



EDUCATION REVIEW OFFICE
Te Tari Arotake Mātauranga



**Teaching
Council of
Aotearoa
New Zealand**

MEMORANDUM OF UNDERSTANDING

Between

Education Review Office, Te Tari Arotake Mātauranga

And

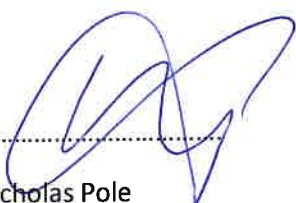
Teaching Council of Aotearoa New Zealand, Matatū Aotearoa

Preamble

Following the Royal Commission of Inquiry on Abuse in Care (Institutional Hearing) in August 2022 and undertakings given at the Hearing by the Parties for sharing information to enable each party to meet their statutory obligations under the Education and Training Act 2022 and to ensure the wellbeing and safety of children.

Signatories

Signed for and on behalf of the Education Review Office, Te Tari Arotake Mātauranga



Nicholas Pole
Chief Executive/Chief Review Officer

16th March 2023

Date

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



Lesley Hoskin
Chief Executive

16/3/23

Date

Parties

1. The Education Review Office (ERO)

AND

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

Purpose

3. The purpose of this Memorandum is to:
 - 3.1. acknowledge and apply the statutory context in which the information sharing will occur; and
 - 3.2. 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
 - 3.3. detail the process for reviewing and reporting on the information shared under this Memorandum.
 - 3.4. assist ERO to fulfil its functions under Part 5, subpart 3 and Part 6, subpart 6 of the Education and Training Act 2020 (the Act); and
 - 3.5. assist the Council fulfil its role and functions under Part 5, subpart 4 of the Act.
4. This Memorandum is not an Approved Information Sharing Agreement as defined under Part 7 of the Privacy Act 2020 and does not authorise any breach of any of the Information Privacy Principles in the Privacy Act 2020.

Background

5. All registered schools¹ must comply with legislative requirements relating to the provision of a safe physical and emotional environment for students under the Act, and the Children's Act 2014, among others. Similarly, early childhood learning services must comply with minimum requirements set out in the Act, the Education (Early Childhood Services) Regulations 2008 (early childhood regulations), and associated licensing criteria in order to gain and maintain a licence to operate.
6. ERO is responsible for reviewing the performance of the institutions referred in clause 5 of this Memorandum, including compliance with the aforementioned legislation. That includes maintaining standards for the health and safety and care and protection of children. In carrying out its functions, Review Officers at ERO have powers of entry and inspection in registered schools and early childhood services.
7. The Council has jurisdiction over registered teachers and holders of limited authorities to teach.² Its statutory purpose is to ensure safe and high-quality leadership, teaching and

¹ A registered school means a State school, a State Integrated School, or a private school as defined in section 10 of the Education and Training Act 2020.

² The term "teacher" includes registered teachers and holders of limited authorities to teach. The disciplinary processes overseen by the Teaching Council can also deal with formerly registered teachers and former holders of limited authorities to teach (LATs), provided the relevant conduct occurred when the person was a "teacher", as defined in section 10 of the Education and Training Act 2020. References to "teacher" in this Memorandum should be read as including registered teachers and LAT holders.

learning for children and young people in early learning, primary and secondary school settings through raising the status of the teaching profession.

8. The Council is responsible under the Act for establishing and maintaining a code of conduct for teachers under section 485;³ and for performing disciplinary functions relating to teacher misconduct, reports of teacher convictions and responding to reports relating to teacher competence. These functions and others contribute to the Council achieving its statutory purpose.
9. ERO may, when undertaking its review function, become aware of information that indicates a potential conduct or competence concern relating to a teacher. Conversely, the Council, when investigating a teacher, may become aware of information that relates to a registered school or early learning service's licence.
10. Employers are required to report concerns about a teacher's conduct or competence to the Council in circumstances outlined in the Act (sections 489 to 493). Where a concern relating to a teacher's conduct involves an incident with a child (including serious injury or illness of a child) registered schools and early learning services must report this to the Council, as well as the Ministry of Education.
11. This Memorandum aims to ensure that each Party can share information to assist the other Party to meet their statutory obligations to ensure the wellbeing and safety of children.

Legal Authority and Application of the Privacy Act 2020

12. The Parties have various statutory obligations under the provisions of the Act, as outlined in clauses 6 to 11 of this Memorandum. 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 and Training Act 2020/Children's Act 2014

13. The boards and management of registered schools and the management of early childhood services are required to comply with the registration, police vetting, mandatory reporting requirements under the Act, and safety checking of children's workers under the Children's Act 2014.
14. In carrying out their functions of entry and inspection under the Act, review officers can require school boards and the management of early childhood services to produce documents, or provide information, to make or provide statements, about matters referred in clause 13 above, to ensure compliance, and to corroborate any information held by the Council.
15. The Council's Complaints Assessment Committees (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 ERO) to provide information considered necessary for the purposes of an investigation under sections 496(4) and 497(7) of the Act and rule 15(3) of the Teaching Council Rules 2016.
16. Apart from the requirements mentioned above for a government agency (including ERO) to provide information to the Council, there are no specific provisions in the legislation for ERO to share information with the Council (or vice versa).
17. Therefore, this Memorandum sets out how information relevant to each Party's statutory obligations will be shared to avoid prejudice to the maintenance of the law, and to help both Parties achieve their respective statutory roles and functions.

³ This is reflected in the Code of Professional Responsibility.

18. It is recognised that, in some cases, it will be appropriate for matters involving teacher conduct and competence to be raised with the Council, to allow the Council to carry out its statutory functions. These matters may be dealt with by way of complaint or by way of an own motion referral commenced by the Council on receipt of information.
19. Similarly, it is important for matters relating to registered schools and early learning services which may have implications for the safety and wellbeing of children to be notified to ERO, so it too can carry out its statutory functions.

Privacy Act 2020

20. The Parties agree the legal authority enabling the sharing of information is Information Privacy Principle 11(1)(e) (contained in section 22 of the Privacy Act 2020), which provides that personal information may be disclosed where an agency believes on reasonable grounds that disclosure is necessary to avoid prejudice to the maintenance of the law by any public sector agency, 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.
21. The Parties also agree that Information Privacy Principle 11(1) (f), which provides that personal information may be disclosed if necessary to prevent or lessen a serious threat to the life or health of an individual or public safety, may also apply.
22. The Parties agree that the use and disclosure of personal information where this is necessary to fulfil the purposes set out in clause 3 of this Memorandum complies with the Privacy Act 2020 (provided disclosure is consistent with the circumstances in which disclosure of information is permissible, as set out in Information Privacy Principle 11).
23. This Memorandum does not preclude the sharing of personal information under an alternative Information Privacy Principle or provision in the Privacy Act where this is relevant and appropriate.

Information to be shared

24. The information to be shared under this Memorandum is information that is considered relevant to each Party's respective obligations under the legislation, as set out above.
25. Notwithstanding clauses 20 to 23 of this Memorandum, the information shared under this Memorandum must be relevant, necessary, and proportionate to the circumstances, consistent with the purposes and scope of this Memorandum, and essential to allowing the other Party to meet its obligations.
26. Before sharing information, ERO and Council staff will:
 - 26.1. identify the specific information to be shared; and
 - 26.2. satisfy themselves that the information is relevant to the other Party's statutory obligations; and
 - 26.3. satisfy themselves that it is necessary to share the information to avoid prejudice to the maintenance of the law, and/or to prevent or lessen a serious threat to the life or health of an individual or to public safety; and
 - 26.4. ensure that only relevant and necessary information is shared; and
 - 26.5. ensure that the information is shared securely with staff authorised by ERO and the Council.

Parties' Obligation to provide Training

27. The Parties will undertake to provide relevant training, guidelines and frameworks needed for all staff dealing with information sharing that occurs in accordance with clauses 24 to 26 of this Memorandum.

Method and Frequency of Information Exchange

28. In addition to the information to be shared under clauses 24 to 26, information exchanged under this Memorandum may include personal information (including that capable of identifying individuals), and information of a sensitive nature.
29. The information to be shared under this Memorandum will be exchanged on an “as required” basis.

The Education Review Office

30. The process prescribed in subclauses 30.1 to 30.5 below will apply if ERO becomes aware of: a possible conduct concern on the part of a teacher (including a holder of a limited authority to teach (**LAT holder**)); or, a possible breach of the Code of Professional Responsibility by a registered teacher or LAT holder at a registered school or early learning service; or a matter that may require mandatory reporting under the provisions in the Act; or, that a registered teacher or LAT holder has been convicted of an offence punishable by imprisonment for 3 months or more; or, a possible offence under the Act (for example, see sections 542 and 662 of the Act). If one or more of these circumstances apply, the appropriate staff at ERO’s regional office or National office will:
 - 30.1. notify the board or management of the registered school or early learning service of the need to immediately provide the Council with a mandatory report, and of the need for the early learning service to notify the Ministry of Education at the same time; and
 - 30.2. if the matter relates to a teacher, remind the teacher of their obligation to self-report to the Council (if applicable);⁴ and
 - 30.3. advise the board or management of registered school or early learning service or teacher that, if a mandatory report or self-report (as applicable) is not made to the Council by a specified date, then ERO 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 Council recipients. Information should include the name and location of the registered school or early learning service and/or the name/s of teacher/s, and any other relevant information pertaining to the concern; and
 - 30.4. if, after the initial disclosure about a teacher, provide further information the Council considers necessary for the purposes of an investigation in reliance on sections 496(4) and 497(7) of the Act and rule 15(3) of the Teaching Council Rules 2016; and
 - 30.5. securely store information in the relevant complaints file consistent with the requirements of the Privacy Act 2020.

Teaching Council

31. The following process will apply if the Council becomes aware, through mandatory reporting or otherwise, that there has been, or is, a risk to a child’s wellbeing or safety at a registered school, as referred to in terms of sections 127(1)(b) and (c) of the Education and Training Act 2020, or an early childhood service as referred to in regulation 57 of the Education (Early Childhood Services) Regulations 2008, and this may fall within ERO’s functions:

⁴ See section 493 of the Act: Every holder of a practising certificate, and every authorised person, who is convicted of an offence punishable by imprisonment for 3 months or more must, within 7 days of conviction,, report the conviction to the Council.

- 31.1. If the Council has received a mandatory report or other notification, and it meets the threshold under clauses 20 to 23 of this Memorandum for notification to ERO, then the Council will advise ERO of the concern; and
- 31.2. Concerns will be shared by secure transmission or hand-delivered to named recipients;
- 31.3. Information should include the name of the registered school or early learning service and the name/s of any relevant teacher/s, and any other relevant information pertaining to the concern; and
- 31.4. The Council will keep ERO's Chief Review Officer or authorised manager informed of the progress of any Council investigation, where appropriate, to enable the ERO to effectively carry out its functions; and
- 31.5. The Council will securely store information in its complaint management system.

Use of the Information

32. Both Parties agree that the information shared under this Memorandum will only be used for the purposes outlined in this Memorandum. Information shared will be recorded and reviewed to ensure this Memorandum is being implemented as intended.
33. Both Parties agree that the information shared between the Parties, and any subsequent use, release, or publication of that information must be in accordance with all relevant legislation including, but not limited to, the Privacy Act 2020 and the Official Information Act 1982.

Security of the Information

34. 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.
35. The Parties will ensure that:
 - 35.1. all information is protected from unauthorised access, use and disclosure;
 - 35.2. all information is stored on the Parties' own securely managed computer systems, with password and firewall protection, and with access confined to employees doing work directly related to this Memorandum;
 - 35.3. all ERO 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;
 - 35.4. 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 US portable device), appropriate safeguards will be put 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 in a secure way once the transfer has been completed.
36. The obligations in this Memorandum concerning use, security and disposal of information shall remain in force notwithstanding any suspension or termination of this Memorandum.

Breaches of Security or Confidentiality

37. A Party 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 of the Memorandum, 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, so as to give the other Party time to remedy the breach.
42. If there has been a privacy breach that either has caused or is likely to cause anyone serious harm, the Parties will notify the Privacy Commissioner and any affected people as soon as practicable, in accordance with the Privacy Act 2020.

Relationship Management and Oversight

43. To facilitate and support the relationship between the Parties to this Memorandum, and to provide operational oversight of the information sharing activity under the Memorandum, each Party will nominate a Relationship Manager.
44. 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.
45. ERO's Relationship Manager is Jane Lee, Deputy Chief Executive Review and Improvement (email: Jane.Lee@ero.govt.nz). The Council's Relationship Manager is Sharon Coulton, Manager Professional Responsibility (Sharon.coulton@teachingcouncil.nz).
46. There will also be Primary Contacts responsible for implementing information sharing under this Memorandum on an operational level and liaising with each other about the work under the Memorandum.
47. ERO's Primary Contact is John Collinson, Senior Advisor & Ministerial Liaison (John.Collinson@ero.govt.nz). The Council's Primary Contact is Jess Ludgate, Senior Advisor Privacy, Government, and Information (information@teachingcouncil.nz)

Third Party Contracting

48. 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 the Party has with the third party.

External Communications

49. The Parties are responsible for complying with their respective obligations under the Education and Training Act 2020, the Privacy Act 2020 and the Official Information Act 1982.
50. In the event that either Party receives a complaint or request (including from the media) under the Privacy Act or 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.

Effect of this Memorandum

51. 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.

52. Where there are changes to Government policy which affect the purpose and functions of this Memorandum, each Party agrees to inform the other Party of those changes and agrees to review, as required, any aspects of this Memorandum.
53. 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

54. 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.
55. Where a remedy cannot be agreed upon, the issue will be escalated to the appropriate 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 ask the Relationship Managers to work together to resolve the issue.

Term of this Memorandum

56. 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

57. A Party may request a review of this Memorandum at any time.
58. The Parties agree to review this Memorandum 12 months after the date of this Memorandum, then every three years thereafter.
59. ERO and the Council will share responsibility for initiating each review.

Variations to this Memorandum

60. 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

61. New schedules can be added to this Memorandum by way of a variation agreed to by both Parties.
62. 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

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

Costs

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

Proactive release

65. The Parties agree to proactively release this Memorandum on their respective websites.