

Regulatory Impact Statement

Information sharing between Inland Revenue and the Accident Compensation Corporation

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

It provides an analysis of options that would enable Inland Revenue to share additional information with the Accident Compensation Corporation (ACC). The information is required to enable ACC to fulfil its legislative obligations in relation to the ACC Scheme.

Inland Revenue has legal authority to share specific information with ACC. This has been a long standing authorised process under the Tax Administration Act 1994.

Inland Revenue has identified that some of the sharing of information with ACC which is taking place under the provisions of a Memorandum of Understanding currently falls outside the remit of the Tax Administration Act 1994. This information is necessary to enable the calculation of levies, provision of invoices to for payment, the determination of the level of entitlements/compensation that an injured individual is entitled to receive.

In sharing information in this way, there is a trade-off between the privacy rights of individuals and the need for government agencies to provide efficient, high quality services. However, the recommended design of the approach would provide considerable efficiencies for the government, whilst having a minimal effect on an individual's right to privacy. This is because ACC would only receive information that it is lawfully entitled to collect in its own right and Inland Revenue would not collect additional information on behalf of ACC. For the customer this would mean only providing their details to government once.

The Office of the Privacy Commissioner has been consulted and is supportive of the proposal. It does not see any significant privacy risk with the current sharing, given the information is provided to ACC for a legitimate purpose.

We have not identified any other significant gaps, assumptions, dependencies, constraints, caveats or uncertainties. The preferred option in this statement does not impose additional costs on businesses, impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest or override fundamental common law principles.

The preferred option in this statement has an administrative impact that will be neutral as it will be undertaken on an agreed fee for service basis.

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STATUS QUO AND PROBLEM DEFINITION

1. Section 81 of the Tax Administration Act 1994 (the TAA) creates an obligation of secrecy for officers of Inland Revenue. This obligation is necessary to protect the integrity of the tax system, which includes taxpayer perceptions of that integrity, and the responsibilities of those administering the law to maintain the confidentiality of affairs of taxpayers.
2. However, under section 81(4) of the TAA, there is a list of circumstances in which this obligation has been removed. One such instance refers to the ability of Inland Revenue to legally provide certain information to ACC to enable it to carry out its legislative functions. The scope of the information able to be provided is set out in sections 82 and 85E of the TAA. The operational transfer of this information, safeguards and governance are set out in a Memorandum of Understanding (the Memorandum) between the two parties.
3. The secrecy obligation and the exception highlight the policy trade-off between ensuring the confidentiality of taxpayer information with the desire for efficient administration of the tax system and government services.
4. Inland Revenue has identified that some of the sharing of information which has taken place in accordance with the Memorandum that is not permissible under the TAA. The additional identified information, and the permissible information, is required by ACC to calculate employer levies and produce invoices to employers for payment. The information is also used to determine the level of compensation that an injured individual is entitled to receive.
5. The sharing of the additional information is a breach of the secrecy provisions by Inland Revenue. It is also a possible breach of privacy under the Privacy Act 1993.
6. Inland Revenue subsequently held discussions with ACC to determine the key information required by ACC to fulfil its functions and obligations under its legislation. There would be a significant customer impact if the current arrangement was discontinued. For example, the calculation of employer levies would not be able to be done and invoices would not be able to be issued for many employers. For customers who receive compensation, the level of entitlement/compensation would not be able to be accurately determined.
7. Inland Revenue and ACC held discussions with the Office of the Privacy Commissioner concerning the possible breach of privacy. The Office of the Privacy Commissioner does not see any significant privacy risk with the current sharing given the information is provided to ACC for a legitimate purpose.
8. If Inland Revenue and ACC were to continue to share this information without legislative change or other legal authorisation there is a risk of breaching the Privacy Act 1993 and the secrecy provisions of the TAA.
9. Inland Revenue has determined that the information is reasonable and necessary for ACC to receive in order to administer the ACC Scheme. Given this, Inland Revenue has continued to share the required information with ACC.

10. ACC is authorised to collect the information to be shared in its own right.¹ However, ACC cannot always rely on customers to communicate their current circumstances or any change in those circumstances, for example, a change in business status or earnings. This situation can lead to inaccurate calculation of levies and compensation payments which can lead to insufficient payment of levies or overpayments for compensation, fraud and even prosecution action. Sharing this information will enable timely, efficient and accurate calculation of levies and compensation to be made.

11. Section 81BA of the TAA provides a framework for Inland Revenue to share the information it holds with other Government agencies. Any sharing of information under these provisions requires legislative approval through an Order in Council.

12. This regulatory impact statement addresses the problem of how Inland Revenue may share additional information with ACC in order for ACC to fulfil its legislative obligations.

13. The new information to be shared, in addition to that currently permitted, will be limited to:

Information for the purposes of assessing levies

- If an income tax return has been filed;
- Name of employer who paid schedular payments;
- Customer identifiers – that is, name, address, date of birth, IRD number, New Zealand Business Number;
- Customer contact details – that is, phone number and email address;
- The date a customer’s address was updated;
- If a partner in a partnership;
- Income as a beneficiary of a trust; and
- Start date of salary or wage employment.

Information for eligibility of earnings related compensation

- Customer identifiers – that is, name, address, date of birth, IRD number, New Zealand Business Number;
- Customer contact details – that is, phone number and email address;
- Balance date;
- If an income tax return has been filed;
- If a partner in a partnership;
- The partners of a partnership;
- Income as a beneficiary of a trust;
- Trustees of a trust;
- Start date of being a private domestic worker;
- Cease date of being an employer; and
- Cease date of being a private domestic worker.

Benefits of the information sharing

¹ Section 246 of the Accident Compensation Act 2001.

14. Sharing information between Inland Revenue and ACC will improve the accuracy and timeliness of the calculation of employer levies and compensation payments.

15. Inland Revenue and ACC have already started developing this memorandum for the sharing of information that ACC is legally able to collect as stated above in paragraph 10. The agencies have also detailed how they will follow established process to determine the mechanisms to transfer, store and dispose of data. In addition, the memorandum of understanding will include processes to ensure data integrity and manage the reversal of incorrect data. It will also include provisions for monitoring the success of the information sharing, as well as provisions on controls and the use of the data by third parties. Prior to completing the memorandum the two agencies will undertake more detailed work determining privacy risks.

OBJECTIVES

16. The objectives of this review are to:

- implement an information sharing mechanism between Inland Revenue and ACC to enable Inland Revenue to legally share additional information under the TAA;
- enable ACC to carry out its legislative functions which include the calculation of employer levies, provision of invoices for employers for payment, the determination of the level of entitlement or compensation that an injured individual is entitled to receive; and
- provide safeguards to the privacy rights of individuals.

17. One of the aims of the Government's Better Public Services reforms is to ensure the public sector undertakes a more collaborative, cross agency approach to supporting citizens and gaining efficiencies. Making better use of information and information sharing between Government agencies is one method of gaining greater efficiency and improving outcomes for the public. For the customer this would mean only providing their details to government once.

REGULATORY IMPACT ANALYSIS

18. While Inland Revenue has identified five possible options to meet the objectives these have not as yet been costed:

- **Option 1:** The status quo is maintained in the interim until an Order in Council under the information sharing framework in section 81BA of the TAA is made.
- **Option 2:** The status quo is maintained indefinitely.
- **Option 3:** The information sharing ceases.
- **Option 4:** The information is collected by ACC.
- **Option 5:** An information matching under the Privacy Act 1993.

Option 1: The status quo is maintained in the interim until an Order in Council under the information sharing framework in section 81BA of the Tax Administration Act 1994 is made

19. Under Option 1, an Order in Council under section 81BA of the TAA would be made to enable Inland Revenue to legally share additional information with ACC.

20. In the interim period before the Order in Council the objectives are not met. However, once the Order in Council is in place all objectives will be met.

21. Inland Revenue considers that it is acceptable to maintain the status quo in the interim period to ensure the integrity of the ACC Scheme and the provision of efficient government services. In addition, as noted earlier, the Office of the Privacy Commissioner does not see any significant privacy risk with the current sharing given the information is provided to ACC for a legitimate purpose.

Option 2: The status quo is maintained indefinitely

22. If Inland Revenue and ACC were to continue to share information without legislative change or other legal authorisation, there is a risk of breaching the Privacy Act 1993 and the secrecy provisions of the TAA.

23. Inland Revenue's view is that it would not be acceptable to maintain the status quo indefinitely because this would mean a perpetual breach of secrecy. As a result option 2 is not recommended.

Option 3: The information sharing ceases

24. The information is required by ACC to calculate employer levies and produce invoices to employers for payment. The information is also used to determine the level of compensation that an injured individual is entitled to receive. There would be a significant customer impact if the current arrangement was discontinued. For example, the calculation of employer levies would not be able to be done and invoices would not be able to be issued for the majority of employers. For customers who receive compensation, the level of entitlement/compensation would not be able to be accurately determined.

25. As a result option 3 is not recommended.

Option 4: The information is collected by ACC

26. The information required is currently held by Inland Revenue. Should ACC seek this information directly from its customers it would require them to tell government the same information on numerous occasions. This is administratively inefficient and not in line with Better Public Services.

27. As a result option 4 is not recommended.

Option 5: An information matching under the Privacy Act 1993

28. Inland Revenue could provide data to ACC through information matching under the Privacy Act 1993. However, this would not capture the additional required information as the information needed by ACC is not limited to specific data points.

29. As a result option 5 is not recommended.

Summary of impacts of options

| | Option 1 | Option 2 | Option 3 | Option 4 | Option 5 |
|--|--|--|---|--|--|
| Fiscal implications for the Government | None. | None. | Possible loss of revenue and loss of productivity given an inoperative and non-funded scheme. | Loss of revenue and loss of productivity given an inoperative and non-funded scheme. | Loss of revenue and loss of productivity given an inoperative and non-funded scheme. |
| Administrative implications for Inland Revenue and ACC | Inland Revenue would be in breach of its secrecy provisions in the TAA in the interim. Inland Revenue may also breach privacy provisions of the Privacy Act in the interim. | Inland Revenue would be in breach of its secrecy provisions in the TAA. Inland Revenue may also breach privacy provisions of the Privacy Act. | Considerable impact on Inland Revenue in determining what information to stop sharing. Significant impact on ACC's ability to accurately calculate and collect levies payable, entitlements and compensation. | Will impact on ACC's ability to accurately calculate and collect levies payable, entitlements and compensation. This would be administratively burdensome for the ACC. | ACC would not be able to fulfil their legislative obligations. |
| Compliance implications for customers | None. | None. | A decrease in the level of compliance with the ACC's scheme. | Increase in compliance costs for customers. | None. |
| Social, cultural and environmental implications | Adversely impact on the reputation of and culture within Inland Revenue as staff will be knowingly breaching the secrecy | Adversely impact on the reputation of and culture within Inland Revenue as staff will be knowingly breaching the secrecy | Adversely impact on the reputation of and culture within the ACC. There would be a breakdown in the relationship between Inland Revenue and the ACC. | Adversely impact on the reputation of and culture within the ACC. | None. |

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|--|---------------------------------------|------------------------|--|--|--|
| | obligation in the TAA in the interim. | obligation in the TAA. | | | |
|--|---------------------------------------|------------------------|--|--|--|

CONSULTATION

30. Inland Revenue has consulted with the ACC and the Office of the Privacy Commissioner on this machinery of government amendment.

31. The Office of the Privacy Commissioner is supportive of our proposal. It does not see any significant privacy risk with the current sharing given the information is provided to ACC for a legitimate purpose.

32. ACC have been consulted on this proposal and are supportive given it will enable them to fulfil their legislative obligations and their administrative responsibilities for the scheme.

CONCLUSIONS AND RECOMMENDATIONS

33. Officials recommend making an Order in Council to support information sharing under Option 1. We consider that this option would enable ACC to fulfil its legislative obligations in the administration of the ACC Scheme.

IMPLEMENTATION

34. The preferred option (Option 1) does not require Inland Revenue to alter its current information collection practices. As noted earlier in paragraph 15, Inland Revenue would not collect additional information on behalf of ACC. Inland Revenue would establish processes to monitor and audit the use of its data by ACC, and ensure that Inland Revenue’s tax secrecy obligations are maintained.

35. Also, as noted in paragraph 10, under the proposed arrangement ACC would only receive information that it is lawfully entitled to collect in its own right.

MONITORING, EVALUATION AND REVIEW

36. The Order in Council is subject to the review provision in the Tax Administration Act. The proposed review would be carried out after the new framework has been in operation for five years, and would be tabled in the House of Representatives by the Minister of Revenue, after consultation with the Office of the Privacy Commissioner. Such a review would allow for consideration of whether the objectives of the new framework have been achieved. Since the review would be made public, it should be transparent as to how the new framework is being applied.