



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA



Inland Revenue
Te Tari Taake

INLAND REVENUE

AND

MINISTRY OF SOCIAL DEVELOPMENT

**AMENDMENT RELATING TO THE APPROVED INFORMATION
SHARING AGREEMENT BETWEEN**

INLAND REVENUE

AND

THE MINISTRY OF SOCIAL DEVELOPMENT

**UNDER SECTION 18(E)(2) OF THE TAX ADMINISTRATION ACT
1994 AND PART 7 OF THE PRIVACY ACT 2020**

AMENDMENT dated

2023

PARTIES

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

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

BACKGROUND

- I. Inland Revenue and MSD are parties to an Approved Information Sharing Agreement (the Agreement) under section 18E(2) of the Tax Administration Act 1994 (TAA) and Part 7 of the Privacy Act 2020, enabling the Parties to share information for a variety of prescribed purposes set out in the Agreement.

- II. Prior to the execution of this Amendment, the purposes for which the Parties could share information under the Agreement were:
 - (a) Assessing eligibility for, and entitlement to, Benefits and Subsidies (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
 - (b) Assessing and enforcing any obligations related to Benefits and Subsidies, including recovering any associated debt (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
 - (c) Assessing and enforcing current or past Tax Obligations, including recovering any associated debt;
 - (d) Registering new customers or updating customer Contact Information and Identifying Information (including in relation to taxpayers and applicants for, or current or past recipients of, Benefits or Subsidies);
 - (e) Assessing the potential costs to the Crown of policy proposals (at any stage of development) and modelling the impact of the proposals on individuals, or groups of individuals, who may be affected; and
 - (f) Testing systems and operational processes to enable subsequent sharing and use for any purpose (or purposes) stated in (a) – (e) where sharing for such a purpose is either already occurring or is reasonably anticipated.

- III. In accordance with clause 13 of the Agreement, the Parties wish to vary the Agreement:
 - (a) to enable the Parties to share Information for the purpose of statistical analysis and research (related to purposes (a) to (d), above, inclusive);
 - (b) to dispense with the notice requirements under section 152 of the Privacy Act 2020 in respect of Adverse Actions specified in the Agreement that may be taken by MSD in relation to child support payments; and
 - (c) To update the background and clauses of the Agreement so that they no longer refer to the original context in which the Agreement was created, and instead reflect the modern context in which the Agreement exists –

including updating references to legislation, and defined terms of the Agreement.

COVENANTS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions: In this Amendment, including the Background, terms defined in the Agreement have the same meaning where used in this Amendment and the following terms have the following meanings unless the context requires otherwise:

Agreement means the Approved Information Sharing Agreement between the Parties that is made under Section 18E(2) of the TAA and Part 7 of the Privacy Act 2020 (previously section 81A of the TAA and Part 9A of the Privacy Act 1993) and is approved by the Order in Council, and includes the Schedules and any amendment made by the Parties.

TAA means the Tax Administration Act 1994

Amendment means this Amendment, including any Annexure to it; and

Effective Date means the date this amendment is signed by both Parties.

1.2. Interpretation: In this Amendment:

- (a) headings are for convenience only and have no legal effect;
- (b) reference to the singular includes the plural and vice versa; and
- (c) reference to any document includes any amendment, supplementation or replacement of it made from time to time.
- (d) unless the context requires otherwise, references to any clauses and Annexures are to clauses and Annexures to this Amendment;
- (e) unless the context requires otherwise, references to any statute include any amendment to, or replacement of, that statute and any subordinate legislation made under it.

2. Amendment

2.1. Amendment of terms: The Parties agree to amend the Agreement as set out in the Annexure with effect on and from the Effective Date.

2.2. Terms remain in effect: Except as expressly varied in this Amendment, the terms contained in the agreement continue and remain in full force and effect.

3. COUNTERPARTS

3.1. Counterparts: This Amendment may be signed in any number of counterparts all of which, when taken together, will constitute one and the same amendment. A Party may enter into this Amendment by signing any counterpart.

Executed:

The Commissioner of Inland Revenue, or his authorised delegate Signature:
Name:
Position:
Date:

The Chief Executive of the Ministry of Social Development, or her authorised delegate Signature:
Name:
Position:
Date:

ANNEXURE

The Agreement is amended as set out below. In the event of any inconsistency or contradiction between the Agreement and the terms set out in this Annexure, the terms set out in this Annexure apply.

1. Background Section of the Agreement

Paragraphs B-H are removed and replaced with the following:

Paragraph "B":

Prior to the execution of the AISA, the Parties shared information under various agreements made under various sections of the TAA, the Income Tax Act 2007, the Student Loan Scheme Act 2011, and the Child Support Act 1991, each of which enabled them to share specified information for specified purposes.

Paragraph "C":

Through the execution of the AISA the Parties consolidated these various agreements into one Approved Information Sharing Agreement under section 18E(2) of the TAA and Part 7 of the Privacy Act 2020 which enabled a broader range of Information to be shared for a broader purpose.

Paragraph "D":

In mid-2021 the Parties agreed that using the Information shared (under the AISA) for undertaking the costing and modelling of policy proposals would assist the development of public policy using information to assess the potential costs to the Crown and the impact on individuals, or groups of individuals, who may be affected. A new purpose to that effect (together with other relevant amendments) was therefore added to the AISA on 27 September 2021.

Paragraph "E":

In mid-2022 the Parties agreed that using the Information shared (under the AISA) for system and operational testing for subsequent sharing and uses under the AISA would assist the implementation of public policy. A new purpose to that effect (together with other relevant amendments) was therefore added to the AISA on 1 August 2022.

Paragraph "F":

In 2022 the Parties agreed on the need for several further amendments that would:

1. In respect of benefits, dispense with the adverse action notice requirement under section 152 of the Privacy Act 2020 so that MSD

may take Adverse Actions specified in Schedule 2 in respect of child support payments.

2. Enable the sharing and use of information for statistical analysis and research.

Paragraph "G":

The purposes for which the Parties wish to be authorised to share the Information across their respective organisations are:

- (a) Assessing eligibility for, and entitlement to, Benefits and Subsidies (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
- (b) Assessing eligibility for, and entitlement to, Benefits and Subsidies (in relation to applicants for, or current or past recipients of, Benefits or Subsidies);
- (c) Assessing and enforcing current or past Tax Obligations, including recovering any associated debt;
- (d) Registering new customers or updating customer Contact Information and Identifying Information (including in relation to taxpayers and applicants for, or current or past recipients of, Benefits or Subsidies);
- (e) Assessing the potential costs to the Crown of policy proposals (at any stage of development) and modelling the impact of the proposals on individuals, or groups of individuals, who may be affected;
- (f) Testing systems and operational processes to enable subsequent sharing and use for any purpose (or purposes) stated in clause 2(a) – (e) where sharing for such a purpose is either already occurring or is reasonably anticipated; and
- (g) Statistical analysis and research (related to purposes (a) to (d) inclusive).

2. Amended Terms

The term "**Current Agreements**" in clause 1 of the Agreement is removed:

The following terms in clause 1 of the Agreement are added or amended (as applicable) as follows:

Adverse Action has the meaning specified at section 177 of the Privacy Act 2020, including the adverse actions set out in Schedule 2 of this Agreement.

Agreement/AISA means the Approved Information Sharing Agreement (dated 10 July 2017) between the Parties that was made under section 18E(2) of the TAA and Part 7 of the Privacy Act 2020 (previously section 81A of the TAA and Part 9A of the Privacy Act 1993) on the same subject matter, including all amendments.

Benefit means:

- (a) a benefit as defined in Schedule 2 of the Social Security Act 2018; and
- (b) any other amount that is payable or may be paid under the Social Security Act 2018, including-
 - (i) a funeral grant that may be paid under section 90 of that Act; and
 - (ii) any special assistance grant that may be paid under any welfare programme approved under section 100 or 101 of that Act.

Dependent Child has the meaning specified Schedule 2 of the Social Security Act 2018.

Information Sharing Agreement has the meaning specified at section 138 of the Privacy Act 2020.

Inland Revenue Acts means the Acts referred to at section 16C(1) of the TAA.

MOUs means the memoranda of understanding that the Parties may enter into pursuant to this Agreement.

Order in Council means the Order in Council that approves this Agreement and that is made under sections 145 to 147 of the Privacy Act 2020.

Personal Information has the meaning in section 7(1) of the Privacy Act 2020.

Privacy Commissioner means the Commissioner established under section 13 of the Privacy Act 2020.

Subsidies means 1 or more of:

- (a) working for families tax credits payable under Income Tax Act 2007 and the TAA;
- (b) community services cards issued under regulations made under either or both of the Pae Ora (Healthy Futures) Act 2022 or the Social Security Act 2018;
- (c) student loans payable under the “student loan scheme” as defined in the Student Loan Scheme Act 2011;
- (d) student allowances payable under regulations issued under the Education and Training Act 2020;
- (e) child support payable under the Child Support Act 1991;
- (f) income-related rent payable under the Public and Community Housing Management Act 1992; and
- (g) social housing available under the Public and Community Housing Management Act 1992.

Tax Obligations means tax obligations arising under the Inland Revenue Acts.

Working Day has meaning specified at section YA 1 of the Income Tax Act 2007.

3. Clause 2 of the Main Body of the Agreement

The punctuation at the end of subclause 6(e) is amended to remove the word “and” after the semi-colon.

The punctuation at the end of subclause 6(f) is amended to remove the full-stop, and to insert a semi-colon and the word “and”.

A new subclause 2(g) is added to the Agreement in the following terms:

- (g) Statistical analysis and research (related to purposes 2(a) to 2(d) inclusive).

4. Clause 3 of the Main Body of the Agreement

Subclause 3(b) is amended to read in the following terms:

- (b) Notwithstanding sub-clause 3(a) above, the Information that is shared solely for the purpose described in:
 - (i) sub-clause 2(e)(regarding policy proposals);
 - (ii) sub-clause 2(f)(testing systems and operational processes); or
 - (iii) subclause 2(g)(used for statistical analysis and research).may only be used for that purpose.

A new subclause 3(c) is added to the Agreement in the following terms:

- (c) Notwithstanding sub-clause 3(a) above, any output from the analysis or research of Information shared under subclause 2(g) must not be disclosed in a form that could reasonably be expected to identify any individual concerned.

5. Clause 4 of the Main Body of the Agreement

The first paragraph of clause 4 is amended to read in the following terms:

For the purposes of this Agreement, information privacy principles 2 and 11 which are set out in section 22 of the Privacy Act 2020 are modified (by the Order in Council) as follows:

For the avoidance of doubt, subclauses 4(a) and (b) remain unchanged.

6. Clause 5 of the Main Body of the Agreement

Subclause 5(d) is amended to read in the following terms:

- (d) Development of public policy using information to assess the potential costs to the Crown and the impact on individuals, or groups of individuals, who may be affected.

A new subclause 5(e) is added to the Agreement in the following terms:

- (e) Research and analysis for the purposes (a) – (d) inclusive.

7. Clause 6 of the Main Body of the Agreement

Subclauses 6(a), 6(b), 6(c), and 6(e) are amended to read in the following terms:

- (a) Section 152 of the Privacy Act 2020 requires parties to an Approved Information Sharing Agreement to provide written notice to individuals before any Adverse Action is taken against them on the basis of information shared under that agreement, including details of the Adverse Action that the party proposes to take and the Personal Information about the individual on which the action is based. The notice must give those individuals 10 Working Days to dispute the correctness of the information. Section 153 of that Act allows an Approved Information Sharing Agreement to provide that a party to that agreement may give a shorter period of notice or dispense with the notice requirement.
- (b) The Parties agree to dispense with the notice requirement under section 152

where the sharing of Personal Information under this Agreement gives either Party reasonable grounds to suspect that:

- (i) a crime has been committed, is being committed, or will be committed; and
 - (ii) the Personal Information is relevant to the Party's decision-making on preventative, investigative or enforcement interventions related to that crime; and
 - (iii) advance notification by a Party to a suspect of an Adverse Action might defeat the purpose of the intervention.
- (c) The Parties agree that IR may dispense with the notice requirement under section 152 in order to immediately suspend payment to an individual of all or part of an interim instalment of a credit of tax under subparts MA to MG and MZ of the Income Tax Act 2007 when IR identifies a discrepancy between Information shared and information supplied to IR if, before or immediately after the decision to suspend, IR gives a written notice to the individual that:
- (i) provides details of the discrepancy and the suspension of payment of the credit of tax and any other Adverse Action which IR proposes to take; and
 - (ii) states that the individual has 5 Working Days from the receipt of the notice to show cause why payment of the credit of tax ought not to have been suspended or why the Adverse Action should not be taken, or both —
- and the other Adverse Action must not be taken until expiration of those 5 Working Days.
- (e) Notwithstanding sub-clauses 6(a)-6(d) above, the Parties may not take any Adverse Action as a result of the sharing of Information solely for the purpose set out in sub-clause 2(e)(regarding policy proposals), subclause 2(f) (regarding system testing), or subclause 2(g)(regarding statistical analysis and research purposes).

8. Clause 6A of the Main Body of the Agreement

A new clause 6A is added to the Agreement in the following terms:

6A. Procedure for adverse actions by Ministry of Social Development in relation to child support payments

- (a) This clause applies to Adverse Actions in respect of benefits (for example, a decision to reduce or suspend the benefit).
- (b) The Parties agree that MSD may dispense with notice requirements under section 152 in respect of any Adverse Actions specified in Schedule 2 that may be taken by MSD in relation to child support payments.
- (c) Before taking any of those Adverse Actions against an individual as a result of sharing Personal Information under this Agreement, MSD must comply with—
 - (i) all applicable internal policies and guidelines of MSD; and
 - (ii) the Solicitor-General's Prosecution Guidelines (as applicable).

- (d) MSD must, immediately after any decision to reduce or suspend a benefit, take reasonable steps to notify the individual of—
 - (i) the details of their benefit change; and
 - (ii) their right to review and appeal MSD's decision.

9. Clause 7 of the Main Body of the Agreement

Subclause 7(b) is amended to read in the following terms:

- (b) in person at Inland Revenue's Head Office in Wellington (IR, 55 Featherston Street, Wellington)

10. Clause 8 of the Main Body of the Agreement

Subclauses 8(e) and 8(i) are amended to read in the following terms:

- (e) All existing MoU agreements under the AISA will continue until amended or terminated by the Parties.
- (i) Each Party will be responsible for responding to requests for Personal Information as appropriate in the circumstances, in accordance with Part 4 of the Privacy Act 2020.

11. Clause 9 of the Main Body of the Agreement

Subclause 9(d)(v) is amended to read as follows:

- (v) The Lead Agency will use the results of the assessment to report on the operation of this Agreement as part of its annual report, in accordance with sections 154 to 156 of the Privacy Act 2020.

12. Clause 13 of the Main Body of the Agreement

Subclause 13(b) is amended to read as follows:

- (b) Amendments to this Agreement will be made in accordance with section 157 of the Privacy Act 2020.

13. Clause 15 of the Main Body of the Agreement

Subclause 15(a) is amended to read as follows:

- (a) Each Party will appoint a contact person to co-ordinate the operation of this Agreement with the other Party and will ensure that the contact person is familiar with the requirements of the Privacy Act 2020 and this Agreement.