



Inland Revenue
Te Tari Taake



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

Information Sharing Agreement

Between

Ministry of Social Development

And

Inland Revenue Department

Pursuant to Part 9A of the Privacy Act 1993 and
section 81A of the Tax Administration Act 1994

July 2017

Information Sharing Agreement

The Parties

Inland Revenue (IR) (acting through the Commissioner of Inland Revenue)

Ministry of Social Development (MSD) (acting through the Chief Executive)

The Agreement

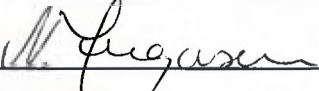
This Agreement is put in place under Part 9A of the Privacy Act 1993 and section 81A of the Tax Administration Act 1994 (TAA) to enable the Parties to share Information for the purpose of:

- (a) Assessing eligibility for, and entitlement to, Benefits and Subsidies (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
- (b) Assessing and enforcing any obligations related to Benefits and Subsidies, including recovering any associated debt (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
- (c) Assessing and enforcing current or past Tax Obligations, including recovering any associated debt; and
- (d) registering new customers or updating customer Contact Information and Identifying Information (including in relation to taxpayers and applicants for, or current or past recipients of, Benefits or Subsidies).

Acceptance

In signing this Agreement, each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of **Inland Revenue:**



Naomi Ferguson
Commissioner
Inland Revenue

Date 10/7/17

For and on behalf of the **Ministry of Social Development:**



Brendan Boyle
Chief Executive
Ministry of Social Development

Date 7/7/17

BACKGROUND

- A. The Government has set out its commitment to ensuring that government agencies share information as efficiently and effectively as possible.
- B. The Parties share information under Current Agreements made under various sections of the TAA, the Income Tax Act 2007, the Student Loan Scheme Act 2011 and the Child Support Act 1991, each of which enable them to share specified information for specified purposes.
- C. The Parties wish to consolidate these Current Agreements into one approved Information Sharing Agreement under section 81A of the TAA and Part 9A of the Privacy Act 1993 which enables a broader range of Information to be shared for a broader purpose.
- D. More specifically, the Parties wish to be authorised to:
 - 1. share additional information related to the provision of social housing, income-related rent and student allowances; and
 - 2. use this new information, and the information that they currently share, across their respective organisations for the purpose of:
 - a. Assessing eligibility for, and entitlement to, Benefits and Subsidies (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
 - b. Assessing and enforcing any obligations related to Benefits and Subsidies, including recovering any associated debt (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
 - c. Assessing and enforcing current or past Tax Obligations, including recovering any associated debt; and
 - d. registering new customers or updating customer Contact Information and Identifying Information (including in relation to taxpayers and applicants for, or current or past recipients of, Benefits or Subsidies).
- E. The Parties agree to enter into MOUs that replace the Current Agreements with effect from the date this Agreement comes into force and that are made pursuant to this Agreement. The MOUs will reflect the new legislative authority for the sharing of Information and will enable the sharing of new information as described above.
- F. Under the Taxation (Annual Rates for 2016-17, Closely Held Companies, and Remedial Matters) Act 2017, IR will, by Order in Council, amend or repeal the legislative provisions that currently authorise the sharing of information between the Parties (as referred to at paragraph B) with effect from the date that this Agreement comes into force.

TERMS

1. Defined Terms

In this Agreement, including the Background, unless the context otherwise requires:

Adverse Action has the meaning specified at section 96C of the Privacy Act 1993.

Agreement means this Information Sharing Agreement between the Parties that is made under section 81A of the TAA and Part 9A of the Privacy Act 1993 and is approved by the Order in Council, and includes the Schedules and any amendment made by the Parties.

Assess includes reassess and determine.

Authorised Staff in relation to a Party, means staff of that Party who are authorised to send or receive Information under this Agreement.

Benefit means:

- (a) a benefit within the meaning of paragraphs (a) and (b) of the definition of benefit in section 3(1) of the Social Security Act 1964; and
- (b) any other amount that is payable or may be paid under the Social Security Act 1964, including-
 - (i) a funeral grant that may be paid under section 61DB, 61DC or 61DD of that Act; and
 - (ii) any special assistance grant that may be paid under any welfare programme approved under section 124(1) of that Act.

Chief Executive means the Chief Executive of MSD.

Commissioner has the meaning specified at section 3(1) of the TAA.

Current Agreements means the agreements between the Parties on the following topics that are in force at the date of this Agreement and that, from the date that this Agreement comes into force, will be replaced with MOUs entered into under this Agreement:

- (a) working for families double payment and community service cards;
- (b) commencement/cessation of benefits/students;
- (c) working for families tax credits administration;
- (d) child support and domestic maintenance;
- (e) pro-active information sharing to reduce benefit overpayments; and
- (f) student loan programme.

Dependent Child has the meaning specified at section 3(1) of the Social Security Act 1964.

Information means the information that may be shared between the Parties under this Agreement, including Personal Information, as described at Schedule 1.

Information Sharing Agreement has the meaning specified at section 96C of the Privacy Act 1993.

IRD Number has the meaning given to tax file number by section 3(1) of the TAA.

Lead Agency means IR.

Maori Authority has the meaning specified at section YA1 of the Income Tax Act 2007.

MOUs means the memoranda of understanding on the following topics that the Parties will enter into pursuant to this Agreement, that replace the Current Agreements, and that set out the operational arrangements by which the Parties may share Information:

- (a) working for families double payment and community service cards;
- (b) commencement/cessation of benefits/students;
- (c) working for families tax credits administration;
- (d) child support and domestic maintenance;
- (e) pro-active information sharing to reduce benefit overpayments; and
- (f) student loan programme; and
- (g) social housing and income-related rent.

Order in Council means the Order in Council that approves this Agreement and that is made under sections 96J to 96L of the Privacy Act 1993, dated July 2017.

Parent, in relation to any person, means a person who is the person's mother, father, guardian, step-parent, or is acting in place of a parent.

Party means IR or MSD and **Parties** means both IR and MSD.

Personal Information has the meaning in section 2(1) of the Privacy Act 1993.

Privacy Commissioner means the Commissioner established under section 12 of the Privacy Act 1993.

Revenue Acts means the Acts referred to at section 81(1C) of the TAA.

Subsidies means 1 or more of:

- (a) working for families tax credits payable under Income Tax Act 2007 and the TAA;
- (b) community services cards available under the Social Security Act 1964;
- (c) student loans payable under the "student loan scheme" as defined in the Student Loan Scheme Act 2011;
- (d) student allowances payable under the Education Act 1989;
- (e) child support payable under the Child Support Act 1991;
- (f) income-related rent payable under the Housing Restructuring and Tenancy Matters Act 1992; and

- (g) social housing available under the Housing Restructuring and Tenancy Matters Act 1992.

TAA means the Tax Administration Act 1994.

Tax Obligations means tax obligations arising under the Revenue Acts.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Working for Families Tax Credit has the meaning given to WFF tax credit in section MA 8 of the Income Tax Act 2007.

2. Purpose

The purpose of this Agreement is to authorise the sharing of Information and enable the Information to be used for the purpose of:

- (a) Assessing eligibility for, and entitlement to, Benefits and Subsidies (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
- (b) Assessing and enforcing any obligations related to Benefits and Subsidies, including recovering any associated debt (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
- (c) Assessing and enforcing current or past Tax Obligations, including recovering any associated debt; and
- (d) registering new customers or updating customer Contact Information and Identifying Information (including in relation to taxpayers and applicants for, or current or past recipients of, Benefits or Subsidies).

3. Information to be shared

Each Party may share the Information with the other Party, and each Party may use the Information for 1 or more of the purposes specified at clause 2.

4. Exemptions and/or modifications to information privacy principles

For the purposes of this Agreement, information privacy principles 2 and 11 which are set out in section 6 of the Privacy Act 1993 are modified (by the Order in Council) as follows:

(a) Principle 2: Source of Personal Information

It is not a breach of information privacy principle 2 for the Parties to collect Personal Information from each other for the purposes of this Agreement.

(b) **Principle 11: Limits on disclosure of Personal Information**

It is not a breach of information privacy principle 11 for the Parties to disclose Personal Information to each other for the purposes of this Agreement.

5. **The public services that this Agreement is intended to facilitate**

The public services that this Agreement is intended to facilitate are the accurate and efficient:

- (a) Assessment of eligibility for, and entitlement to, Benefits and Subsidies; and
- (b) Assessment and enforcement of Tax Obligations, including recovering any associated debt; and
- (c) Assessment and enforcement of obligations relating to Benefits and Subsidies, including recovering any associated debt.

6. **Adverse Actions**

- (a) Section 96Q of the Privacy Act 1993 requires parties to an Information Sharing Agreement to provide written notice to individuals before any Adverse Action is taken against them on the basis of information shared under that agreement, including details of the Adverse Action that the party proposes to take and the Personal Information about the individual on which the action is based. The notice must give those individuals 10 Working Days to dispute the correctness of the information. Section 96R of that Act allows an approved Information Sharing Agreement to provide that a party to that agreement may give a shorter period of notice or dispense with the notice requirement.
- (b) The Parties agree to dispense with the notice requirement under section 96Q where the sharing of Personal Information under this Agreement gives either Party reasonable grounds to suspect that:
 - (i) a crime has been committed, is being committed, or will be committed; and
 - (ii) the Personal Information is relevant to the Party's decision-making on preventative, investigative or enforcement interventions related to that crime; and
 - (iii) advance notification by a Party to a suspect of an Adverse Action might defeat the purpose of the intervention.
- (c) The Parties agree that IR may dispense with the notice requirement under section 96Q in order to immediately suspend payment to an individual of all or part of an interim instalment of a credit of tax under subparts MA to MF and MZ of the Income Tax Act 2007 when IR identifies a discrepancy between Information shared and information supplied to IR if, before or immediately after the decision to suspend, IR gives a written notice to the individual that:

- (i) provides details of the discrepancy and the suspension of payment of the credit of tax and any other Adverse Action which IR proposes to take; and
- (ii) states that the individual has 5 Working Days from the receipt of the notice to show cause why payment of the credit of tax ought not to have been suspended or why the Adverse Action should not be taken, or both—

and the other Adverse Action must not be taken until expiration of those 5 Working Days.

- (d) The Adverse Actions that the Parties may take under this Agreement are specified at Schedule 2.

7. **Where you can view this document**

This document is available:

- (a) on the public website of each Party; or
- (b) in person at IR, 55 Featherston Street, Wellington.

8. **Overview of operational details**

- (a) The Information will be transferred securely between the Parties using the methods specified in clause 9 and in accordance with the MOUs.
- (b) The Information shared mainly relates to personal details (for example, name, address or contact details), family circumstances (spouse, children and care arrangements), income details, or unique identifiers (IRD Number or social welfare number).
- (c) The Parties will compare Information shared under this Agreement to verify individual entitlements to Benefits and Subsidies, to reduce Benefit debt and to Assess Tax Obligations. The Parties will use existing systems and practices to confirm Information is correct before relying on it. For example, the Parties may confirm the Information with the individual or the source of the information (e.g. an employer).
- (d) Both MSD and IR will, with some exceptions, provide written notice to individuals in advance of any Adverse Action proposed to be taken against them (see clause 6).
- (e) The Parties agree that this Agreement and the MOUs will replace the Current Agreements with effect from the date that the Order in Council comes into force.
- (f) The MOUs will contain operational details about how the Parties may share Information under this Agreement, including:
 - (i) security arrangements and technical standards in relation to the transfer and use of Information, as described at clause 9 below;
 - (ii) procedures to verify an individual's identity, to identify any discrepancies in the Information about that individual that is held by each Party, and to update that individual's records;

- (iii) provisions that specify how frequently Information is to be shared and in what format;
- (iv) requirements in relation to the retention and disposal of Information;
- (v) relationship principles and provisions that clarify the role of each Party under the MOU;
- (vi) governance processes, including processes that enable regular review of the MOUs and resolution of any disputes between the Parties;
- (vii) provisions that specify how the MOU may be amended or terminated and any requirements (such as confidentiality provisions) that continue to apply after termination; and
- (viii) contact details for Authorised Staff.
- (g) Operational details will be included in the MOUs, rather than in this Agreement, as they may need to be regularly updated over time, and they relate to matters that it is appropriate for the Parties to manage internally within their respective organisations.
- (h) Information will only be accessible by Authorised Staff, for the purposes set out in this Agreement.

9. **Safeguards that will be applied to protect the privacy of individuals and ensure that any interference with their privacy is minimised**

(a) **Security Provisions**

Each Party will have mechanisms and procedures for:

- (i) the secure storage and transfer of Information in accordance with government security standards (including by encrypted USB Iron Key, SEEMail, Secure File Transfer Protocol, or B2B framework, as applicable to the particular MOU);
- (ii) the appointment of Authorised Staff;
- (iii) the training of Authorised Staff, so that they share Information appropriately and in accordance with this Agreement;
- (iv) ensuring that the Information is of adequate quality;
- (v) ensuring that the Information is only used for the purposes specified in this Agreement.

(b) **Disclosure**

Neither Party will disclose the Information to any other agency or third party, except as required or permitted by law.

(c) **Access and correction requests for Personal Information under Information Privacy Principles 6 & 7**

Each Party will be responsible for responding to requests for Personal Information as appropriate in the circumstances, in accordance with Part 4 of the Privacy Act 1993.

(d) **Privacy breaches**

Each Party will be responsible for the investigation of privacy breaches as appropriate in the circumstances. Where Personal Information is found to have been inappropriately accessed or disclosed, the relevant Party's internal investigation processes will be applied. Where an internal investigation confirms the loss of, or unauthorised access to, Personal Information, the Privacy Commissioner will be notified as soon as possible, in accordance with the Privacy Commissioner's Privacy Breach Guidelines.

(e) **Audit**

The Parties will undertake an annual audit of the operation of this Agreement to check that the safeguards in the Agreement are operating as intended, that they remain sufficient to protect the privacy of individuals, and to ascertain whether any issues have arisen in practice that need to be resolved. The Lead Agency will provide the results of the audit to the Privacy Commissioner. The Parties may agree to make all or part of the results of the audit publicly available, if appropriate in the circumstances.

10. **Assistance statement**

The Parties will provide any reasonable assistance that is necessary in the circumstances to allow the Privacy Commissioner or an individual who wishes to make a complaint about an interference with privacy to determine the Party against which the complaint should be made.

11. **Security in the event of a breach**

- (a) If a Party has reasonable cause to believe that any breach of any security provisions in this Agreement or the MOUs has occurred or may occur, that Party may investigate that actual or suspected breach as it deems necessary.
- (b) The other Party shall ensure that reasonable assistance is provided to the investigating Party in connection with the investigation.
- (c) The investigating Party will ensure that the other Party is kept informed of any developments.
- (d) Compliance by IR officers with this clause 11 is subject to their obligations under the TAA.
- (e) A Party may suspend its sharing of Information under clause 3 of this Agreement to allow time for a security breach to be remedied.

12. **Dispute resolution**

- (a) Should any dispute arise in relation to this Agreement, the Parties will meet in good faith to attempt to resolve it as quickly as possible.
- (b) If the Parties are unable to resolve the dispute within 60 days, the matter shall be referred to the Commissioner and the Chief Executive, or their delegates, for resolution.

- (c) The Parties will continue to comply with their obligations under this Agreement despite the existence of any dispute.

13. Review

- (a) A joint review of this Agreement may be undertaken whenever the Parties consider that such a review is necessary.
- (b) The Lead Agency will conduct a review annually or at intervals specified by the Privacy Commissioner and will produce a report that will be included in the Lead Agency's annual report.
- (c) The Parties will co-operate with each other in any review and will take all reasonable actions to make the required resources available.

14. Amendments

- (a) Any amendments to this Agreement must be in writing and signed by the Commissioner and the Chief Executive, or their delegates.
- (b) Amendments to this Agreement will be made in accordance with section 96V of the Privacy Act 1993.
- (c) If the Parties are unable to agree on any amendments, the matter will be dealt with under clause 12.

15. Term and termination

- (a) This Agreement comes into force on the date on which the Order in Council comes into force and shall continue in force until the Parties agree to terminate it or the Order in Council is revoked.
- (b) A Party may suspend, limit, or terminate its participation in this Agreement if it appears to that Party that the terms of the Agreement or the Order in Council are not being met or the sharing of Information under this Agreement is otherwise unlawful.
- (c) The obligations in the MOUs which concern confidentiality and secrecy shall remain in force notwithstanding the termination of this Agreement.
- (d) If extraordinary circumstances arise (including but not limited to earthquake, eruption, fire, flood, storm or war) which prevent a Party from performing its obligations under the Agreement, the performance of that Party's obligations shall be suspended, to the extent necessary, for as long as those extraordinary circumstances prevail.

16. Departmental representatives

- (a) Each Party will appoint a contact person to co-ordinate the operation of this Agreement with the other Party and will ensure that the contact person is familiar with the requirements of the Privacy Act 1993 and this Agreement.
- (b) The initial contact persons are as follows:
 - (i) MSD: Director, Information Sharing.

- (ii) IR: Manager, Information Sharing Hub.
- (c) All notices and other communication between the Parties under this Agreement shall be sent to the contact persons specified above.
- (d) The contact persons set out above may be updated from time to time by notice to the other Party and the Privacy Commissioner.

17. **Precedence**

This Agreement takes precedence over the MOUs, to the extent of any inconsistency.

SCHEDULE 1: INFORMATION

The Parties may share Information that falls into the following categories:

Category	Definition
Contact Information	Information that may be used to contact an identifiable individual or that individual's nominated representative(s), including names, email and postal addresses, and telephone numbers.
Identifying Information	Information that identifies, or relates to the identity of, an individual, including names, aliases, and the date and location of the individual's birth and death.
Information about Domestic Relationships	<p>Information about Domestic Relationships (as defined below), including:</p> <ul style="list-style-type: none"> (a) the current and previous names, aliases, contact details, and dates of birth of persons with whom an identifiable individual has or had a Domestic Relationship; and (b) in relation to any of those persons, information about employment, information about finances and income, information about social assistance, and information about tax (as defined below). <p>Domestic Relationship means a current or previous relationship between an identifiable individual and another person who is or was:</p> <ul style="list-style-type: none"> (a) the individual's spouse or partner; (b) the child of the individual or of the individual's spouse or partner; (c) the Parent of the individual; (d) any other family member of the individual; or (e) another person who ordinarily shares or shared a household with the individual.
Information about employment	<p>Information about an individual's employment, including:</p> <ul style="list-style-type: none"> (a) an individual's current or previous engagement in a contract of service or a contract for service; (b) the employer's name, trading name, contact details, and IRD number; (c) the name by which the employer knows or knew the individual; (d) the date on which the individual commenced and ceased employment with the employer; (e) details of the income that the individual earned with the employer and the period of payment; and (f) the individual's tax code for the period.

Category	Definition
Information and finances and income	Financial information about an individual, including: <ul style="list-style-type: none"> (a) the individual's bank account number; (b) any debt due to the Crown resulting from overpayment of any Benefit or Subsidy or underpayment of tax; (c) information about the income of that individual, including: <ul style="list-style-type: none"> i. salary and wages income; ii. interest, dividends, and Maori Authority distributions; iii. business income; and iv. other taxable and non-taxable income.
Information about social assistance	Information about the Benefits and Subsidies received by an individual, including: <ul style="list-style-type: none"> (a) the amount paid; (b) recovery of over-payments; (c) current and previous account status; (d) entitlements; (e) payment methods; (f) account balance; and (g) information about whether that individual has or had: <ul style="list-style-type: none"> i. 1 or more Dependent Children; and ii. a spouse or partner.
Information about tax	Information about an individual's current or previous tax affairs, including: <ul style="list-style-type: none"> (a) tax class; (b) tax year; (c) tax paid; (d) tax refunds; (e) tax adjustments; and (f) IRD Number.

SCHEDULE 2: ADVERSE ACTIONS

1. The type of Adverse Action a Party may take is dependent on:
 - (a) the immediacy of the action required; and
 - (b) the nature and value of the Information that it receives from the other Party when considered alongside the facts of the case and the information that it already holds.
2. The types of Adverse Action that MSD may take are steps to:
 - (a) Assess eligibility for, or entitlement to, Benefits and Subsidies that are applied for or received;
 - (b) Assess whether obligations in relation to Benefits and Subsidies that are applied for or received have been met; and
 - (c) enforce any unmet obligations in relation to Benefits and Subsidies that are applied for or received.
3. The steps referred to at clause 2 of this Schedule 2 include, but are not limited to:
 - (a) investigation;
 - (b) refusal to grant, or suspension or cessation of, or review or reassessment of entitlement to, a Benefit or Subsidy;
 - (c) debt recovery; and
 - (d) prosecution.
4. The types of Adverse Action that IR may take are steps to:
 - (a) Assess whether Tax Obligations have been met;
 - (b) Assess eligibility for, or entitlement to, Subsidies that are applied for or received;
 - (c) Assess whether obligations in relation to Subsidies that are applied for or received have been met; and
 - (d) enforce any unmet Tax Obligations or unmet obligations in relation to Subsidies that are applied for or received.
5. The steps referred to at clause 4 of this Schedule 2 include, but are not limited to:
 - (a) investigation;
 - (b) refusal to grant, or suspension or cessation of, or review or reassessment of entitlement to, a Subsidy;
 - (c) reassessment of Tax Obligations (which may result in the requirement to pay of a higher amount of tax);
 - (d) debt recovery; and
 - (e) prosecution.
6. The Parties may use their statutory powers to support these actions.

7. The Parties will comply with all of their respective policies and guidelines as well as the Solicitor-General's Prosecution Guidelines (Guidelines), as applicable, before taking any Adverse Action. The Guidelines assist in determining:
 - (a) whether criminal proceedings should be commenced;
 - (b) what charges should be filed; and
 - (c) whether, if commenced, criminal proceedings should be continued or discontinued.

The Guidelines also provide advice for the conduct of criminal prosecutions, and establish standards of conduct and practice expected from those whose duties include conducting prosecutions.

8. If Personal Information shared under this Agreement forms part of the prosecution's evidence in a criminal case, the Personal Information may be disclosed to an individual in accordance with the Criminal Disclosure Act 2008. Any dispute about the provision of such information will be managed by the courts as part of the subject matter of the prosecution.