

Chair
Cabinet Social Wellbeing Committee

RELEASE OF DRAFT APPROVED INFORMATION SHARING AGREEMENT BETWEEN THE MINISTRY OF SOCIAL DEVELOPMENT AND NEW ZEALAND CUSTOMS SERVICE AND DISCUSSION DOCUMENT FOR CONSULTATION

Proposal

- 1 This paper seeks agreement in principle to create an Approved Information Sharing Agreement (AISA) between the Ministry of Social Development (MSD) and New Zealand Customs Service (Customs). It also seeks approval to release the draft AISA and the associated discussion document and the Privacy Impact Assessment (PIA) for public consultation.

Executive summary

- 2 The Winter Energy Payment (WEP), a supplementary assistance payment, was introduced in 1 July 2018. All main beneficiaries and New Zealand Superannuation/Veteran's Pension (NZS/VP) clients are eligible for WEP. As with other supplementary assistance payments, clients will lose eligibility for WEP if they are overseas for more than 28 days.
- 3 About 700,000 NZS/VP clients are eligible to receive WEP. Currently, most New Zealand Superannuation/Veteran's Pension (NZS/VP) clients who travel overseas for more than 28 days and do not tell MSD will incur a debt due to an overpayment of a supplementary assistance payment, which in most cases WEP. This overpayment issue does not occur for main beneficiaries as their supplementary assistance is immediately suspended (alongside their main benefit) when they are overseas for more than 28 days without an approved travel reason.
- 4 Many NZS/VP clients are not used to engaging with MSD about their travel plans. As such, even with MSD communications encouraging these clients to inform MSD of their overseas travel, there will be people affected by this overpayment. This will create frustration among affected clients. To add to the confusion, most NZS/VP clients will only need to notify us of their absence over the winter period when WEP is paid (as they do not receive any supplementary support from us outside of the winter months, and an NZS/VP client only becomes ineligible for their NZS/VP if they are overseas for more than 26 weeks).
- 5 The debt is created due to a requirement in the Privacy Act 1993 (the Privacy Act) to give notice before adverse action, such as suspending a payment. During the notice period, the supplementary assistance payment continues to be paid. This creates a debt for the client, which they must pay back when they return to New Zealand.
- 6 MSD is bound by this requirement because it receives data on the arrivals and departures of their clients from Customs through an Information Matching

Agreement (IMA). An AISA on the other hand gives the legislative authority to override the relevant sections of the Privacy Act, and could allow MSD to suspend payments without giving a notice period.

- 7 While it was the establishment of WEP this year that exposed this issue for NZS/VP clients, for consistency, the AISA is drafted to include all supplementary assistance for all MSD clients – including main beneficiaries and non-beneficiaries who receive supplementary assistance.
- 8 The draft AISA must undergo consultation with affected parties (or people or entities that represent the interests of affected parties). Due to the broad nature of the agencies' shared customers, we propose that this requirement would be best met through a public consultation process. A discussion document titled *Reducing Debt for MSD clients travelling overseas*, outlining the information sharing process in more detail, has been prepared to invite submissions.
- 9 The Governor-General must approve the AISA (by Order in Council) on the recommendation of the relevant Minister/s. We are aiming to have the AISA in place for 1 May 2019, the start of the next period in which WEP will be paid.

MSD's current system creates a debt for many clients who go overseas, which must then be repaid

- 10 Most supplementary assistance (such as Disability Allowance, Accommodation Supplement (AS) and Temporary Additional Support) can only be paid to a client who is overseas for a maximum of 28 days. MSD relies on clients advising that they are going overseas to ensure their benefit is paid correctly. NZS/VP clients going overseas currently only need to notify MSD if they receive supplementary assistance, or are overseas for more than 26 weeks.
- 11 MSD has an IMA with Customs. This enables MSD to identify any clients who leave the country and when they return. Clients must be given notice prior to an adverse action being taken as a consequence of the IMA. Suspending payments is considered an adverse action. However, there is an exception under section 103 (1A) of the Privacy Act 1993 which enables MSD to suspend main benefits¹ immediately without notice.
- 12 This exception does not apply to supplementary assistance. NZS/VP clients and others not receiving a main benefit who are receiving supplementary assistance and leave the country without contacting MSD will be notified at the end of the 28 day period. MSD will then allow a notice period of 10 days before suspending payments. This establishes an overpayment debt during the 10 day notice period. WEP, a supplementary assistance payment that all NZS/VP clients are eligible for, was introduced in July this year. Before the introduction of WEP, this process of establishing overpayment debt only affected the small subset of NZS/VP clients who received supplementary assistance.
- 13 MSD's current practice is to encourage NZS/VP clients who are receiving supplementary assistance to tell MSD if they will be out of New Zealand for more than 28 days. This communication includes letters and emails sent to NZS/VP clients, brochures distributed to stakeholders, and information in the SuperSeniors

¹References to main benefits in this paper refer to Jobseeker Support, Sole Parent Support, Supported Living Payment, Orphans Benefit and Unsupported Childs Benefit and Emergency Benefit.

newsletter explaining why they need to do this, and how to contact MSD. A NZS/VP client telling MSD they will be overseas for more than 28 days ensures that their supplementary assistance can be stopped from the correct date, thus avoiding an overpayment and a resulting debt.

14 About 700,000 NZS/VP clients are eligible to receive WEP. Many of these clients are not used to engaging with MSD about their travel plans. As such, even with MSD communications, there will be people who will receive an overpayment. This will create frustration among affected clients. To add to the confusion, most NZS/VP clients will only need to notify us of their absence over the winter period (as most do not receive any supplementary support from us outside of the winter months).

15 When a NZS/VP client does not tell MSD about their plans to be out of New Zealand for longer than 28 days, the following process occurs:

15.1A client leaves New Zealand and they are identified as receiving NZS/VP and supplementary assistance via the data match with Customs (which is run daily)

15.2At day 29 the data match with Customs identifies that client has been out of New Zealand for more than 28 days

15.3MSD sends a letter to the client to advise the client has been identified as being out of New Zealand for more than 28 days and that, if they do not contact MSD, their supplementary assistance will be stopped 10 days later

15.4At day 39, if the client has not contacted MSD, their supplementary assistance is stopped and the client is sent a letter to advise them of this. The letter also advises they have incurred an overpayment of the supplementary assistance (during the notice period) which will need to be repaid to MSD.

Greg's experience with notice period



Greg leaves NZ for a 3 month holiday to see his daughter



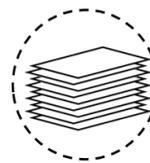
Greg has a great time on holiday



Greg explores London and Europe



Greg returns to NZ



Greg comes home to find letters at his home address saying that he has been away and now owes a \$30 debt and should contact MSD



Greg can't understand why MSD didn't stop his extra payments when they knew he was away and why they notified him at home if they knew wasn't there

16 Since WEP was introduced in July this year, it is estimated that around 9,500 clients have incurred a debt of, on average, \$36 in relation to WEP because of absence from New Zealand. This equates to a total of approximately \$340,000 of client debt that could have been avoided by removing the notice period requirement. Further, MSD has received approximately 60 client complaints on this issue so far.

17 It is worth noting that this year, WEP was only paid from 1 July to 30 September 2018. In future winter periods, WEP will be paid from 1 May to 30 September 2018, meaning the period in which this WEP debt could be incurred will be two months longer.

The solution is an Approved Information Sharing Agreement between MSD and Customs

- 18 MSD has determined that the best solution is to establish an Approved Information Sharing Agreement (AISA) with Customs. An AISA is a tool under the Privacy Act for government agencies to provide more efficient and effective public services. It achieves this by allowing agencies to share information while protecting individual privacy, and provides a clear legal authority for sharing. This is because it provides certainty around the purpose of information sharing, use of information, and management of privacy risks.
- 19 The proposed AISA does not allow any additional information to be matched, rather, it changes *how* the information from the match is used. It gives MSD the legal basis to automatically stop supplementary assistance payments for NZS/VP clients and others not receiving a main benefit who are receiving supplementary assistance who are outside of New Zealand for more than 28 days, at day 29. The establishment of an AISA itself does not automatically remove the need to provide a notice period. However, for this AISA, the requirement for a notice period has been modified so that the AISA provides the legal authority for the notice period to be removed.
- 20 In addition, an AISA can be amended more easily and in a shorter timeframe than legislation, providing a more future-proof framework for sharing information. The AISA would be included in schedule 2A of the Privacy Act by Order in Council.

The scope of the AISA covers all supplementary assistance payments for all MSD clients, not just NZS/VP recipients

- 21 While it was the establishment of WEP that highlighted this overpayment issue, it would be inconsistent to establish an AISA and only have it cover NZS/VP clients who receive WEP. Some NZS/VP clients will receive both WEP and other types of supplementary assistance payments such as AS. This would create the situation where someone would have their WEP stopped automatically, but not, for example, their AS. This would create a debt due to the overpayment of other supplementary assistance (besides WEP).
- 22 MSD has used this inconsistency as part of the rationale for including all supplementary assistance payments for all clients as in scope for this AISA, rather than only WEP for NZS/VP clients. This includes both main beneficiaries who are receiving supplementary assistance, as well as non-beneficiaries who receive supplementary assistance.
- 23 MSD currently suspends main benefits and supplementary assistance payments on the day after a client leaves New Zealand.² However, for non-beneficiaries receiving supplementary assistance, the same overpayment issue occurs as the one for NZS/VP clients.
- 24 Including all supplementary assistance payments in this AISA ensures MSD has the legal authority to suspend payments automatically. This will align MSD's process for supplementary assistance payments for all clients with the current

2 During consultation with OPC, a question arose as to whether this practice aligns with MSD's legal authority. While MSD intends to fully assess this issue and any potential impacts on clients, the AISA will authorise this existing practice.

process for main benefits.³ In practice, this means MSD will suspend these payments, without notice, on the day after eligibility ends. This will significantly reduce the number of clients coming home to a debt.

The benefits of removing the notice period outweigh the risks

25 There are two key risks to the removal of the notice period through the AISA:

25.1 The AISA gives MSD the legal authority to remove the right for people to have a notice period. People may feel that this affects their right to natural justice.

25.1.1 MSD considers that the notice period is often not effective. Notice is typically given to a client's home address despite MSD knowing that they are overseas. Therefore while technically notice is given, it is not usually received in time by the client. This negates the very purpose of giving notice in the first place - by the time the client actually receives it, their supplementary assistance payment has already been suspended. While there is the option of receiving letters from MSD online through myMSD, only 4 percent of NZS/VP clients have registered for this service.

25.2 While the data match has a high rate of accuracy, there is no way to ensure that inaccuracies will not arise in the future. A notice period does give clients the opportunity to inform MSD if they have been given the notice of adverse action incorrectly.

25.2.1 MSD is aware of this risk, and has outlined the mitigations it will take in the attached PIA. Without a notice period, clients who are falsely matched will still receive a letter and be able to contact MSD to restart payments and receive any missed payments. However, it should be noted that the number of payments that will be suspended incorrectly is estimated to be less than one percent.

26 MSD considers that the benefits to clients of removing the notice period outweigh the potential harm. Moreover, the public consultation will provide the opportunity for any concerns to be raised about the removal of the notice period. MSD will ensure that changes made due to the AISA are communicated effectively to our clients, and maintain a smooth process for reinstating payments when there is an error. More details on this are in the attached PIA.

We recommend consulting with the public on the proposed AISA

27 Under the Privacy Act, the development of an AISA requires consultation with affected parties. This includes government agencies and persons or organisations representing the interests of individuals whose information will be shared. The discussion document titled *Reducing Debt for MSD clients travelling overseas* will help facilitate the public consultation. The PIA will be attached to the discussion document to give the public the full details of this process.

³ Generally, a main benefit cannot be paid for more than 28 days in a 52 week period when someone is overseas. One exception to this is when a main beneficiary tells us they are going overseas, and they are travelling for an approved reason (such as attending a significant family event). In this situation, clients could still be eligible for their benefit and/or supplementary assistance even when they are overseas for more than 28 days.

- 28 The consultation will encourage feedback from targeted stakeholders and the general public on the proposed AISA. The discussion document contains information on an AISA, its benefits and how it fits with the existing information matching between the two agencies. It also contains the categories of information to be matched, what the information will be used for, and safeguards.
- 29 The proposed consultation period for the discussion document is 4 December 2018 to 25 January 2019. We propose to announce the public consultation on the AISA following Cabinet approval. The discussion document and AISA will be sent to stakeholders such as:
- SuperGold Card holders (through the SuperSeniors newsletter)
 - Age Concern
 - Grey Power
 - Beneficiary Advocates

Process and timeline for introducing the AISA

- 30 Continuous oversight from the Office of the Privacy Commissioner (OPC) is required during the development of an AISA. Feedback has been received and is being incorporated from the OPC on the draft AISA, discussion document and PIA. Officials will consult with the OPC after considering submissions from the public.
- 31 An AISA must be approved by the Governor-General through an Order in Council. To create efficiencies for Cabinet, the Parliamentary Counsel Office and officials, we recommend delegating authority to the Minister for Social Development and the Minister of Customs to make minor and technical changes to the AISA in response to analysis of feedback from the public consultation process.
- 32 The proposed timeline for the AISA, subject to the required approvals, is:

4 December 2018 - 25 January 2019	Public consultation on the draft AISA - discussion document and PIA to support this process
February 2019	Minister for Social Development and Minister of Customs consider a paper outlining feedback from submissions
March 2019	Cabinet considers legislation paper and Order in Council Order in Council and AISA included in the <i>New Zealand Gazette</i>
1 May 2019 (start of the next winter period)	AISA in place

- 33 Once the ASIA is operating as intended, over the following 24 months the current IMA on arrivals and departures between MSD and Customs will be converted into a Memorandum of Understanding attached to the AISA. The relevant sections of the Customs and Excise Act 2018 could then be repealed. MSD and Customs will continue to work together as required on this work, and Ministers and/or Cabinet will be informed as needed.

Consultation

- 34 The New Zealand Customs Service and the Office of the Privacy Commissioner have been consulted on this paper.
- 35 The Department of the Prime Minister and Cabinet (Policy Advice Group) has been informed.

Privacy Commissioner Statement

- 36 The Office of the Privacy Commissioner has provided the following statement from the Privacy Commissioner: *“I support MSD’s proposed policy approach, to use an AISA to provide a sensible solution to a technical problem. I am pleased with the engagement officials have had with my Office to date on this AISA and look forward to this continuing.”*

Financial implications

- 37 There are no financial implications of the proposals within this paper.
- 38 The public consultation phase will be undertaken within departmental baselines.

Human rights implications

- 39 There are no human rights implications from this paper.

Legislative implications

- 40 Should the proposal for an AISA be agreed to, an Order in Council will be required.

Regulatory impact analysis

- 41 The Treasury Regulatory Quality Team has determined that the proposal is exempt from the Regulatory Impact Analysis (RIA) requirements on the basis that a RIA would substantively duplicate other government policy development, reporting and publication requirements or commitments. Specifically, a PIA has been provided to accompany the discussion document.

Gender implications

- 42 There are no specific gender implications from the proposals in this paper.

Disability perspective

- 43 There are no specific disability implications from the proposals in this paper.

Publicity

- 1 Subject to Cabinet approval, the discussion document will be formatted for publication and publicly released via the MSD website and linked via the government consultation “Have Your Say” pages at <https://www.govt.nz/browse/engaging-with-government/consultations-have-your-say/>.

Recommendations

- 44 It is recommended that the Committee:
 - 1 **Note** that currently, New Zealand Superannuation/Veteran’s Pension clients who travel overseas for more than 28 days and who do not tell the Ministry of Social Development will incur a debt due to an overpayment of the Winter Energy Payment
 - 2 **Note** that this issue exists for all supplementary assistance payments and for other clients receiving supplementary assistance who are not on a main benefit
 - 3 **Note** that the creation of the Winter Energy Payment heightened this issue as all New Zealand Superannuation/Veteran’s Pension clients are eligible for the Winter Energy Payment and many will not be used to engaging with the Ministry of Social Development about their travel plans
 - 4 **Note** that debt is incurred due to a requirement in the Privacy Act 1993 to give notice before adverse action, such as suspending a payment
 - 5 **Agree** to convert the existing Information Matching Agreement between the Ministry of Social Development and the New Zealand Customs Service to an Approved Information Sharing Agreement, to remove the need to give notice to clients who receive supplementary assistance
 - 6 **Agree** to release the attached *Approved Information Sharing Agreement between the Ministry of Social Development and the New Zealand Customs Service*, and the associated discussion document and Privacy Impact Assessment, for public consultation
 - 7 **Note** that the consultation period will run from 4 December 2018 to 25 January 2019
 - 8 **Authorise** the Minister for Social Development and the Minister of Customs to make minor and technical changes to the Approved Information Sharing Agreement following public consultation
 - 9 **Agree** that provided the changes from the analysis of public consultation feedback are only minor and/or technical, the final Approved Information Sharing Agreement and Order in Council will be submitted to Cabinet for approval in March 2019
 - 10 **Invite** the Minister of Social Development to issue drafting instructions to the Parliamentary Counsel Office for an Order in Council to approve the Approved Information Sharing Agreement.

Hon Carmel Sepuloni
Minister for Social Development

Authorised for lodgement

Hon Kris Faafoi
Minister of Customs

Authorised for lodgement