

## Appendix 1: Options analysis

Inland Revenue and the Ministry of Business, Innovation and Employment (MBIE) evaluated five options to address issues with their information sharing arrangements. These were:

- **Option 1:** Maintain the status quo
- **Option 2:** Use the Commissioner of IR's powers to request information
- **Option 3:** Make regulations to permit bulk data collection
- **Option 4:** Amend primary legislation, and
- **Option 5 (preferred option):** Establish an approved information sharing agreement (AISA).

Each option was evaluated based on its effectiveness in facilitating existing information sharing between the parties, as well as its ability to enable further information sharing in compliance with current legislation (outlined in Chapter 2).

### Option 1: Maintain the status quo

- The first option considered was maintaining the status quo. Under this option, information-sharing between the parties would not be expanded beyond the current settings as Memorandum of Understandings (MOUs) cannot legitimise disclosures that would otherwise be unauthorised under the Tax Administration Act 1994, Privacy Act 2020, or any other statute.
- Additionally, as the MOU between Inland Revenue and business.govt.nz was underpinned by COVID-19 legislation and has since expired, any proposed entity information shares in Category 9 would no longer be possible.

### Option 2: Use the Commissioner of Inland Revenue's powers to request information

- The second option considered was using Inland Revenue's existing information-gathering powers, particularly the power to request information in section 17B of the Tax Administration Act 1994, to obtain information from MBIE.
- The information-gathering power contained in section 17B is broad and could potentially be used by Inland Revenue to access any relevant information from MBIE. However, while it allows Inland Revenue to obtain information from MBIE, it would not allow MBIE to obtain information from Inland Revenue in return.
- Using section 17B in this manner also lacks transparency. No Order in Council or other process open to public scrutiny is required for Inland Revenue to request information under this section, and few limits exist on the nature or extent of data which Inland Revenue can request. While this is appropriate for audits and criminal investigations, it is less appropriate for regular bulk collection of data concerning the public. A different approach would allow more public oversight about what data is being collected and why.
- Ultimately, this option would not allow Inland Revenue and MBIE to share further information. It would not alter existing information sharing arrangements.

### **Option 3: Make regulations to permit bulk data collection**

- The third option considered was using another of Inland Revenue's information-gathering powers, set out in section 17L of the Tax Administration Act 1994, to request information. Section 17L empowers the Commissioner to request bulk data on an ongoing, recurring basis for a particular purpose relating to administration or enforcement of Inland Revenue's responsibilities.
- An Order in Council approved by the Governor-General is required to collect information under section 17L. This Order must specify the nature of the information Inland Revenue can request and the purpose for which the information must be used. This allows for public scrutiny and the placement of appropriate limits on what information Inland Revenue can collect. Section 17L is therefore a more appropriate tool than section 17B for ensuring transparency.
- However, like section 17B, section 17L authorises the gathering of information by Inland Revenue, but does not authorise Inland Revenue to share information with MBIE. Again, this option would not overcome the legislative restrictions that prevent Inland Revenue from sharing information with MBIE that will help it to better carry out its responsibilities. Nor would it alter existing information sharing arrangements.

### **Option 4: Amend primary legislation**

- The fourth option considered was legislative amendments to allow the parties to disclose information to one another on a broader basis. This would require amendments to several pieces of primary legislation, including to the Tax Administration Act 1994, the Companies Act 1993, the Charitable Trusts Act 1957, and the Incorporated Societies Acts 1908 and 2022.
- This option would allow two-way sharing between Inland Revenue and MBIE and negate the need for Inland Revenue to use its information gathering powers. For this reason, it would be superior to options 2 and 3, which only enable a one-way share of information and rely on the use of IR's information gathering powers.
- Another advantage of this option is that it would require the full parliamentary process, which allows for public transparency and debate.
- This option could, however, be complex and take significant time. It would likely involve changes to multiple pieces of primary legislation, and it could take some time for the passage of all the necessary legislation. Use of parliamentary resources for such legislation would limit the opportunity to address other unrelated matters through legislation.
- Legislative change may also be a less flexible option than other options considered. If the requirements for information sharing were to change, an Act of Parliament would likely be required to make future legislative changes.
- Ultimately, this option would achieve the desired outcomes of providing for existing information sharing and enabling sharing that is currently not allowed. It does, however, come with some difficulties, in that it would be time-consuming to undertake and lack flexibility once enacted.

### **Option 5: Establish an AISA (preferred option)**

- The fifth option considered was the use of an approved information sharing agreement (AISA).

- The AISA proposed by Inland Revenue and MBIE would consolidate the existing information sharing agreements in the MOUs, alongside other proposed information shares. Essentially it would create a single authority for the sharing of information between the parties, applying the same processes and protections across all shares.
- Importantly, an AISA would enable a two-way share of information between Inland Revenue and MBIE. An AISA can address current legal restrictions, as it is one of the few exemptions to the confidentiality obligations in the Tax Administration Act 1994 (see the exception in section 18B(2)). AISAs can also modify restrictions in the Privacy Act 2020 that would otherwise prevent MBIE from sharing information with Inland Revenue.
- The process for developing and approving an AISA allows for public scrutiny and transparency. The parties are obliged to consult with the public, and the Privacy Commissioner, before presenting an AISA to ministers. An AISA will take effect only if the Governor-General approves it through an Order in Council. The Order in Council will ensure the terms of the AISA are publicly available.
- The AISA regime in the Privacy Act 2020 provides a clear mechanism for agencies to share information to enable the better delivery of public services. It is a scheme tailored to achieve the types of outcomes that Inland Revenue and MBIE are seeking to achieve. It has inbuilt protections for privacy. For instance, an AISA must clearly set out what types of information are to be shared, the purposes for which such information can be used, and the types of security arrangements that will apply to the transfer and handling of the information. This ensures that individuals' privacy is not unreasonably impinged and that there are adequate safeguards to protect the privacy and security of information.
- An AISA is also easier to amend than primary legislation if changes to it are needed. The mechanism for this would be an amendment to the AISA, which would have effect only once the Governor-General approved it through an Order in Council. The parties would need to consult the public and the Office of the Privacy Commissioner before agreeing to any changes that would have privacy implications.
- While AISAs can take time to develop, they are more flexible and less resource intensive to put in place than amending primary legislation and should make less use of parliamentary resources.
- Overall, establishing an AISA is a positive step because it would allow Inland Revenue and MBIE to share more information effectively. This will help them fulfil their obligations, uphold privacy expectations, and better discharge their functions and duties.