

MEMORANDUM OF UNDERSTANDING

Between

Ministry of Education, *Te Tāhuhu o te Mātauranga*

And

Teaching Council of Aotearoa New Zealand, *Matatū Aotearoa*

For the Purpose of
sharing information to enable each party to meet its statutory
obligations under the Education Act 1989 and for the wellbeing
and safety of children

Released under the Official Information Act 1982

Signatories

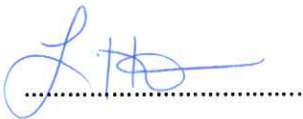
Signed for and on behalf of Ministry of Education, *Te Tāhuhu o te Mātauranga*



Date: 01/06/2020

Iona Holsted
Secretary for Education

Signed for and on behalf of Teaching Council of Aotearoa New Zealand, *Matatū Aotearoa*



Date: 03/07/2020

Lesley Hoskin
Chief Executive

Parties

1. The Ministry of Education (Ministry)

AND

2. The Teaching Council of Aotearoa New Zealand (Council)

Background

3. Early learning services must comply with minimum requirements set out in the Education Act 1989 (the Act), the Education (Early Childhood Services) Regulations 2008 (early childhood regulations) and Education (Playgroups) Regulations 2008 (playgroup regulations), and associated licensing and certification criteria in order to gain and maintain a licence or certificate to operate.
4. The Ministry is responsible for assessing compliance with the aforementioned legislation, which includes standards for the health and safety and care and protection of children.
5. The Council has jurisdiction over registered teachers. Its statutory purpose is to ensure safe and high-quality leadership, teaching and learning for children and young people in early learning, primary and secondary school settings through raising the status of the teaching profession.
6. The Council is responsible under the Act for performing disciplinary functions relating to teacher misconduct and reports of teacher convictions and responding to reports relating to teacher competence. These functions and others contribute to achieving its statutory purpose.
7. The Ministry may, when undertaking its licensing or certification function become aware of information that indicates a potential conduct or competence concern for a teacher. Conversely, the Council may, when investigating a teacher become aware of information that may relate to an early learning service's licence or certificate.
8. Employers are required to report concerns about a teacher's conduct or competence to the Council. Where a concern may or does involve injury or illness or incident involving a child, early learning services must also report this to the Ministry.
9. This Memorandum aims to ensure that each Party can share information to assist the other to meet their statutory obligations for the wellbeing and safety of children.

Purpose

10. The purpose of the information sharing under this Memorandum is to:
 - 10.1. assist the Ministry fulfil its licensing and certification function under the Act and regulations; and

10.2. assist the Council fulfil its conduct and competence obligations under the Act.

11. The purpose of this Memorandum is to:

- 11.1. acknowledge and apply the statutory context in which the information sharing will occur; and
- 11.2. record the Parties agreement of their understanding of what information will be shared, the justifications for the information sharing, and how that information will be used by the Parties; and
- 11.3. detail the process for reviewing and reporting on the information shared under this Memorandum.

12. This Memorandum is **not** an Approved Information Sharing Agreement under Part 9A of the Privacy Act 1993 and does **not** authorise any breach of the Information Privacy Principles in that Act.

Legal Authority and Application of the Privacy Act 1993

13. The parties have various statutory obligations under the provisions of the Act, as outlined in clauses 3 to 8 above. The Act enables relevant information to be collected, or requires information to be provided, for the purposes of fulfilling those statutory obligations, as set out below.

Education Act 1989

- 14. Early learning services must comply with minimum requirements set out in the Education Act 1989 (the Act), Education (Early Childhood Services) Regulations 2008 (early childhood regulations), and the Education (Playgroups) Regulations 2008 (playgroup regulations).
- 15. Licensed early learning services must keep, and make available to the Secretary on request, records that are necessary to enable the service's performance to be monitored adequately (section 313 of the Act). Licensing requirements necessitate that licensed early learning services ensure that appropriate documentation and records are developed, maintained and made available at any time on request by any person exercising powers or carrying out functions under part 26 of the Act (early childhood regulation 47(1)(c)).
- 16. Certificated playgroups must ensure that appropriate written procedures and records are developed, maintained and made available on request by any person exercising powers or carrying out functions under part 26 of the Act (playgroup regulation 22).
- 17. To ensure that the Act and regulations are being complied with, Ministry representatives may also enter and inspect any licensed or certificated early learning service, and inspect, photocopy, print out, copy onto a storage device or remove documents (section 319B).
- 18. The employer at an early learning service is required to report any teacher to the Council if the criteria in sections 392 to 395 of the Education Act 1989 are met.

19. Every holder of a practising certificate or a limited authority to teach is required to report to the Council if the criteria in section 397 of the Act is met.
20. The Council's Complaints Assessment Committee (or an investigator acting on the committee's behalf) may require an employer, or former employer (including an early learning service), or a government agency (including the Ministry) to provide information considered necessary for the purposes of an investigation (section 401(6) of the Act).
21. Apart from the aforementioned requirement for a government agency (including the Ministry of Education) to provide information to the Council, there are no specific provisions for the Ministry and the Council to share information. Therefore, this memorandum sets out how information relevant to each agency's statutory obligations will be shared, to avoid prejudice to the maintenance of the law.

Privacy Act 1993

22. The Parties agree the legal authority enabling the sharing of information is Privacy Principle 11(e) which provides that personal information may be disclosed where an agency believes on reasonable grounds it is necessary to avoid prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution and punishment of offences. This applies only in situations where not providing specific information would prejudice or be detrimental to enforcing the law.
23. The Parties also agree that Privacy Principle 11 (f), which provides that personal information may be disclosed to prevent or lessen a serious threat to the life or health of an individual, may also apply.
24. The Parties agree that the use and disclosure of personal information for the purposes set out in clause 10 comply with the Privacy Act.
25. This memo does not preclude the sharing of personal information under an alternate privacy principle, where this is relevant and appropriate.

Information to be shared

26. The information to be shared under this Memorandum is information that is considered relevant to each Party's obligations under the Act and regulations.
27. Notwithstanding clauses 22 and 23 the information shared under this agreement must be relevant, necessary and proportionate to the circumstances, consistent with the purposes and scope of this agreement, and essential to meet the other party's obligations.
28. Before sharing information, Ministry and Council staff will:
 - 28.1. identify the specific information to be shared, and
 - 28.2. satisfy themselves that the information is relevant to the other party's statutory obligations, and
 - 28.3. satisfy themselves that it is necessary to share the information to avoid prejudice to the maintenance of the law, and
 - 28.4. ensure that only relevant and necessary information is shared, and

- 28.5. ensure that information is shared securely.

Method and Frequency of Information Exchange

29. Information exchanged under this Memorandum may include personal, or personally identifiable information, of a sensitive nature.
30. The information to be shared under this Memorandum will be exchanged on an as required basis.

The Ministry of Education

31. If the Ministry becomes aware of a possible conduct or competence concern for a teacher at an early learning service that may require mandatory reporting to the Council, or that a teacher has been convicted of an offence punishable by imprisonment for 3 months or more, then the Ministry's regional office will:
 - 31.1. remind the early learning service of its obligation to immediately furnish the Council with a mandatory report, and that the early learning service must also notify the Ministry at the same time; and
 - 31.2. remind the teacher of their obligation to self-report to the Council; and
 - 31.3. advise the early learning service or teacher that if a mandatory report or self-report is not made to the Council by a specified date, then the Ministry will advise the Council of the concern within 2 working days of that specified date. Information will be shared by secure transmission or hand-delivered to named recipients. Information should include the name and location of the early learning service and/or the name/s of teacher/s, and any other relevant information pertaining to the concern; and
 - 31.4. if after the initial disclosure about a teacher, provide further information the Council considers necessary for the purposes of an investigation in reliance on section 401(6) of the Act; and
 - 31.5. securely store information in the relevant Kbase complaints, incident or LSM workflow system.

Teaching Council

32. If the Council becomes aware, through mandatory reporting or otherwise, that there has been or there is potential for a risk to a child's wellbeing or safety while at an early learning service, and this may fall within the Ministry's licensing or certification function, the following applies:
 - 32.1. if the Council has received a mandatory report and it meets the threshold for notification to the Ministry under licensing or certification criteria, then the Council will remind the early learning service of its obligation to immediately notify the Ministry of the mandatory report, and advise the Ministry of the concern at the same time; and

- 32.2. in situations that may not require notification to the Ministry under licensing or certification criteria, then the Council will advise the Ministry of the concern; and
- 32.3. concerns will be shared by secure transmission or hand-delivered to named recipients. Information should include the name of the early learning service and the name/s of teacher/s, and any other relevant information pertaining to the concern; and
- 32.4. the Council will keep the Ministry's regional office informed of progress of any investigation, where the concerns are likely to be substantiated, to enable the Ministry to fulfil its licensing function; and
- 32.5. securely store information in the complaint management system.

Use of the Information

33. Both Parties agree that the information shared under this Memorandum will only be used for the purpose(s) outlined in this Memorandum. Information shared will be recorded and reviewed to ensure this Memorandum is being implemented as intended.
34. Both Parties agree that the information shared between the Parties, and any subsequent use, release, or publication of that information must be taken in accordance with all relevant legislation including, but not limited to, the Privacy Act and the Ombudsman Act 1982.

Security of the Information

35. Each Party will ensure its employees and contractors handling any information for the purposes of any information exchange under this Memorandum will comply with the Privacy Act and any other applicable legislation relevant to each Party.
36. The Parties will ensure that:
- 36.1. all information is protected from unauthorised access, use and disclosure;
 - 36.2. all information is stored on the Parties own securely managed computer systems with password and firewall protection with access allowed only to employees doing work directly related to this Memorandum;
 - 36.3. all Ministry and Council employees dealing with the information exchanged under this Memorandum are aware of their responsibilities and the strict limitations on use and disclosure of any information subject to this Memorandum;
 - 36.4. where information is kept or stored in any form that might be easily portable (e.g. printed material, laptop, portable digital assistant, DVD, CD, memory card, or USB portable device) appropriate safeguards will be in place to guard against any unauthorised access, use or disclosure of the information. If the information is kept or

stored on such a device for the purpose of transfer of source or comparison information, it will be permanently disposed of once the transfer has been complete.

Breaches of Security or Confidentiality

37. The Parties must immediately notify the other Party of any actual or suspected unauthorised access, use or disclosure of any information exchanged under this Memorandum.
38. The Parties must also investigate any actual or suspected unauthorised access, use or disclosure of any information exchanged under this Memorandum.
39. If either Party has reasonable cause to believe that a breach of any other security provision in the Memorandum has occurred or may occur, that Party may undertake such investigations as it deems necessary.
40. Where an investigation is commenced under this clause, the other Party will provide the investigating Party with reasonable assistance, and the investigating Party will keep the other Party informed on the progress and outcome of that investigation.
41. If there has been a security breach, either Party may suspend the exchange of information under this Memorandum by notice in writing to give the other Party time to remedy the breach.

Relationship Management and Oversight

42. To facilitate and support the relationship between the Parties to this Memorandum, and to provide operational oversight of the information sharing activity, each Party will nominate a Relationship Manager.
43. The Relationship Manager will have oversight of the operation of this Memorandum and be the first point of contact for each Party with regards to the operation of this Memorandum.
44. The Ministry's relationship manager is the manager, ECE Regulations and Planning. The Council's relationship manager is the Senior Manager, Professional Responsibility.

Third Party Contracting

45. Any third party contracted to carry out any work in relation to this Memorandum that may involve access to, or use information received under this Memorandum, will be subject to all obligations set out in this Memorandum, which will be reflected in any associated Contract for Services with the third party.

External Communications

46. The Parties are responsible for complying with their respective obligations under the Education Act 1989, the Privacy Act 1993 (Privacy Act) and the Official Information Act 1982 (Official Information Act).
47. In the event that either Party receives a complaint or request under the Privacy Act, Official Information Act, in relation to information exchanged, accessed, used or disclosed under this Memorandum, the Party which receives the complaint or request will consult with the other Party on the proposed response prior to making a decision on the complaint or request.
48. In the event that either Party receives a request from the media in relation to this Memorandum or any information exchanged, accessed, used or disclosed under this Memorandum, the Party will advise the other Party of the media request, and any proposed response to the media before responding to the media.

Effect of this Memorandum

49. This Memorandum does not constitute or create, and shall not be deemed to constitute, any legally binding or enforceable obligations on the part of the Parties.
50. Where there are changes to Government policy which affect the purpose and functions of this Memorandum, each Party agrees to inform the other of those changes and agree to review as required any aspects of this Memorandum.
51. Any schedules attached to this Memorandum are regarded as part of the Memorandum and therefore should be read subject to the provisions of the Memorandum.

Disputes Resolution

52. The Parties will negotiate in good faith to resolve any disputes arising out of, or in relation to, this Memorandum. In the first instance, the relevant Primary Contacts will work together to identify the reasons for the dispute and what can be done to remedy the dispute.
53. Where a remedy cannot be agreed upon, the issue will be escalated to the Relationship Manager, who will be asked to make judgements necessary to resolve the issue. If resolution is still not achieved, the Chief Executive (or delegated person) of each Party may be advised and asked to work together to resolve the issue.
54. The obligations in this Memorandum concerning use, security and disposal of information shall remain in force notwithstanding any suspension or termination of this Memorandum.

Term of this Memorandum

55. This Memorandum commences on the date it is signed by both Parties and continues in effect until terminated in accordance with clause 63.

Review of this Memorandum

56. A Party may request a review of this Memorandum at any time.

57. The Parties agree to review this Memorandum after 12 months, then every three years thereafter.

58. The Ministry and Council will share responsibility for initiating each review.

Variations to this Memorandum

59. This Memorandum may only be varied with the agreement of both Parties, and any such variation shall be set out in writing and signed by both Parties.

Schedules to the Memorandum

60. New schedules can be added to this Memorandum by way of a variation agreed to by both Parties.

61. Reviews, amendments or terminations of schedules under this Memorandum can be effected by agreement of the signatories to this Memorandum (or their delegate) upon which the Memorandum will be updated accordingly.

Termination of this Memorandum

62. This Memorandum may be terminated at any time by agreement in writing by both Parties.

Costs

63. Each Party will bear their own costs in relation to this Memorandum.