



## Briefing Note: Teaching without practising certificates

<b>To:</b>	Hon Chris Hipkins, Minister of Education		
<b>Date:</b>	3 July 2020	<b>Priority:</b>	Medium
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	1232782 (TC: EC2089)
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<b>Messaging seen by Communications team:</b>	No	<b>Round Robin:</b>	No

### Purpose of Paper

This paper provides joint MoE and Teaching Council advice on the matter of teachers who are teaching without practising certificates.

### Summary

- On 22 May, you received a briefing note from the Teaching Council indicating that the Council does not consider it has a mandate to enforce the requirement for teachers to be registered and have a current practising certificate. The Ministry provided a Rapid Response that outlined the Ministry's advice on the points raised in the briefing, along with a draft reply to Lesley Hoskin [METIS 1229665, 27 May].
- Since then, the Ministry of Education and the Teaching Council have agreed on a way forward on this issue.
- The Council acknowledges that enforcing the requirement for teachers to be registered and to have a current practising certificate is a logical part of the Council's functions.
- The Ministry will support the Council by:
  - Working with the Council to improve the data matching process, to make it easier to identify individuals who may be in breach of the requirement; and
  - Supporting a process to amend legislation to make this aspect of the Council's functions clearer, as part of the next available legislative opportunity.

## Proactive release

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**Agree** that this Briefing will be proactively released.

☒ **Agree** ☐ **Disagree**



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03/07/2020



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03/07/2020



Hon Chris Hipkins  
**Minister of Education**

12/07/2020

## Background

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1. It is illegal for a teacher who does not hold a practising certificate or a limited authority to teach to be employed as a teacher at a school or early childhood education service for more than 20 half-days in any calendar year (Education Act 1989, s350(3) and (4)). This is an offence both for the employer and the teacher concerned.
2. The Education Act enables information sharing between the Ministry and the Council, explicitly for the purpose of enabling the Council to determine the status and currency of teachers' practising certificates (s360). This suggests an expectation that the Council has a role in enforcing s350, even though this is not explicit in the Act.
3. However, the Teaching Council has received legal advice stating that the Council is not able to enforce s350 because this role is not listed in the Council's statutory functions.

## Current follow-up process for expired certification

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4. Under the current information sharing agreement between the Ministry and the Council, the Ministry provides a list of all people in the state schooling sector who are currently being paid as a teacher to the Council. The Council then matches this information against certification records to ascertain people who are being paid as a teacher but don't have a current practising certificate.
5. For those people who are working as teachers without a current practising certificate, the Council initially follows up with the person concerned, then the principal of the school and then the board of the school. If these follow ups don't result in a certification application, the Council does not currently take prosecutions for working as a teacher without a practising certificate.

## **Enforcing certification requirements is a logical function of the Teaching Council as the regulatory body for teaching**

6. Enforcing registration and/or certification requirements is a key function of most regulatory professional bodies. It would be unusual for the Teaching Council to not perform this function.
7. The Council acknowledges that enforcing the requirement for registration and certification is a logical function for the Council. However, the Council is concerned that it does not currently have an explicit mandate in legislation to prosecute people who are in breach of the requirement. The concern is that, if there was an appeal to the decision to prosecute, (Council decisions on registration and disciplinary matters are appealed fairly often), it would be difficult for the Council to defend the decision to prosecute.
8. The Council has asked that work is done to amend the legislation to make it clearer on this point, at the next available legislative opportunity.

## Next Steps

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9. In the meantime, the Ministry will work with the Council to identify individuals who have been teaching without a current certificate for some time. This will involve the investigation of cases where the Council's follow up work has not resulted in a certification application.
10. The Teaching Council also intends to extend its current advisory approach to ensure compliance by contacting teachers and employers identified in the data matching process in person to ensure they understand their legal obligations.

11. The Ministry will also help by actively following up with school Boards that have teaching staff who have not held a practising certificate for an extended period.
12. The Ministry and the Council will also jointly work to review and update the data matching agreement, to reflect the opportunities to improve data matching now that the Council has moved to its new online (salesforce) based registration and certification platform.

Proactively Released