

**CODE OF CONDUCT FOR
OBTAINING INFORMATION
UNDER clause 2 of
SCHEDULE 6 of the SOCIAL
SECURITY ACT 2018**

This version of the Code applies from 1 March 2021

Code of Conduct for obtaining information under clause 2 of Schedule 6 of the Social Security Act 2018

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Code of Conduct for Obtaining Information under clause 2 of Schedule 6 of the Social Security Act 2018

I, Debbie Power, Chief Executive of the responsible department that is, with the authority of the Prime Minister, for the time being, responsible for the administration of the Social Security Act 2018, having consulted with the Privacy Commissioner, issue the following Code of Conduct under clause 8 of Schedule 6 of the Social Security Act 2018 to take effect on 1 March 2021 and revoke with effect on that date, the previous Code issued on 13 September 2012.

Every officer of the responsible department must, on and after 1 March 2021 comply with this Code of Conduct when obtaining information under clause 2 of Schedule 6 of the Social Security Act 2018.

Dated this on 18th December 2020



Debbie Power

Chief Executive

Ministry of Social Development

Part 1 – Introduction

1. Introduction

1. This Code is issued under clause 8 of Schedule 6 of the Social Security Act 2018. It applies to notices under clause 2 of Schedule 6 of the Act (Refer to Appendix A).
2. Clause 2 of Schedule 6 gives the Ministry of Social Development (MSD) the power to obtain information under compulsion. This Code of Conduct provides safeguards to protect individuals' privacy and ensure fair procedures are followed by the Ministry of Social Development (MSD).

2. Commencement

This Code will come into force on 1 March 2021.

3. Review, Oversight and Transparency Reporting

1. This Code will be formally reviewed at three-yearly intervals; however, it can be reviewed at other times if required, and will be reviewed 12 months after it comes into effect.
2. Each three-yearly review of the Code will consider, at minimum:
 - a) Recent jurisprudence including the New Zealand Bill of Rights Act 1990 and changes in related legislation that may affect the Code;
 - b) Complaints and feedback provided by beneficiaries and/or any other person;
 - c) New or amended information sources that may need to be addressed in Part 4 of the Code; and
 - d) Updated MSD policies and procedures which are related to the Code.
3. MSD will ensure that at each review interval:
 - a) There is an external independent review of the process and outcomes of the review of the Code; and
 - b) The Privacy Commissioner is consulted whether or not there has been an amendment, revocation or replacement of the Code.
4. MSD will record and monitor the operation of the Code and periodically report on its use.

4. Complaints of breach of the Code

Anyone who has received or is a subject of a notice under clause 2 of Schedule 6, can complain to the Privacy Commissioner about a breach of this Code under clause 12 of Schedule 6. Parts 5 and 6 of the Privacy Act 2020 will apply to the complaint as if this Code of Conduct were a Code of Practice under Part 3 of the Privacy Act 2020.

5. Application and effect of the Code

1. This Code sets out:
 - a) an overview of MSD's information-gathering powers under clause 2 of Schedule 6 of the Act for the purposes under clause 3 of Schedule 6 of the Act; and
 - b) the requirements and procedures that MSD must apply when using its information gathering powers under clause 2 of Schedule 6 of the Act.
2. All notices under clause 2 of Schedule 6 of the Act must be given in accordance with this Code.
3. The Privacy Commissioner must be consulted on any amendment, revocation or replacement of this Code, as required under clause 8 of Schedule 6 of the Act.

6. Other Acts

1. MSD acknowledges the right of all individuals to be secure against unreasonable search or seizure under Section 21 of the New Zealand Bill of Rights Act 1990, and its obligations under other human rights legislation and instruments.
2. As discussed further in Clause 4 above, the Code of Conduct is treated as if it were a Code of Practice issued under the Privacy Act 2020 for the purposes of complaints. The code mirrors aspects of information privacy principles 2 and 3 and puts in place safeguards to protect individual privacy while enabling MSD to perform its functions effectively and efficiently.

7. Interpretation

| | |
|----------------------------|---|
| Act | means the Social Security Act 2018. |
| Appropriate Senior Manager | An appropriate senior manager in MSD who has delegated authority as set out in Appendix D. |
| Beneficiary | has the meaning in Schedule 2 of the Act and includes an applicant for a benefit. |
| Benefit | has the meaning in Schedule 2 of the Act. |
| Collusion | Where two or more people conspire to commit offences (the existence of a marriage-type relationship case does not in itself evidence collusion). |
| MSD | Ministry of Social Development has the meaning set out in Schedule 2 of the Act as follows: (a) means the responsible department (as defined in this schedule); but (b) for a duty, function, or power that MSD must or may perform or exercise, means— (i) the chief executive of the responsible department; or (ii) a Public Service employee, or other person, acting under a delegation (direct or indirect) from that chief executive; and (c) in clause 2 of Schedule 6 (power to obtain information by notice), includes (see clause 2(2) of Schedule 6) a MSD employee who is identified in a notice given under that clause. |

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| MSD employee | MSD employee has the meaning set out in Schedule 2 of the Act as follows: means an employee— (a) of the chief executive of the responsible department; and (b) acting under a delegation for the purposes of this Act (direct or indirect) from that chief executive. |
| Partner | in the phrase "spouse or partner" and in related contexts, includes a civil union partner or de facto partner as defined in Schedule 2 of the Act. |
| Prejudice the maintenance of the law | includes an action that would, or would be likely, to: (a) prejudice the prevention, detection, investigation, prosecution or punishment of an offence; or (b) prejudice the imposition of a pecuniary penalty. |
| Principles | In this context refer to the Information Privacy Principles in Section 22 of the Privacy Act 2020. |
| Reasonable cause | includes: (a) cause to suspect that the beneficiary has committed an offence under the Act, under regulations made under the Act, or under the Residential Care and Disability Support Services Act 2018, or has obtained by fraud any payment or credit or advance under the Act; or (b) the fact that the beneficiary or the beneficiary's spouse or partner has failed within a reasonable time, or refused, to provide any information or produce any |

document in accordance with a request for that information made to that person in accordance with Clause 13 of this Code; or

(c) where a beneficiary has been identified based on a discrepancy produced by an approved information sharing agreement or an authorised information matching programme (as those terms are defined in Sections 138 and 177 in Part 7 of the Privacy Act 2020) conducted by the department; and current contact details for that beneficiary cannot be ascertained.

Responsible department Responsible department has the meaning set out in Schedule 2 of the Act as follows:

(a) the department of State (for example, a service of the department of State) that, with the Prime Minister's authority, is for the time being responsible for the administration of the Social Security Act 2018 or

(b) a departmental agency that, under the Public Service Act 2020 is part of that department of State, and has duties, functions, or powers relating to that administration.

Reasonable grounds A set of facts or circumstances in which a reasonable person could be satisfied that there is reason to believe beyond mere suspicion.

Schedule 6 notice Schedule 6 notice means a notice in writing making a requirement for information or documents under clause 2 of Schedule 6 of the Act for the purposes set out in clause 3 of Schedule 6 of the Act.

SMS information Short Message Service – including content of messages but excluding any pictures.

- Source** The place of origin from where information comes from, i.e. from a third party.
- Spouse** Has the meaning set out in Schedule 2 of the Act: Spouse of a person (for example, an applicant or a beneficiary), means the person's husband or wife.
- Working day** Has the meaning set out in Schedule 2 of the Act:
- (a) means a day of the week other than—
 - i) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and
 - ii) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
 - iii) a day in the period commencing on 25 December in any year and ending with 15 January in the following year; and
 - iv) the day observed as the anniversary day of the appropriate province; but
 - (b) is defined in section 241(4) for the purposes of section 241(3).

Part 2 – Privacy Considerations

8. MSD's Information Collection Powers

1. MSD collects personal information about clients in several ways and for a variety of purposes. Clause 3 of Schedule 6 of the Act sets out the purposes for which MSD can collect information and documents about beneficiaries using its powers under clause 2 of Schedule 6.
2. Where MSD is given special statutory to obtain information, these powers may override some parts of the Privacy Act 2020. For example, clause 2 of the Schedule 6 allows MSD employee to require any person (including the beneficiary) to provide information or documents for the purpose set out in clause 3 of Schedule 6 of the Act.
3. Where MSD requires this information from a third party (other than the beneficiary themselves, an employer or former employer of the beneficiary, a financial institution or a lawyer) MSD is required to have reasonable cause to do so.
4. This Code only applies to the collection of information under clause 2 of Schedule 6 of the Act.
5. MSD's collection activity must not contravene other Acts referred to in Clause 6 of this Code.

9. Seeking information from an individual

1. For the purposes of clause 2 of Schedule 6, MSD must firstly (except if compliance would prejudice the maintenance of the law) ask for information about a beneficiary or other person (such as a spouse or partner) from that person and give them reasonable time to provide information.
2. When asking for information from a beneficiary or other person (such as a spouse or partner) MSD must meet its obligations under IPP3 of the Privacy Act 2020.

3. When asking for information about a beneficiary and/or other person MSD must consider any impact of that request on the beneficiary's and /or other person's personal safety.
4. There are several benefits of requesting information directly from the person concerned. The following are examples of why it is a requirement to approach a person directly:
 - a) That person can convey important and key pieces of information directly to MSD;
 - b) The person is empowered to take charge of their own information;
 - c) The person is empowered to provide MSD with authorisation to seek information from other people and third parties if they so wish;
 - d) Asking for information directly means that there may not be a need to obtain more intrusive information about a person;
 - e) It enables MSD to consider a person's individual circumstances, including taking into account mental health concerns and how to interact with the person in a way that best meets their needs;
 - f) It provides MSD with access to information it may not otherwise be able to access in a timely way;
 - g) It can contribute to MSD being able to achieve a quicker turnaround for the person; and
 - h) It is consistent with natural justice and privacy principles.
5. If the beneficiary or other person does not provide the information within a reasonable time, has refused to provide it, or fails to provide all of the information MSD may obtain it from a source instead. MSD can request the information from a source on the basis that reasonable cause has been established.
6. MSD can, even after receiving information from the beneficiary or other person directly, request information directly from a source. This may be because, for example, MSD suspects that the documents have been altered or are not a genuine copy of the original document. MSD must have reasonable cause to do this, for example, they have cause to suspect that the beneficiary has committed an offence under the Act.

10. Prejudice to the maintenance of the law

1. MSD may, in limited circumstances go directly to the source to obtain information if there are reasonable grounds to believe that approaching the beneficiary and/or other person first will prejudice the maintenance of the law.

2. MSD must assess each case individually to determine whether there are reasonable grounds as required by Clause 10.1 above.
3. Prejudice to the maintenance of the law has the meaning set out in the Interpretation section in this Code.
4. An appropriate senior manager must approve all decisions to rely on prejudice to the maintenance of the law to obtain information directly from a source without asking the individual first. The justification for each decision and approval process must be documented and accessible for the purposes of reporting, oversight and assurance and must relate to the purpose for which the information is being collected under clause 3 of Schedule 6 (as set out in Appendix A).

11. Privacy considerations

1. Children and young persons
MSD will not use clause 2 of Schedule 6 to approach any dependent children to obtain personal information. MSD will take particular care to ensure that any personal information collected from a child or young person is by means that are fair.
2. Highly intrusive information
MSD acknowledges that there will be limited circumstances where there is a need to obtain highly intrusive information for the purposes outlined in clause 3 of Schedule 6. The collection of highly intrusive information is limited (see Part 4 – Limitations) and collection of certain sector information must be approved by an appropriate senior manager within MSD.
3. Necessary and relevant
Information requested under a Schedule 6 notice must be necessary and relevant to the purpose for which it is being obtained. The assessment of whether a Schedule 6 notice is necessary and relevant will be carried out for each individual case.
4. Reasonable and proportionate
Information requested under a Schedule 6 notice must be reasonable and proportionate in scope and clearly linked to the matter under investigation. The assessment of whether a Schedule 6 notice is reasonable and proportionate will be carried out for each individual case.

5. Appropriate and defined timeframe

Information requested by MSD under a Schedule 6 notice must be for an appropriate and defined timeframe and this timeframe must relate to the purpose for which the information is being obtained. Any request must relate to a past period, i.e. it must not be future focussed. The assessment of whether a Schedule 6 notice is for an appropriate and defined timeframe will be carried out for each individual case.

6. Where information is over-provided

There will be instances where MSD receives more information than requested in a notice. For example, information about individuals that are outside of the scope of the request, for longer timeframes than required by the notice, or additional information that was not requested.

MSD will review the information it receives in response to a Schedule 6 notice. Where information is over-provided and is not relevant to the request, MSD will either redact the information, return the information to the original source or dispose of it to meet its obligations under the Privacy Act 2020.

12. Applying the Privacy Principles

1. MSD is required to apply all the principles of the Privacy Act 2020 when dealing with an individual's information except where overridden by the Code. The Privacy Act 2020 governs the collection, use, storage and disclosure of information – including information gathered under this Code.
2. This Code is a requirement of clause 8 of Schedule 6 of the Act and is intended to be a balance between MSD's power to obtain information through compulsion and the recognition that this power may in certain circumstances involve the collection of highly intrusive information.

Part 3 – Procedures for Schedule 6 Notices

13. Steps prior to giving a Schedule 6 notice

1. Where MSD seeks information or documents about a beneficiary and/or any other person, MSD must: -
 - a) First request the information or documents from the beneficiary and/or that other person (except if compliance would prejudice the maintenance of the law);
 - b) Provide the beneficiary and/or that other person a reasonable time to provide the information or documents;
 - c) Inform the beneficiary and/or that other person of the time within which they must respond;
 - d) Ensure that the request is reasonable and proportionate and is aligned to the purpose for which the information is being collected; and
 - e) Consider any reasonable request made by the beneficiary and/or that other person for an extension of time to provide the requested information.

14. Giving a Schedule 6 notice to a third party

1. A Schedule 6 notice can only be given for a purpose as outlined in clause 3 of Schedule 6.
2. A Schedule 6 notice can be issued after a reasonable time following the request for information made to a beneficiary and/or other person where they have failed/refused/declined to provide the information or part thereof outlined in Clause 13.1 of this Code.
3. Subject to Part 4 of this Code (Limitations), MSD can give a Schedule 6 notice to any person (except an officer of the Court) if there is reasonable cause to do so.
4. Reasonable cause is not required where a Schedule 6 notice is given to the beneficiary, any employer or former employer of the beneficiary, financial institution or law practitioner.

15. Prejudice to the maintenance of the law

1. MSD can seek information or documents from any other person without approaching the beneficiary and/or other person (as required in Clause

13.1 of this Code) if MSD has reasonable grounds to believe that compliance would prejudice the maintenance of the law.

2. All assessments of prejudice to the maintenance of the law require approval from an appropriate senior manager within MSD and must be considered on an individual case by case basis. The justification for any decision to rely on prejudice to the maintenance of the law to obtain information directly from a source and the approval process must be documented and accessible for the purposes of reporting, oversight and assurance.

16. Form and content of a Schedule 6 notice

Every Schedule 6 notice must –

- a) Be in writing; and
- b) Advise of the existence of this Code and notify the person to whom the notice is given how that person can view or obtain a copy; and
- c) Specify that the notice is given under clause 2 of Schedule 6 of the Act; and
- d) Specify the information or documents sought; and
- e) Specify the date by or period within which the recipient must provide the required information or documents and the form in which they are to be provided; and
- f) Notify the recipient of their right to complain to the Privacy Commissioner if the notice breaches the Code; and
- g) Comply with Information Privacy Principle 3 of the Privacy Act 2020 (where applicable); and
- h) Advise the recipient to limit the scope of their response to the information requested in the notice; and
- i) Notify the recipient of the matters specified in Clause 18 of this Code.

17. Timeframe for responding to request

1. MSD must provide no fewer than 5 working days after a Schedule 6 notice is given for recipients to provide the required information or documents.
2. MSD will consider the nature of the information and resources likely to be required to process the notice when considering a timeframe for response.

18. Enforcing compliance with Schedule 6 notices

1. Where a recipient of a Schedule 6 notice fails to comply with the notice MSD can commence an enforcement proceeding under clause 5 of

Schedule 6 of the Act. However, this can only be done if MSD has advised recipients of a Schedule 6 notice of the following: -

- a) That no person is required to provide any information or produce any documents that would be privileged in a Court of Law except as provided in Clause 18.1 of this Code; and
- b) That a person who is required to provide information under clause 2 of Schedule 6, commits an offence and is liable to a fine not exceeding \$2,000, if the person:
 - i. Refuses or fails to comply with Schedule 6 notice without reasonable excuse where they are capable of complying with it; or
 - ii. Knowingly or recklessly provides false or misleading information while complying with a Schedule 6 notice.

Part 4 – Limitations

19. Limitations on what may be requested from specified groups

MSD acknowledges that there will be circumstances where there is a need to obtain highly intrusive information for the purposes outlined in clause 3 of Schedule 6 of the Act and therefore MSD will follow the information collection restrictions set out below;

19.1 Employers

Restriction on type of information sought from employers or former employers

1. A Schedule 6 notice can only require specified information relating to the employment and address of an employee or former employee.
2. A Schedule 6 notice must not require an employer to give an opinion about the nature of their employee's relationship status.
3. A Schedule 6 notice must not require an employer to provide information or documents that relate solely to the relationship status of an employee or former employee.

19.2 Banks

Restriction on type of information sought from banks

1. A Schedule 6 notice can only require a bank to provide information or documents relating to the finances and address of a customer.
2. A Schedule 6 notice must not require a bank to give an opinion about the nature of their client's relationship status.
3. A Schedule 6 notice must not require a bank to provide information or documents that relate solely to the relationship status of a customer.

19.3 Education Sector

Restriction on type of information sought from the Education Sector

1. A Schedule 6 notice cannot be given to any early childhood education and care centre, any school or its staff to;
 - a) Require them to provide information about a child's academic learning, health and wellbeing, parent interviews, accidents or illnesses, or referrals to health or welfare agencies; or
 - b) Require them to give an opinion about the nature of a child's parent's or caregiver's relationship status.

Note: Early childhood education and care centre has the meaning set out in Section 10 of the Education and Training Act 2020. The limitations in 19.3 do not restrict MSD from requesting administrative information provided by a beneficiary for the purposes of

enrolling or re-enrolling a child in any such educational establishment and that is recorded on any form or record.

19.4 Health and Disability Sector

Restriction on type of health information sought from the Health and Disability Sector

1. A Schedule 6 notice cannot be given to any health agency including a hospital, medical clinic, registered medical practitioner, Plunket or similar service, nurse, midwife or clinical psychologist to;
 - a) Require them to provide information about the health of an individual, including details of any consultation, medical diagnosis or treatment;
 - b) Require them to provide information about an individual's body, lifestyle, emotions and behaviour; or
 - c) Require them to give an opinion about the nature of a beneficiary's relationship status.

Note: The limitations set out in 19.4 do not restrict MSD from requesting any standard administrative details provided by the beneficiary and required for the purpose of pre-admission administration that is recorded on any form or record.

19.5 New Zealand Police

Restriction on type of information sought from NZ Police

1. All Schedule 6 notice requests to NZ Police about a marriage type relationship are governed by the Police Records Request Protocol [Appendix B].
2. The Police Records Request Protocol must set out:
 - a) The matters that an appropriate senior manager must be satisfied of before approving a Schedule 6.2 notice;
 - b) The procedure for making requests that relate solely to marriage type relationship investigations; and
 - c) The procedure that NZ Police must follow when responding to a Schedule 6.2 notice.
3. A Schedule 6.2 notice must not be issued to NZ Police unless there is a clear indication that Police have been involved with the client and/or their partner.
4. All requests must be approved by an appropriate senior manager before being sent to NZ Police.
5. A Schedule 6 notice cannot be given to NZ Police to require them to:
 - a) provide information in excess of the information in the Police Records Request Protocol when requesting information that relates solely to a marriage type relationship investigation; or

- b) give an opinion about the nature of a beneficiary's or (partner's or spouse's) relationship status.

19.6 Telecommunication Sector

Restriction on SMS information sought from Telecommunication Companies

1. All Schedule 6 notice requests to Telecommunication Companies for SMS information are governed by the Telecommunication Records Request Protocol [Appendix C].
2. The SMS Telecommunication Records Request Protocol must set out:
 - a) The matters that an appropriate senior manager must be satisfied of before approving the Schedule 6.2 notice;
 - b) The criteria for determining whether an investigation meets the required seriousness threshold for a Schedule 6.2 notice to be issued; and
 - c) The procedure that a Telecommunication Company must follow when responding to a Schedule 6.2 notice.
3. All requests must be approved by an appropriate senior manager before being sent to a Telecommunication Company.
4. All schedule 6 notices must be limited in scope to what is strictly relevant, necessary and proportionate to the relevant investigation. In this context, all Schedule 6 requests to Telecommunications Companies must only request information regarding phone numbers that are relevant to the purpose and scope of an investigation and for an appropriate defined timeframe in the circumstances.
5. No Schedule 6 notice can require them to give an opinion about the nature of their client's relationship status.

19.7 Oranga Tamariki

Restriction on type of information sought from Oranga Tamariki - Ministry for Children

1. A Schedule 6 notice cannot be given to Oranga Tamariki to:
 - a) Require them to give an opinion about the nature of a child's parent's or caregiver's relationship status;
 - b) Provide any information about the child's wellbeing in the course of a child's care; or
 - c) No Schedule 6 notice can require the care records for any adult who may have been in its care as a child.

Note: Information does not include administrative information that Oranga Tamariki has recorded on any form or record (such as but not limited to, whose care the child is in, where the child is located, the dates for which the child was under the care of a person).

19.8 Privilege

1. No person is required to provide any information or produce any document that would be privileged in a Court of Law, except when the information or documents
 - a) Is contained in, or is all or part of, a record prepared by or kept in connection with a lawyer's trust account; and
 - b) Consists wholly or partly of, or relates wholly or partly to,
 - i. The receipts, payments, income, expenditure, or financial transactions of a specified person (whether the lawyer, lawyer's client, or any other person), or
 - ii. Investment receipts (being receipts arising or accruing from any money lodged at any time with a lawyer for investment) of any person or persons (whether the lawyer, the lawyer's clients, or any other person or persons).

Appendix A – Purposes for which information can be obtained

Clause 3 of Schedule 6 of the Act provides:

Information may be obtained under clause 2 for all or any of the following purposes:

- a) Determining whether a person who has made a claim for, is receiving, or has received a benefit or payment under any of the following enactments or programmes is or was entitled to receive that benefit or that payment:
 - i. This Act (for example, under a reciprocity agreement adopted by an order made under section 380);
 - ii. Part 6 of the Veteran’s Support Act 2014;
 - iii. Part 1 of the New Zealand Superannuation and Retirement Income Act 2001;
 - iv. A welfare programme approved by the Minister under section 101 of this Act;
 - v. The residential Care and Disability Support Services Act 2018;
- b) Determining the rate of benefit or payment that is or was applicable to that person;
- c) Determining whether a person who has been issued with, or has made a claim for, an entitlement card under regulations in force under section 437 is or was entitled to be issued with that card;
- d) Conducting or reviewing a means assessment under Part 6 of the Residential Care and Disability Support Services Act 2018 (relating to payment for LTR contracted care as defined in Section 10 of that Act), or determining whether means assessment of that kind is correct;
- e) Determining, under Part 8 of the Residential Care and Disability Support Services Act 2018, the amount that a person is required to pay towards the cost of the home-based disability support services supplied to that person, and whether a person who has been so assessed is entitled to that assessment;
- f) Ascertaining the financial circumstances or whereabouts of a person who is indebted to the Crown under –

- i. This Act (for example, under a reciprocity agreement adopted by an order made under section 380); or
 - ii. Sections 27I to 27ZI (except section 27X) of, and Schedule 20 of, the Social Security Act 1964 (as preserved by section 256(1) of the Child Support Act 1991); or
 - iii. Section 61CA of the Social Security Act 1964 (Family Proceedings Act 1980 maintenance payable to the Crown) (as that section is saved by clause 49 of Schedule 1);
 - iv. The Residential Care and Disability Support Services Act 2018;
- g) Discharging MSD's functions under, or under any regulations in force under, an enactment or a programme in paragraph (a)(i) to (v).

Appendix B – Police Records Request Protocol (Marriage Type Relationships)

1.0 The Parties

The Ministry of Social Development (MSD)
The New Zealand Police (NZ Police)

2.0 The Protocol

This protocol prescribes the legal limits of requests that can be made by MSD and the procedure that the Parties must comply with when completing requests for information pursuant to Clause 19.5 of the Code of Conduct for obtaining information under clause 2 of Schedule 6 of the Social Security Act 2018 ('the Code') in investigations relating solely to marriage type relationships.

3.0 Legal basis

This protocol forms part of and is pursuant to clause 19.5 of the Code. The definitions set out in the interpretation section of the Code apply to the content of this Protocol.

4.0 MSD Information Request Approval Process

4.1 Approval assessment

Before approving the issuing of a Schedule 6 notice to NZ Police, the appropriate senior manager shall have regard to, and be satisfied of the following matters:

- 4.1.1 The person against whom the request for information is sought has been given a reasonable opportunity to provide the information (except if compliance would be prejudicial to the maintenance of the law) but has not done so.
- 4.1.2 The reasons and grounds to use the prejudice to the maintenance of the law exception (to not firstly contact the person against whom the request for information is being made) has been appropriately considered.
- 4.1.3 That use of the reason of prejudice to the maintenance of the law (to not firstly contact the person against whom the request for information is being made) has been

reviewed and approved by an appropriate senior manager in MSD.

- 4.1.4 The nature, scope and timeframe of the information requested is necessary, relevant and proportionate.
- 4.1.5 The notice is expected to find information that will be material to assisting MSD to complete an investigation.
- 4.1.6 That it is not more appropriate to obtain the information from another source using a less intrusive manner.

4.2 Approval

All Schedule 6 notices issued to NZ Police must be approved by an appropriate senior manager in MSD who has delegated authority.

Delegations to issue Schedule 6 notices are found in the Delegations document and the sub delegations relating to operational functions within Organisational Assurance and Communication.

5.0 Information Exchange

5.1 Information request

When issuing a Schedule 6 notice to NZ Police, MSD will limit its request to information which is necessary, relevant and proportionate in the circumstances of each individual case and will not ask for information outside of the scope of the questions set out below:

- 5.1.1 For each occurrence that NZ Police have responded to:
 - a. How does the client and the partner describe their relationship (e.g. partner/husband/friend/family member/not stated)?
 - b. State the address attended?
 - c. How do each describe their association to that address?
 - d. Brief context for the reason for NZ Police attendance.
 - e. Were there incidents of family harm?
 - f. If yes, how many instances of family harm have the Police attended?
 - g. If a protection order is in place/or has there been a protection order in place?

5.2 Police: information request process

NZ Police will confirm the validity of the Schedule 6 notice by checking:

- 5.2.1 It is a written formal notice on MSD letterhead
- 5.2.2 The name of the officer making the request is stated
- 5.2.3 Contact details of the officer is stated

5.3 Request validation

NZ Police will contact the MSD officer to confirm the validity of the notice if there is any concern about the validity of the request.

5.4 Information collation

Police will search its records to locate any information held. If printed records are supplied, all information held in that record that does not relate directly to the request will be redacted.

5.5 Information release

NZ Police will provide information to the MSD officer via email using [SEEMAIL] code.

6.0 Review and Amendments

This protocol must be reviewed within 12 months of this Code coming into effect and thereafter, will be reviewed every three years as part of the Code review process.

Amendments to this protocol may be made separately to the three-yearly review of the Code for operational reasons.

The Privacy Commissioner must be consulted on any amendment, revocation or replacement of this protocol as it forms part of the Code.

7.0 Term and Termination

This protocol comes into force on 1 March 2021.

Appendix C – Telecommunications Records Request Protocol

1.0 The Parties

The Ministry of Social Development
Telecommunications Sector

2.0 The Protocol

This protocol prescribes the legal requirements and procedure that the Parties must comply with when completing requests for information pursuant to section 19.6 of the Code of Conduct for obtaining information under clause 2 of Schedule 6 of the Social Security Act 2018 ('the Code').

3.0 Legal basis

This protocol forms part of and is pursuant to Clause 19.6 of the Code. The definitions set out in the interpretation section of the Code apply to the content of this protocol.

4.0 MSD Information Request Approval Process

4.1 Serious Threshold

MSD may only issue a Schedule 6.2 notice to a Telecommunications Company for investigations that meet a 'serious' threshold. Any such requests for information from the telecommunication sector must be limited to what is strictly relevant, necessary and proportionate in the circumstances of each individual case. In determining whether the 'serious' threshold is met, MSD must consider the seriousness and the sophistication of the suspected offending, including the following factors:

- 4.1.1 the number of individuals potentially involved in the offending;
- 4.1.2 whether the individual(s) involved have been the subject of prior enforcement action by MSD (and the outcome of that action);
- 4.1.3 whether the investigation involves potential offences across a range of agencies;
- 4.1.4 whether the individual(s) involved have provided multiple false statements when questioned about the alleged offending;
- 4.1.5 whether the suspected offending has an organised or cooperative nature, such as a centralised controller(s);

- 4.1.6 whether the suspected offending involves potential collusion (more than two people conspiring to commit offences);
- 4.1.7 whether the suspected offending involves the production of false documents or identities; and
- 4.1.8 whether the suspected offending has occurred over a long period of time and has potential to continue or expand if not investigated.

Not all of the above factors must be present to meet the serious threshold and one factor being present does not automatically mean the serious threshold will be met.

4.2 Approval assessment

Before approving the issuing of a Schedule 6 notice to a Telecommunication Company, the appropriate senior manager shall have regard to, and be satisfied of the following matters:

- 4.2.1 The person(s) against whom the request for information is sought has been given reasonable opportunity to provide the information (except if compliance would prejudice the maintenance of the law) but has not done so;
- 4.2.2 That use of the prejudice to the maintenance of the law exception (to not firstly contact the person against whom the request for information is being made) has been reviewed and approved by an appropriate senior manager in MSD;
- 4.2.3 That use of the reason of prejudice to the maintenance of the law exception (to not firstly contact the person whom the request for information is being made) has been appropriately considered;
- 4.2.4 The scope of the request is limited to an appropriate defined timeframe, is proportionate and includes only relevant phone numbers that are required for the purpose of the investigation;
- 4.2.5 The request meets the serious threshold set out in clause 4.1 of this protocol and is an exceptional rather than routine investigation;
- 4.2.6 The notice is expected to find information that will be material to assisting MSD to complete an investigation;
- 4.2.7 That it is not more appropriate to obtain the information from another source using a less intrusive manner.

4.3 Approval

All Schedule 6 notices issued to a Telecommunications Company must be approved by an appropriate senior manager in MSD.

Delegations to issue a Schedule 6 notice are found in the Delegations document and sub delegations relating to operational functions within Organisational Assurance and Communication.

5.0 Information Exchange

5.1 Information request from MSD

When issuing a Schedule 6 notice to a Telecommunications Company, MSD will limit its request to information that is necessary and proportionate to the investigation.

5.2 Telecommunication Sector: information request process

Telecommunication Companies will confirm the validity of the Schedule 6 notice by checking:

- 5.2.1 It is a written formal notice on MSD letterhead;
- 5.2.2 The name of the officer making the request is stated; and
- 5.2.3 Contact details of the officer is stated.

5.3 Information release

Telecommunication Companies will provide information to MSD in a secure manner in response to any Schedule 6 notice.

6.0 Review and Amendments

This protocol must be reviewed within 12 months of this Code coming into effect and thereafter will be reviewed every three years as part of the Code review process.

Amendments to this protocol may be made separately to the three-yearly review of the Code for operational reasons.

The Privacy Commissioner must be consulted on any amendment, revocation or replacement of this protocol as it forms part of the Code.

7.0 Term and termination

This protocol comes into force on 1 March 2021.

Appendix D – Code of Conduct Authorisation Protocol

Appropriate Senior Manager in MSD

1.0 The Protocol

This protocol prescribes the authorisation settings that apply in particular circumstances as set out in certain protocols in the Code of Conduct before making a request for information using powers under clause 2 of Schedule 6 of the Social Security Act 2018.

2.0 Legal Basis

This protocol forms part of and is pursuant to the Code of Conduct issued under clause 8 of Schedule 6 of the Social Security Act 2018.

3.0 The Code and Protocols

The Code and protocols require that in some circumstance's authorisation must be obtained from an appropriate senior manager in MSD before requests for information are made under Schedule 6 of the Social Security Act 2018. These are:

- a) where the request is being made to a third party, without seeking the information from the individual first. This will be when MSD determines that going to the individual first would prejudice the maintenance of the law; and
- b) where the request is being made to either the Police or Telecommunications companies (irrespective of whether we have approached the individual for this information first).

4.0 Delegations

Staff who issue a notice under Schedule 6 of the Social Security Act 2018 are delegated to do so as specified in MSD's written delegations.

5.0 Approval Authority

5.1 Integrity and Debt

The following appropriate senior manager levels will apply in Integrity and Debt in the case of requests made in Clause 3.0 of this protocol;

- a) When a request is being made to a third party, without our having gone to the individual first – a manager two management positions; above the staff member issuing the request must approve and record their decision.

- b) When a request is being made to either the Police or Telecommunications companies - a manager two management positions; above the staff member issuing the request must approve and record their decision.

5.2 Workplace Integrity

The following Senior Manager levels will apply in Workplace Integrity in the case of requests made under Clause 3.0 of this protocol;

- a) where the request is being made to a third party, without our having gone to the client first – the Manager Workplace Integrity

- b) where the request is being made to either the Police or Telecommunications companies - the Manager Workplace Integrity

6.0 Review and Amendments

This protocol must be reviewed within 12 months of this Code coming into effect and thereafter, will be reviewed every three years as part of the Code review process.

Amendments to this protocol may be made separately to the three-yearly review of the Code for operational reasons.

The Privacy Commissioner must be consulted on any amendment, revocation or replacement of this protocol as it forms part of the Code.

7.0 Term and termination

This protocol comes into force on 1 March 2021.