

Vulnerable Children Act 2014 Compliance within New Zealand Primary and Secondary Schools

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This report may be found at improbable.co.nz.

For my T.E.A.M.

*Be strong and courageous
and may you always be protected.*

Child Protection¹

An activity or initiative or project designed to protect children from any form of harm, particularly arising from child abuse or neglect.

“Too often individuals and organisations know of abuse but do not take the required action – there will no longer be justifiable excuses.”

–Hon Paula Bennett
Vulnerable Children Bill, First reading²
16 September 2013

¹ Cosgrove School Child Protection Policy 2017 (page 106)

² www.parliament.nz/en/pb/hansard-debates/rhr/document/50HansD_20130917_00000008/vulnerable-children-bill-first-reading

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Executive Summary

The Vulnerable Children Act 2014 is a significant piece of legislation intended to create “a better life for the most vulnerable children in New Zealand”³ and help “build a strong culture of child protection”⁴ in schools and other agencies that work with children. The legislation includes requirements for all school Boards of Trustees to implement a Child Protection Policy and gave them two years to create and ratify one.

Two years after this legislation was enacted, this research found only 274 schools had implemented one prior to the commencement date. Almost four years after this legislation was enacted, up to 62% of schools did not have a Child Protection Policy, with a known 267 schools not being in compliance. This amounts to up to a possible 484,000 children being affected.

The Education Review Office (ERO) did not identify any policy issues relating to the Vulnerable Children Act for 94% of schools that were known to not have a Child Protection Policy in this research. Further, ERO provided explicit assurance in their reports that they had checked compliance or policies relating to the Vulnerable Children Act for 68% of the schools that were known to not have a Child Protection Policy in this research. Those parents and caregivers were misled.

There also appears to be a significant issue in the self-assurance checklists and compliance attestations made by school Boards of Trustees to ERO which seem to be accepted as true without independent verification by ERO.

Child Protection Policy compliance failures were found to be both systemic and widespread across New Zealand. All parents and caregivers should be concerned and be asking questions of their schools. Further investigations by state agencies are warranted.

³ www.orangatamariki.govt.nz/working-with-children/vulnerable-children-act-requirements/

⁴ www.education.govt.nz/school/running-a-school/vulnerable-children-act-2014-requirements-for-schools-and-kura/

Introduction

Objectives

1. To determine the number of schools that are not satisfying their obligations outlined under Sections 18 and 19 of the Vulnerable Children Act 2014 (VCA).
2. To determine when schools ratified a Child Protection Policy (CPP).
3. To determine the number of schools that had been reviewed by the Education Review Office (ERO) and found to be compliant when they were not.

Rationale

In May 2018, the author discovered that the school at which three of his children attended did not have a Child Protection Policy as mandated under the Vulnerable Children Act 2014⁵. Yet ERO provided assurance that they had indeed checked compliance and stated no issues in the school's October 2016 ERO review report.

The author hypothesised that the situation at Helensville Primary School was not an isolated case and that the compliance failures could be both systemic and widespread across New Zealand.

No literature or data on the adoption and contents of Child Protection Policies by New Zealand schools and when they were implemented could be found. This research addresses that gap and is extremely important in providing transparency and knowledge to all parents and state agencies for the first time.

⁵ www.legislation.govt.nz/act/public/2014/0040/latest/DLM5501618.html

VCA Timeline⁶

Key Dates	Requirements
30 June 2014	VCA enacted
From 1 July 2014	Early childhood education services and ngā kōhanga reo (Services) must have their child protection policies in place.
From 1 July 2015	All new core children's workers in Services and schools and kura (schools) must be safety checked before being employed or engaged from this date. The Workforce Restriction applies to new core children's workers, unless an exemption has been granted.
1 July 2016	Schools must have their child protection policies in place as soon as practicable after this date. The Workforce Restriction applies for all existing core children's workers, unless an exemption has been granted. All new non-core children's workers must be safety checked before being employed or engaged.
By 1 July 2018	All existing core children's workers must be safety checked by this date.
By 1 July 2019	All existing non-core children's workers must be safety checked by this date.

Terms

BAS	Board Assurance Statement
BOT	Board of Trustees
CPP	Child Protection Policy
ECE	Early Childhood Education
ERO	Education Review Office
NAGs	National Administrative Guidelines
NZSTA	New Zealand School Trustees Association
OIA	Official Information Act
ROC	Report of Concern
VCA	Vulnerable Children Act 2014

⁶ education.govt.nz/assets/Uploads/VCAPracticalGuide.pdf and www.education.govt.nz/assets/Documents/School/Running-a-school/4-planning-green-30-03-B.pdf

Background

In May 2018, the author believed that Helensville Primary School did not meet their obligations to provide emotional safety for his son. On 25 May 2018, the author discovered with concern that the school did not have a Child Protection Policy as mandated under the Vulnerable Children Act 2014. The school, the Ministry of Education, the New Zealand School Trustees Association were all made aware of the non-compliance on that date. NZSTA advised the board of its obligation and policy error also on that date.

To understand how a school could not have a CPP for nearly two years after the law came into effect, the author turned to ERO's reports. ERO visited Helensville Primary School in October 2016, three months after the VCA had come into effect. ERO's report for that visit states:

During the review, ERO checked the following items because they have a potentially high impact on student safety and wellbeing:

- compliance with the provisions of the Vulnerable Children Act 2014

The report provided explicit assurance to parents and caregivers that they had checked compliance with the VCA, and there were no notes of issues relating to it. This raised more concerns and questions. How could ERO have failed to discover the non-compliance?

Further, the chairman of the Board of Trustees of Helensville Primary School at the time the VCA came into effect was a senior police officer who worked in child protection, and one would expect him to be very familiar with this significant piece of legislation. How could this requirement have been overlooked by this board in particular?

The author mused that perhaps the situation at Helensville Primary School was not an isolated case. Was there a widespread problem with schools not implementing the VCA and was ERO assuring parents and caregivers at those schools that there was not a problem?

On 5 September 2018, the author began emailing all schools in New Zealand to request copies of their Child Protection Policies under the OIA, including Helensville Primary School.

On the following day, 6 September 2018, more than three months after the Helensville Primary School was advised of its non-compliance by NZSTA, the Board of Trustees ratified NZSTA's standard CPP template⁷ as an interim Child Protection Policy. The policy was announced to the author and all other school parents on 20 September 2018.

New Zealand has one of the worst rates of child abuse in the world⁸.

⁷ www.nzsta.org.nz/assets/Governance-framework-2018/Part-D-Operational-policies/D7-Child-protection-policy.docx

⁸ www.unicef.org.nz/in-new-zealand/child-abuse

In the year to 31 March 2018, Oranga Tamariki⁹ received a total of 89,651 reports of concern (ROC) relating to 63,077 distinct tamariki and rangatahi. Of those, 41,268 reports of concern relating to 34,368 distinct tamariki and rangatahi required further action. Of those requiring further action, 13,966 cases were substantiated across 11,587 distinct tamariki and rangatahi. 16% of all reports of concerns had findings substantiated.

Of all distinct children and young people where there were substantiated findings of abuse, *more than half* of all these cases were for emotional abuse - not only for the most recent year but for at least the five years prior¹⁰.

Emotional abuse is significantly a more prevalent problem than physical abuse, sexual abuse, and neglect. Research has shown emotional abuse can have a long-lasting impact on mental health¹¹.

Changing New Zealand's legislation – and mindset – from child *abuse* to child *protection* requires not only considering emotional *abuse* but emotional *safety*. Indeed, the Ministry of Education's NAG5 states that school boards are required to provide a safe physical and emotional environment for students.

When a person experiences abuse, their sense of safety is affected. The author's experience with a school's approach to handling emotional safety for a child after emotional abuse had occurred led to this investigation.

The sweeping changes that the VCA ushered in were a significant attempt by the then National Government to address child abuse.

No literature or data on the adoption and contents of Child Protection Policies by New Zealand schools and when they were implemented could be found. This research addresses that gap and is extremely important in providing transparency and knowledge to all parents and state agencies for the first time.

⁹ www.orangatamariki.govt.nz/assets/Uploads/20180828-Reports-of-Concern-and-Police-Family-Violence-referrals.pdf

¹⁰ www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/cyf/findings.html

¹¹ journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001349

Method

The Ministry of Education's New Zealand Schools Directory¹² was retrieved on 3 August 2018 and used to provide a list of all primary and secondary schools in New Zealand. The list includes all state, partnership, and private schools. Proposed schools that were not currently operating were excluded. This left a total of 2,545 schools.

The data was migrated to a Google Document spreadsheet¹³ and various fields that were not required for this research were removed.

For each school in the spreadsheet, their website was visited between 29 August and 3 September 2018 to determine whether or not a CPP had been made available online.

This was a laborious process. Policies were often difficult to locate with little consistency across websites. For those schools that did have a CPP on their website, it was typically found on a Policies and Procedures page. In some cases, Policies and Procedures were found under the About Us, School Information, or Information for Parents type pages, or else it was found under the Board of Trustees, or Governance pages. In a small number of cases, there was a direct link to the CPP from the school's homepage.

If no CPP was initially located on their website, all other applicable policies available on their website were reviewed. While the law specifies the provision of a policy specifically named *Child Protection Policy*, some schools had policies by a different name that had provisions for the identification and reporting of child abuse and neglect, the minimum criteria for a CPP¹⁴.

For the purpose of this research, a school was defined as having a CPP if their policies met the minimum criteria.

Many schools in New Zealand utilise a service called SchoolDocs which provides a core set of policies and procedures ensuring their legal obligations are met. Where a school had a link to SchoolDocs from their school website, the school was recorded to have a CPP.

Schools which did not have a website were denoted as "na" in the spreadsheet.

If a ratification date for the CPP was available, this was recorded in the spreadsheet.

¹² www.educationcounts.govt.nz/data-services/directories/list-of-nz-schools

¹³ docs.google.com/spreadsheets/d/1Pfd-IcwJfdsQLhWnlyplNOYLWxjIP4XHeWOjToiUx8Q/edit?usp=sharing

¹⁴ www.orangatamariki.govt.nz/assets/Uploads/Safer-Organisations-safer-children.pdf (page 8)

For those schools where a CPP was unable to be located on their website, they were emailed between 5–10 September 2018 with an Official Information Request for a copy of their CPP and the date it was ratified. (Appendix A)

The Ministry of Education’s New Zealand Schools Directory email addresses were used to send the OIA request. Six email addresses bounced. Three alternative email addresses from their school website were located and the email re-sent. Three schools were unable to be contacted by email.

Follow up email reminders were sent to those who had not yet responded between 17–19 September 2018. Responses were required under the OIA by between 3–8 October 2018. Schools which did not respond to the OIA request are noted in the spreadsheet as “na” for the Date Responded field.

Schools responded in a number of ways. Policies were also provided in a variety of formats including scanned originals and unsigned digital copies. Some provided login credentials to their SchoolDocs accounts while others provided access to their policies stored in GoogleDocs.

Responses to the OIA request for the first ratification date were varied:

- **Provided:** Date listed in the When column. Where only the month and year were provided, it was assumed for the purposes of this research that the ratification date was the last day of that month. Where only the year was provided, it was assumed for the purposes of this research that the ratification date was the last day of that year. Where only 2018 was provided, it was assumed for the purposes of this research that the ratification date was the date of the response.
- **Unclear:** The most recent review date was provided. Where a review date only was provided, it was assumed that this was the ratification date as per the OIA request.
- **Not provided:** Marked as “na” in the When column. In addition, for some schools using SchoolDocs, the join date was unable to be ascertained.

Many schools provided copies of their *Health & Safety* policies or other policies dealing with child abuse such as *Policy for the Identification of Child Abuse and Neglect*, *Child Abuse Policy*, and *Student Protection Policy*. Some schools used the NZSTA CPP template¹⁵ but gave the policy a different title. For the purposes of this research, where the contents of a policy met the minimum requirements of a CPP but the title of that policy was not *Child Protection Policy*, it was determined that that school had a CPP.

¹⁵ www.nzsta.org.nz/assets/Governance-framework-2018/Part-D-Operational-policies/D7-Child-protection-policy.docx

The 852 schools listed on the SchoolDocs website¹⁶ as using SchoolDocs as of 4 October 2018 were cross-referenced and information added to the spreadsheet. Schools that were not yet opened and SchoolDocs' dummy schools were removed leaving 848 schools.

For the purposes of this research, it is assumed that SchoolDocs' list is accurate. Using SchoolDoc's announcements on their Facebook page¹⁷ which list the names of many of the schools joining the service, the ratification date of those school's CPP was assumed to match the date of the announcement. Where a school had provided a ratification date prior to this date, the earlier date was used. Announcements prior to 1 July 2016 were not included in this research.

For each school known to not have a CPP as of 25 May 2018, the most recent ERO report was retrieved from ERO's website. Schools which were not visited by ERO in the period 1 July 2016 – 25 May 2018 were excluded from further checks. Remaining schools' ERO reports were examined for all mentions of Vulnerable Children Act, VCA, Child Protection Policy, and CPP. Data were recorded in the spreadsheet.

¹⁶ www.schooldocs.co.nz/OurRoll.aspx

¹⁷ www.facebook.com/SchoolDocsNZ

Spreadsheet Fields

School	Name of the school
Website	URL of the school's website
CPP Website	Is a CPP provided on their website, na (no school website)
When	Date CPP first ratified as based on website and school's response, na (unknown)
Date Responded	Date school responded to OIA request, na (no response)
SchoolDocs	Schools utilising the SchoolDocs service as of 4 October 2018
SchoolDocs join date	Date school joined SchoolDocs service, na (unknown)
Has CPP	School had a CPP as of 30 September 2018, na (unknown)
When (compiled)	Date CPP first ratified as based on all available information (website, school response, SchoolDocs data), na (unknown)
Had CPP 25/05/18	School had a CPP as of 25 May 2018, na (unknown)
Had CPP 01/07/18	School had a CPP as of 1 July 2018, na (unknown)
ERO Report Date	Date ERO last visited school (for schools matching criteria)
ERO Report Notes	ERO's report notes relating to the VCA/CPP (for schools matching criteria)
Roll	Total school roll as at start of July 2018
Authority	Type of school

Results

Child Protection Policies

Had CPP	1 July 2016	25 May 2018	30 September 2018	Unknown Date
Yes	274	976	1,159	700
No	969	267	84	

- Refusals: 599 schools
- Bounces: 3 schools
- Total schools: 2,545

38.1% – 89.2% of schools did not have a CPP as of 1 July 2016.

10.5% – 61.7% of schools did not have a CPP as of 25 May 2018. This amounts to an estimated minimum of 80,000¹⁸ children affected, with up to a possible 484,000.

3.3% – 27.0% of schools do not have a CPP as of 30 September 2018.

The minimum figures for the above ranges are obtained by counting the “No”s. The maximum figures for 2016 and May 2018 are obtained by assuming refusals, bounces and unknown dates are “No”s. The maximum figure for September 2018 is obtained by assuming refusals and bounces are “No”s.

Ratification Dates

Ratified CPP	Prior to 1 July 2016	1 July – 31 December 2016	2017	2018	Unknown Date
Yes	274	268	346	271	700

School Websites

As of 3 September 2018:

- 27.7% of all schools had a CPP on their website.

¹⁸ Using Ministry of Education total roll for those 267 known schools as at 1 July 2018, and using the median overall school roll for those schools which did not have roll data available.

- 30.4% of schools with a website had a CPP on it.
- 37.9% of schools which had a CPP link to it on their website.

ERO Reviews

Of the 267 schools known to not have a Child Protection Policy as of 25 May 2018, 108 were reviewed by ERO between the commencement of the VCA on 1 July 2016 and 25 May 2018, when this issue at Helensville Primary School was uncovered.

Of those 108 schools, ERO made the following report notes:

ERO Report Notes	Number	Percentage
ERO does not mention VCA in their review.	29	26.9%
ERO says checked policies in relation to VCA requirements.	46	42.6%
ERO says checked VCA compliance.	27	25.0%
ERO makes a note* about VCA issues.	4	3.7%
ERO identified VCA non-compliance.	2	1.9%

*Issues noted by ERO:

- Board should continue updating policies and procedures relating to the VCA.
- Board should reference ERO's publications about the VCA when reviewing policies.
- Board have taken steps to to meet VCA requirements since the on-site review phase.
- Police vetting requirements of VCA.

For these 108 schools, ERO:

- Did not identify any VCA-related policy problem in 94.4% (102) of cases.
- Identified a VCA-related policy problem in 5.6% (6) of cases.
- Explicitly assured parents and caregivers that they had checked compliance or policies relating to the VCA in 67.6% (73) of cases.

For those 6 schools identified by ERO as having a VCA-related policy problem, 5 have now a Child Protection Policy. The length of time to implement a CPP after ERO published its review which noted the non-compliance or issue ranged between 212 and 712 days.

Discussion

Significant Findings

The hypothesis that the situation at Helensville Primary School was not an isolated case and that the compliance failures could be both systemic and widespread across New Zealand was supported by the data.

As of 25 May 2018, almost two years after the VCA came into effect and almost four years since the VCA was enacted, between 10% and 62% of schools did not have a CPP, with a known 267 schools not being compliant.

The VCA was a significant piece of legislation intended to create “a better life for the most vulnerable children in New Zealand”¹⁹ and help build a strong culture of child protection in schools²⁰. The legislation was discussed widely and had a high profile in the media. The Ministry of Education created resources and documents to advise schools on how to respond to the new legislation requirements. NZSTA provided training, resources, and announcements to school boards to support their governance responsibilities. Despite all of this, a mere 274 schools were found to have implemented a CPP prior to the commencement date.

Parents and caregivers entrust their children to the care of their schools and expect them to be in safe hands. They expect that schools have carefully thought through and planned for future scenarios so that if, and when they occur the school is prepared to handle it and how it will be handled is clearly explained to all involved.

The results of this investigation are sobering. Despite all the efforts made by lawmakers to do what they can to protect children, too many schools have not taken their duty of care obligations seriously.

This reinforces the notion that along with our disgraceful record of child abuse in New Zealand, as a country we also do not take child abuse, including emotional abuse and emotional safety and their implications for later in life, seriously.

The Education Act²¹ itself states:

“A board’s primary objective in governing the school is to ensure that every student at the school is able to attain his or her highest possible standard in educational

¹⁹ www.orangatamariki.govt.nz/working-with-children/vulnerable-children-act-requirements/

²⁰ www.education.govt.nz/school/running-a-school/vulnerable-children-act-2014-requirements-for-schools-and-kura/

²¹ www.legislation.govt.nz/act/public/1989/0080/latest/DLM187929.html

achievement. To meet the primary objective, the board must—ensure that the school—is a physically and emotionally safe place for all students and staff...”

Despite the lack of urgency by many school Boards of Trustees to implement Child Protection Policies “as soon as practicable”²², it is heartening to see schools which take their obligations and duty of care seriously by not settling for the minimum requirements but who are engaged in developing a culture of child protection.

There also appears to be a significant issue in the self-assurance checklists and compliance attestations made by school Boards of Trustees to ERO. It would appear that their provided answers are taken to be true without independent verification, despite this being what most people would understand ERO to be doing.

When the Ministry of Education was informed that Helensville Primary School did not have a Child Protection Policy, there was a response of disbelief that this was possible. Not only was it possible, but hundreds of other schools also did not have a CPP.

ERO failed to identify any VCA-related policy problems at 94% of schools that were known to not have a CPP in this research. 68% of the ERO reports for those schools incorrectly assured parents and caregivers that ERO had checked compliance or policies relating to the VCA and no related issues were noted.

Even when ERO notified schools and the wider public of non-compliance or policy issues, boards moved very slowly to rectify the problem, with a range of between 212 and 712 days before a CPP was ratified.

This widespread and systemic problem appears to be unknown by multiple agencies.

OIA Responses

The majority of schools promptly replied with the requested information, including schools simply stating that they did not have one, such as Waitakere College:

We do not have a Child Protection Policy but please note that all our policies are available on our website.

A number of schools entered into dialogue with the author regarding the Official Information Request.

For example, Principal Barrie Wickens of Tauranga Special School responded:

²² www.legislation.govt.nz/act/public/2014/0040/latest/DLM5501668.html

With all due respect..... can you confirm and provide the contact details of a Ministry of Education key person you must be working with? And seriously why do you need to know how many schools do or dont; have the policy on their website?

In response, the author said:

I am interested in sighting your child protection policy and the date it was ratified. If you wish to refuse my request, you may do so and provide reasoning based on the OIA legislation.

Principal Barrie Wickens replied:

I'm not refusing..... I have simply asked for MOE confirmation to your request. Schools' are encountering an increase in requests for many reasons,,,your's no exception.

No CPP was subsequently provided.

A number of other principals also raised the issue of an increase in the number of Official Information Requests that they are receiving and noted that these requests become a drain on schools' resources, particularly for smaller ones.

Traci Liddall, principal of South Wellington Intermediate, one of the few schools that had ratified a CPP prior to the legislation coming into effect, tweeted the following to the author:

Another OIA request wanting a copy of a policy. If our website says the policies are available to view onsite are we obliged to spend our time (and non-existent budget) to send it to a demanding journo?

Across the nation's schools that would be hundreds of hours which could be better spent doing stuff like, you know, teaching! Cheers @reganjcunliffe And before you start, yes you are well within your legal rights to ask for it.

Wesley Intermediate also noted time pressures:

Sorry, will do this when time allows. Myself and my Deputy Principal are spending so much time in the classrooms teaching, because their [sic] are no relief teachers in Auckland... which means we don't start our Principal tasks on some days until 3.00pm. At the present time we are working 65 - 80 hours per week, and still not getting everything done.

Another school requested that I complete the Ombudsman's OIA request template before they would respond.

It was heartening to receive much more positive responses by schools to the OIA request.

Opihi College said:

I have attached here our Agenda from our July Board meeting, along with our Child Protection Policy [sic].

We had included it in that meeting as we were well aware that it was unsatisfactory. We discussed it at the meeting and agreed to investigate more robust policies.

During the investigation process, we have come to a point where we will most likely join SchoolDocs to have all of our policies developed through them. We will be discussing that at tomorrow night's Board meeting.

I was holding off replying to you until a decision had been made but given that there may be further investigation required figured it made sense to send our current one to you.

Waihi College said:

At this moment in time our school does not have a Child Protection Policy in place however your email request has prompted me into action and I will be developing one asap.

Karangahake School said:

I have just started as Principal at Karangahake School and am finding my way through all the things that have not been put in place by the previous Principal who had been here for 25 years.

I have looked through our Policy folder and all policies that we have saved on an external hard drive and I cannot find a Child Protection Policy (obviously one of those things that the previous principal had overlooked). I will have to add this to my list of things to do.

Bradford School were not only compliant on time, but had already been considering child protection well before they were required to:

Please find attached our Child Protection Policy which is reviewed annually by our school Board of Trustees.

This particular policy was ratified on June 27th 2016, however before this date we had child protection procedures which were used.

With the introduction of the Vulnerable Children's Act 2014, this was then made into a school policy as opposed to procedures.

Waipu School said:

Attached is our Child Protection Policy. This is on our website - though possibly needs to be located on the end of a direct link from the main page.

I am a new principal at this school and am in the process of getting to understand what is where and where the gaps are. This policy is one that is being reviewed this year (as opposed to the date on the policy attached).

For those schools which refused the OIA request, the author is entitled to complain to the Ombudsman in order to obtain the data. The Ombudsman complaints process can be lengthy and it is hoped that schools who have not responded to the OIA request to date will provide the information on publication of this report, and, where required, implement a CPP.

There is no doubt that a number of schools ratified their Child Protection Policies as a direct result of this investigation's OIA request bringing it to the attention of all schools.

Private Schools

While private schools fall outside the jurisdiction of the Official Information Act, they still have an obligation under the Vulnerable Children Act 2014 to have a Child Protection Policy with provisions for the identification and reporting of child abuse and neglect.

Some private schools responded that they were not legally obligated to supply their CPP. In these instances, the author noted the VCA requirements and a further request was made to them to confirm that they did have a CPP and the date on which it was ratified. In every case where this happened, the private school provided confirmation and a ratification date.

Other private schools did provide their CPPs after the initial request.

Principals

A number of schools with new principals discovered in the course of this research that their predecessor had failed to comply with their obligations under the VCA and moved to address these issues.

The principal of Helensville Primary School began not long after ERO had completed their visit in 2016 but did not appear to identify the existing non-compliance in her induction program.

Child Protection Policies

There were a wide variety of different Child Protection Policies that had been ratified by schools. These ranged in length from only a few sentences all the way through to Cosgrove School's comprehensive 108-page-long document.

Throughout the process of reading hundreds of Child Protection Policies, it became apparent that schools that did have a CPP could be categorised into having done one of the following:

1. Just enough to be compliant
2. Given some extra thought about the development of their CPP
3. Gone above and beyond and were striving for a culture of child protection

Many schools have copy and pasted the NZSTA template²³ for their own use. This method provides compliance to Boards of Trustees with minimal effort and consideration as to what child protection means.

The SchoolDocs policy framework provides for ease of implementation and the addition of various provisions at the check of a box. Their service is becoming increasingly popular among New Zealand schools that value peace of mind in having compliant and comprehensive policies and procedures without needing to re-invent the wheel.

Some schools used ChildMatters²⁴ services and workshops to assist with creating and implementing their child protection policies.

A number of schools have developed their own Child Protection Policies with clear and specific detail with the intent of being prepared for how to deal with scenarios when they arise.

It is positive to note that the number of schools which first ratified their CPP in 2018 (271) is on track to be larger than 2017 (346). If this year's trend continues, an expected 361 schools will have a CPP ratified by year-end.

There appears to be a slight increase in ratifications made after 25 May 2018, perhaps as a result of the Helensville Primary School non-compliance notification.

There was a significant increase in ratifications in September 2018 as compared with previous September data, a direct response to this research. The author would expect that October and November 2018 ratifications would also be up, as school boards may not have met in the OIA period.

²³ www.nzsta.org.nz/assets/Governance-framework-2018/Part-D-Operational-policies/D7-Child-protection-policy.docx

²⁴ www.childmatters.org.nz/

Child Protection Policies on School Websites

The VCA²⁵ states:

Every school board must—ensure that a copy of the policy is available on the Internet site (if any) maintained by or on behalf of the board or is available on school premises if requested;

While the majority of schools now have a website, only 38% of schools which do have a CPP link to it on their website. To help parents and caregivers, and for greater transparency, all schools should put all their policies on their websites and make these easy to find.

Some schools using SchoolDocs provide the username and password to their account directly on their website. Others provide it in school newsletters and the login is not readily available to others. During this research, a number SchoolDocs schools provided login credentials.

Boards of Trustees

Education Counts²⁶ summarises the responsibilities of Boards of Trustees as follows:

All of New Zealand's state and state-integrated schools have a board of trustees. The board of trustees is the Crown entity responsible for the governance and the control of the management of the school. The board is the employer of all staff in the school, is responsible for setting the school's strategic direction in consultation with parents, staff and students, and 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.

While Boards of Trustees have legal obligations to meet in relation to governance and ensuring a safe environment for all its students, there does not appear to be any consequences for non-compliance other than the potential of a poor ERO report. If ERO fails to identify non-compliance, then what? Who enforces the legal requirements of the VCA?

At the other end of the spectrum, parents and caregivers provide anecdotes of being threatened by schools with fines for parking for short periods of time in drop-off zones. There are clear and immediate consequences for minor infringements by parents and caregivers, yet do not appear to be any in return for major legislation non-compliance by boards.

²⁵ www.legislation.govt.nz/act/public/2014/0040/latest/DLM5501668.html

²⁶ www.educationcounts.govt.nz/data-services/data-collections/national/boards_of_trustees

NZSTA

The New Zealand School Trustees Association is contracted by the Ministry of Education to deliver a range of free services to all school Boards of Trustees to support and enhance their capability in governance and employment. This includes providing advice and resources to boards in relation to their legislative obligations. The Ministry of Education funds NZSTA over \$10 million annually to provide this support²⁷.

When an issue of legal non-compliance was brought to NZSTA's attention, there is no evidence that information regarding this potentially widespread issue was disseminated to all school boards. NZSTA made no mention of Child Protection Policies and VCA compliance in their *STAnews* publication, *Membership Matters* emails and any regional newsletter for the period May–September 2018.

ERO Reviews

Within the teaching profession there is a general consensus that ERO reviews are rigorous and grave external assessments. As one retired teacher said:

As teachers we thought they were so nit-picking they would find a rotten mouse out in the caretaker's shed.

Positive ERO reports are proudly referenced by schools and used to help assure parents and caregivers that their school is a good choice for their children.

ERO reports are the sole nationwide public benchmark that determines how well a school is doing and are trusted by parents and caregivers, teachers, communities, the Ministry of Education, and the media.

The initial part of the ERO Review Process requires Boards of Trustees to complete a Board Assurance Statement and Self-Audit Checklist.

In correspondence, ERO explained this as:

Part of the preparation for an ERO review is to request from the Board of Trustees its attestation that the school is meeting its legislative obligations through an extensive Board Assurance Statement (BAS). ERO review teams check aspects of schools' compliance. It is the school that has the responsibility for implementing its obligations.

<http://www.ero.govt.nz/how-ero-reviews/our-approach-to-school-evaluations/>

²⁷ www.education.govt.nz/assets/Documents/1-OIA-releases/NZSTA-funding.pdf

ERO updated its BAS²⁸ in July 2015 to include the following:

Has the board taken steps to meet new requirements* under the Vulnerable Children Act 2014 to put child protection policies in place that guide staff to identify and report child abuse and neglect?

[*Note: the new requirements will apply at a later date to be confirmed by legislation, but it will be good practice for boards to be prepared].

[Yes / No / Unsure]

ERO updated its BAS²⁹ again in January 2018 to include the following:

Does the board have a child protection policy* that -

- (a) Is written down and in use?
- (b) Says how suspected neglect and abuse will be identified and reported?
- (c) Will be reviewed every three years?
- (d) Is available on the school's website or on request?

[Reference sections 18 and 19 Vulnerable Children Act 2014. Refer to Part 6 of Vulnerable Children Act 2014 - practical guide for assistance]

[*Note: the policy is a mandatory requirement from 1 July 2016].

Of the 108 schools that were known to not have a CPP as of 25 May 2018 and were reviewed by ERO between 1 July 2016 and 25 May 2018, it is assumed that all Boards of Trustees completed and signed one of these ERO BAS forms as part of the ERO review.

When parents and caregivers read in an ERO report that "During the review, ERO checked... compliance with the provisions of the Vulnerable Children Act 2014" ... because they have a potentially high impact on student safety and wellbeing" they would likely assume that an ERO check would involve more than accepting a BAS and taking the board's word for it, but that ERO would also conduct a full audit and sight the applicable documentation related to items in the BAS checklist.

On 7 June 2018, the author asked ERO for clarification on how they checked compliance with the provisions of the VCA, and whether or not a Child Protection Policy was sighted as part of this check.

²⁸

[web.archive.org/web/20160122201912/http://www.ero.govt.nz/content/download/206082/3511852/version/2/file/Board+Assurance+Master+-+July++2015+%5BFinal%5D.DOCX](http://www.ero.govt.nz/content/download/206082/3511852/version/2/file/Board+Assurance+Master+-+July++2015+%5BFinal%5D.DOCX)

²⁹ www.ero.govt.nz/assets/Uploads/Board-Assurance-Statement-January-2018.docx

On 12 June 2018, ERO's Deputy Chief Review Officer Northern (Acting) Julie Foley provided the following response to a request for clarification about Helensville Primary School's October 2016 ERO report:

I confirm that the coordinator of the review, and the reviewer who carried out the compliance check, sighted documentation related to the emotional and physical safety of children as a part of the review of Helensville School. The documentation incorporated the requirements of the Vulnerable Children Act.

ERO does not retain copies of board policies. A copy of the child protection policy should be requested from the school.

ERO reconfirmed their report, stating that there were no issues. However, it is unclear from ERO's response whether the sighted documentation noted was simply the BAS or whether the provided documentation was not read carefully.

On 28 May 2018 the Helensville Primary School Board of Trustees was asked by the author:

How could ERO, in their 2016 report for Helensville Primary School, state that they checked the compliance with the Vulnerable Children Act 2014?

On the 19 June 2018, the Board responded: "You would have to ask ERO".

The Board of Trustees and ERO both pointed to each other as to the cause of the ERO report not identifying the non-compliance.

By accepting BAS attestations as what is presumed to be the sole verification of the VCA requirements, ERO did not identify any VCA-related policy problem with 94% (102) of schools that were known to not have a CPP in this research. This is a widespread problem, not limited to Helensville Primary School. There are also many schools for which their CPP data is currently unknown, so this count is the minimum number of schools where ERO has failed to identify policy errors.

Further, in the ERO reports for 68% (73) of the 108 schools, parents and caregivers were explicitly assured that ERO had checked compliance or policies relating to the VCA. With no statement regarding findings of non-compliance, those parents and caregivers were misled.

This is concerning. It is the responsibility of ERO to check that schools are taking all reasonable steps to meet their legal obligations.

If ERO did not identify this policy error, what else are they missing? Are their reviews truly comprehensive and can their reviews be trusted or are their checks cursory?

On 10 August 2018, a complaint was sent to ERO outlining the ERO review and non-compliance issues at Helensville Primary School alone, and concern that this was a systemic failure affecting the entire country. That email concluded:

As a result of Helensville Primary School not having a Child Protection Policy, my two sons have suffered a great injustice and their mental health has been adversely affected... Further, a child psychologist has said that the risk to one of my son's mental health was too great to continue to send him to Helensville Primary School.

I request that ERO addresses these serious concerns.

On 16 August 2018, ERO's Mark Evans Senior Advisor Ministerial and Legal/RSM National said:

By way of background, part of the preparation for an ERO review is to request from the Board of Trustees its attestation that the school is meeting its legislative obligations through an extensive board assurance statement. ERO review teams check aspects of schools' compliance. It is the school that has the responsibility for implementing its obligations.

For information on how ERO approaches school review please visit our website:
<http://www.ero.govt.nz/how-ero-reviews/our-approach-to-school-evaluations/>

At the time of the 2016 ERO review at Helensville Primary School the review team checked that the school had systems and processes to give effect to the intent of the Vulnerable Children Act 2016. Notes from the 2016 review file state that the school had comprehensive systems and processes to ensure the emotional safety of students at board, leadership team and class levels. In addition, further notes with respect to the employment of staff at the school comment that processes for recruitment and appointment are robust. In 2016 the board attested to the new requirements to put child protection policies in place in the board assurance statement. ERO accepted that attestation.

You have stated in your email that two years on the school does not have an over-arching Child Protection policy in place. We will follow up.

On 17 August 2018, the author formally requested for ERO to conduct a special review of Helensville Primary School's policies and procedures due to wide-ranging concerns.

On 29 August 2018, ERO's Mark Evans Senior Advisor Ministerial and Legal/RSM National responded:

I have been following up your request and will reply once we have given due consideration to your concerns.

In the meantime, if you have anything further to add to what you have already forwarded, please get in touch.

No further correspondence from ERO has been received to date.

Study Limitations

Three schools were unable to be contacted by email. 599 schools refused the OIA request. Private schools were not obligated to respond to OIA requests. A small number of private schools self-reported that they had a Child Protection Policy and its ratification date without these being sighted.

Percentage ranges for schools that did not have a CPP are wide due to the number of refusals. This would be reduced by making complaints to the Ombudsman and awaiting their data to be provided in time.

Many schools did not provide the date that their Child Protection Policy was first ratified. Other schools provided only partial dates (such as the month and year or simply the year) or the date that SchoolDocs were joined and assumptions were made about the ratification date.

New government safety checking regulations made under the Vulnerable Children Act 2014 that required all paid employees and contractors who work with children for state-funded organisations to be safety checked started to be phased in. Compliance regarding this part of the Act was not considered as part of this report.

For corrections, amendments and updates, please contact the author.

Conclusion

This research has uncovered a systemic nationwide failure involving school boards, principals, NZSTA, ERO and the Ministry of Education in relation to the Vulnerable Children Act 2014.

It is of grave concern that the requirements to have a Child Protection Policy has not been taken seriously by many schools in New Zealand. All parents and caregivers should be asking questions of their schools.

Boards of Trustees' primary responsibility is to ensure that every student is able to attain his or her highest possible educational achievement and that the school is a physically and emotionally safe place for all students and staff.

Our tamariki need all the protection they require to function safely, grow to the best of their ability and become emotionally well-balanced, contributing members of our society.

Further Research

Additional investigations by state agencies are warranted:

- How many schools do not have a Child Protection Policy by 31 December 2018?
- As advised by NZSTA³⁰ and in relation to their Child Protection Policy, how many schools:
 - “make available professional development, resources, and/or advice to ensure all staff can carry out their roles”
 - “ensure that this policy forms part of the initial staff induction programme for each staff member”
 - “make child safety a regular discussion point at meetings and in announcements”
- Are schools implementing their child safety policies and procedures?
- Are children safer – both physically and emotionally – as a result of the Vulnerable Children’s Act?
- What other attestations to ERO by Boards of Trustees about taking all reasonable steps to meet its legal obligations be in compliance with legislation are not true?
- What else is ERO misleading parents and caregivers about in their reviews?
- Have the provisions for the vetting of core and non-core workers under the VCA been implemented by school Boards of Trustees?
- What policies and procedures are in place to protect the physical and emotional safety of all staff, particularly those who are vulnerable?
- What is the situation at ECE services?

³⁰ www.nzsta.org.nz/assets/Governance-framework-2018/Part-D-Operational-policies/D7-Child-protection-policy.docx and www.nzsta.org.nz/advice-and-support/employment/day-to-day-staff-management/child-protection-policy-2/

Recommendations

To the Minister of Education Hon Chris Hipkins

In light of these findings, the author requests a formal inquiry into New Zealand schools' compliance with the Vulnerable Children Act 2014, the Education Review Office processes, and Board Assurance Statements made by Boards of Trustees.

What actions will you take for Boards of Trustees that are not taking all reasonable steps to meet their legal requirements?

What assurances can you provide to parents and caregivers that this issue of non-compliance in relation to the Vulnerable Children Act 2014 is not an indication of systemic failures and non-compliance by school Boards of Trustees in other areas?

To all Parents and Caregivers

In light of the findings of this research, the author requests that all concerned parents and caregivers contact their school to find out if they have a Child Protection Policy, and exactly what is contained in it.

If required, demand that your school change its culture from being one which responds to child abuse to one which proactively protects children as the Vulnerable Children Act 2014 intended.

About the Author

Regan Cunliffe is a father of four children and lives with his wife and children near Kaukapakapa on a small farm. He is a freelance journalist and media commentator with an extensive background in digital media. Formerly, Regan was the founder and editor of *Throng*, a television community website.

Regan can be reached by email reganjcunliffe@gmail.com or phone 021 2999 364.

To show gratitude for the time and effort which has gone into this research, you may make a donation at givealittle.co.nz/cause/childprotection.

Appendix A: OIA Email

I am a freelance journalist working on a story about child abuse statistics in New Zealand.

Could you please provide me with your school's Child Protection Policy at your earliest convenience. Please note when it was ratified by your Board of Trustees if it is not stated in your document.

This request is being made to every school in New Zealand where I have been unable to source a Child Protection Policy from the school's website.

If you do not normally deal with official information requests, or you need advice on dealing with this request, guidance is available from the Ombudsman at www.ombudsman.parliament.nz

If you have any questions, please feel free to email me.