



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA



MINISTRY OF EDUCATION
TE TĀHUHU O TE MĀTAURANGA

Memorandum of Understanding

Between

Ministry of Social Development

and

Ministry of Education

for the purpose of sharing information to support locating children and young people either not enrolled in school or not attending school due to exclusion.

November 2018

SIGNATORIES

Signed for and on behalf of The Ministry of Education/Te Tāhuhu o te Mātauranga


.....
Katrina Casey
Deputy Secretary SE&S

Date 26/11/2018

Signed for and on behalf of Ministry of Social Development/Te Manatū Whakahiato Ora


.....
Viv Rickard
Deputy Chief Executive
Service Delivery

Date 07/02/19

Released under the Official Information Act 1982

Parties

1 The Chief Executive of the Ministry of Social Development ("**MSD**")

AND

2 The Chief Executive of the Ministry of Education ("**Education**")

Background

- 3 Section 20 of the Education Act 1989 ("**Education Act**") requires that all children and young people between 6 and 16 years of age are enrolled in a registered school unless they are exempted from enrolment under the Education Act. Section 24 provides that a parent commits an offence and is liable on conviction to a fine not exceeding \$3,000 if their child is not enrolled in a registered school.
- 4 Section 25 of the Education Act provides that every student enrolled at a registered school is required to attend school whenever it is open. This includes both students required to be enrolled under section 20, and 4 or 5 year olds who are enrolled at a registered school. Section 29 provides that a parent commits an offence if their enrolled child does not attend school as required under section 25.
- 5 Schools refer children and young people who are not enrolled and who are not exempted from enrolment to Education in accordance with the Rules for Student Enrolment Records made under section 77A of the Education Act. Education and/or Education's contracted tracing agency then work with the child or young person's parent/caregiver/whānau to ensure the child or young person is enrolled and attending school.
- 6 Education is also required under section 16 of the Education Act to work with the parent/caregiver/whānau of children and young people who are not attending school due to exclusion (as defined in the Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999) to ensure they resume attending school as soon as possible.
- 7 Sometimes, Education cannot locate the child or young person who is not enrolled or not attending due to exclusion ("**non-locatable students**").
- 8 In cases where Education and/or Education's contracted tracing agency has not been able to obtain the current contact details of a non-locatable student, MSD has agreed to assist Education by providing any known contact details of parents/caregivers to Education ("**the information sharing**").

Purpose

- 9 The purpose of the information sharing described in clause 8 is to:
- 9.1 help Education fulfil its obligations under section 16 of the Education Act, and/or to detect, investigate and prevent offences under section 24 and section 29 by locating the parents/caregivers of non-locatable students.
- 10 The purpose of this Memorandum is to:
- 10.1 facilitate the sharing of information between Education and MSD to achieve the aim set out in clause 9;
 - 10.2 set out the privacy considerations and safeguards the Parties must take into account when deciding to share information with one another;
 - 10.3 record the Parties' understanding of how the sharing of information will occur between them and the justifications for each information flow; and
 - 10.4 detail the process for reviewing information flows between the Parties.

Information Flows

- 11 Education may request from MSD any contact details MSD may hold about a parent/caregiver of a non-locatable student for the purpose in clause 9
- 12 Education agrees that it will make a request for information under clause 11 only if:
- 12.1 Education or its agent believe that all other avenues have been exhausted with regard to Education's or its agent's usual processes; and
 - 12.2 Education or its agent has reasonable grounds to believe the non-locatable student concerned is required under the Education Act to be enrolled at and attending a registered school and that the parent/caregiver is failing or refusing to ensure the student is enrolled or attending, as the case may be.
- 13 Education will not make a request for information under clause 11 in respect of more than 9 non-locatable students at any one time.
- 14 Requests made under this Memorandum will be made from Education or its agent in the manner and form set out in Schedule 1.
- 15 MSD will provide relevant information to Education in response to a request made under clause 11 of this Memorandum within a reasonable timeframe.
- 16 In doing so, MSD will provide only such information as is necessary to enable Education or its agent to locate the parent/caregiver of the non-locatable student.

Privacy Act Compliance

- 17 The Parties will comply with the Privacy Act 1993 ("**Privacy Act**") and any relevant Code of Practice made under the Privacy Act when sharing information under this Memorandum.
- 18 The Parties consider the provision of personal information about the parents/caregivers of non-locatable students under the provisions of this Memorandum complies with the principles in section 6 of the Privacy Act. In particular:
- 18.1 Under Principle 1, Education is seeking this information for the purpose of fulfilling its obligations under section 16 of the Education Act, and/or finding non-locatable students, whose parents/caregivers may be in breach of their obligations under sections 20 and 25 of the Education Act. The information being collected by Education is necessary to enable Education or its agents to locate these non-locatable students and ensure they are enrolled and attending school.
 - 18.2 Under Principle 2, Education is required to collect personal information directly from the individual concerned. Under this Memorandum, Education will be collecting information from a third party, MSD. The parties consider Education can rely on Principle 2(2)(f) to request this information from MSD on the basis that Education is unable to collect information from the individuals concerned as it cannot locate them.
 - 18.3 Under Principle 4, the Parties consider that information is not being collected by unlawful means or by means that are unfair or intrude to an unreasonable extent upon the personal affairs of the individual concerned. Education will only request the information if it has exhausted all other means of locating the parents/caregivers of the non-locatable students concerned, and will request the minimum amount of information necessary to locate those individuals.
 - 18.4 Under Principle 5, the information will be shared and held securely and in compliance with the provisions of the Privacy Act and all steps currently undertaken with respect to personal information held by each of the Parties to ensure the security of this information. Further details relating to security are set out in Schedule 1.
 - 18.5 Under Principles 6 and 7, individuals will be given the same rights of access and correction that they are given in respect of all other personal information held by both Parties.
 - 18.6 Under Principle 8 all information provided by Education will be checked to ensure it relates to the non-locatable student being located before any information is shared. MSD will take reasonable steps to ensure that the information it provides is accurate.
 - 18.7 Under Principle 9, all information will be destroyed by the Parties in accordance with existing procedures and the Public Records Act 2005.
 - 18.8 Under Principle 10, neither agency will use the information disclosed pursuant to this Memorandum for any purpose not identified in this Memorandum.

18.9 Under Principle 11(e)(i), disclosure of the information by MSD to Education is permissible because MSD believes on reasonable grounds disclosure is necessary so Education can fulfil its obligations under section 16 of the Education Act and/or locate and contact parents/caregivers who may be committing or about to commit an offence under section 25 or 29 of the Education Act by not ensuring:

18.9.1 the child or young person concerned is enrolled in school; or

18.9.2 the child or young person not attending school due to exclusion is enrolled and attending another school within a reasonable timeframe following the exclusion.

Relationship Management

19 Each Party will nominate a Relationship Manager to act as that Party's representative for managing the relationship between the Parties, and other high-level issues. The Relationship Managers will be responsible for:

19.1 establishing and maintaining communication and understanding between the two Parties; and

19.2 providing assistance in resolving any disputes between the Parties.

Costs

20 Each party shall bear its own costs of meeting its obligations under the Memorandum.

Dispute resolution

21 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 Relationship Managers will work together to identify the reasons for disagreement and what can be done to achieve agreement.

22 If resolution is not possible, the Chief Executive of MSD and the Chief Executive of Education may be advised, and asked to work together to resolve the issue.

Status of Memorandum

23 This Memorandum is not an approved information sharing agreement under Part 9A of the Privacy Act. Instead, the Parties rely on an exception to Principle 11 of the Privacy Act, set out above, to authorise the sharing.

24 The Schedules are regarded as part of the Memorandum, but should be read subject to the provisions of the Memorandum.

25 The Parties acknowledge that the Memorandum is intended as a statement of mutually agreed intentions in relation to an area of interest. It is not intended to create legally enforceable rights or obligations.

26 The Parties will act in good faith to observe and perform their obligations in accordance with the Memorandum, while noting the provisions of this

Memorandum are subject to any Government direction, policy or law change.

Variation

- 27 The Parties agree to review this Memorandum no less than once every 12 months.
- 28 This Memorandum may only be varied with the agreement of the Parties, and any such variation shall be set out in writing and signed by both Parties.
- 29 The Schedules to the Memorandum may be varied by agreement in writing between the Relationship Managers.
- 30 All reviews and variations will be noted on the version history in Schedule 3.

Termination of Memorandum

- 31 This Memorandum comes into effect on the date it is signed.
- 32 This Memorandum and its Schedules may be suspended or terminated at any time by either Party giving notice in writing.
- 33 The obligations in this Memorandum concerning security, use and destruction of information shall remain in force notwithstanding any suspension or termination of this Memorandum.

Schedule One

1. Information to be transmitted as below:
2. Information will be exchanged in a spreadsheet with the following paragraphs and columns:

The following request is made under clause 11 of the agreed Memorandum of Understanding between the Ministry of Education and the Ministry of Social Development for the purpose of sharing information to support locating children and young people not enrolled in school or not attending school due to exclusion.

Pursuant to that MoU, The Ministry of Education confirms:

- *The names listed below are those of children and young people either not enrolled in school or not attending school due to exclusion (as defined in the Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999));*
- *Education or its agent has reasonable grounds to believe the child/young person concerned is required under the Education Act 1989 to be enrolled at and attending a registered school and that the parent/caregiver is failing or refusing to ensure the student is enrolled or attending, as the case may be; and*
- *Education or its agent has exhausted all other avenues to locate the child/young person with regard to their usual processes.*

The Ministry of Education requests relevant information to be used in locating the parents or caregivers of the children/young people named on the list.

3. Columns:
 - 3.1. Case ID (Education use only)
 - 3.2. Child's first name
 - 3.3. Child's surname
 - 3.4. AKA surname
 - 3.5. Date of Birth
 - 3.6. Caregiver's name (may be multiple)
 - 3.7. Caregiver's address
 - 3.8. Advisor (Education use only)
 - 3.9. MSD response
4. Education will not make a request for information under clause 11 of this Memorandum in respect of more than 9 children at any one time.
5. Requests made under this Memorandum will be made from Education or its agent by emailing requests using SEEMAIL, in the form set out above, to the Central Processing Unit at MSD.
6. MSD will send its response using SEEMAIL.

Schedule Two s 9(2)(a) OIA

| Relationship Managers |
|--|
| <i>For the Ministry of Social Development</i> |
| Amanda Williams Service Manager Centralised Services Phone: 0-7-9218103 Mobile: [REDACTED] Email: Amanda.Williams023@msd.govt.nz |
| <i>For the Ministry of Education</i> |
| Maria Galvin Senior Advisor, Provider Services Phone 04-4631547 Email: Maria.Galvin@education.govt.nz |

Released under the Official Information Act 1982

Schedule Three

| Version History | | | |
|-----------------------|-----------------------|---|-------------|
| Date review initiated | Review Outcome | If varied: | |
| | | Clauses/schedules effected | Date agreed |
| | <i>e.g. no change</i> | | |
| | <i>e.g. varied</i> | <i>e.g. clauses 1, 3, 15 and Sch 2.</i> | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Released under the Official Information Act 1982