

Regulatory Impact Statement

Information sharing agreement between Inland Revenue and the Ministry of Social Development

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by Inland Revenue. It provides an analysis of options to enable Inland Revenue and the Ministry of Social Development to continue the current sharing of information and extend the information shared to the provision of housing and verification of students and their parent's income for student allowance purposes.

Information sharing agreements between government agencies require the privacy of individuals to be considered and balanced against the need for government agencies to provide efficient, high quality services. The agencies have been working together to assess options to enable a more efficient sharing of information that allows sharing with a broader purpose, reducing multiple requests for the same information and time delays in the provision of benefits and entitlements to the public.

Consultation has been undertaken with the Office of the Privacy Commissioner, the Ministry of Social Development, Treasury, and Data Futures Partnership. The Department of the Prime Minister and Cabinet has been informed. Public consultation has been carried out and seven submissions have been received. The concerns from submissions have been considered in the assessment of the recommended option.

The Privacy Commissioner is comfortable with the proposals presented under the recommended policy option and has expressed full support to its implementation.

The assessed options will not incur significant additional costs to the agencies. It is difficult to determine the number of people who may be impacted by the proposals but it is envisaged the recommended policy option will continue to provide the benefits generated by the current Memoranda of Understanding and will provide additional benefits to the agencies and their customers in the form of efficiency gains and better service provision.

None of the policy options would impair private property rights, restrict market competition, reduce the incentives for business to innovate and invest, or override fundamental common law principles.

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STATUS QUO AND PROBLEM DEFINITION

1. The Government has set out its commitment to reforms that ensure the public sector takes a more collaborative, cross-agency approach to supporting New Zealanders and gaining efficiencies. To achieve these results, government agencies will need to work together to better use their resources, and it becomes essential that they are able to efficiently share information with each other. Government agencies must be trusted to share only when appropriate and handle private information respectfully with transparent processes.

2. The Ministry of Social Development and Inland Revenue have common customers and have been sharing information about these customers since 1994. Over the years information has been shared for specific purposes by way of specific amendments to the tax legislation. These specific purposes under different legislative provisions have resulted in multiple requests for the same information and time delays in the provision of benefits and entitlements to the public.

3. Existing exchanges between the Ministry of Social Development and Inland Revenue enable:

- the administration of shared services (such as Working for Families tax credits, child support, and student loans);
- improved service to joint customers (such as proof of identity at the Ministry of Social Development on behalf of Inland Revenue); and
- the prevention and detection of fraud (such as income and relationship information from Inland Revenue to the Ministry of Social Development).

4. Each sharing activity is governed by its own Memorandum of Understanding (MoU). These are very prescriptive and contain inconsistent operational aspects such as data handling and use of the information. Even though the current sharing of information between the agencies has been providing numerous benefits to both agencies across a range of services, the improvements are limited by the specific purposes of the information sharing, which do not allow the agencies to gain further efficiencies and provide a better experience for the customers interacting with them. In addition, the agreements are difficult, expensive, and time-consuming to amend.

5. The existing MoUs have very specific purpose provisions, which restrict what the information can be used for. This may affect the agency's ability to correctly determine entitlement to benefits and subsidies, result in multiple requests being made to Inland Revenue for the same information, or delay payments due to the need for evidence to be provided. The following examples illustrate some of the situations where this can occur:

- a. Currently, the Ministry of Social Development receives income information for the purposes of determining entitlement to main benefits. This income information, once verified with the customer, would also be useful in determining entitlement to social housing, but because of the prescriptive nature of the existing agreements, this income information cannot be used for other purposes.
- b. A customer applies to the Ministry of Social Development for a benefit and must provide verification of their IRD number but some customers do not have this in their possession. Currently, the customer has to go to Inland Revenue to get verification of

their IRD number. Under the Student Loan Scheme, Inland Revenue is able to verify IRD numbers in near real-time. If the purpose of the existing IRD number verification system were to be expanded in the future, the agencies would be able to verify IRD numbers for benefit applications, which would save time for customers, reduce their compliance costs and provide a better customer experience.

6. Research conducted by Inland Revenue and Victoria University of Wellington¹ indicates that New Zealanders are generally supportive of information sharing across government. They expect high standards of management of the information shared, and they expect their personal circumstances to be considered holistically. Information sharing between the Ministry of Social Development and Inland Revenue will only achieve further benefits if the agencies are trusted to share only when appropriate and handle private information respectfully with transparent processes.

7. For example, widening the purpose of the existing information sharing arrangements would enable information to be shared for assessing eligibility for social housing and student allowances. This would enable the Ministry of Social Development to extend assistance to those who are most in need, and ensure people receive correct entitlements and benefits across a wider range of the Ministry of Social Development services than currently.

8. To address the issues in the examples above, there is the need for a change of focus for information sharing, from agreements that share information for purposes of determining an entitlement to a product type (such as child support or Working for Families), to one with a more generic purpose.

9. The generic purpose would change the way information can currently be used, and the oversight and safeguards that apply to these exchanges. This will enable information to be shared for the purpose of determining an individual's eligibility to benefits and subsidies provided by the two agencies, and for assessing tax obligations.

10. The recommended option should address these issues and enable agencies to move towards the goal of making it easier for individuals to interact with government and to access the services they require.

Scale of the problem

11. Inland Revenue shared approximately 7 million records with the Ministry of Social Development under the existing information sharing agreements during the 2015/16 year. This figure will include multiple records on a single person and often the same piece of information being shared more than once for different purposes.

12. At the end of 2016, there were approximately 193,000 people in Housing New Zealand houses², and 297,000 working-age people receiving a main benefit³. In 2015, over 40,000

¹ Professor Miriam Lips, Dr Elizabeth Eppel, Amanda Cunningham & Virginia Hopkins Burns, *Public Attitudes to the Sharing of Personal Information in the Course of Online Public Service Provision*, Victoria University of Wellington, 2009.

² https://www.beehive.govt.nz/sites/all/files/Social_housing_by_the_numbers.pdf (retrieved 8 February 2017)

³ <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/benefit/latest-quarterly-results/all-main-benefits.html> (retrieved 8 February 2017)

students 24 years old or younger were receiving a student allowance⁴. The number of student allowance recipients to be affected by the recommended option is estimated to be over 30,000, but the estimated number of social housing recipients to be affected is unknown.

13. While the number of records to be shared for social housing has been negotiated to be a maximum of 10,000 per month (due to operational constraints), the number of records proposed to be shared for student allowance is still unknown. It has been assumed that sharing information with a wider purpose will reduce the amount of information shared as it will avoid the current duplication. At the same time, the extension of information shared to provide for student allowance and social housing will increase that amount again. The magnitude of these opposing forces and the resulting impact is not known.

14. The aim of sharing of information for social housing purposes is to assist the proper allocation of social housing and to assist in calculating the correct rate of income-related rent the household may be required to pay for the property. This may result in a fiscal benefit or revenue savings.

OBJECTIVES

15. The **main objective** is to deliver better outcomes for customers by enabling a more accurate and timely provision of benefits and subsidies.

16. All the options are assessed against the status quo in relation to the main objective and the following criteria:

- (a) **Efficiency of compliance and administration** – gain efficiencies through a more collaborative, cross-agency work in regards to common customers and the joint administration of social policy, and provide better services to customers, reducing their compliance costs and delivering a better customer experience;
- (b) **Fairness and integrity** – maintain the integrity of the tax and benefit systems, and ensure sufficient protection of people’s privacy and a proper level of security and transparency;
- (c) **Sustainability of the public sector** – provide a framework that is flexible enough to respond to Government’s priorities, and facilitate changes going forward.

17. Criterion (a) can potentially conflict with (b) if information is shared too widely or if robust security systems and processes are not established to protect people’s privacy. A balance must be reached between providing better public services and ensuring people’s information is adequately protected, so all objectives can be achieved without conflicting.

REGULATORY IMPACT ANALYSIS

18. Four options have been considered in this RIS:

Option 1: Retain the status quo

⁴ <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/studylink/student-allowance-vtd-12.html> (retrieved 8 February 2017)

- Option 2: Create an Approved Information Sharing Agreement (AISA) under Part 9A of the Privacy Act to amalgamate existing agreements and extend the information shared to social housing and verification of students and their parent's income for student allowance purposes. **(preferred option)**
- Option 3: Use the information sharing framework in section 81BA of the Tax Administration Act to share information for housing assistance and verification of students and their parent's income for student allowance purposes.
- Option 4: Retain the current information sharing provisions and create a specific legislative amendment in the Tax Administration Act to allow information sharing for social housing and verification of students and their parent's income for student allowance purposes.

Option 1

- 19. Option 1 is to retain the status quo.

Assessment against objective and criteria – option 1

Main objective

- 20. Inland Revenue and the Ministry of Social Development must work together closely to deliver the service improvements expected by government and customers and that requires information to be available more fluidly across organisational boundaries. This doesn't currently happen under the status quo.

Efficiency of compliance and administration

- 21. There are efficiency gains that cannot be achieved under this option due to the limitations of the current information sharing agreements, which are very prescriptive.

Fairness and integrity

- 22. This option ensures sufficient protection of people's privacy and a proper level of security and transparency. However, the benefits are limited and do not result in improvements in the integrity of the tax and benefit systems. Although Inland Revenue shares information with the Ministry of Social Development to ensure integrity of benefits, information is not shared in relation to student allowance or social housing.

Sustainability of the public sector

- 23. This option is not future proof as it is not flexible enough to respond to the upcoming organisational changes, Government's and customer's expectations.

Option 2

- 24. This option would create an AISA, which is a legal mechanism enabled under the Privacy Act 1993 authorising the sharing of information between or within agencies (either from one agency to another or sharing by both agencies) for the purpose of delivering efficient and effective public services. With this option the current legislation would be

amalgamated into one AISA and would operate under its authority. Also, the information shared would be extended to include information for assessing eligibility for social housing and student allowance.

25. AISAs set out how information is to be shared according to the requirements of the Privacy Act. They also provide the necessary flexibility to enable efficient information sharing, and provide appropriate systems and processes to protect people's privacy.

26. While AISAs do not apply for the sharing of information between non-individuals, that does not cause any concerns as the information sharing considered in this RIS is entirely relating to individuals.

Assessment against objective and criteria – option 2

Main objective

27. The AISA framework was created for the purpose of delivering efficient and effective public services, so this approach to information sharing would provide easier and faster access to government services and reduced compliance costs for customers.

28. From a customer perspective, greater sharing of customer information facilitated by the proposed AISA would, over time:

- reduce the need for individuals to interact with agencies on multiple occasions or to provide duplicate information to government agencies;
- make it easier for individuals to meet their obligations, thereby reducing adverse outcomes such as accumulating debt; and
- meet evolving expectations of the public to provide joined-up social services across government agencies.

29. This option meets the main objective.

Efficiency of compliance and administration

30. The AISA would continue the existing information sharing and provide a wider purpose for using the information. This would enable agencies to provide services more efficiently and effectively, by improving the timeliness and accuracy of benefits and subsidies, and assisting the assessment of tax obligations. It would reduce the administration costs associated with agencies sharing information, and create public confidence through the perception of agencies' efficiency in managing customer information – sharing the right information, in the right way, at the right time. It would also reduce compliance costs for customers as they would not be required to provide the same information multiple times. This is a significant improvement on the status quo.

Fairness and integrity

31. The AISA clarifies and improves the rules around how agencies share personal information, while ensuring safeguards are in place to protect an individual's privacy. It would provide certainty around the purpose of information sharing, use of information, and management of privacy risks; it can also modify privacy principles when justified. AISAs provide a transparent approach to sharing, as all agreements are made public and consultation is required for any agreement. This is an improvement on the status quo.

Sustainability of the public sector

32. An AISA is easier and faster to amend to include sharing of additional information and other agencies in comparison to the status quo process for changing legislation, providing a more future-proof framework for sharing information.

33. From a government and agency perspective, the wider scope of the agreement and having all information sharing under one agreement would, over time, contribute to the Government's Better Public Service objectives of better service to New Zealanders, and provide a foundation on which to base future sharing of information among the two agencies.

34. This is an improvement on the status quo.

Option 3

35. This option consists of making an Order in Council (OIC) under section 81BA of the Tax Administration Act to enable Inland Revenue to share information with the Ministry of Social Development.

36. This option is similar to option 2 in that it enables information sharing to occur through an OIC. The advantages of this option are that it enables information sharing to be done under a means that is presently in use and it enables information to be shared about individuals as well as non-individuals. However, section 81BA is a one-way information sharing mechanism, from Inland Revenue to another agency, and therefore does not provide the ability for the Ministry of Social Development to disclose information to Inland Revenue..

Assessment against objective and criteria – option 3

Main objective

37. This option only partially meets the main objective because it only allows information to be shared in one way, from Inland Revenue to another agency.

Efficiency of compliance and administration

38. This option limits sharing to information that the agency already has the legal authority to collect. It also has the limitation of being a one-way sharing. This will limit the compliance and administrative efficiencies that can be achieved with this option. This would be worse than the status quo.

Fairness and integrity

39. This provision also contains protections for people's privacy similar to option 2. Also consultation with the Privacy Commissioner and affected organisations is required before an OIC is made under this section. This is an improvement on the status quo.

Sustainability of the public sector

40. This is not a sustainable option because it is limited to one-way information sharing only. This is the same as the status quo.

Option 4

41. Under this option, the current information sharing provisions would remain and the Tax Administration Act would be amended to allow for Inland Revenue to share information with the Ministry of Social Development for the specific purposes of social housing and student allowance.

Assessment against objective and criteria – option 4

Main objective

42. This option would not achieve the main objective because it would make new information sharing agreements for housing assistance and student allowance using the same framework as the status quo.

Efficiency of compliance and administration

43. No efficiency gains would be achieved under this option because it would maintain the status quo. Even though more information would be shared, this option would not provide the wider purpose necessary to achieve that, so is the same as the status quo.

Fairness and integrity

44. This option has the advantage of being the most transparent. The information sharing would face Parliamentary scrutiny and would be recorded in primary legislation. This is the same as the status quo.

Sustainability of the public sector

45. This is not a sustainable option because it does not provide the required flexibility going forward. This is the same as the status quo.

CONSULTATION

46. Consultation has been undertaken with the Office of the Privacy Commissioner, the Ministry of Social Development, Treasury, and Data Futures Partnership. The Department of the Prime Minister and Cabinet has been informed. In addition, a discussion document and a draft AISA were made available for public consultation from 17 November to 16 December 2016. Submissions were invited through the Government Online Engagement Services, the Inland Revenue Tax Policy website database (which currently has over 6,500 subscribers), the Ministry of Social Development database (which currently has over 1,100 subscribers), and a Ministerial press release.

47. During the consultation period, the website received 673 visits, resulting in three submissions. From the number of people who received notification directly (over 7,600, either from Inland Revenue or the Ministry of Social Development) another four written submissions were received. From these results it is reasonable to infer that most people did not find problems with the proposals and therefore did not take the time to make a submission.

48. The key concerns raised by submissions and the officials' response to each of them are as follows:

- a. Submitters questioned whether the driver for the extended information sharing is improving outcomes for customers by streamlining processes, or identifying fraud. Officials confirm that the additional information sharing has the aim of improving processes for students applying for student allowances and identifying people in need of social housing. While it is unavoidable that some additional fraud cases might be identified, this is not the purpose of the reform.
- b. It was commented that the risk of amalgamating numerous and diverse information sharing agreements into one AISA is that more information will be shared than is strictly necessary or appropriate, and the safeguards are not clearly stated in the AISA. Officials recognise that a privacy breach is clearly one of the risks associated with any information sharing proposal and, as such, requires careful management. The agencies have considered and assessed the risks associated with the proposals and have consulted with the Office of the Privacy Commissioner, who has indicated they are comfortable with the proposals and support the development of this AISA. In addition, before any information sharing can take place, agencies are required to have an operational agreement clearly describing the purpose of sharing the information, as well as how information will be handled and the process to be followed in case of privacy breach. A review and audit process is also outlined in the AISA and operational agreements. Officials consider the safeguards in the AISA address the submitters concerns.
- c. It was suggested that, whenever practicable, individual's consent to the information sharing should be obtained and/or notification of reuse of information for different purposes should be sent. Although officials appreciate the concern raised, we note that customers applying for a benefit are notified of the information sharing between agencies through the Privacy Statement included in the Ministry of Social Development's application forms. In addition, both the Privacy Act and the AISA allow modification of the Privacy Principles relating to requirements to collect information direct from the individual (Privacy Principle 2) and the requirement not to disclose information (Privacy Principle 11), therefore allowing the sharing of information without seeking consent from individuals, which would not be practicable and negate some of the benefits from sharing information.
- d. In relation to the objective of improving services provided by agencies, a submitter is not convinced that solely amalgamating current sharing agreements under one AISA will necessarily result in two agencies being able to provide services more efficiently, instead considering that efficiencies will arise as a result of improved IT systems and processes. Officials consider that there is some efficiency to be gained through amalgamating current agreements and providing a more flexible legislative mechanism. For example, enabling the Ministry of Social Development to re-use information obtained for one purpose to determine entitlement to another benefit will allow the individual to be assessed more holistically, removing the need for duplication of information requests, which will ultimately result in more timely and efficient services. Officials agree with the submitter's comments that further significant benefits will come from improved IT systems and processes which the AISA will enable.
- e. A submitter commented, that the information to be shared for student allowance purposes about an estranged parent who does not financially support the student can cause discomfort for the student concerned. They mention "it is a difficulty for the Ministry of Social Development to know whether incomplete applications are

awaiting the completion of such documentation or if they have been discontinued". Officials note that, the Ministry would only match parental income of those considered a parent in line with legislation and only after consent is received from the appropriate parties. Legislatively, the student has until the end of their course of study to complete their student allowance application, therefore the Ministry is unable to discontinue or close applications prior to this date.

- f. It was suggested making sure it is clear in the agreement what the purpose of the information sharing is, ensuring it is clear that it is for operational functions and not intended to cover information for other purposes such as policy development, evaluation, research and statistics. However, officials currently use information shared for evaluation, statistical and policy development purposes under the exceptions to Privacy Principle 10 - limits on use of personal information, in the Privacy Act. We consider that current exceptions to the Privacy Principle 10 should be retained in relation to the proposed AISA.
- g. A submitter was concerned that the term "domestic relationship" is too widely defined and could result in inappropriate sharing of information. They consider the term "family member of the individual" should be defined. An example is where an adult who is made redundant applies for a "jobseeker support" and moves back to live with their parents. In this situation the definition of "domestic relationship" should not include the parents. However, officials consider that the definition of domestic relationship in the AISA needs to be widely cast to cover all possible domestic relationships for benefit purposes. Although in the example those sharing accommodation should be excluded from the term "domestic relationship" for jobseeker support, for New Zealand Superannuation purposes sharing accommodation is taken into account in determining entitlement. The operational agreements between the two agencies will further define the term "domestic relationship" for each benefit type.
- h. Submitters also proposed minor drafting changes to the AISA to make a few points clearer and provide the readers with a better understanding, and improve trust in the information sharing by creating more transparency and accountability. Officials have considered these submissions and amended the AISA accordingly.

49. Generally, since the sharing of information between the two agencies has been occurring for some time, submitters indicated more support than opposition to the proposals. In summary, there was support to the information sharing where there are clear benefits, and as long as there is a balance between the benefits, the safety of the information shared and consideration of the individual's privacy. It is recognised that the benefit will be realised from the AISA, whilst also safeguarding information. The AISA will also improve clarity, transparency and efficiency.

CONCLUSIONS AND RECOMMENDATIONS

50. Information sharing between Inland Revenue and the Ministry of Social Development has provided a number of benefits since it started in 1994. However, the current format needs to evolve to allow for further benefits.

51. The following table summarises the consideration of the options from the regulatory analysis section above. Within the overview table the following symbols are used:

- ✓✓ Significant improvement on the status quo
- ✓ Improvement on the status quo
- × The same as the status quo
- ×× Worse than the status quo

Options	Analysis against the objective and criteria
Option 1. Status quo	Does not meet the main objective
Option 2. Approved Information Sharing Agreement (AISA) under Part 9A of the Privacy Act	Meets the main objective Efficiency of compliance and administration ✓✓ Fairness and integrity ✓ Sustainability of the public sector ✓
Option 3. Use the information sharing framework in section 81BA of the Tax Administration Act	Partially meets the main objective Efficiency of compliance and administration ×× Fairness and integrity ✓ Sustainability of the public sector ×
Option 4. Create a specific legislative amendment in the Tax Administration Act	Does not meet the main objective Efficiency of compliance and administration × Fairness and integrity × Sustainability of the public sector ×

52. Option 2 is the **recommended option** because it provides a consistent and agreed-to means of addressing privacy and security concerns in addition to meeting all the above criteria.

53. The AISA framework provides the flexibility and transparency to continue the information sharing between the agencies, while sharing additional information would provide greater benefits to customers. The additional sharing would have little to no impact on the integrity of the tax system and would not unreasonably intrude upon individual's privacy interests.

54. Therefore, an AISA is considered the best legislative vehicle to enable the information sharing, with additional information being added to the agreement to enable provision of better services to common customers, and officials recommend this option is implemented. This option would enable the information to be shared under a consistent framework that has been designed for information sharing projects. The AISA would enable efficient sharing and ensure the method of transferring information and protections for people's privacy are clearly laid out.

IMPLEMENTATION

55. Under the preferred option, officials will finalise the AISA to allow for Inland Revenue to share information with the Ministry of Social Development. The existing information sharing agreements (Memoranda of Understanding) will be updated to address operational inconsistencies and include the additional information to be shared.

56. During the drafting process, Inland Revenue and the Ministry of Social Development will design the agreed method of sharing information and then clearly set out the processes

that will be followed in the information sharing agreement. These processes will contain adequate protections for people's privacy and security of information, designed in consultation with the Privacy Commissioner.

57. Following this, an OIC will be sought to enact the final AISA agreement.

58. In order to give effect to the AISA the current information sharing provisions will need to be repealed with effect from a future date set by OIC. At the same time the AISA comes into force, an OIC will set the date for the repeal of the relevant information sharing provisions between Inland Revenue and the Ministry of Social Development. This needs to occur to ensure there is not an overlap between legislation and regulations for information sharing, the result of which would be current legislation overriding the AISA and therefore the OIC and AISA would not have effect.

59. When the OIC is passed, the AISA will be publicly available on Inland Revenue's website. The AISA will continue the existing information sharing and provide a wider purpose for using the information. This will enable Inland Revenue information to be used to determine entitlement to social housing and student allowances.

MONITORING, EVALUATION AND REVIEW

60. Inland Revenue is required to report on the operation of an AISA at times specified by the Privacy Commissioner. These reports are concerned with whether the agreement is meeting its goals. The maximum requirements of the report are that it covers the costs and benefits of sharing, difficulties experienced, audits undertaken, amendments and safeguards put in place, complaints received, number of individuals whose information has been shared, number of transactions that have occurred and number of adverse actions taken as a result.

61. AISAs are subject to regular review by the Privacy Commissioner. The Privacy Commissioner can review the operation of the agreement on his or her own initiative 12 months after the OIC approving the agreement has been made and at any time that the Commissioner considers appropriate for subsequent reviews.

62. Any review by the Privacy Commissioner would cover whether the agreement is failing to meet its goal in facilitating public services, unreasonably infringing privacy, or operating in an unforeseen way. It would also cover whether the costs of sharing are outweighing the benefits. If there are reasonable grounds to believe any of these are occurring, the Privacy Commissioner will prepare a report for the Minister of Revenue, which will also be tabled in Parliament.