As mentioned earlier (paragraph 19), it has been proposed by a senior ERO manager that the prohibition against attempting to influence boards' or principals' employment decisions is a constraint against ERO reviewers drilling down too far into the hiring processes, procedures, decision criteria and checking activities carried out by boards. We consider that, even if ERO reviewers are deterred by the State Sector Act, this is insufficient justification for the apparently scant attention paid to the way boards go about hiring teachers.
37. ERO places substantial confidence in boards' self-auditing and the registration processes used by the Teachers Council, and relies on the possibility that evidence of poor employment performance will be detected by reviewers in their oversight of board minutes, their own on-site observations, or via the informal education intelligence network. It would be helpful, we think, if reviewers regularly challenged, and reported on, boards in relation to all their hiring decisions, and sampled their performance on this crucial employment issue.<sup>2</sup>
38. Certainly we were not offered any evidence that reviewers interrogate boards or board records on what must be seen as their most important function: to hire staff who are of good character and fit to teach. We would like to have seen more evidence of reviewers' specific interest in the hiring dimension of employment management.
39. So far as we know, the annual agreement between the Ministry of Education and ERO on what should be addressed in school and other reviews has never included reference to the decisions taken by boards in hiring teachers. Whatever the reason, limited use of the monitoring powers and authorities of external review increase the risk that undesirable and unregistered persons, like Miki, will get jobs in schools where children will then be exposed to poor teaching – or much worse.

<sup>2</sup> We are reminded of what Dr Beeby is alleged to have said: what ERO expects, the system will rise to. ERO does not appear to have any explicit expectations as to the processes, procedures, principles or standards of good practice that might apply to boards of trustees, and help them lift their game.

The Inquiry recommends that ERO consider developing an active and critical review focus on how boards hire teachers and support staff, including the processes boards use, the extent to which they validate, verify and authenticate information critical to the well-being of students; and evaluating, for both individual school reports and a national evaluative report:

- how well trained and prepared principals and boards are to perform their role as employers
- the recruitment, prioritising, hiring and post-employment monitoring processes they use
- the persons or sources to which they turn for advice
- the reliance they place on informal or untested testimonials, attestations and other references for the character, competence, qualifications and experience of applicants for jobs
- the extent to which the need for a “warm body” to supervise or fill a prolonged gap, or provide any contribution to the curriculum, however sub-optimal, affects their judgement and employment decisions
- their professional preparation to assess the risks that candidates may be dishonest, emotionally unstable, or unsuited to work with children and young people
- their knowledge of their mandatory reporting obligations.

- The role of the Ministry of Education in school employment management
40. Our terms of reference address the process schools undertake with regard to vetting prospective employees, school policies on teachers’ employment, boards’ capacity and capability to deliver a reliable process, and any role the Ministry of Education may have in reviewing such policies.
41. The Ministry has the central role in overseeing the relevant school sector legislation, and over the past decade, amendments to the Education Act in respect to vetting of non-teaching employees and contractors illustrate the Ministry’s attention to regulatory improvement. Oversight is not a monitoring role as such, and board performance monitoring is properly seen as the function of ERO, the OAG, other statutory external agencies, parents and the public at large.
42. The Ministry has full access to all the evaluative reports and school performance data available from ERO. The two agencies confer annually on a work programme that will support the Ministry’s responsibility to monitor the regulatory framework for school governance and management.

43. From time to time, in addition to the National Administration Guidelines (NAGs) and National Education Goals (NEGs) promulgated by the Ministry as a very stable framework for school governance, the Ministry issues circulars and advisory notices to school boards, including an occasional – albeit modest – one on employment.
44. For instance, one on *Being a Good Employer* (undated) briefly outlines sources to which boards might go for industrial and employment advice: the Ministry’s website and NZSTA. Another undated circular on the legal obligations of boards does not list being a good employer amongst the key assurances a board provides for the government. There are two brief references to the duty to impartially select suitably qualified persons when recruiting employees, and to provide an environment that is physically and emotionally safe for all students.
45. An undated document entitled *Understanding School Employment* provides a succinct (and rare) summary of the legislation and collective agreements to which boards must pay attention. It comments on the payroll system, concurrence, performance appraisal, complaints and team development. There is a short section on appointing staff – almost the only, and by far the most explicit and practical Ministry of Education guidance we were able to find on hiring:
- “During the selection and appointment process, carefully check the background and performance of applicants. Start with registration, contact all referees, ask searching questions about capability, and think of and ask about what has not been stated on paper or in an interview. Be very methodical in building a picture of applicants on your short list.”*
46. As one senior Ministry official commented to the Inquiry, “All in all, the Ministry of Education doesn’t provide serious advice on employment processes ... though a possible exception to this may be in [industrial relations] where advice is given about provisions in the collective agreements and the way these need to be followed ....”
47. A practical, widely used Ministry of Education publication is entitled *Effective Governance: Working in Partnership (2010)* but employment-related risk – one of the key risks facing these Crown entities – is not explicitly addressed. We return later in this Part to the issue of risk management by boards.

The Inquiry recommends that in consultation with the relevant sector agencies, the Ministry of Education:

- a. review its role in providing guidance, information and advice to school trustees in respect to the employment of teaching staff
- b. review the annual financial provision in Vote: Education for training school trustees and consider whether better targeted training and more active on-site mentoring might not only be more cost-effective in schools where the Ministry's regional staff, or ERO, signal a need for external advice and guidance but not necessarily other more serious intervention
- c. review Part 10A of the Education Act 1989 in respect to the power and functions of the NZTC's disciplinary roles, with a view to removing any ambivalence about the extent of the role of the Complaints Assessment Committee, and establishing an explicit threshold for referral from this Committee to the Disciplinary Tribunal (Part 2 above refers)
- d. review the range of data-sharing protocols and agreements it has now with all central government agencies that hold any information relevant to the safety and well-being of children and advise the Minister of Education on any opportunities for improved exchanges of information that she could discuss with her ministerial colleagues so that new or improved understandings and protocols could be put in place.

#### The role of the New Zealand School Trustees Association

48. The New Zealand School Trustees Association (NZSTA) was established in 1989. It is a voluntary membership organisation. NZSTA's membership includes approximately 14,500 trustees from most primary and secondary schools, and the agency is "owned" and controlled through a member-elected council. It is generally recognised as having the mandate to represent board of trustees' interests, to speak for them in national consultation, negotiations etc and to be the preferred provider of trustee training.
49. A senior ERO manager advised that "given the emphasis on the independence of boards in the appointment and management of staff in schools, as could be expected the NZSTA (New Zealand School Trustees Association) is the principal organisation that provides the best guidance (and support) for boards, and that Association's website provides advice, forms and templates for appointing board employees. The Ministry of Education ... contracts NZSTA to provide HR support for all school boards".

50. On NZSTA's website is an excellent one page "checklist" which sets out the questions a board should ask through the recruitment or appointment process. On the NZSTA website this checklist has links to the different advice forms, including reference checks, with an application form template that can be used outlining how the reference check may be done.
51. We were advised that in schools this standard application form is the most commonly used medium for employment applications. It requests information on previous or pending criminal convictions and charges, police diversion etc. It includes an explicit advisory to boards re the extent of consent to which they should ask each applicant to agree. This is in line with what has been modelled by Child Matters, and endorsed by the Privacy Commission.
52. In relation to reference checks, the Inquiry was advised by experienced NZSTA officials that reference checking has undergone a number of changes over the years. "Historically, school employment practice very much relied on written references being the key element in checking prospective employees and references were sought at the initial stages of the recruitment process. This changed progressively and advice from both us and the unions has been that it is important to do formal reference checks of the preferred candidate after the interview process."
53. Meticulously and consistently followed by boards and/or principals delegated to engage staff, the NZSTA checklist on the appointment process would go a good way to ensuring sound employment practice. However, the Inquiry has been advised by various agencies, including ERO, that:
- a. consistency and thorough adherence to every stage in NZSTA guidance on good practice is not necessarily the norm
  - b. poor, indifferent, unconfident or poorly skilled governance characterises many small, isolated rural schools with chronic recruitment and retention challenges but the same duty to deliver the curriculum as large urban well-endowed schools, and also schools in locations where the range of professional and peer experience and advice is limited; and
  - c. there may be substantial slippage in the consistency with which matters such as principals' or senior teachers' endorsements and reference checking are carried out; "tick it" may be easier and less time-consuming for a busy principal or senior teachers than time-consuming reference and performance checking.



The Inquiry recommends that the New Zealand School Trustees Association review the effectiveness of its advisory role in respect to the employment responsibilities of boards of trustees and consider whether much tighter focusing on the poorest performers would represent better use of its contractual funding from the Ministry of Education.

#### The role of the Privacy Commission

54. During the course of this Inquiry we repeatedly heard of the “BOTPA” effect: “We can’t do such and such, we can’t advise you of so and so, we can’t release the information you have asked for Because Of The Privacy Act.”
55. As referred to earlier in this Report, this is the cause of considerable well-justified regret in the Privacy Commission, which has taken a number of steps to ensure that the proper business and delivery of the duties of school boards are not inhibited by a false reading of the Privacy Act 1993.
56. To that end, in 2009 the Commission published a book entitled *Privacy in Schools: A Guide to the Privacy Act for Principals, Teachers and Boards of Trustees*. The publication is readily available online and gives practical advice to schools about how the Act works, with examples of each of the privacy principles and relevant legislation.
57. The Inquiry was advised that individuals and agencies often hide behind the alleged constraints of the Privacy Act. In Miki’s case what was in fact significant information was requested by a school principal of the Teachers Council. The request was refused. The Privacy Act was incorrectly cited to justify this unfortunate refusal.
58. The Privacy Commission offered the Inquiry very pointed advice on the issue of requests for information from a job applicant. The Commission asked: “Do employing boards of trustees have any real scope for vetting applicants?”
59. It was suggested by the Commission that the most useful tool for the employer would be to ask the applicant to give the widest possible lawful consent for the employer to seek information and advice on the applicant. This is reflected in the standard application form available from the NZSTA.

60. Issues raised in discussion with the Inquiry included:
- a. Is the consent currently sought sufficient to allow the employer to get as comprehensive and reliable a picture as possible of the person they might hire?
  - b. Do boards of trustees ask themselves: what sort of authority do we need to be confident that this applicant is authentic?
  - c. Is the consent form we are using both wide and durable enough – ie can it be used again in future for re-checking?
  - d. Is the consent authority recommended by NZSTA broad enough?
  - e. Do boards of trustees know that they are fully entitled to ask applicants to state any aliases, changes of name, commonly used or alternative names?
  - f. How capable and informed is a board of trustees to seek, obtain and responsibly use a check on a criminal conviction?
  - g. If there is a lengthy period (ie some years) between provisional registration and an application for full registration, should a fresh police vet always be requested? (It should be noted that one is required every three years when all teachers' registration must be renewed).
  - h. What protections are there for boards of trustees and applicants against mis-use or ill-advised use of the Privacy Act?

The Inquiry recommends that the Ministry of Education, Education Review Office, teachers' unions and NZSTA collectively review the Privacy Commissioner's published guidance and the questions quoted in this Report, and take prompt steps to educate their members and all school boards.

The role of the Office of the Auditor General (OAG)

61. The OAG provides information to boards of trustees relating to the annual audit of their schools, primarily about their financial management and financial accountability responsibilities. Apart from a reference to the detection of fraud and a recommendation to have a Code of Conduct, there is no explicit guidance or reporting duty in relation to hiring or the employment of teachers.
62. In 2012, as part of their normal auditing role, the Office decided to take a closer look at teachers' registration. We appreciate the helpfulness of the Office in making available to us their draft report. It provided a straightforward factual description of the relatively complex process, and we valued the opportunity to discuss their findings with OAG staff.

## Risk management

63. Under Section 78D of the Education Act 1989, schools are required to have a risk management scheme. Sections 78D to G of the Act and all related Ministry guidelines emphasise risks around property and physical school assets. There is no legislative reference, and almost no advice or official guidance to school boards, on how to address risk exposures that occur when they are hiring teachers.
64. The implications of this gap in what is required of school boards, and, as discussed earlier, in the focus of ERO's monitoring, underlie concerns voiced by Ministry of Education officials in a memo to the Secretary of Education on 21 March 2012:
- “The Ministry has insufficient evidence to confirm Person B [not Miki] presents an on-going risk to children. We also currently have no basis for assessing the level of risk in other cases of sex offenders retaining their registration. However, legislation, policies and practice should be reviewed to assess the appropriate extent of discretion in the system to manage disciplinary issues with regards to teachers who have sexually offended and to ensure the system is sufficiently robust to maintain public confidence in the teaching profession.”*
65. The Ministry of Education's booklet *Effective Governance: Working in Partnership*, referred to above, includes a section entitled “Management of Risk”. This is a general guide to risk management, but includes no specific reference to employment-related risk or the risks associated with hiring processes and procedures.
66. Nor is risk management in respect to staff or employment a matter for inquiry by ERO. It is not explicitly excluded or neglected, it *“just doesn't come up...and we don't specify it in the self-review documents for boards”* (ERO manager's comment). Boards' hiring practices have never been the subject of a national evaluation report by ERO.
67. This situation raises a number of issues. Firstly, substantial emphasis is placed in the education literature, government policy, Ministry of Education policy and ERO evaluations on the role of the teacher in delivering the school curriculum.
68. As stated earlier, it is generally agreed that within the context of a school, the most significant influence on the quality of a child's learning is the quality of teaching and the student-teacher relationship. Therefore, it

might be expected that the one point in time when a board, or principal acting under delegation, would focus the keenest attention would be when a teacher is hired. This is not only a moment of considerable risk for the school and its students; it is also one of the relatively rare points when a board can exercise direct leverage in the overwhelmingly paper-based, high trust, governance and monitoring system.

69. In fact, the risks associated with the decision to hire appear to be almost unexplored, despite:
- a. a reasonably comprehensive and generally accepted regulatory framework for teacher employment
  - b. a large body of Ministry of Education school governance policy
  - c. comprehensive advisory support for boards by the NZSTA
  - d. a wide range of public and commercial induction and training opportunities available to school trustees
  - e. professional development courses for principals, who typically have delegated power to hire teaching staff
  - f. the protections and opportunities offered by the Privacy Act
  - g. regular interventions by key external agencies – the Audit Office and ERO.
70. Boards are not required to develop, articulate, report or define (eg in self-review or other reports to ERO) specific employment and hiring-related risk management systems.
71. Secondly, no organisation met so far during the course of the Inquiry, including teachers' unions, NZQA, ERO or Ministry of Education, could report any particular interest in the nuances and risks of hiring. Seemingly, sector-wide trust derived from the broad requirements of the law and widely accepted NZTC registration processes has reduced interest in the actual processes and performance of boards when they come to engage a new staff member.
72. The level of assurance apparently given by and accepted from the New Zealand Teachers Council – and generally, in our view, for good reasons – may have generated a false sense of security. Sensitivity to the possibility that applicants like Miki could get through the system does not appear to be high. Even though NZSTA advises all boards to do their own checking and not assume that any prior employer has covered off the risks, it seems clear at this stage that there is a high degree of comfort and confidence in the New Zealand Teachers Council, peer checks, or the intelligence that is informally available in a relatively small country like New Zealand.

73. Thirdly, the Education Act emphasises ethnic and socio economic representation of board membership. However, apart from the (Section 99) suggestion that it is desirable for every board to have some management expertise, it is silent on other important characteristics such as financial skills, property management, or HR skills and experience. The whole question of the hiring or employment skills of a locally-elected board turns on:
- the findings of ERO or other external authorities
  - the quality and relevance of advice and guidance from NZSTA
  - the way any of the risks of incompetent or weak hiring arrangements reported or highlighted by either ERO or NZSTA might be remedied after the fact.
74. Fourthly, as mentioned earlier, education literature on New Zealand school governance does not appear to have had an interest in this specific phase of teachers' employment so there is not only little evidence-based guidance but few prompts from the research to look keenly at hiring systems and actual hiring performance.

The Inquiry recommends that the Ministry of Education, the NZTC, ERO, NZSTA, the OAG, principals and boards of trustees, critically consider the issue of risk management, in respect to the safety, protection and educational well-being of school children, and test whether this is given the highest explicit priority by all school boards and education sector agencies in all their policy and operational decisions.

A justifiably trusting system?

75. The 2011 OECD report on New Zealand's assessment and evaluation arrangements commented repeatedly on the high-trust nature of the school system. It appears to be somewhat of an international outlier in this respect.
76. Not only is the employment system heavily weighted towards high trust in documentary evidence, there is also a deep cultural preference for both formal and informal peer group reliance, notably when principals are being hired or appraised, and in the New Zealand Teachers Council complaints and disciplinary arrangements.
77. This may not differ greatly from other professional groups such as nurses or lawyers. But it does raise the risks of a "closed shop" culture, and in general may provide insufficient opportunity for community views and

preferences to be consulted and taken into account eg in hiring senior staff (although on occasion a board might arrange community meetings to consider the school's needs and parental expectations).

78. Employers and teachers are substantially protected by the law. It is not clear that the same level of protection is available to children who are by far the most vulnerable and silent population in respect to teachers' employment. There are instances when a secondary school student representative is active and articulate, but he/she cannot be expected to carry responsibility for anticipating or recognising risks to students' safety.
79. Many senior people we talked to suggested that hiring practice appears to be a real gap in the current governance, monitoring and reporting arrangements. The record of Miki's employment at each of the schools in which he worked, most notably at School A, sharply illustrates the exposed nature of the school governance system in respect to employment matters.
80. We are very concerned by what appears to be the unusually trusting, even gullible, management of Miki in School A for all of 2011–2012. As shown in the material provided by an investigator engaged by School A after Miki's arrest, there were numerous practical opportunities to challenge, validate, verify and authenticate critical information, including quite extensive documentary evidence containing at best ambiguous and at worst conflicting information, including alerts from the whanau, that were either accepted at face value or set aside, by the principal and trustees.
81. The experience of School A was not only the longest in terms of the time Miki was employed while being sought by the Corrections Department and police. It was also the most troubling to the Inquiry because of passive leadership by the board, relatively uncritical management, and unprincipled behaviour by others associated with the school and Miki.

The Inquiry recommends that the Ministry of Education, as the government's principal education policy adviser, consider the following:

- a. Should a board's risk management duty extend to cover employment-related risks, how to assess their probability and possible consequences, and how to avoid or mitigate them?
- b. Is it reasonable to expect that all lay boards of trustees, as hiring agencies, will be competent to handle the risks associated with hiring staff where these risks have potentially serious implications for the well-being and safety of children?
- c. Should alternative governance arrangements be put in place soon after, say, board elections demonstrate a paucity of relevant governance skills, or at least one adverse ERO report, and before ex-post interventions become unavoidable?
- d. Does the current, substantially paper-based, employment system for graduation, entry to pedagogical training, application for registration, attestation, appointment and confirmation as a teacher adequately address the triangulation of validation, verification and authentication that should be in play when a person seeks employment in a school?
- e. Is registration and allocation of a practising certificate by the Teachers Council, arguably a critical "point of reliance" by a board, sufficient to counter the risks of incompetent, ill-advised or poorly-informed hiring practice, even with much less skilled forgers than Miki?



# Summary

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01. On the one hand, we found that:
- a. school trustees can access relatively adequate information, guidance and training opportunities to help them understand the law and policies relating to teachers' employment, although we doubt that \$200 per school trustee per annum is sufficient to achieve a step change in the quality of their significant labour market role
  - b. principals are able to attend induction training on these matters and, like trustees, have ready access to a stream of off- and on-line employment-related information from the New Zealand School Trustees Association, the New Zealand Teachers Council, the Education Review Office, the Ministry of Education, numerous other authorities and NGOs such as Child Matters
  - c. some data-sharing is required by legislation between, for instance, the Ministry of Education, the courts and probation service, the police, the New Zealand Teachers Council and school boards.
02. On the other hand, we found that:
- a. there are numerous agency sources and streams of information relevant to a board's employment decisions that are not necessarily available or formally tracked, and to which trustees have (as yet) no "look-up" rights
  - b. a notable gap in the information readily available to boards of trustees is the absence of any reliable register of convicted child sex offenders who could, as in this case, succeed in gaining registration, a practising certificate and employment in any part of the New Zealand education sector
  - c. NZSTA (contracted by the Ministry of Education) provides careful guidance on the key dimensions of employment, but no other advisory or regulatory State agency emphasises or, in most cases, even clearly points boards' attention to, the powers and obligations of boards when hiring teachers
  - d. no external audits or reviews have been found by the Inquiry to address what we consider to be a critical point in the employment process: the immediate hiring process
  - e. the diligence with which boards (or principals under delegation) actually undertake hiring individual staff is largely taken for granted; both internal and external attention are almost exclusively focused on the post-employment situation

- f. opportunities for exercising due diligence in the hiring process, and the potential benefits to boards (and their students) of close external appraisal and evaluation of their hiring practices, are not universally and consistently taken
  - g. risk management by boards, as required by law, is entirely silent on employment risk; financial and asset management occupy this aspect of school governance.
03. There appears to be virtually no reliable evidence about the details of boards' hiring practices unless this is located in a departmental evidential file or specified in a public ERO report – as a rare matter of exception – when some relatively gross error or breach is detected.
04. The case of Miki sharply illustrates the importance of good hiring practice, and we consider that there is a significant gap in the employment process. Given this, and scant evaluative evidence or academic research into how effectively boards handle their hiring responsibilities, Ministers cannot be confident that this vital part of our education system is well-managed.
05. Although the NZTC registration system is clearly not fundamentally flawed, this Inquiry has documented numerous unintended opportunities for a determined fraudster such as Miki to gain employment and remain employed for anything from a few days to over two years, as in the case of School A. In addition, we have reservations about the adequacy of the suite of criteria for registration, and the extent to which they can be rigorously tested when a graduate applies for registration.
06. At present, the Teachers Council's statutory duty to provide professional leadership cannot be effectively delivered, and unless the Council's capacity to perform this vital role is substantially augmented, responsibility for such an industrially-prized function might have to be reconsidered.
07. Finally, there may be scope for establishing an independent authority (or augmenting the powers of the NZTC) to consider all serious concerns about school students' well-being, like the Health and Disability Commissioner to whom all sentinel and serious events in health can be referred. We suggest that this issue be taken up in the forthcoming review of the New Zealand Teachers Council.

# PART FIVE

## New Zealand Teachers Council Review

Term of Reference 1.e.



- 01.* This Term asked that the Inquiry consider whether the Terms of Reference for the current review of the Teachers Council could be amended to reflect the recommendations of the Inquiry.
- 02.* As we indicated in our Interim Report of 30 April 2012 we very carefully considered the proposed Terms of Reference for the Teachers Council review and, after discussion with Ministry of Education officials and the Teachers Council, we concluded that the Terms of Reference were comprehensive and adequately covered the objectives for the review.
- 03.* Following our full Inquiry we still consider that the proposed Terms of Reference for the Teachers Council review are comprehensive and adequate. Our report does however cover a range of issues relating to the Teachers Council and its functions, including its interactions with other agencies and schools. The material provided in this Report may be of particular interest and assistance to those undertaking the review.
- 04.* We **recommend** that you provide those carrying out the review with a full copy of this Report for their consideration during that review.

# PART SIX

## Summary



01. The foregoing report provides a comprehensive response to the Terms of Reference directed to the Inquiry. It analyses the background issues and provides, inter alia, proposals intended to support the proposition that the safety and well-being of children in the education system is paramount.
02. As has been noted in the introduction to this Report, the Inquiry has been complex. There have been many people affected by the behaviour of Miki and the responses of those people have ranged from considerable anger to resignation. The Judge who sentenced Miki on 18 May 2012 said in her sentencing notes:

*“I also commend and acknowledge the schools, which have sent me victim impact statements, and have done so in a way which is respectful and which, while containing matters understandably of emotion, have put before me in a very rational objective way the concerns they have.”*
03. This accurately reflects the experience that members of the Inquiry had in our face-to-face discussions with school board members, staff and parents. Those who had been directly involved with Miki in the school system found it difficult to believe that they succumbed to such a sophisticated level of deception.
04. Equally those who had involvement with Miki at the government agency level believed that they had acted professionally and with good intent but still found themselves grossly deceived.
05. The report provides some 35 recommendations. These include proposed changes to law, practice and processes. The Inquiry believes that, if the recommended changes are put in place, the failures that occurred in this somewhat extreme case should be avoided in the future. Over and above those proposals that are directed to closing loopholes or weaknesses in the law and in practice, the report contains recommendations intended to benefit the processes of schooling, teaching, hiring and employment of staff and, most importantly, the way schools are managed.
06. As we said in the introduction to this Report we approached our task so as to find solutions rather than laying blame. The Inquiry’s report reflects that approach.

# PART SEVEN

## Any other matters

Term of Reference 1.f.





01. There are two particular matters we refer to your attention. The first concerns the manner in which government agencies and all the schools where Miki had been employed responded to the devastating news that a convicted sex offender had been employed to work with children. The second is the way school communities handled the crisis.
02. In the public service environment, “no surprises” is an article of faith for most officials. News of Miki’s arrest and background delivered not only a most unwelcome surprise, but, as we could see at the outset of this Inquiry, triggered immediate cross-agency recognition of the impact this would have on the government, the many communities involved, innumerable whānau and family groups, the wider New Zealand public, the news media and all officials and agency employees who work anywhere with children.
03. We were very impressed by the way all the agencies pulled together, their skill in crisis management, their willingness to look hard and honestly at their own roles, even where they found this might not have been as faultless as they would prefer, and above all their overriding concern for the children and young people who may have been damaged or upset in any way by Miki.
04. We talked to members of the Tauranga police, to people who work in the Rape Education centre in Auckland, to a private security investigator and an investigator commissioned by School A, the director of the Child Matters organisation, and others in a number of central public service departments. We were repeatedly impressed by the way they had cooperated and had immediately begun to review their own practice in the interest of children’s well-being. We found a most welcome willingness to share with us departmental experience, knowledge and databases. Most of all, we observed an extraordinary degree of concern for children and a commendable absence of ex-post self-justification.
05. We have a great deal of admiration for the school communities. We visited six of the schools most immediately affected in the Auckland and Bay of Plenty regions and talked to many sector and union leaders, trustees, principals, staff members, whānau, parents and government officials. We found almost no blame-laying; all were genuinely concerned to look for practical, enduring ways to avoid similar events in future. Certainly the manner in which some recorded the events – and in particular the meticulous way in which the principal of School B documented what had happened to that school – will provide a rich source of experience which we hope will be drawn upon for future lessons.

06. In School A, where Miki had been employed for over two years, we found a distressing legacy of betrayal, anger, disappointment and distrust. He had been treated with respect and actively supported, even when his lack of professionalism was revealed by unforgiveable discourtesies and breakdowns in his conduct. The parents, trustees and teachers at School A were fully entitled to be extremely concerned about their children – and they still are. Nonetheless, although they were understandably more exacting in their expectations of external aid once the news broke, most were still prepared to appreciate the prompt response their school received from a multi-agency Traumatic Incidents team, ably led by the Ministry of Education.
07. In each of the other schools, the prompt, generous and thorough work done by all officials was highly praised. The consistency of the basic guidance they provided on how to assist children and apprehensive families was noted and valued. The commonsense approach, clearly borne of various agency officials' experience, helped stabilise and reassure school communities.
08. Not much good comes from such a protracted story of deceit and fraud, but we strongly commend the work of all the agencies engaged and the school communities involved in dealing so well with this traumatic incident.
09. We also note that in general the news media handled the sensitive issues well, and despite the obvious newsworthiness of the story, did not unfairly or salaciously report the crisis schools were facing.

# PART EIGHT

## Recommendations



## From Part 2

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The Teachers Council (NZTC)

01. The Inquiry **recommends** that the forthcoming Review of the Teachers Council evaluate the merits and disadvantages of retaining dual approval by the NZTC for both professional education and registration standards for the teaching profession.  
(Part 2, Section 1)
02. The Inquiry **recommends** that a police vet be obtained when any person seeks to move from provisional to full registration.  
(Part 2, Section 2)
03. The Inquiry **recommends** that any notation, including any information about a change of name(s) and the reason for that name change, made beside a registered teacher's name on the NZTC Register, be readily accessible by any bona fide inquirer (eg a potential school employer).  
(Part 2, Section 2)
04. The Inquiry **recommends** that in consultation with the Ministry of Education, the NZTC:
  - a. introduce a Code of Conduct for all school teachers, teachers' support staff (eg kaiawhina), and any person with a Limited Authority to Teach (LAT)
  - b. promulgate the Code of Conduct to all teacher training providers; and
  - c. require that it be formally agreed to by any applicant for registration as a teacher or for a LAT.
 (Part 2, Section 2)
05. The Inquiry **recommends** that the Ministry of Education considers the need for interests to be:
  - a. declared by every school trustee, principal and senior staff member
  - b. formally recorded; and
  - c. if there is any potential or actual conflict, the decision on how this should be managed taken collectively by the Board of Trustees, and the decision, with reasons stated, formally recorded in the Board's records of business.
 (Part 2, Section 2)

We suggest that guidance on this issue by the Office of the Auditor-General be referred to by all school boards.

06. The Inquiry **recommends** that the Ministry of Education and the NZTC review the means by which responsible persons (eg school principals, board chairs) might raise with the NZTC any matter of substantial concern concerning the conduct of an employee when the evidence available does not necessarily or fully meet the threshold for investigation by the Complaints Assessment Committee of the NZTC.  
(Part 2, Section 2)
07. The Inquiry **recommends** that biometric photographic evidence for identity:
- a. be mandatorily required by the NZTC for any person seeking registration, be held on the Teachers Register, and be accessible to any future employer; and that
  - b. a second biometric photograph be taken of any preferred candidate for an appointment to a school teaching position, or for a LAT; and
  - c. before any appointment is confirmed, compared by the employer with that held on the NZTC Register.
- (Part 2, Section 3)
08. The Inquiry **recommends** that the Ministry of Education review the law on the NZTC's disciplinary functions with regard to:
- a. the threshold for issues addressed to the Complaints Assessments Committee to be referred to the Disciplinary Tribunal
  - b. whether this threshold should be that any alleged breach that could result in a term of imprisonment, if convicted, should be referred immediately from the Complaints Assessment Committee to the Disciplinary Tribunal.
- (Part 2, Section 5)

## From Part 3

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Wider government departments and information sharing

01. The Inquiry **strongly recommends** that all of the agencies holding information relevant to the safety and well-being of children in schools be convened under the chairmanship of an independent person to develop an Information Sharing agreement.  
(Part 3, Section 1)
02. The Inquiry **further recommends** that if the recommendation above is not implemented because the prerequisite legislation – the Privacy (Information Sharing) Bill – is not enacted then you give consideration to making a provision in the Education Act 1989 similar in intent to that provided in Section 66 of the Children, Young Persons and Their Families Act 1989.  
(Part 3, Section 1)
03. The Inquiry **recommends** that you refer the issue of name change law and the administrative processes related to it to the Ministers of Internal Affairs and Justice and that, as a matter of urgency, a policy review of the law and processes is initiated.  
(Part 3, Section 2)
04. The Inquiry **recommends** that you request, through the Minister of Internal Affairs, that the Births, Deaths, Marriages, and Relationships Registration Act 1995 be amended to provide in Schedule 1 for the Ministry of Education and the New Zealand Teachers Council to each become a specified agency, and that appropriate protocols be put in place to govern the process.  
Part 3, Section 2)
05. The Inquiry **recommends** that you refer the issue of notification of name change to the appropriate Ministers with the proposal that urgent consideration be given to require the Office of the Registrar-General to notify any registered change of name to the Passports Office, Customs Department and the Immigration Office of the Department of Labour and that appropriate protocols be put in place to govern that process.  
(Part 3, Section 2)

06. The Inquiry supports the appointment of social workers in schools and **recommends** that you discuss with the Minister of Social Development further extension of this policy.  
(Part 3, Section 2)
07. The Inquiry **recommends** that you refer to the Minister of Police for reference to the Commissioner of Police for his investigation into the question as to why no further charges other than those relating to breaches of release conditions laid by Corrections were laid by police as a result of Miki's arrest at Te Kura o Matapihi in August 2009.  
(Part 3, Section 2)
08. The Inquiry fully supports the recommendations of the special, internal investigation report prepared by the Chief Probation Officer on Miki's supervision by Corrections staff and itself **recommends** that the Minister of Corrections direct the Chief Executive of the Department of Corrections to give priority to their implementation.  
(Part 3, Section 2)
09. The Inquiry gives its full support to the development of a GPS tracking system as part of a sentence or a supervision order such as that imposed on Miki, assuming proper legislative authority and imposition by a judge and **recommends** that you convey this support to the Minister of Corrections.  
(Part 3, Section 2)



## From Part 4

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### Boards of trustees

- 01.* The Inquiry **recommends** that the Ministers of Education and State Services review the appropriateness of the categorisation of school boards of trustees as statutory Crown entities in terms of their ability to implement government policy and achieve national education goals for New Zealand children.  
(Part 4, Section 1)
- 02.* The Inquiry **recommends** that the question of schools boards' engagement in the design of entry standards for teacher trainees be considered as part of the forthcoming Teachers Council Review.  
(Part 4, Section 1)
- 03.* The Inquiry **recommends** that the Ministers of Education and Finance review the costs and value added to the school education system through the operations of up to 26 different teacher training institutions, in light of demand for training as affected by forecasts for the size of the New Zealand school population, and changes in technology and teaching practice over the next 10–20 years.  
(Part 4, Section 1)
- 04.* The Inquiry **recommends** that the forthcoming review of the Teachers Council evaluate the merits and disadvantages of retaining dual approval by the NZTC for both professional education and registration standards for the teaching profession (see also Part 2, Section 1).
- 05.* The Inquiry **recommends** that as part of the forthcoming review, the NZTC's current proposals for six-yearly surveys of teaching graduates be evaluated to test the sufficiency of assurance they would provide for the government, employers, school boards and other key stakeholders as to the quality of pre-employment teacher training.  
(Part 4, Section 1)
- 06.* The Inquiry **recommends** that necessary steps be taken to ensure that it is within the Minister of Education's remit to determine the policies that govern and raise:

- a. the pre-entry standards required by teacher training providers
  - b. the pre-employment standards required by the New Zealand Teachers Council when assessing whether a “satisfactorily trained” person may be provisionally registered and entitled to apply for teaching positions
  - c. the pre-certification standards required by the New Zealand Teachers Council to assess whether a provisionally registered teacher is entitled to a full practising certificate
  - d. the employment standards required by state and state-integrated school boards of trustees to assess the competence, suitability and other qualities of anyone applying for a teaching job (privately owned and charter schools would be exempt).
- (Part 4, Section 1)

07. The Inquiry **recommends** that as a matter of some urgency policies on proof of identity be considered by the Ministry of Education in consultation with key education sector stakeholders for introduction to all key points of entry to teacher training, teacher registration, the approval of practising certificates, and employment in schools. In particular the Inquiry **recommends** the use of biometric photographic evidence of identity at all stages of a person’s entry to teaching.

(Part 4, Section 3)

08. The Inquiry **recommends** that the Ministry of Education review the government’s National Administration Guidelines and National Education Goals and related policies in respect of Māoritanga and the quality of Māori children’s education and where appropriate revise them to more realistically reflect:

- a. the state of the Māori education labour market
- b. the intense general labour market competition for competent speakers of Te Reo and essential Māori cultural skills.

(Part 4, Section 3)

09. The Inquiry **recommends** that in the context of the forthcoming review of the Teachers Council, the Ministry of Education and the NZTC:

- a. review the policy framework for practising certificates
- b. revise these in light of the experience of other professionals where a graduate from, say, a specialist university programme (eg law or medicine) is employed on what is essentially an apprenticeship basis, and supervised and mentored for a period before being granted a “practising certificate” or professional ticket, and, after further work experience, full registration.

(Part 4, Section 3)

10. The Inquiry **recommends** that, to ensure that the quality of school governance is sufficient to mitigate the ongoing risks of chronic underachievement by some specific student populations, to meet the challenges of recruiting high quality teachers and facilitate more thorough teacher training, and to ensure that the school sector can better support the growth of the New Zealand economy, the Ministers of Education and Economic Development:
- a. initiate a review of the capacity and capability of the system for school governance established nearly 25 years ago
  - b. direct that this review be reported back to Ministers by mid-2013 in time for any agreed policy or legislative changes to be considered for the 2014 legislative programme.
- (Part 4, Section 3)
11. The Inquiry **recommends** that the Ministry of Education, in consultation with boards of trustees, principals, the teachers unions and any other appropriate agency, review the adequacy of professional employment services and guidance needed by a diverse range of school employers (including principals) if they are to secure the safety and well-being of school students.  
(Part 4, Section 4)
12. The Inquiry **recommends** that the Education Review Office consider:
- a. developing a review focus on how boards hire teachers and support staff, including the processes boards use, and the extent to which they validate, verify and authenticate information critical to the well-being of students
  - b. evaluating, for both individual school reports and a national evaluative report:
    - i. how well trained and prepared principals and boards are to perform their role as employers
    - ii. the recruitment, prioritising, hiring and post-employment monitoring processes they use
    - iii. the persons/sources to whom they turn for advice
    - iv. the reliance they place on informal or untested testimonials, attestations and other references for the character, competence, qualifications and experience of applicants for jobs
    - v. the extent to which the sheer need for a person to supervise or fill a prolonged gap or provide any contribution to the curriculum affects their judgement and employment decisions
    - vi. their professional preparation to assess the risks that candidates may be dishonest, emotionally unstable, or unsuited to work with children and young people
    - vii. their knowledge of their mandatory reporting obligations.
- (Part 4, Section 4)

13. The Inquiry **recommends** that in consultation with the relevant sector agencies, the Ministry of Education:
- a. review the annual financial provision in Vote: Education for training school trustees and consider whether better targeted training and more active on-site mentoring might be more cost effective in schools where the Ministry's regional staff, or ERO, signal a need for external advice and guidance but not necessarily other more serious intervention
  - b. review the range of data-sharing protocols and agreements it has now with all central government agencies that hold any information relevant to the safety and well-being of children and advise the Minister of Education on any opportunities for improved exchanges of information that she could discuss with her ministerial colleagues so that new or improved understandings and protocols could be put in place.
- (Part 4, Section 4)
14. The Inquiry **recommends** that the New Zealand School Trustees Association (NZSTA) review the effectiveness of its advisory role with respect to the employment responsibilities of boards of trustees and consider whether much tighter focussing on the poorest performers would represent better use of its contractual funding from the Ministry of Education.
- (Part 4, Section 4)
15. The Inquiry **recommends** that the Ministry of Education, ERO, the teachers' unions and NZSTA collectively review the Privacy Commissioner's published guidance and the questions quoted in this Report, and take prompt steps to educate their members and all school boards.
- (Part 4, Section 4)
16. The Inquiry **recommends** that the Ministry of Education, NZTC, ERO, NZSTA, the OAG, principals and boards of trustees critically consider the issue of risk management, in respect to the safety, protection and educational well-being of school children, and test whether this is given the highest explicit priority by all school boards and education sector agencies in all their policy and operational decisions.
- (Part 4, Section 4)
17. The Inquiry **recommends** that the Ministry of Education, as the Government's principal education policy adviser, consider the following:
- a. Should a board's risk management duty extend to cover employment-related risks, how to assess their probability and possible consequences, and how to avoid or mitigate them?

- b. Is it reasonable to expect that all lay boards of trustees, as hiring agencies, will be competent to handle the risks associated with hiring staff where these risks have potentially serious implications for the well-being and safety of children?
- c. Should alternative governance arrangements be put in place soon after, say, board elections demonstrate a paucity of relevant governance skills, or at least one adverse ERO report, and before ex-post interventions become unavoidable?
- d. Does the current, substantially paper-based, employment system for graduation, entry to pedagogical training, application for registration, attestation, appointment and confirmation as a teacher adequately address the triangulation of validation, verification and authentication that should be in play when a person seeks employment in a school?
- e. Is registration and allocation of a practising certificate by the Teachers Council, arguably a critical “point of reliance” by a board, sufficient to counter the risks of incompetent, ill-advised or poorly-informed hiring practice, even with much less skilled forgers than Miki?

(Part 4, Section 4)

## From Part 5

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### NZTC Review

- 01. The Inquiry **recommends** that you provide those carrying out the review with a full copy of this Report for their consideration during that review.

# APPENDIX A

## Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector: Terms of Reference



# Terms of Reference directed to the Inquiry

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With regard to the actions of this alleged offender, the Review will explore how the system was manipulated, including:

- a. Teacher Council involvement in employee vetting and registration
  - i. Legislative requirements
  - ii. Capability and capacity to deliver
  - iii. Inter-operability of government agencies
- b. Wider government departments
  - i. Current legal obligations to share information
  - ii. Effectiveness of inter-agency collaboration
  - iii. Effectiveness of protocols in place to manage a failure in the system
- c. Process schools undertake with regard to vetting prospective employees
  - i. Legislative requirements
  - ii. School policies (boards of trustees)
  - iii. Capability and capacity to deliver
  - iv. Does Ministry/ERO review such policies?
- d. Whether the individuals and agencies involved in the case shared information effectively or not. If not, why not? Did the individuals have a clear understanding of the law around information sharing?
- e. How the Terms of Reference for the current review of the Teachers Council could possibly be amended to reflect the recommendations of this review?
- f. Any other matters you might identify that you believe should be brought to the Minister of Education's attention.

## Objectives for the Inquiry

- The specific points at which, and the specific means by which (Person A) was able to exploit opportunities in the system.
- How we strengthen the system to prevent this happening again.
- Identify any specific issues that systematically need to be addressed.
- Determine how to further strengthen the system to ensure such an exploitation does not happen again.



