

Regulatory Impact Statement

Initial proposals from the *Making Tax Easier* discussion document

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by Inland Revenue.

The objective of this Statement is to review whether the current privacy and secrecy laws provide sufficient flexibility for Inland Revenue to administer the tax system in the most efficient way and, if not, whether a new framework that allows for more efficient administration (while still ensuring appropriate restrictions) would be a suitable replacement.

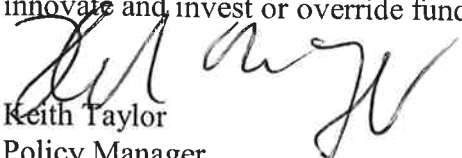
Inland Revenue is currently subject to strict secrecy obligations that restrict the disclosure of taxpayer information. In addition, privacy laws restrict sharing of information between government agencies, which can be a barrier to efficiency. However, secrecy and privacy are fundamental principles to the way that the tax system and government generally function. This Statement looks at the trade-offs between the privacy rights of individuals, and the need for government agencies to provide efficient, high quality services.

Public consultation was undertaken with the release of a discussion document and a focus group run by Victoria University of Wellington. An online public forum was also set up, where members of the public could discuss options and vote on proposals. Consultation within the public sector has also been undertaken. In particular, officials have consulted with the Office of the Privacy Commissioner, and will continue to do so.

The problems raised in consultation were concerns that the proposals might infringe the privacy rights of individuals, and that voluntary compliance with the tax system may be adversely affected. This Statement considers the ways in which a balance might be achieved between these concerns, and providing efficient and accurate government services.

Overall, the proposals should result in considerable efficiencies for government departments and for businesses. However, this needs to be balanced with concerns that have been raised via consultation about the impacts on voluntary compliance with the tax system, and an individual's right to privacy.

We are not aware of any other gaps or constraints. The preferred options in this statement do 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.


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STATUS QUO AND PROBLEM DEFINITION

1. One of the main policy objectives underlying the Government's *Making Tax Easier* discussion document, released in July 2010, was to bring about efficiencies across government agencies that interact with the tax system. A key part of this is to enable greater sharing of information across government agencies. The ability to share information is subject to the limitations set by privacy and secrecy laws.
2. Privacy laws regulate the exchange of information between government departments. The current accepted practice for exchanging information is via information matching. This generally involves comparing personal information from one set of records against personal information from another set of records. This is done for the purpose of verifying information about an identifiable individual, generally with the aim of finding records in both sets that belong to the same person.
3. For any new Inland Revenue-related information match, amendment to the secrecy provisions in the Tax Administration Act 1994 (the TAA) and a written agreement between the agencies is required. Inland Revenue is currently party to eight information matching agreements with the Ministry of Social Development. The timeframe to implement a new information match is 12 to 18 months. The matches themselves are often slow and the data may be out of date by the time the information is eventually received.
4. In addition to the privacy laws, section 81 of the Tax Administration Act 1994 imposes strict secrecy obligations on Inland Revenue. This provision is very restrictive and impacts on the administration of the tax system. It currently restricts Inland Revenue's ability to disclose information to situations where disclosure is necessary to properly administer the tax system. One example of this is that disclosure of tax debts to credit reporting agencies is not permitted, despite the fact that tax debts generally have priority over other debts.
5. Officials consider that further interpretive problems with the secrecy rules will arise as Inland Revenue progresses initiatives to administer the tax system more efficiently. As the threshold for releasing tax information is so high, there has been considerable uncertainty about when it is appropriate to release information. As noted, this has been solved in the past by amending section 81 of the TAA on a case by case basis to ensure that releases can be made. This has led to delays in releasing information, and a range of ad hoc exemptions.

OBJECTIVE

6. The objective of this Statement is to review whether the current privacy and secrecy laws provide sufficient flexibility for Inland Revenue to administer the tax system in an efficient way and, if not, whether a new framework that allows for more efficient administration while still ensuring appropriate restrictions would be a suitable replacement.
7. Reform in the area of the use of information collected by Inland Revenue supports one of the Government's objectives to deliver a better, smarter public service. Principally, this is achieved by reducing duplication between agencies. The PAYE information that Inland Revenue collects is often collected by other agencies.

For example, the Ministry of Social Development (MSD) uses income information to assess entitlement levels.

8. As sharing information improves timeliness and efficiency, there is potential for lowering compliance costs and improving efficiency for businesses. Any such changes, however, must be balanced with existing privacy rights of individuals and Inland Revenue's secrecy obligations. To that end, the proposals are limited to sharing information with agencies that are empowered to collect the information in their own right.

9. Any policy changes arising from this analysis are proposed to be incorporated into a taxation bill scheduled for introduction in November 2010.

REGULATORY IMPACT ANALYSIS

10. The options are broken down into two areas – privacy and secrecy.

Privacy options

(A) **Legislating for the new information sharing framework outlined in the discussion document** (*recommended option*). The proposed framework is:

- PAYE information would only be shared with government agencies if they have the ability and authority to collect information in their own right.
- The information must not be so sensitive that such sharing would discourage individuals from providing accurate information in the future.
- It must be uneconomic for the government agency to collect it themselves; or there are clear compliance cost benefits to individuals.
- The final decision to share information would rest with Cabinet via an Order in Council.
- The framework itself would be reviewed after five years of operation and that review would be tabled by the Minister of Revenue in the House of Representatives, following consultation with the Office of the Privacy Commissioner.
- The new framework would be applied in the first instance only to PAYE information to be shared with the Ministry of Social Development.

(B) **Pursue an enhanced information-match with only the Ministry of Social Development.** Information would be shared under the current information matching framework in the Privacy Act 1993, but via an updated agreement. It would result in case by case, 'on demand', real time access by the Ministry to the information held by Inland Revenue. More information would therefore be shared, and on a more frequent basis.

(C) **Wait for the Law Commission's review of the Privacy Act 1993.** The Law Commission is currently conducting a review of the Privacy Act 1993, with their findings due to be reported at the end of 2010. This option involves waiting for the findings and then considering whether any resulting reforms provide sufficient flexibility.

Secrecy

- (A) **Retain the status quo.** Retain section 81 of the Tax Administration Act 1994 as it currently is drafted, with its strict secrecy obligations.
- (B) **Make the disclosure of tax information more flexible by amending the TAA in favour of a new secrecy framework** (*recommended option*).
- (i) This new framework would involve:
- A lower threshold for the release of information for tax administration purposes;
 - Consideration of the care and management provisions before release;
 - Allowing information that does not identify a taxpayer to be released without Ministerial authorisation;
 - Improving legislative navigability; and
 - Publishing operational guidelines.
- (ii) Information on tax debts (including student loans and child support) would be released.
- (iii) An exemption to section 81 would allow for the provision of information to Treasury employees, but this is restricted to the purpose of tax revenue forecasting.

The positives, negatives and implementation risks of these proposals are considered in the table on page 5 of this Statement.

CONCLUSIONS ON OPTIONS

11. The preferred options are:

- Privacy – to legislate the new information sharing framework.
- Secrecy – to amend the TAA in favour of the new secrecy framework.

12. These new frameworks are the preferred options because they would be the most likely to achieve the objective of efficient tax administration, while also maintaining suitable protections for the privacy of individuals. The safeguards included in both of the frameworks, such as the requirement to consider voluntary compliance in the secrecy framework and the restriction on sharing to organisations that can collect the information in their own right in the privacy framework, help to achieve a balance between efficiency and protection of privacy and secrecy.

ANNEX 1: Analysis of the options

Option	Negatives	Positives	Implementation issues
<p><i>Privacy</i></p> <p>Legislating the new information sharing framework outlined in the discussion document (recommended option).</p>	<ul style="list-style-type: none"> - Public consultation shows that the public is split as to whether the new framework should proceed. - There is a social cost in that the proposal could result in erosion of individual privacy, which is a concern that came across in submissions. - Framework is inconsistent with the current legislative framework for information matching in the Privacy Act 1993. - The Office of the Privacy Commissioner has raised concerns about this proposal and submitted that the aims could be achieved using the current information matching framework contained in the Privacy Act 1993. 	<ul style="list-style-type: none"> - Major benefits to individuals and the government in terms of the speed and accuracy of service. This is because it would reduce the need for individuals to duplicate the information they provide to government agencies. Also, government agencies such as IR have very accurate information, which would ensure that entitlements such as benefits are provided appropriately. - Gains in terms of administrative efficiency, as it would speed up processes. - The review of how the framework has worked after five years of operation would provide transparency as the review would be made public. 	<ul style="list-style-type: none"> - Possible problems with interpreting the framework and applying it consistently. - Requires consultation with the Privacy Commissioner. - New processes between the agencies that are sharing information would need to be worked through. This could cause delays and impact negatively on the efficiency gains. - Safeguards and checks would need to be built into the processes so that the matches do not exceed the framework, with extra information being inadvertently disclosed.
<p>Pursue an enhanced information match with only the Ministry of Social Development.</p>	<ul style="list-style-type: none"> - Degree of uncertainty as to whether the Government's objectives of improving services and efficiency would be achieved. - Information matching has historically been slow, cumbersome, expensive and inflexible. 	<ul style="list-style-type: none"> - Uses the existing legislative framework in the Privacy Act. - This is the option suggested by the Office of the Privacy Commissioner, although it is not endorsed by that Office at this time. - There is precedent for this kind of information matching as it is the process currently used. 	<ul style="list-style-type: none"> - Proposal requires an Information Matching Privacy Impact Assessment (IMPIA) to be prepared, which would be considered by the Privacy Commissioner, who would report her conclusions to the Minister of Justice. Cabinet makes final decision. This process could be lengthy and there is no guarantee that the IMPIA will be approved by the Privacy Commissioner. - Given that the proposal still requires amendment to the TAA and possibly the Privacy Act 1994, there may be extended delay getting the matching process in place. - As this proposal involves delaying decisions, there are
<p>Wait for the Law</p>	<ul style="list-style-type: none"> - May result in a considerable time 	<ul style="list-style-type: none"> - May be more appropriate to wait 	<ul style="list-style-type: none"> - As this proposal involves delaying decisions, there are

<p>Commission's review of the Privacy Act 1993.</p>	<p>delay before any progress towards efficient data sharing is made.</p>	<p>for the outcome of this review before making decisions that relate to wider data sharing.</p>	<p>no real implementation risks beyond those associated with the delay itself.</p>
<p><i>Secrecy</i> Retain the status quo.</p>	<ul style="list-style-type: none"> - Section 81 as currently drafted restricts efficiencies. - Exemptions will continue to be added to section 81 on an ad hoc basis. 	<ul style="list-style-type: none"> - The tax system relies upon voluntary compliance, which in turn is heavily assisted by taxpayer trust in Inland Revenue. Part of this trust comes from the knowledge that taxpayer information will not be disclosed inappropriately. 	<ul style="list-style-type: none"> - Continuing to amend section 81 on an ad hoc basis is undesirable as it makes the application of secrecy obligations difficult and possibly inconsistent. Also, it is possible that exemptions will be added without regard to overall secrecy and privacy principles.
<p>Make the disclosure of tax information more flexible (recommended option).</p>	<ul style="list-style-type: none"> - Public submissions showed concern for adverse impacts on voluntary compliance and opposition to potential erosion of privacy rights. Opinion was split on the issue of whether to advance the new framework. 	<ul style="list-style-type: none"> - Benefits to individuals and the government in terms of the speed and accuracy of service. This is because it would reduce the need to provide information to multiple agencies. Also, the information that IR holds (for example, income information) is very accurate. - Would provide greater certainty as to the application of the secrecy obligations due to the provision of operational guidelines. - Should not impact on voluntary compliance, as this will be one of the factors considered when deciding whether to release information. 	<ul style="list-style-type: none"> - Risk that the operational guidelines may end up restricting Inland Revenue in a similar way to the current law. - Risks to individual privacy rights. - May enable disclosures that have a negative impact on taxpayers, although under the framework, such disclosures could only occur when clearly outweighed by benefits.

<p>Allow for the release of tax debt information (recommended option).</p>	<p>- Privacy of individuals affected.</p>	<p>- Would provide increased commercial certainty to lenders and entities as they would have a more accurate picture of credit worthiness. - Fairer given that some debts to Inland Revenue have priority over other debts, and that Inland Revenue has certain legislative powers to collect money owing to it that other entities do not.</p>	<p>- Issue of how to release the information – either to publicise it via the <i>New Zealand Gazette</i>, or to release the information to credit reporters (with the latter being officials’ preferred approach). - Risk of mistaken identity, but this is mitigated to an extent if information is only released to credit reporters, since the information can be easily corrected.</p>
<p>Allow for the provision of information to Treasury employees for the purpose of tax policy development (recommended option).</p>	<p>- Limited costs, although privacy of individuals may be affected.</p>	<p>- Would improve policy advice to Ministers as officials would be able to make more informed decisions.</p>	<p>- Little to no implementation risk, as the exemption would be limited to a small number of Treasury officials.</p>

CONSULTATION

13. Consultation has been undertaken via a public discussion document, an online forum, and a focus group run by Victoria University of Wellington.

14. In relation to the proposed new frameworks, the submissions were split in support and opposition. Those in favour recognised the efficiency gains to be made. Those in opposition were concerned about the level of privacy available to citizens or unconvinced of any pressing need to share information more freely. Several others argued that releasing or sharing information should only be done with the consent of individuals and that there should be provision for people to 'opt-out' if they so wish. They also noted that any operational guidelines produced by Inland Revenue would be very important. Several were also concerned about the impact on voluntary compliance.

15. The Office of the Privacy Commissioner is of the view that the objectives underlying the proposal for a new information sharing framework is able to be advanced through the existing information matching provisions in the Privacy Act 1993, without the requirement for any substantial legislative amendments.

16. The Office of the Privacy Commissioner also submitted that, although it appreciates the reasons for lowering the tax secrecy threshold, it still holds concerns for the status of the safeguards under the Privacy Act 1993. The submission noted that the strict tax secrecy threshold has served as a major privacy safeguard and that, if this is relaxed, the privacy principles will become more relevant. The Office submitted that it would prefer to see a stronger obligation to comply with the privacy principles as a minimum threshold for disclosure, rather than a requirement to 'consider' the privacy principles.

OFFICIALS' COMMENT ON ISSUES RAISED IN CONSULTATION

17. While officials note the concerns of the public on privacy, to make information sharing 'opt-in' on behalf of the individual concerned would be impractical and could lead to outcomes that are inconsistent with the policy objectives of the proposal. For example, one of the main practical outcomes of information sharing would be the ability for MSD to be able to quickly and accurately ensure that benefit entitlements are correct, based on income information shared by Inland Revenue. Where a person is knowingly receiving a benefit without entitlement, they are unlikely to consent to their information being shared. It should also be noted that the new privacy framework would require the potential receiving agency to be entitled to collect the shared information in their own right. This would act as a useful limit on the extent of the data that can be shared.

18. Although the option suggested by the Office of the Privacy Commissioner was to work within the existing privacy frameworks, officials have concerns that these processes may not achieve the objectives of sharing information in an efficient manner. The reasons for this include the prescriptive regulation of information matching, with restrictions as to content, frequency and the conduct of matching, and the emphasis on adverse action as opposed to enabling benefits or improving

customer service. On balance, officials consider that the new privacy framework is the most suitable option.

19. The new privacy framework would also be subject to a provision in the TAA which would require the framework to be reviewed after five years of operation. This review would then be tabled by the Minister of Revenue in the House of Representatives. This should provide the public with information as to how the framework has been applied, and provide transparency.

20. There was a degree of opposition to the proposed new secrecy framework. The main objections fall into two main areas: concerns about the potential impact on voluntary compliance, and resistance to the perceived erosion of rights.

21. Officials consider that the new framework, and in particular the proposal to share tax debt information with credit agencies, should encourage rather than discourage voluntary compliance. Voluntary compliance is one of the express factors that the new framework would require consideration of when making the decision to release information. In addition, rights concerning secrecy are not absolute, and can be balanced against other considerations, in this case, the public interest in the efficient and effective administration of the tax and welfare system.

IMPLEMENTATION

22. In relation to the new privacy framework for sharing PAYE information, officials recommend that the new framework be subject to a review provision in the TAA. 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.

23. Such a review would allow for consideration of whether the objectives of the new framework have been achieved. Since it would also be made public, it would make transparent the way that the new framework would be applied.

24. The main implementation risks regarding the secrecy proposals is the risk that the new framework, and in particular, the new operational guidelines, may be restrictive in a similar way to section 81 as it is currently drafted. This would need to be managed with careful drafting of the legislation and operational guidelines, and subsequent review at a later date.

25. Overall, it is expected that these proposals would result in lowered compliance costs for individuals and lowered administration costs for government, as they will reduce the need for duplication. They will also help to ensure that the information that agencies are basing their decisions upon, for example, income information when assessing benefit entitlements, is more accurate.

26. Specific implementation issues that relate to each of the options are considered in the table in Annex 1.

MONITORING, EVALUATION AND REVIEW

27. In general, the monitoring, evaluation and review of these proposals would take place under the Generic Tax Policy Process (GTPP). The GTPP is a multi stage policy process that has been used to design tax policy in New Zealand since 1995. The final step in the process is the implementation and review stage, which involves post-implementation review of legislation, and the identification of remedial issues. Opportunities for external consultation are also built into this stage. In practice, this would mean that these proposals would be reviewed at a time after it has had some time to work. Any changes that are needed to give the legislation its intended effect would be added to the Tax Policy Work Programme, and proposals would go through the GTPP.

28. As mentioned earlier, the new privacy framework will also contain a provision that requires the framework to be reviewed in five years' time.