

C & V Turnbull

27 February 2024

Deputy Secretary

N Bell

Te Mahau

cc: Judge Peter Boshier, Erica Stanford, Abuse in Care Royal Commission of Inquiry

Dear Nancy

**Re: Your response letter dated 19 October 2023**

We find your response unacceptable and inappropriate considering the nature and gravity of the accusations. We are talking about abuse of children and young people at school.

Firstly, it is infuriating to be continually linked to the development of guidance for the education sector, guidance that is based on a lie - **that there were no guidelines for schools to follow, when there was.**

It is extremely gutting for us to have had a corrupted, draft version of those guidelines used for the Police investigation into the abuse of our son and others. We feel absolutely disgusted to have been patted on the back by Police, who associated us with the creation of the corrupted draft Seclusion Guidelines, produced and provided to Police by the MoE. It is disturbing to us, to have been hoodwinked by the MoE, knowing that right up until 12 October 2016 it was intending to release Seclusion Guidelines, allowing for the abuse to continue for at least 3 more years, when it was deemed aversive, cruel and inhumane at least 15 years earlier.

Our concerns about the actions of Murray Roberts and Christine Menzies have been dismissed by you because you state the matters were reviewed by the Ombudsman. You have also excused the actions of David Wales because you have stated they were reviewed and scrutinized by multiple agencies. We are unaware that all of the concerns we have raised with you about the actions of David Wales, have had public scrutiny. You were unable to reach the same conclusions in relation to our concerns about Terri Johnstone, noting *these matters have already been subject to review.*

You have not provided us with names of the agencies, apart from the *Ombudsman*, that conducted these reviews and the documentation or media links that support your response.

We would like to advise you that we have written to the Chief Ombudsman seeking confirmation from him that your advice is correct, in relation to his review of matters. He has not yet replied, however after reviewing letters and documentation, as far as we know the specific concerns we raised in our complaint letters against Ministry of Education staff, fell outside the scope of his investigations in 2017.

We are providing the following timeline for your reference. Side notes have been provided for your information.

### 22 July 2015

Complaints made to the Office of the Ombudsman about multiple agencies - Ruru, MoE, ERO, MSD (CYF)

### 13 June 2016

Office of the Ombudsman advised the Ombudsman would be investigating complaints we made.

### 19 October 2016

Judge Peter Boshier wrote to us confirming – *My investigation will consider the actions of the schools, the **extent of the practice**, and any related actions or omissions of government agencies, including the Ministry of Education. Note: this was also expressed in the media.*

### 25 May 2017

Judge Boshier writes to us - *You have asked why I am not investigating the seclusion of other students at Ruru. The scope of my investigation was set out in my letter of 14 December 2016. This includes looking at the whether the Ministry of Education may have caused or contributed to the use of seclusion in schools generally. However, I have received no complaint in respect of any other individual children who attended Ruru. I will not be inquiring into the conduct in relation to any child where a parent or guardian has not asked me to do so.*

Following on from this and after investigation it is worth noting Chief Ombudsman Opinion 5.a.i.ii – *it (Ruru) failed to consult with Mr and Mrs Turnbull about the proposed use of the room or inform them about its actual use; it (Ruru) failed to clearly and accurately record transportation to, and use of, the room – it would be reasonable to consider this may be one reason why no other parent complaints were received.*

### 7/11/17

Judge Peter Boshier writes to our lawyer – *As you noted, when I announced my intention to investigate the use of seclusion in schools on 14 October 2016, I referred to the extent of the practice. On 14 December 2016, I wrote to you setting out more specifically the scope of my investigation. By that time, the Ministry had issued new guidelines making it clear that schools **should not be using seclusion** and the Minister had signalled a legislative change to reinforce that. The Ministry had undertaken a nationwide survey to establish which schools were using seclusion or had done so in 2016, and to engage with those schools as necessary.*

*As noted in my opinion, under section 18(7) of the Ombudsman Act (the Act) an Ombudsman may regulate his procedure as he thinks fit. My investigation has focused on those aspects of your complaint that I determined it was necessary to investigate.*

Please note: When the Chief Ombudsman wrote on the 14 December 2016, after narrowing the scope, we can only assume he was not aware that MoE guidelines already existed which stated –

- *Timeout rooms should not be used.*
- *It is important to avoid actions that are likely to be emotionally or physically distressing to a student. These are aversive and can place students and staff at risk – 1. Shutting students into rooms where they can't get out.*

It is notable also that these guidelines were equivalent to the new guidance issued by the MoE in October 2016, and remained current right up until the new guidance was issued. Both old and new MoE guidelines opposed seclusion.

It is important to note: Ministry of Education also had guidelines for MoE staff to follow – to support MoE staff to reduce any inappropriate use of timeout/seclusion in School and Early Childhood settings. These MoE internal guidelines were also current up until the new guidance for schools was issued in 2016.

As you can see from the timeline above, Judge Peter Boshier narrowed the scope of the investigation to areas of our complaint that were limited to our experience.

So, we highly doubt that he was aware, MoE District Manager **Christine Menzies** withheld the current guidelines from Police in 2016, during the Police interagency investigation, as she revealed to Police in 2023, during questioning.

Our doubt is reinforced by the Chief Ombudsman Opinion - 208. *However, there is also a question as to schools' awareness of the 1998 Guidelines and their availability. They were not provided to Ruru. Ms O noted in her report that the NZSTA was unable to offer any guidelines, and that despite contacting the Ministry she had been unable to locate any guidelines about the use of time-out facilities or safe rooms. It would appear she was not provided with the 1998 Guidelines. **If neither the Ministry nor the NZSTA was aware of these, the extent to which they were known to, and accessible by, individual schools would seem highly questionable.***

Please note: (April 2015 – Terri Johnstone's letter to Turnbulls' lawyer J Eaton QC "I contacted NZSTA for advice on the lawfulness of safe rooms. I found basic guidelines around ventilation and the physical characteristics but found nothing that said that the rooms themselves were either lawful or unlawful."

Also notable is that the Chief Ombudsman stated in his Opinion – *I note that there was no evidence in the Ministry's responses to my provisional opinions to indicate that the 1998 Guidelines were provided or made available to schools.* However, the MoE advised under OIA later that all schools were sent hardcopies of these guidelines and subsequent updates were sent to all schools. Copies were also available to MoE staff who also held copies of guidelines to provide schools who required additional copies.

Had the Chief Ombudsman known Christine Menzies knew of the existing guidelines, (and withheld them from Police) it would have been contrary to the findings in his Report.

In 2023 Christine Menzies told Police - "I have never had any intention to impede the criminal investigation, and I always sort **authority or legal advice** before releasing any information."

Please be advised Police are happy enough with having been misled by MoE/Christine Menzies during the Ruru Allegations of Physical and Emotional Abuse Police Investigation/Assault and Unlawful Detention Reinvestigation.

In relation to Christine Menzies withholding the current/existing MoE guidelines from Police in 2016 (which stated: *Timeout rooms should not be used. They are not necessary and can result in teachers and schools being accused of using inhumane, cruel punishments.*) Detective Inspector Shona Low advised us at a meeting in 2023, "**it's not an offence to tell us a lie.**"

You have viewed evidence that **Murray Roberts** provided false information and withheld information from Police and stated that was a matter for Police, however our complaint isn't about what the Police did with information, it's about the fact that the information was false or withheld. Murray Roberts should have been honest when liaising with Police, representing the MoE, when he was not. How is this dishonesty acceptable to you Nancy?

In your letter you have stated contracts are developed with Terms of Reference and are monitored by Ministry teams. The Description of Services **Terri Johnstone** was to provide during investigation in **February 2015** at Ruru was 2. *Ruru School's use of a 'timeout/safe room' or similar withdrawal space in the school and its lawfulness.* However, this critical issue of lawfulness was not addressed.

In April 2015 Terri Johnstone wrote to our lawyer J Eaton – "I do reiterate the Terms of Reference." "While I could not find use of the safe room unlawful, I was surprised that rooms like that of Ruru School could be lawful."

Terri Johnstone was then contracted by the MoE to write new guidelines for the MoE Advisory Group (because she could locate MoE guidelines during her Ruru investigation). The MoE contract was based on the Terms of Reference and as Project Lead Terri Johnstone was to review the 'Ministry of Education Practice Guidelines for the Management of Serious and Challenging Behaviour' and provide the Advisory Group with a summary. However, these critical tasks were not completed.

The Advisory Group's Terms of Reference for the contractor was to analyse legal issues and produce written summary of findings. A peer reviewed Legal Issues paper was written in **June 2015** by Project Lead Terri Johnstone and then provided to the Restraint and Seclusion Advisory Group.

Terri Johnstone was then contracted in **July 2016** by MoE to investigate a seclusion complaint at Miramar Central School - Terms of Reference to cover – 2. The school's use of a 'timeout' space in the school and it's lawfulness. However, this critical issue of lawfulness was not addressed.

She reported – "as an expert in law has not carried out this investigation, it would be inappropriate for this report to make claims as to the legality of using the time out room."

We had raised concerns with the MoE in 2015, about the appointment of Terri Johnstone (her being a suitably qualified person), but these were dismissed. We reject any inference Terri Johnstone was hand-picked because of her expertise, or expertise she developed through her contracts.

As highlighted above, it is evident from the Investigation Reports she was not qualified to meet the Terms of Reference in the contracts, nor did the knowledge she had gained through writing the Legal Issues paper (that informed the Advisory Group) transpire in her Miramar Complaint Report. What did transpire is the cover up of guidelines and wrongdoing by schools.

**David Wales** knew about MoE guidelines for schools and guidelines for MoE staff. He also knew that the use of timeout rooms in Special Education was common practice. He knew schools were secluding students. Instead of putting schools and MoE staff on notice to stop (and enforce current guidelines) – he worked on creating new guidelines to allow for seclusion, while the abuse continued.

You have stated the MoE does not accept that David's goal was to mitigate the risk of legal liability and cover up abuse. However, we reference the Education Report from David Wales and Katrina Casey to the then Minister of Education, regarding the launch of Restraint and Seclusion Guidelines – a **Key Message** to support the release was – *Use of the guidelines will reduce the risk of legal liability.*

We find the actions of David Wales deplorable and inexcusable.

Your letter to us condones the actions of MoE staff, their handling and cover-up of abuse in NZ schools. We do not accept this.

Callum and Victoria Turnbull

