



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



Information Sharing Agreement

Between

The Ministry of Social Development

And

The New Zealand Customs Service

Pursuant to Part 9A of the Privacy Act 1993

March 2019

Information Sharing Agreement

The Parties

The New Zealand Customs Service (Customs)

(acting through the Comptroller of Customs)

The Ministry of Social Development (MSD) – Lead Agency

(acting through the Chief Executive of MSD)

The Agreement

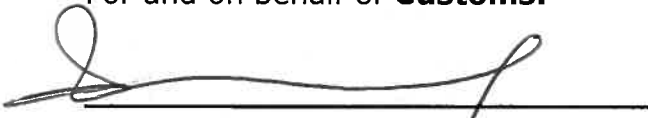
This Agreement is put in place under Part 9A of the Privacy Act 1993 to enable the Parties to share Information for the purposes of:

- (a) verifying the entitlement or eligibility of any Beneficiary travelling overseas to receive a Benefit;
- (b) verifying the amount of any Benefit to which any Beneficiary travelling overseas is or was entitled or for which they are or were eligible;
- (c) to avoid the overpayment of benefits and debts to the Crown being incurred by Beneficiaries travelling overseas; and
- (d) enabling the recovery of any debt due to the Crown in respect of any Benefit.

Acceptance

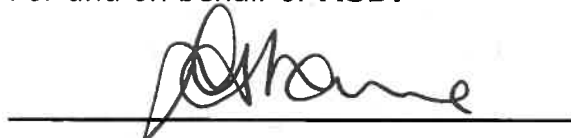
In signing this Agreement, each Party acknowledges that it has read and agrees to be bound by it.

For and on behalf of **Customs:**



Bill Perry
Acting Comptroller of Customs
New Zealand Customs Service

For and on behalf of **MSD:**



Debbie Power
Chief Executive
Ministry of Social Development

Date 1/4/19

BACKGROUND

- A. The Parties currently share information under the “arrivals and departures” information matching agreement created under section 280 of the Customs and Excise Act 1996 (the Current Agreement). This enables them to share specified information for specified purposes.
- B. The Parties wish to create an Approved Information Sharing Agreement, created and governed under Part 9A of the Privacy Act:
 - that replaces the Current Agreement,
 - that enables MSD to dispense with the notice period required by s96Q of the Privacy Act before suspending Specified Payments.
- C. The Parties note that “Specified Payments” do not include New Zealand Superannuation, Veterans Pensions or Student Allowances. This Agreement therefore does not affect the obligation to provide notice before any action is taken to suspend those payments.
- D. Enabling MSD to dispense with the notice period before suspending Specified Payments will help to prevent people travelling overseas from incurring a debt that they then have to repay to MSD on their return.

TERMS

1. Defined Terms

In this Agreement, including the Background, unless the context otherwise requires:

Adverse Action has the meaning specified in section 96C of the Privacy Act 1993.

Authorised Staff in relation to a Party, means staff of that Party who are authorised to disclose, receive or use Information under this Agreement.

Beneficiary means a person who has been granted a benefit, including a recipient of New Zealand Superannuation, Veterans Pension or Student Allowance.

Benefit has the meaning given to that term in Schedule 2 of the Social Security Act 2018, and includes—

- (a) a lump sum payable under section 90 of that Act
- (b) any special assistance payable under a programme approved under section 101 of that Act
- (c) a Student Allowance

Information means the personal information that may be shared between the Parties under this Agreement, as described in Schedule 1.

Lead Agency means MSD.

Minor Amendments means amendments to this agreement that relate only to:

- a) the fees and charges payable under the agreement; or
- b) the name or description of a Party to the agreement; or
- c) any terms or conditions of the agreement that the Lead Agency considers, after consulting the Privacy Commissioner, do not, or are unlikely to, have any effect on the privacy implications of the agreement.

Operational Protocol means a protocol that the Parties enter into pursuant to this Agreement, which sets out the operational arrangements by which the Parties may share Information.

Order in Council means the Order in Council that approves this Agreement and that is made under sections 96J to 96L of the Privacy Act 1993.

Party means Customs or MSD and **Parties** means both Customs and MSD.

Personal Information has the meaning in section 2(1) of the Privacy Act 1993.

Privacy Commissioner means the Commissioner holding that office under section 12 of the Privacy Act 1993.

Specified Payment means Benefit, excluding New Zealand Superannuation, Veterans Pension and Student Allowance.

Student Allowance means an allowance established by regulations made under section 303 of the Education Act 1989.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (c) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

2. Purposes of this Agreement

This Agreement authorises the information sharing arrangements between the parties for the purposes set out in clause 3. In particular it:

- replaces the existing information matching agreement for the Arrivals/Departures Match entered into under section 280 of the Customs and Excise Act 1996;
- requires the Parties to create a new operational protocol to govern the operational aspects of the sharing;
- provides that MSD may suspend benefit payments without first providing a beneficiary with an opportunity to comment (except for New Zealand Superannuation, Veterans Pension or Student Allowance recipients) when eligibility expires as a result of overseas travel;
- specifies the safeguards that are required to protect privacy.

3. Purposes for which information may be shared

This Agreement authorises the sharing of personal information for the following purposes:

- (a) to verify the entitlement or eligibility of any beneficiary travelling overseas to receive a benefit; and
- (b) to verify the amount of any benefit that –
 - i. a beneficiary travelling overseas is entitled or eligible to receive; or
 - ii. a beneficiary who has travelled overseas was entitled or eligible to receive; and
- (c) to avoid the overpayment of benefits and debts to the Crown being incurred by beneficiaries travelling overseas; and
- (d) enabling the recovery of any debt due to the Crown in respect of any Benefit.

4. Personal information that may be shared under Agreement

The Information about a person that Customs may share with MSD is collected by Customs from persons departing from or arriving in New Zealand and is set out in Schedule 1.

5. How MSD may use personal information

MSD may use the Information in accordance with the information sharing process authorised by this Agreement, for one or more of the purposes described in clause 3 of this Agreement.

6. Exemptions to information privacy principles

For the purposes of this Agreement, information privacy principles 2, 10 and 11, which are set out in section 6 of the Privacy Act 1993, are modified (by the Order in Council that approves this Agreement) as follows:

(a) Principle 2: Source of Personal Information

It is not a breach of information privacy principle 2 for MSD to collect the Information from Customs in accordance with this Agreement.

(b) Principle 10: Limits on use of Personal Information

It is not a breach of information privacy principle 10 for MSD to use the Information in accordance with this Agreement.

(c) Principle 11: Limits on disclosure of Personal Information

It is not a breach of information privacy principle 11 for Customs to disclose the Information to MSD in accordance with this Agreement.

7. The public services that this Agreement is intended to facilitate

The public services that this Agreement is intended to facilitate are:

- (a) the accurate and efficient assessment of entitlements to Benefits; and
- (b) ensuring MSD client debt is reduced.

8. Adverse Actions

- (a) Section 96R of the Privacy Act 1993 allows an Information Sharing Agreement to provide that a party to that kind of agreement may give a shorter period of notice than the 10 working day period referred to in section 96(Q)(2)(b) of that Act, or dispense with the notice requirement before taking adverse actions.
- (b) The Parties agree that MSD may dispense with the notice requirement under section 96Q of the Privacy Act 1993 in order to immediately suspend all or part of a Specified Payment because a person has been outside New Zealand for longer than allowable to continue receiving that Specified Payment ("the ineligibility").
- (c) MSD must, immediately after the decision to suspend the Specified Payment, write to the person:
 - (i) Providing details of the ineligibility;
 - (ii) Notifying the person that the Specified Payment has been suspended; and
 - (iii) Advising the person of their right to review and appeal the Ministry's decision.
- (d) In relation to Benefits that are not Specified Payments, MSD will provide written notice to individuals in advance of any Adverse Action proposed to be taken against them, in accordance with section 96Q of the Privacy Act.

- (e) The Adverse Actions MSD may take under this Agreement are specified at Schedule 2.
- (f) MSD staff will comply with all MSD policies and guidelines before taking any adverse action. MSD will use existing systems and practices to ensure the correct identity of Beneficiaries before using the Information.

9. How to access Agreement

- (a) A copy of the Agreement is available online at <http://msd.govt.nz> and <http://customs.govt.nz>
- (b) A copy of the Agreement is also available at MSD, 56 The Terrace, Wellington.

10. Overview of operational details

- (a) The Information to be shared is set out in this Agreement. The operational details setting out how the information sharing will work is set out in the operational protocol.
- (b) MSD will compare the Information that Customs discloses under this Agreement with information that MSD holds about Beneficiaries and their entitlements to Benefits, and use it for the purposes specified in clause 3 of this Agreement.
- (c) MSD will use existing systems and practices to ensure the correct identity of Beneficiaries before using the Information.
- (d) If clause 8(b) of this agreement applies, MSD may suspend a Specified Payment immediately, but must follow the process in clause 8(c) to notify the Beneficiary of the suspension.
- (e) In relation to Benefits that are not Specified Payments, MSD will provide written notice to individuals in advance of any Adverse Action proposed to be taken against them, in accordance with section 96Q of the Privacy Act.
- (f) The operational protocol will contain operational details about how the Parties may share Information under this Agreement, including:
 - (i) security arrangements and technical standards in relation to the transfer and use of Information;
 - (ii) procedures to verify an individual's identity, to identify any discrepancies in the Information about that individual that is held by each Party, and to update that individual's records;
 - (iii) provisions that specify how frequently Information is to be shared and in what format;
 - (iv) requirements in relation to the retention and disposal of Information;
 - (v) relationship principles and provisions that clarify the role of each Party;

- (vi) governance processes, including processes that enable regular review of the operational protocol and resolution of any disputes between the Parties;
- (vii) provisions that specify how the operational protocol may be amended or terminated and any requirements (such as confidentiality provisions) that continue to apply after termination; and
- (viii) contact details for Authorised Staff.
- (g) Operational details will be included in the operational protocol, rather than in this Agreement, as they may need to be regularly updated over time, and they relate to matters that it is appropriate for the Parties to manage internally within their respective organisations.
- (h) Information will only be accessible by those Authorised Staff who need to use it for the purposes of this Agreement.
- (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 1993.

11. Safeguards that will be applied to protect the privacy of individuals and ensure that any interference with their privacy is minimised

(a) Security Provisions

Each Party will have mechanisms and procedures for:

- (i) the secure storage and transfer of Information in accordance with government security standards, as applicable to the operational protocol;
- (ii) the appointment of Authorised Staff;
- (iii) training of Authorised Staff to share Information appropriately and in accordance with this Agreement;
- (iv) ensuring the Information is of adequate quality at the time it is provided to the other Party;
- (v) ensuring the Information is only used for the purposes specified in this Agreement.

Accuracy and Correction

- (b) MSD will take all necessary and reasonable steps in accordance with information privacy principle 8 to ensure that Beneficiaries who may be adversely affected by the information sharing are accurately identified, and that Specified Payments are only suspended when they are no longer eligible to receive them.
- (c) If MSD suspends a Benefit (including a Specified Payment) in error under this Agreement, it will ensure that the error is corrected and any applicable repayment is made to the Beneficiary promptly and as soon as reasonably practicable.

(d) **Disclosure**

Neither Party will disclose the Information to any third party, except as required or permitted by law.

(e) **Privacy/security breaches**

- (i) Each Party will be responsible for the investigation of privacy/security breaches, as appropriate in the circumstances.
- (ii) If a Party has reasonable cause to believe that a breach has occurred or may occur, that Party will:
 - a. notify the other party; and
 - b. investigate the actual or suspected breach as it deems necessary.
- (iii) The other Party will ensure that reasonable assistance is provided to the investigating Party in connection with the investigation.
- (iv) The investigating Party will ensure that the other Party is kept informed of any developments.
- (v) Where an investigation confirms a privacy/security breach has occurred, the investigating Party will notify:
 - a. the other Party first; and then
 - b. the Privacy Commissioner, if required, in accordance with the Privacy Act and the Privacy Commissioner's Privacy Breach Guidelines.
- (vi) A Party may suspend its sharing of Information under this Agreement to allow time for a breach to be remedied.

(f) **Audit and reporting**

- (i) The Parties will assess the operation of this Agreement every two years to check that the safeguards in the Agreement are operating as intended, that they remain sufficient to protect the privacy of individuals, and to ascertain whether any issues have arisen in practice that need to be resolved.
- (ii) This assessment may (as agreed by the Parties) involve a full audit or another form of assessment that is less than a full audit and that enables the exchange of letters of assurance between the Parties.
- (iii) The Parties will co-operate with each other during the assessment process and will take all reasonable actions to make the required resources available.
- (iv) The Lead Agency will report annually on the operation of this Agreement as part of its annual report, in accordance with sections 96S to 96U of the Privacy Act 1993.

12. Assistance statement

The Parties will provide any reasonable assistance that is necessary in the circumstances to allow the Privacy Commissioner or an individual who

wishes to make a complaint about an interference with privacy to determine the Party against which the complaint should be made.

13. Dispute resolution

- (a) Should any dispute arise in relation to this Agreement, the Parties will meet in good faith to attempt to resolve it as quickly as possible.
- (b) If the Parties are unable to resolve the dispute within 60 days, the matter shall be referred to the relevant Chief Executives, or their delegates, for resolution.
- (c) Subject to clauses 10(f)(vi) and 14(b), the Parties will continue to comply with their obligations under this Agreement despite the existence of any dispute.

14. Amendments

- (a) Any amendments to this Agreement must be in writing and signed by the Chief Executives of the Parties, or their delegates.
- (b) Amendments to this Agreement, other than Minor Amendments, will have no effect unless approved by the Governor-General by further Order in Council.
- (c) Amendments to this Agreement will be made in accordance with section 96V of the Privacy Act 1993.
- (d) Amendments to the operational protocol must be, at a minimum, in writing and signed by the Parties and otherwise made in accordance with the terms of that operational protocol.
- (e) If the Parties are unable to agree on any amendments, the matter will be dealt with under clause 13.

15. Term and termination

- (a) This Agreement comes into force on the date specified in the Order in Council and shall continue in force until the Parties agree to terminate it or the Order in Council is revoked.
- (b) A Party may suspend, limit, or terminate its participation in this Agreement if it appears to that Party that the terms of the Agreement or the Order in Council are not being met or the sharing of Information under this Agreement is otherwise unlawful.
- (c) The obligations in the operational protocol which concern confidentiality and secrecy shall remain in force notwithstanding the termination of this Agreement.
- (d) If extraordinary circumstances arise (including but not limited to earthquake, eruption, fire, flood, storm or war) which prevent a Party from performing its obligations under the Agreement, the performance of that Party's obligations shall be suspended, to the extent necessary, for as long as those extraordinary circumstances prevail.

16. Departmental representatives

- (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 1993 and this Agreement.
- (b) The initial contact persons are as follows:
 - (i) MSD: Lead Advisor, Information Sharing.
 - (ii) Customs: Team Leader, Border Systems.
- (c) All notices and other communication between the Parties under this Agreement shall be sent to the contact persons specified above.
- (d) The contact persons set out above may be updated from time to time by notice to the other Party and the Privacy Commissioner.

17. Precedence

This Agreement takes precedence over any operational protocol, to the extent of any inconsistency.

SCHEDULE 1: INFORMATION THAT CUSTOMS MAY SHARE WITH MSD

The Information about a person that Customs may share with MSD is the following information that Customs collects from persons departing from or arriving in NZ:

- (a) the person's family name and given names:
- (b) the person's date of birth:
- (c) the person's gender:
- (d) the person's nationality:
- (e) the person's citizenship
- (f) the number of the person's travel document:
- (g) the person's flight or craft details:
- (h) the port where the person boarded their plane or craft
- (i) the port where the person disembarked from their plane or craft:
- (j) the unique number generated for each passenger movement by Customs computer systems
- (k) the time, date, and place of the person's –
 - i. departure from New Zealand; or
 - ii. arrival in New Zealand

SCHEDULE 2: ADVERSE ACTIONS THAT MSD MAY TAKE IF INFORMATION DISCREPANCY IDENTIFIED

1. The type of Adverse Action MSD may take will depend on:
 - (a) the immediacy of the action required; and
 - (b) the nature and value of the Information that it receives when considered alongside the facts of the case and the information that it already holds.
2. The types of Adverse Action that MSD may take are:
 - (a) suspension of a Benefit;
 - (b) debt recovery;
 - (c) investigation; and
 - (d) prosecution.
3. Customs will not take any Adverse Action in relation to this Agreement.

