COMPLIANCE WITH REGULATORY DEMANDS RELATING TO NOTIFICATION OF ABUSE OF STUDENTS: PERSPECTIVES FROM THE USA, QUEENSLAND AND NEW ZEALAND

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Whilst words foul said bring mischief foul to those
one foully seeks, by any means, oppose,
fair words unsaid, where foul play doth exist,
permit foul players foully to persist.

Increasingly, obligations are placed on teachers, counsellors, school administrators and others, such as police or prosecution authorities, to notify to police or regulatory authorities known, suspected or even likely abuse of students. These may relate to abuse by school staff or others, and whether at school or elsewhere. These obligations may relate to sexual, physical, psychological or emotional harm and abuse. Teachers, in particular, may be subject to a number of such obligations. They may arise from statutes, from employer instructions or indeed from the common law duty of care itself.

Whilst educators may lack discretion whether to comply with their obligations to report and while the consequences of failing to do so, both for the students and the teachers, can be very significant, there is a tension between these regulatory demands and educational values insofar as feelings of loyalty and trust can inhibit compliance with such regulations. In an educational context, culture becomes absolutely critical in ensuring compliance, as acknowledged, for example, by the Australian Royal Commission into Institutional Responses to Sexual Abuse.

Against this background, this paper examines and compares the sources and scope of obligations arising in Queensland, the United States of America, and New Zealand.

It is hoped that the paper will stimulate discussion in relation to a range of issues such as the administrative challenge of having a variety of regimes with which to comply involving different definitions of abuse, different information being required, and different recipients of that information. It also hopes to stimulate discussion about how educational administrators, working with their lawyers, can create appropriate cultures of compliance without feeling that they are betraying others who may be innocent but in respect of whom the report is required to be made.[1]

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I Non-Statutory Sources of the Obligation

The purpose of this article is to analyse, and reflect upon, the imposition on school staff, by direct statutory provision or statutorily mandated policy provision, of reporting obligations relating to abuse of students.

Such obligations may vary as to:

- upon whom the obligation is imposed;
- the definition of abuse (one or more of sexual, physical, psychological, emotional or neglect);
- whether limited to life at school or generally;
- whether known or suspected;
- whether past, present or future;
- to whom reporting is mandated; and
- what information is to be included in the report.

In section 2 below, the laws of USA, Queensland and New Zealand are discussed.

Before doing so, however, it is appropriate to refer briefly to other sources of reporting obligations legally imposed on staff, and issues of liability in tort.

A *Duty of Care*

Schools (strictly, the legal entities conducting them) and their staff have a common law duty of care[2] to take reasonable steps to minimise the risk of injury (or harm) to students. This may well extend to a duty to pass on details of known or suspected abuse of children whether at school or elsewhere. In determining whether a duty exists it is obviously very relevant to Courts that the resources necessary to report are relatively limited compared to the massive and lifelong consequences which can flow from serious abuse which might have been prevented by early report of knowledge or suspicion.

Staff will be personally liable for failure to discharge their own duty (unless protected by statute or employer indemnity). Staff are not liable for the failure of others, though failure to report such failures, or in the case of school administrators failures in discharging training, supervision, and counselling obligations, may result in personal liability.

The position of educational employers is complex, and only brief reference is possible here.

Firstly, the employer may itself be at fault. Gleeson CJ, makes this clear in NSW v Lepore[3] where he said:

> One potentially important matter is fault on the part of the school authority. The legal responsibilities of such an authority include a duty to take reasonable care for the safety of pupils…. The relationship between school authority and pupil is one of the exceptional relationships which give rise to a duty in one party to take reasonable care to protect the other from the wrongful behaviour of third parties even if such behaviour is criminal. Breach of that duty, and consequent harm, will result in liability for damages in negligence.

Indeed, the duty has been classified as 'non-delegable' in the sense that even delegation to a competent contractor will not relieve the school of liability. This reflects the vulnerability of children and degree of control exercised over them by the school.

Secondly, the school may be liable for failures of school staff, including failures by staff to report knowledge or suspicion which may have led to intervention which would have prevented

or reduced harm to the student (whether at, or away from, school). 'Vicarious liability' is imposed by the law upon employers for torts committed by employees who commit that tort (usually negligence) in the course of their employment.

In Withyman v NSW,[4] Allsop P [135] reminds us that:

> Vicarious liability is imposed for a tort committed in the course of or within the scope of employment. If the act is authorised by the employer, the employer will be liable. The difficulty is in the consequence of unauthorised acts…Unauthorised acts will found vicarious liability if they may be regarded as modes (although improper modes) of carrying out employment duties; but if the act is unconnected with the authorised act it may be independent.

It is likely, therefore, that negligent failures by school staff to report will result in employer liability as well.

Thirdly, employers may be liable for intentional torts such as assaults (sexual or physical) committed by staff on students.[5] This is a difficult and developing area, but schools need to take steps to manage this liability risk.

In the context of schools,[6] Gleeson CJ, in Lepore[7] said at [53]:

> It is the element of protection involved in the relationship between school authority and pupil that has given rise to difficulty in defining the circumstances in which an assault by a teacher upon a pupil will result in vicarious liability on the part of a school authority. The problem is complicated by the variety of circumstances in which pupil and teacher may have contact, the differing responsibilities of teachers, and the differing relationships that may exist between a teacher and a pupil.

Accordingly, when drafting instructions to school staff in relation to reporting obligations, schools need to consider:

(a) in respect of all perpetrators, whether staff or not,

- liability arising from the school being at fault, for example, in designing and implementing reporting systems;
- (vicarious) liability arising from staff acting negligently, for example, failing to report;

(b) in respect of staff perpetrators, both the above, and in addition

- (vicarious) liability arising from staff assaulting students, (where failures by other staff to report suspicion or knowledge may delay or prevent detection of abuse).

B *Employer Instructions*

In all jurisdictions educational employers typically provide detailed and written instructions to staff members. In this context, the definition of abuse is usually drawn widely. This is very appropriate given the responsibilities educational employers have for the welfare of the students in their care and the length of time each week for which they are in that care. The instructions normally set out the events which *'trigger'* the obligation, the material that should be reported, the form in which that should occur and the person to whom the information should be forwarded.

II Statutory Sources of Obligation

When analysing such statutes, it is important to bear in mind the objective of the obligation imposed.

A *USA*

A tragic reality of American life is that significant numbers of children are abused and neglected, not to mention killed, often by the hands of their parents and care givers. In fact, 2013 data from the Centres for Disease Control and Prevention (CDC), the most recent available, reveal that 678,932 incidents of child abuse and neglect were reported to Child Protective Services (CPSs) nationally with about 27% of these cases involving youngsters under the age of three. Moreover, the CDC noted that the CPSs' data suggest that their reports may underestimate the occurrences of child abuse and neglect. This same report estimates that about 1,520 children died of abuse and neglect in the United States during 2013.[8]

Based on the duty to safeguard vulnerable youngsters, all jurisdictions have enacted fairly stringent child abuse reporting and protection laws which require a wide variety of professions including various school officials and health care professionals to serve as mandatory reporting. These laws have led to a growing body of litigation with the result that one dispute recently made its way to the Supreme Court.

In *Clark v. Ohio*,[9] the Supreme Court unanimously reversed an order of the Supreme Court of Ohio that would have limited the use of a teacher's testimony in a case involving child abuse. At issue was the admissibility of evidence from a teacher who testified that one of her three year-old students told her he was injured by his mother's boyfriend on being left in the man's care. The Court ruled that allowing the teacher to testify about the student's out of-court-statements concerning the physical abuse he suffered did not violate the defendant's rights under the Sixth Amendment Confrontation Clause.[10] Pursuant to this Clause, a defendant has the right 'to be confronted with the witnesses against him' because her testimony served as a substitute for having the child appear. The boyfriend subsequently challenged his conviction on all but one of the multiple charges he faced and being sentenced to a lengthy prison term. By allowing the student's testimony to be admitted, *Clark* highlighted the importance of having mandatory reports speak with victims of abuse to ensure that these children are protected.

Clarke v. Ohio is noteworthy because in ruling that the admission of the child's testimony did not violate the Confrontation Clause, the Supreme Court added a significant measure to enhance the protection offered by mandatory reporting laws designed to safeguard children who have been victims of sexual abuse. By allowing minors to testify in out-of-court settings that would undoubtedly be less imposing than offering testimony at trials where they would be confronted their abusers, *Clark* provides a measure of additional protection for these children. More specifically, *Clark* is important because it 'puts teeth' in the mandatory reporting laws by allowing the testimony of children, even if made ex parte, to be used in proceedings , thereby hopefully encouraging mandatory reports to speak with these young people about the harms they experienced.[11]

In a related note, the flip side of the issue is that defendants and their attorneys are likely to decry the opportunity that they will not have had the opportunity to confront the victim directly. However, in weighing the conflicting interests, the Court decided, correctly in this author's view, that sparing child victims of the additional trauma of being confronted by their abusers was a

greater good than allowing for such a confrontation to occur because it adds protections that the reporting statutes intend for the most vulnerable in society.

Over the past twenty-five years all jurisdictions have enacted stringent child abuse and reporting laws that usually include a wide array of school personnel as mandatory reporters. For instance, these laws usually cover professionals such as a:

- licensed school psychologist;
- speech pathologist or audiologist;
- administrator or employee of a child day-care centre;
- administrator or employee of a residential camp or child day camp;
- administrator or employee of a certified child care agency or other public or private children services agency;
- school teacher;
- school employee;
- school authority;
- superintendent or regional administrator employed by the department of youth services; and/or
- superintendent, board member, or employee of a county board of developmental disabilities.[12]

Statutorily mandated reporters must make good faith reports of suspected abuse directly to state level agencies rather than through intermediaries in their school systems. Educators who fail to comply with state reporting laws face serious consequences up to and including being dismissed from their jobs. In one recent case, by way of illustration, an appellate court in Arkansas affirmed a teacher's conviction for first-degree failure to make a good faith report of child maltreatment as a mandated reporter for not reporting sexual relations between another teacher and a high school student.[13]

B *Queensland*

1 *Sexual Abuse – Notifying the Police*

The *Education (General Provisions) Act 2006* is the overarching legislation for education law in the State of Queensland. Many of its provisions apply to both State Schools and Non-State Schools. Both of these types of Schools have students from the prep year (approximately the age of 5) to year 12 (approximately to the age of 17).

Part 10 of Chapter 12 of the Act is entitled '*Reporting of sexual abuse*'.

The rationale of the obligations imposed is to ensure that Police officers are informed of abuse or likely abuse at an early date.

The definition of sexual abuse is quite wide and applies in circumstances involving such offences as bribery and coercion where one person has less power than another, and there is a significant disparity between the individuals with at least capacity or maturity.

It seems almost certain that any sexual activity even if consensual with a person under the age of 16 will be sexual abuse as such activity is unlawful under the Criminal Code.

The obligation applies to staff members of the school who become aware or reasonably suspect in the course of their employment that various categories, primarily students under

18, have been sexually abused by another person (s365) or are '*likely to be sexually abused by another person*' (s365A and s366A).

The staff member must give a written report to the school's Principal or the Principal's supervisor, and obligations are then imposed on the Principal or the Principal's supervisor to immediately give a copy of the report to a Police officer.

The details which must be included are provided for in regulation.

s365 and s365A apply to State Schools and s366 and s366B (effectively parallel '*provisions*') to Non-State Schools.

2 *Sexual or Physical Abuse and Notification to the Department of Child Safety*

The rationale of these provisions is to ensure that relevant information is forwarded to the Chief Executive of the Department of Child Safety.

That Department has the overarching responsibility for the safety of children in their homes and is the Department empowered, where appropriate, to intervene in families where there is a statutory obligation or basis for doing so.

Pursuant to policy decisions that were made when the overarching Act the *Child Protection Act 1999* was recently amended, Part 1AA entitled '*Informing the chief executive about harm or risk of harm to children*' imposes obligations on a range of people. This discussion is limited to the imposition of mandatory reporting obligations on teachers arising from s13E of the Act.

The trigger is a '*reportable suspicion*' which is:

> about a child who:
>
> (a) Has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and
>
> (b) May not have a parent able and willing to protect the child from the harm.

The policy decision was to limit this statutory obligation to physical or sexual abuse.

The element that there must be a reasonable suspicion that the child '*may not have a parent able and willing to protect the child from the harm*' is related of course to the rationale of State intervention in the family, that is, there is a need for the State to do so.

Persons such as teachers upon whom this obligation is imposed must give a written report to the Chief Executive of the Department in a form which contains all of the elements set out in a regulation under the Act.

3 *General Comments on the Statutory Obligations under the Education (General Provisions) Act 2006 (Qld) and the Child Protection Act 1999 (Qld)*

Only in respect of one of the various obligations so imposed is there the chance of a prosecution in the criminal courts (and the penalty does not involve any possibility of imprisonment). However, obviously a failure to discharge the statutory obligation, even where it cannot result in a prosecution, must have great significance is teacher registration or employer discipline contexts. The failure is to take a step of obvious importance in relation to a student or a child potentially in need of protection against great harm. The obligation is imposed personally on the relevant categories such as teachers, by the Parliament and a failure to discharge is clearly a serious, even if not criminal, matter.

4 *Registered Teachers and Notification to the Regulator*

In Queensland teacher registration is governed by the *Education (Queensland College of Teachers) Act 2005*. Among other things that Act sets up a body known as the Queensland College of Teachers which determines applications for registration as a teacher and matters arising out of the conduct of registered teachers which may result in outcomes ranging from reprimand to cancellation of registration.

The rationale of this Act is, of course, to protect students by ensuring that only persons who are suitable, not only by training but by character and behaviour, to have children in their care should be permitted to teach. It is an offence to teach in a school where not authorised under that Act to do so. An offence is also committed by the educational employer.

Provisions in the Act imposing mandatory obligations are designed to ensure that the Queensland College of Teachers is made aware of matters which may require its investigation and consideration of whether action should be taken in order to protect students.

Chapter 3 of the Act is entitled '*Requirements for approved teachers and other persons*' and Part 1 is entitled '*Giving information to the college*'. In general terms, teachers must notify various matters to the College in particular matters arising under the criminal law or changes in their teaching status in another State.

Section 75 imposes obligations on the Commissioner of Police to notify various matters particularly relating to the person's criminal history to the College.

Section 76 applies if the employing authority '*…investigates an allegation of harm caused, or likely to be caused, to a child because of the conduct of a relevant teacher of the prescribed school*'.

Obligations are imposed on the employing authority to '*as soon as practicable after the investigation states give notice to the college of the investigation*'.

Section 77 imposes relevant obligations in respect of notification of the outcome.

Section 80 imposes obligations on prosecuting authorities to notify the College in various circumstances arising in relation to criminal proceedings against teachers.

5 *Working with Children Legislation and Notification to Employers and the College of Teachers*

In Queensland the *Working with Children (Risk Management and Screening) Act 2000* governs working with children, whether as an employee or in the conduct of a business. In relation to teachers, this applies outside the discharge of their professional duties such as working with children as a Sunday-School teacher, coaching a soccer club, or privately tutoring children away from school and not as part of their regular school duties.

That Act contains provisions imposing an obligation on the regulator to notify persons such as educational employers or the College of Teachers of various matters which, putting it generally, raise potential child safety issues.

C *New Zealand*

1 *Introduction*

Child abuse (emotional, physical, sexual and neglect) is a regrettable feature of most, if not all, societies. New Zealand is no exception: an OECD report on 'child death rates due to negligence, maltreatment or physical assault' ranked New Zealand as having, amongst OECD countries, the fifth worst rate of death from these causes for those between 0 and 19 years of age.[14] Another OECD report found New Zealand's youth suicide rate to be the worst amongst members, a statistic that may not relate entirely to abuse but which certainly suggests that, under the surface, all is not well.[15]

Raising children and young people is, first and foremost, a family responsibility. But, ultimately, safeguarding children and young people from serious harm caused by others, whether within their family or outside it, is a state responsibility. In New Zealand, as elsewhere, that responsibility is shared amongst all state agencies whose roles bring them into contact with children and young persons, whether that be in education, policing, justice, health or welfare. The lead agency for child protection in New Zealand is the Ministry of Social Development, which has established a service division known as Child Youth and Family (CYF). It is CYF that is specifically charged with keeping children and young persons safe. It operates under the *Children, Young Persons and Their Families Act 1989* (*CYPF Act (NZ*)).

The small size of New Zealand means that notorious cases of child abuse gain national attention. That has been an impetus for important reforms over the years. One recent reform – the *Vulnerable Children Act 2014* (NZ)– is currently being implemented and forms the subject of this section of the paper.

The *Vulnerable Children Act 2014* (NZ) (*VC Act (NZ)*) arose out of a White Paper and an accompanying 'Children's Action Plan' published by Government in 2012 after extensive community consultation. The *VC Act (NZ)* was designed to coordinate the responsibilities of government agencies in protecting children at risk, through such things as information sharing. It aims to promote practices that would reduce abuse by bringing it to light. The *VC Act (NZ)* is not aimed solely at the education sector but is directed at all the sites in which children are engaged. It is designed to bring abuse to the attention of relevant authorities, and also to prevent it from occurring. The focus in this part of the article is on the operation of the *VC Act (NZ)* in the education context.

2 *The Education Sector*

Students spend many years (from age 6 to 16) in compulsory education, and are entitled to free education for even longer (early childhood education through to the age of 19 years)[16]. Teachers and others involved in the sector, such as counsellors, volunteers and sports coaches, are uniquely placed to detect and report possible abuse suffered outside of a school. They may, for example, observe signs of that abuse or be told about it by students. In addition, of course, schools may themselves be sites of such abuse, whether perpetrated by teachers, coaches, volunteers or others who have access to their students.

The legal framework governing schools in the discharge of their responsibilities therefore needs to be properly understood. The focus in what follows is on reporting suspected abuse.

3 *No Mandatory Reporting*

The starting point is that New Zealand law imposes no general duty to report suspicions of abuse. Rather, s15 of the *CYPF Act* (NZ) provides a statutory basis for *voluntary* reports to police constables or to 'social workers' (a term defined to mean those social workers in the service of the state). In practice CYF runs and publicises a National Contact Centre to which calls may be made.

Persons who report in good faith under s15 will be immune from any civil, criminal or disciplinary proceeding that might otherwise have arisen out of their report. So New Zealand law on its face prescribes a *protected*, but not *mandatory*, reporting regime. The constable or social worker to whom a report is made then has a duty to undertake or arrange such investigation as may be necessary or desirable. A further cascade of duties and powers then follows under the *CYPF Act (NZ)*, ultimately including powers of state intervention and powers for courts. Those consequential duties and powers are not our present concern.

The choice of voluntary over mandatory reporting was a considered and evidence-based one. It was discussed most recently in the White Paper on Vulnerable Children. The view there expressed was that levels of reporting were already high – the same or higher than in some Australian states with mandatory reporting – and that the vast majority of abused children were in fact already known to government agencies. That suggested that the problem needing a solution was not so much an under-reporting of cases, but making an effective response to those reports.

Also, it was said that a disadvantage of mandatory reporting – observed in some overseas jurisdictions – was the risk of swamping authorities with reports such that they could not manage to investigate all cases. Paradoxically, the cause of averting abuse might be inhibited by mandatory reports. Also there was the concern about the degree of intervention in families that might result from needless reports.[17]

Some of these points might, of course, be debated. Yet, academic research addressing the views of children and young persons seems to provide some additional support for the direction taken by New Zealand in this regard. Lawson and Niven concluded from a survey of secondary school students in Otago that mandatory reporting would deter students disclosing abuse to teachers and school counsellors, and likely deter them from attending school if they had been physically abused.[18]

In 1993 a Parliamentary Bill had proposed mandatory reporting but was not enacted. The Bill attracted, on its introduction into the House of Representatives, an adverse report from the Attorney-General under s7 of the *New Zealand Bill of Rights Act 1990*. The Attorney-General's view was that mandatory reporting infringed the right to freedom of expression.[19] Emphasis appears to have been placed on case law under the Canadian Charter of Rights and Freedoms holding that freedom of expression included freedom from forced expression. Mandatory reporting was seen as forced expression.[20]

That view was problematic. As one legal scholar pointed out, the Canadian authorities were more concerned with persons being forced to say things they do not actually believe, not things (such as that a child has suffered abuse) that they do believe.[21] In truth, the idea that mandatory reporting offends freedom of expression (and is an unjustifiable limit upon that freedom) seems rather far-fetched. Still, this is not to say mandatory reporting is good policy, or the only sensible policy.

In any event, reporting – whether or not mandatory – has never been advanced by anyone as the whole answer to the problem. Prevention of child abuse has many more strands. In the

end, New Zealand has not taken the mandatory reporting path. Yet, as the following discussion suggest, the *VC Act (NZ)* has taken a turn that comes very close.

4 *Vulnerable Children Act 2014 (NZ)*

Section 18 of the *VC Act (NZ)* requires school boards, amongst other agencies, to adopt 'child protection policies'. School boards include managers of private schools, so the net is drawn widely. Child protection policies *must* contain provisions on the identification and reporting of child abuse. Boards must also ensure that any entity with which they contract to provide services to children also has their own child protection policies in place.

The content of policies is dictated by the *VC Act (NZ)* – but only at that high level. A policy must contain provisions 'on the identification and reporting of child abuse and neglect in accordance with s15 of the [*CYFP Act* (NZ)]'. This appears to *compel* – or, if not compel, then certainly *authorise* – schools to adopt policies that lay down an expectation that staff will report suspected abuse. So, the compulsion that is avoided in national law can be effectively supplied at the institutional level by the adoption of policies. In short, it is now policies on reporting that are mandatory, even if reporting is not itself literally mandatory.

What does this mean for the idea of mandatory reporting? It is perhaps possible to envisage a policy that complies with the *VC Act (NZ)* because it *deals* with 'the identification and reporting of child abuse' yet stops short of spelling out an expectation that staff will report their suspicions. This noted, it seems plain enough this is not the sort of policy the *VC Act (NZ)* envisages.

What the *VC Act (NZ)* envisages is probably best seen through the lens of the publication *Safer Organisations, Safer Children* available from the Children's Action Plan website. This sets out 'guidelines for child protection policies to build safer organisations' while recording the official governmental expectation of what a policy might look like.[22]

From this it seems clear that notification of suspected child abuse is indeed the expectation. For example, it is said that 'policies should clearly state expectations in regard to [...]:[23]

> (b) Responding to a child when the child discloses abuse or where there are concerns about abuse or neglect – a phone call to the Child Youth and Family National Contact Centre to discuss appropriate next steps.'

The flow charts and tables annexed to the two sample policies in this document similarly make plain the expectation that, within an organisation, a staff member's suspicions of abuse must be reported to the person designated by the organisation to receive such reports and that, where staff believe that a child has been or is likely to be abused, authorities *will* be notified. There is no suggestion of discretion.

The mandated policies under the *VC Act (NZ)* therefore form a bridge between discretionary and mandatory reporting. National legislation (s15 of *CYFP Act* (NZ)) permits reporting by prescribing protections for those who report. Institutional policies may, and probably must after the *VC Act (NZ)*, compel notification of suspected abuse. The mandatory aspect, therefore, arises at the institutional level.

Importantly, the mandatory aspect enables institutions to give thought to how their obligation is to be discharged. The Guidelines for Policies usefully give shape to this obligation. Especially significant is the requirement that a staff member discuss concerns about suspected abuse with a manager/supervisor or the designated person for child protection. A 'key consideration' set out in the Guidance is that 'No decisions should be taken in isolation'. Policies operationalising these

concerns will go a long way to dealing with abuse without the over-reporting that was seen as a risk with a simplistic mandatory requirement.

There is much to be said for dealing with reporting in this way, where the mandatory nature is the product of an institution's own policy-making process and can build in the moderating effect of institutional decision-making and management.

5 *The Protocol*

There has been a protocol in effect since 2009 between the Ministry, the NZ School Trustees Association and Child Youth and Family. This protocol, which pre-dates the *VC Act (NZ)*, also contemplates notification of suspected abuse to Police or Child Youth and Family. It says that, in relation to alleged abuse whether by staff or non-staff, the 'principal or nominated person should follow the advice of CYF/Police'. What child protection policies now add is the requirement and opportunity for school authorities to set out in greater specification how concerns about students in their own institution are to be handled.

6 *The Legal Status of Child Protection Policies*

The *VC Act (NZ)* says that a policy does *not* create legal rules or create any legal right enforceable in a court of law, nor affect or limit any person's statutory powers or affect interpretation of an enactment or operation of a legal rule.[24] This is a necessary precaution. After all, policies are not legislation and, though having a child protection policy is mandated by legislation, they are not truly in the category of delegated legislation. Putting their status as non-law beyond doubt seemed desirable.

This appears to make child protection policies basically aspirational. This may be so, but it does not stop them being directive. Indeed, this is usually the whole point of policies. They are intended to provide operational guidance as to expected conduct of employees (and others) and thereby allow an institution to shape how its officers utilise their discretionary powers and liberties on a daily basis.

This suggests that, in this field of child protection as in others, school officials need to carefully consider what will work best for them. Considerations include: designating a particular officer to receive reports, a single channel from that person to authorities, and stipulating for a process that ensures careful judgment is brought to bear on each particular case and whether it ought to be reported. And, if it is, how the consequences are handled.

In contrast, policies simply restating the law in a field, or otherwise failing to set out expected courses of action, risk not being helpful and are usually missed opportunities.[25]

It may be a moot point whether school employees' failure to act in accordance with child protection policies could ever be the subject of disciplinary action. The better view is that, on appropriate facts, it could. A policy is a record of institutional expectation and staff members' failure to apply the policy in circumstances where it is manifestly triggered would ordinarily require explanation. Having regard to that failure in an employment law context is not to treat the policy as a legal rule. The operative legal rule is in fact a different one: that disciplinary action can be justified for not meeting employment expectations set out in a school policy.

7 *Conclusion*

The *VC Act (NZ)* brings about, in the context of institutions to which it relates, the likelihood of mandatory reporting attained by policies. Those policies will likely guide practice even if not technically binding, and in the employment context can have implications for persons not following them. Much more likely, however, is that persons will follow them. School authorities ought to give careful thought to developing polices that actually provide specific guidance and pathways.

Importantly, the issues believed to be associated with mandatory reporting (possible over-reporting; the deterring of complaints by students for fear of those complaints being reported against those students' wishes) do not disappear just because compulsion in reporting is attained through the 'soft law' of policies backed by employment law obligations. It will be for school officials to consider and reflect on their approaches in this difficult area, and to introduce safeguards into their protocols that reckon with these concerns as much as possible.

Other specific education sector measures dealing with risks of child abuse

The goal of reckoning with potential abuse, whether by staff or non-staff, is achieved by a range of further measures that can only briefly be noted here. These include:

(i) **Police vetting** of non-teaching employees, school contractors and their employees at schools, and licensed early childhood education services.[26]

(ii) **Teacher registration and renewals** which similarly requires a police vetting of the person as part of the demonstration of whether a person is 'of good character and fit to be a teacher'.[27]

(iii) **Teacher disciplinary processes** - a search of the records of the Disciplinary Tribunal records a significant number of cases involving physical and sexual abuse of students.[28]

(iv) **Mandatory reporting** - employers must report to the Education Council when teachers are dismissed, or resign after the employer notifies dissatisfaction with their performance, giving reasons for dismissal. Employers must also report complaints received in relation to former employees (if received within 12 months of their ceasing employment).[29]

III Comparative Issues

There are significant differences between the three jurisdictions and these are consistent with some of the differences of opinion in the literature about the value or otherwise of mandatory reporting as distinct from encouraging reporting.

In New Zealand, subject to the qualifications below, there is as a general proposition no statutory, mandatory reporting under the law, which rather 'provides a statutory basis for voluntary reports' and prescribes a 'protected' but not a mandatory reporting regime that is subject to two important qualifications.

The first is that the *Vulnerable Children Act 2014* (NZ) imposes an obligation on school boards and others to adopt 'child protection policies' and the policy must contain provisions 'on the identification reporting of child abuse and neglect in accordance with section 15 of "the Children and Young Peoples Act"'. This appears to compel school officials to adopt policies laying down expectations that their staff will report, so the compulsion lacking in national law can effectively be supplied at the institution level by the adoption of policies as required by the Vulnerable Children Act 2014. As observed above at page 10, the mandated policies under that Act '*therefore form a bridge between discretionary and mandatory reporting'*.

The second qualification which has some resonance with practices in Queensland is the obligation of mandatory reporting to the Educational Council (which has responsibilities in respect of the certification of teachers). These obligations arise when teachers are dismissed or resign after the employer notifies dissatisfaction of their performance. There is also an obligation imposed on employers to report complaints received within 12 months of the cessation of employment.

In the United States all jurisdictions have, in the last 25 years, enacted stringent child abuse and reporting laws which usually include a wide array of school personnel as mandatory reporters (as set out above). A significant feature of this obligation is that mandatory reporters must make good faith reports directly to State level agencies, rather than through intermediaries in their school systems.

As set out above, Queensland has adopted the practice of imposing by legislation directly on (putting it generally) school staff obligations to notify in respect of sexual abuse so that a report goes to the police immediately, and in respect of certain types of sexual physical abuse to the Department of Child Safety so that Department has the opportunity to consider whether intervention in that family is appropriate. Again, as with the USA, and as with New Zealand in relation to the education council, the important feature is to get the relevant information to agencies, external from the school or the school system.

In Queensland there are a range of provisions referred to above whereby notifications must pass from teachers, their employers and the Commission of Police to the Queensland College of Teachers, the registration body for teachers.

Those interested in the differences and in particular in the issue of the value or utility or otherwise of mandatory reporting may find of considerable interest a recently published text, edited by Ben Mathews and Donald C. Bross, and cited in the Future Reading list at page 18.

IV Barriers to Reporting and Possible Ways of Overcoming Them

A *An Appropriate Organisational Culture*

This has been recognised by Australia's Royal Commission into Institutional Responses to Child Sexual Abuse. In its interim report in 2015 it made the following comment:

> It is apparent that perpetrators are more likely to offend when an institution lacks the appropriate culture and is not managed with the protection of children as a high priority. They will manipulate people, processes and situations to create opportunities for abuse. Everyone in a responsible role in an institution must be able to recognise when perpetrators are manipulating or grooming children. This requires education and training and the development of an appropriate institutional culture.

In research commissioned by the Royal Commission a similar comment appears in a report prepared by Professor Eileen Munro and Dr Sheila Fitch entitled 'Hear No Evil, See No Evil – Understanding Failure to Identify and Report Child Sexual Abuse in Institutional Contexts' dated September 2015. The following appears at page 6:

> Organisational culture: This is partly created by the explicit strategies and messages of senior managers but is also strongly influenced by covert messages that are transmitted throughout organisations, influencing individual behaviour. These can significantly affect the rigour with which policies and procedures are implemented.

Apart from creating such a culture it seems to us that it is important that school leaders and administrators should welcome enquiries from teachers about how to manage these issues. No-one should be fearful of seeking advice from a supervisor as to whether an issue arises. It can of course be difficult when one is an extremely busy leader or administrator not to give negative body language when busy with other matters. However, given the exceptionally high priority which will clearly be given to child protection in schools from now on, it is important that leaders create and implement a culture in which school staff feel welcomed in bringing enquiries to leaders for assistance. No-one is 'wasting time' or 'being a nuisance' – the stakes for students are too high compared to the relatively limited time that is necessary to consider whether action is needed.

In New Zealand the development of (and consultation over) child protection policies will be an appropriate way of inculcating that culture.

B *The Importance of Training Leading to Confidence*

In 2010 a team of academics based at Queensland University of Technology in Brisbane submitted their final report entitled 'Teachers Reporting Child Sexual Abuse: Towards Evidenced Based Reform of Law, Policy and Practice'. This flowed out of an Australian Research Council discovery project conducted between 2006 and 2009 based on law and policy as it stood at 1 January 2007.

In 2011 one of the members of the team, Dr Ben Mathews, published in the *Australian Journal of Teacher Education* an article, 'Teacher education to meet the challenges of child sexual abuse'. In reviewing earlier research into the issue Dr Mathews noted at page 18:-

> Most significantly for this article, some research suggests teachers' reporting practice is influenced by the extent and nature of teachers training in recognising abuse … and teachers' confidence in their ability to recognise abuse. … as well, the presence of training, and its recency, appears to influence high levels of teacher knowledge, more positive teacher attitudes towards reporting and effective reporting behaviour. [underlining added]

Near the end of the article Dr Mathews comments at page 26:-

> … these findings about teachers self-rated confidence and knowledge indicate that more thorough and sustained efforts need to be made to ensure that all teachers receive comprehensive, multidisciplinary training about the indicators of child sexual abuse, the context of abuse, and related issues including reporting processes. [underlining added]

In the conclusion Dr Mathews writes at page 26:-

> … should focus on building teachers' knowledge of the social context of child sexual abuse and its indicators, developing teachers' understanding of the reporting duties, helping to instil positive attitudes towards reporting obligations, and ensure the teachers are familiar with the practical mechanisms through which reporting duties are discharged. Such developments will also enable teachers to perform their traditional pedagogical and pastoral care roles in this special context. [underlining added]

For those with responsibility in this area both the report and journal article should be of considerable assistance.

For those having responsibility in this area, both the report and the journal article should be of considerable assistance. If one links up these ideas with the notion of creating a culture in

which enquiry is welcomed and support given, then the impact on compliance with reporting obligations can be very great indeed.

C *Nature of Training*

It is our experience that the way in which training is conducted is very important. It is important to explain the underlying principles and thus the context of rationale of any direction or instruction that is being given. Too often such training is just a recitation of rules associated with implied threats of dire consequences. This falls well short of what is needed to address the issue effectively. If people being trained understand the underlying policy objectives then it is more likely they will internalise the values which will lead to compliance, particularly where the training induces confidence and certainty and the culture reinforces that enquiries are welcomed.

One of our members has experienced in his practice that teachers and school administrators are often inhibited by a sense of loyalty to colleagues in being reluctant to make reports. Whilst loyalty to colleagues is of course admirable as a general principle and in many contexts, it is vital that teachers support each other – for example by giving evidence in trials or other proceedings, a sense of loyalty should not be permitted to inhibit reporting in compliance with mandatory reporting obligations. He found that the following advice is helpful in reassuring teachers in this regard.

> A number of specific matters I have encountered which often come up at teachers' seminars include the following. Teachers often seem to feel that they are in some way betraying a colleague if they report that a child has made an allegation about that teacher. My experience is that it is helpful to explain to people the following considerations:-
>
> 1. Given the obligations imposed on them (from a number of sources) they have no discretion to exercise;
>
> 2. Their obligation is not to make any judgement about the truth or otherwise of the allegation but simply to record carefully and clearly and to pass to the appropriate person (using the prescribed forms where such an obligation exists) exactly what was observed by them or said to them. They do not have an obligation (and indeed in many cases are prohibited from) evaluating the truth or otherwise of the allegations. The truth of concern to the teacher is the truth/accuracy of the report that they give as to what they saw or what was told to them. That is enough but it is vital;
>
> 3. Teachers should be encouraged to 'trust the process'. I explain to people that courts, tribunals and administrative decision makers have the best chance of getting it right if they have all the evidence and that evidence comes from careful and objective witnesses. If the teacher (against whom the allegation is being made) is a person who has in fact engaged in that behaviour then that needs to be addressed and in serious cases may lead to that person's (proper) exclusion from the profession. If the allegation is false or unreliable then there is every prospect that the version given to the teacher will be inconsistent with other versions given by the child for example to the police or in court or to the child's own parent. In that case the accurate report by the teacher, far from damaging the interests of their (innocent) colleague, will be of considerable assistance to them; and
>
> 4. Finally, I make clear to them that, important and vital as accurate reports are, the really hard part of all of this is the decision-making that must follow, whether

somebody is suspended, whether investigations occur and the decision-making by various bodies as to the appropriate outcomes.

D *Foreseeability*

Many of the sorts of situations which can arise and trouble school staff as to whether they should take action and what they should take are foreseeable, that is they raise questions of the 'What if this happens?' variety, many of which are standard, foreseeable and commonly occur. School leaders can address these issues by discussing with their staffs and giving reassuring advice as to what is appropriate behaviour.

E *Who is the Alleged Abuser?*

Finally, there is one factor which should not influence whether or not reporting obligations are discharged. One of the lessons which has become very clear (and noted by the Royal Commission) is that the decision to report or not report should not be a decision determined by the potential reporter's own assessment of the character of the person who is the subject of the allegation. This has led, and could in the future lead, to many tragedies. We now know that particularly in the case of sexual abuse allegations, persons otherwise of exemplary character may commit that type of offence.

At the end of the day though, the bottom line is that reporters are not making a finding, they are not making a decision about what should happen to a person, they are simply putting into the system and passing on to those who have the skills and training to investigate and make judgments, information which will:

(a) trigger an investigation or enquiry; and
(b) be of assistance in obtaining an appropriate determination in respect of that enquiry.

V The Need (often overlooked) for an Immediate Evidentiary Record

It is important always to bear in mind that a person who gives a notification may be a witness (and potentially a critical witness) in any of the following:

- a criminal trial;
- a civil action for damages;
- a teacher registration case;
- an employer investigation; or
- an anti-discrimination case.

This is probably not an exhaustive list. If a person giving evidence is in a position to give consistent evidence, particularly because they have made a record and retained it and used that as the basis (together with their memory) for all subsequent reports (including the initial mandatory notifications), then obviously the decision maker is assisted in 'getting it right' by having accurate and reliable evidence.

Such a document should set out, factually, the conversation or observations. It should record the time, date, and place being talked about and also the time and date of completion of the record (presumably at the bottom of the record). For example, a teacher who has been approached in the grounds should record something such as this:

> At approximately 11.00 am on… I was carrying out playground supervision duty in area B (see attached plan) of X State School.
>
> About that time a student called Y walked up to me and said 'There's something I need to tell you. Mr Z touches me ...',
>
> and so on.

Such a document should record, factually, the events and conversation. If comments are necessary, then a statement, which is not a description of the event, should be put in brackets to distinguish comment from a direct statement of what happened. The document should then be signed and preferably witnessed; the witness would only be witnessing that the signature was made at the time which the document asserts, not about the events). The original of that document should be retained by the staff member as their personal record. Copies can be supplied to appropriate other persons and the record so made would be the basis of any further reporting.

It is absolutely vital in the interests both of child protection and justice more generally (and, indeed, of both the person and the complainant) that accurate, immediate records are made. Where a record is made sufficiently close to the event, a witness may, indeed, be permitted to rely upon the record when giving evidence.

In conclusion, nothing in this document is designed in any way to discourage compliance with employer instructions. Rather, it is intended to enhance them by adding a first step which enhances the integrity of the system.

The objective is to acquit those who are innocent and convict those who are guilty (or the equivalents in non-criminal jurisdictions). Courts, tribunals, and administrative decision makers have the best chance of achieving these outcomes if they have before them material from careful, sober, objective witnesses who are consistent and, in particular, consistent because they have made a detailed, appropriate record as soon as possible after the relevant conversation or observations.

VI Some Possible Consequences of Non-Compliance

A *Action for Damages*

An action for damages, based on negligence, or breach of statutory duty, may well be possible.[30] If successful, damages could be very large in cases where severe long-term harm has resulted.

B *Prosecution*

In some, but not all, cases, legislated mandatory reporting may result in prosecution. In *Police v. Hayes,*[31] for example, a Queensland Principal was prosecuted but acquitted. In *Griffin v. State of Arkansas*, 2015, discussed above under 2.1, the sentence was one year of probation and a $2,500 fine.

In this context in particular, it is important to bear in mind that the relevant duty is imposed directly by the legislature on the individual.

C *Career Impacts*

Clearly consequences such as demotion or dismissal can flow from employer decision-making. This will be determined by the laws and practices in the particular jurisdiction.

Additionally, and more fundamentally, the teacher's right to practice their profession, or the terms on which they do so, can be affected by professional registration decision-making. There have been cases, especially involving Principals, of cancellation of registration, or imposition of terms, such as prohibition from working as a Principal or Acting Principal or as a Child Protection contact.[32]

VII Recommendations for Practice

The presence of state or national laws regulating child abuse reporting does not absolve school boards or governing bodies of their duty to work with educational personnel in implementing these provisions to keep the children in their care safe. As such, educators and their attorneys may wish to keep the following suggestions in mind when discussing their roles in enforcing child abuse and protection laws. To this end, governing boards and educators should:

First, provide mandatory annual professional developments sessions for teachers and other staff. These sessions should not only update participants on the law in their jurisdictions but also provide them with instruction and information about detecting indicators of possible child abuse along with how to fulfil their duties as statutorily mandated reporters. Such sessions should be delivered by professionals, either individually or in teams, in such areas as medicine, psychology, and/or law to identify whether children have been abused and how to respond appropriately.

Second, give hard copies and/ or provide links to all relevant state materials to staff members.

Third, think about devising their own child abuse and protection policies to clarify state requirements while perhaps adding additional protections for children. Local board policies should reiterate the need to report suspected instances of abuse promptly to the appropriate state agencies and to maintain confidentiality to protect all parties involved, including the accused. Policies should also encourage all faculty, staff, and students to cooperate in the event that state or other officials are in schools investigating possible abuse claims.

Fourth, consider expanding state law by including language in their policies adding possibly adding central office personnel to the list of those serving as mandatory reporters. Such additions can be helpful particularly if educators and others work with transportation and/ or are in schools often inspecting facilities because they are likely to be around children frequently enough.

Fifth, include relevant websites and phone numbers in teacher, staff, parent and student handbooks as well as other written materials such as newsletters.

Sixth, schedule regular public information sessions about child abuse detection and reporting for parents and the general public to help heighten awareness of this all too frequent crime in school communities.

Seventh, post child abuse prevention and reporting materials on district websites to make them readily available to all community members.

Eighth, offer confidential counselling to children who have been abused and, if appropriate, to their peers and other family members, including parents, to help overcome the emotional trauma they experienced.

Ninth, review policies annually to ensure that they are kept up with on-going developments in state statutes, regulations and case law.

VIII Conclusion

It is incumbent on governing boards and their attorneys to help enhance student achievement by working to eradicate child abuse in their schools and communities so that youngsters come to school ready to learn. To this end, if educational leaders are up-to-date on law and keep their teachers and other staff members well informed, then perhaps they can help reduce, if not eliminate, this terrible crime that ruins the lives of so many students and their families.

IX Further Reading

1. Ben Mathews and Donald C. Bross (eds.), 'Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect' Springer, 2015.

   This extremely significant text of 560 pages has 25 chapters organised in 6 parts, namely:

   Part I Historical and Current Context of Mandatory Reporting Laws

   Part II Theoretical/Ideological Debates and Issues

   Part III Legal and Conceptual Debates/Issues

   Part IV Practical Issues and Challenges for Reporters

   Part V Relationship of Reporting with Response Systems, and Practical Issues and Challenges for Response Systems

   Part VI International Variations/Challenges

2. 'Teachers reporting child sexual abuse: Towards evidence – based reform of law, policy and practice'. Final Report: Brisbane, Qld: Queensland University of Technology: Australian Research Council Discovery Report DP0664847, April 2010.

3. Website of the Royal Commission into Institutional Reponses to Child Sexual Abuse http://www.childabuseroyalcommission.gov.au/.

   This major enquiry has a substantial research program. Under 'Policy and research', many reports are accessible online, especially 'Mandatory reporting laws for child sexual abuse legislation in Australia', and 'Hear no evil, see no evil'.

4. The profiles of Professor Ben Mathews and Associate Professor Kerryann Walsh on Website of Queensland University of Technology, lead under 'Publications' (including QUT ePrints) to numerous relevant publications, many accessible free and online.

Keywords: students; abuse; notification; regulation; compliance; international.

Endnotes

1 An earlier version of this paper was presented at the *Australia & New Zealand Education Law Association Conference*, Auckland, New Zealand, 28 – 30 September 2016. https://www.lawyerseducation.co.nz/site/nzlaw/files/ANZELA%202016%20Conference%20papers/3.%20Knott%20Rishworth%20and%20Russo.pdf.

2 See generally *Donoghue v Stevenson* [1932] UKHL 100; *Geyer v Downs* [1977] HCA 64; (1977) 138 CLR 91 [5] (Stephen J).

3 *New South Wales v Lepore* [2003] HCA 4 [2] (Gleeson CJ).

4 See *Withyman (by his tutor Glenda Ruth Withyman) v State of New South Wales and Blackburn; Blackburn v Withyman (by his tutor Glenda Ruth Withyman)* [2013] NSWCA 10 [133] (Allsop P).

5 *Withyman* Ibid [133]; See also Vines, Prue 'NSW v Lepore; Samin v Queensland; Rich v Queensland - Schools' Responsibility for Teachers' Sexual Assault: Non-Delegable Duty and Vicarious Liability' [2003] 27(2) *Melbourne University Law Review 612;* Anthony Gray, 'Liability of Educational Providers to Victims of Abuse: A Comparison and Critique' (2017) 39 *Sydney Law Review* 167.

6 See also *Prince Alfred College Incorporated v ADC* [2016] HCA 37 [34] [38] (French CJ, Kiefel, Bell, Keane and Nettle JJ.).

7 *New South Wales v Lepore* [2003] HCA 4.

8 Centers for Disease Control and Prevention, *Injury Prevention & Control : Division of Violence Prevention: Data and Statistics* (2015) http://www.cdc.gov/ViolencePrevention/childmaltreatment/index.html.

9 135 S. Ct. 2173 (2015).

10 U.S. Constitution, Amend. VI (1791). Pursuant to this Amendment:
'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor [sic], and to have the assistance of counsel for his defense.'

11 Charles J. Russo **'**Reporting and Protecting Students from Child Abuse' (2015) 81(10) *School Business Affairs* 33-36.

12 Ohio Revised Code § 2151.421(A)(1)(b) (2014).

13 *Griffin v. State of Arkansas*, 454 S.W.3d 262 (Ark. Ct. App. 2015).

14 OECD Family Database, http://www.oecd.org/social/family/database.htm, OECD, 'SF3.4: Family Violence' 2013 http://www.oecd.org/els/soc/SF3_4_Family_violence_Jan2013.pdf at 5.

15 OECD 'Doing Better for Children', 2009 – ISBN 978-92-64-05933-7, accessed at http://www.oecd.org/els/family/43570328.pdf, 49.

16 *Education Act 1989* (NZ) s20, s3.

17 Children's Action Plan: Reporting Child Abuse, Accessed at http://www.childrensactionplan.govt.nz/resources/white-paper/reporting-child-abuse-/.

18 Deborah Lawson and Brian Niven 'The Impact of Mandatory Reporting Legislation on New Zealand Secondary School Students' Attitudes towards Disclosure of Child Abuse' (2015) 23 *International Journal of Children's Rights* 491-258.

19 See Report of Attorney-General, August 1993 (day not specified), accessed at http://www.justice.govt.nz/assets/Documents/Publications/BORA-Children-Young-Persons-and-Their-Families-Amendment-Bill-unsigned-report.pdf.

20 Unusually the s 7 report does not give reasons, but the 'forced expression' reasoning appears from the Department of Justice advice that lay behind it which is described in Grant Huscroft, 'The Attorney-General, the Bill of Rights and the Public Interest' in Huscroft & Rishworth (eds), *Rights and Freedoms* (Brookers, 1995) 144.

21 Huscroft, ibid.

22 See '*Safer Organisations, Safer Children: Guidelines for child protection policies to build safer organisations'* (2015) *https://www.mvcot.govt.nz/assets/Uploads/Safer-Organisations-safer-children.pdf.*

23 Ibid 27.

24 See *Vulnerable Children Act 2014* (NZ) s 20.

25 The sample child protection policy that appears on the New Zealand School Trustees Association website reads more as a delegation to the Principal of the board's general duties and for that reason comes close to being a policy about the need for policies. It does not, for example, speak to whether it is a school employee's *obligation* to report (to someone in the school, at least, if not to authorities under the *Children, Young Persons and Their Families Act 1989*) suspicions of abuse.

26 See *Education Act 1989* ss78C to 78CD (as to police 'vets' of non-teaching staff, volunteers and contractors) and s 413 (as to teachers).

27 See *Education Act* 1989, Part 31 (Teacher Registration).

28 See *Education Act* 1989, Part 32 (Education Council, dealing with mandatory reporting and disciplinary functions).

29 See *Education Act* 1989, ss392-7.

30 *Butler DA, Mathews BP, Farrell A, Walsh KM, 'Teachers' duties to report suspected child abuse and tortious liability' (2009) 17(1) Torts law journal 1*.

31 *Police v Hayes* (2009) QMC 13 http://www.austlii.edu.au/au/cases/qld/QMC/2009/13.html.

32 See Teacher misconduct panel outcome: Mr Christopher Raymond Hood 2013, UK. https://www.gov.uk/government/publications/teacher-misconduct-panel-outcome-mr-christopher-raymond-hood.
New Zealand Teacher's Council Complaints Assessment Committee v Stephen Hovell, NZTDT 2014/61C NZ (K Johnston Chair) https://educationcouncil.org.nz/sites/default/files/2014-61C.pdf.
Queensland College of Teachers v Hayes [2013] QCAT 657 (Howard, Browne and Macdonald Members) http://www.austlii.edu.au/au/cases/qld/QCAT/2013/657.
New Zealand Teacher's Council Complaints Assessment Committee v Paul Anthony Bremer NZTDT 2015/17 (Johnston (Chair) Gilbert and Hain) https://educationcouncil.org.nz/content/conduct-competence/disciplinary-tribunal/outcome/cac-v-bremer.