

Office of the Minister for Social Development and Employment

Office of the Minister of Revenue

Cabinet Social Wellbeing Committee

## **Release of Draft Amendment to the Approved Information Sharing Agreement Between Inland Revenue and the Ministry Of Social Development and Guidance Document for Consultation**

### **Proposal**

- 1 This paper seeks agreement in principle to amend the Approved Information Sharing Agreement (AISA) between Inland Revenue and the Ministry of Social Development (MSD). The proposed amendment will remove the 10 working days' notice for an adverse action to allow MSD to charge child support as income in real time as part of the wider Child Support Pass-on initiative. It also seeks approval to release the draft proposed amendment to the AISA and the associated guidance document for public consultation.

### **Relation to government priorities**

- 2 Reducing the number of children living in poverty is a key priority for the Government, and the Child Support Pass-on initiative links to this priority; laying the foundations for the future. The Child Support Pass-on initiative contributes to this priority by increasing the incomes of many sole parent families, thus ensuring more resources are available for their children.

### **Executive summary**

- 3 As part of Budget 2022, Cabinet agreed to pass on child support to sole parent beneficiaries and treat it as income for benefit purposes [CAB-22-MIN-0091 refers].
- 4 To improve accuracy and reduce the administrative burden on MSD staff and clients, the charging of child support as income will be automated based on an information share from Inland Revenue to MSD.
- 5 Section 152 of the Privacy Act 2020 requires a party to an AISA to give written notice to an individual before any adverse action is taken, such as a benefit reducing or being stopped, on the basis of personal information pertaining to that individual shared under an AISA. The individual then has 10 working days within which to dispute the correctness of the personal information.
- 6 For Child Support Pass-on purposes, MSD would be required to give the client 10 days' notice after receiving the information shared from Inland Revenue before charging the child support as income. It is proposed that Inland Revenue and MSD's AISA is amended to remove the 10 working days' notice period (notice period) before taking an adverse action against the individual when MSD charges child support as income as a result of an information share. Removing the requirement will mean MSD could automatically charge the child support payment as income as close as possible to when it is received, which will avoid overpayments being made and reduce the

likelihood of client debt. This aligns to the principles of the Debt to Government work programme, in particular the focus on preventing debt from occurring so that it does not create future problems for those in hardship.

- 7 Under the Privacy Act 2020, agencies proposing an amendment to an AISA must consult with affected parties (or people, or organisations that represent the interests of affected parties), including the Privacy Commissioner. We propose that this requirement would be best met through a public consultation process. A guidance document titled *Simplifying the process for MSD clients who receive child support*, has been prepared to outline the information sharing process in more detail and invite public submissions and survey responses.
- 8 Following public consultation, MSD and Inland Revenue will continue to work with the Privacy Commissioner to address any concerns before asking Ministers to recommend to the Governor General to approve the AISA amendment by Order in Council (see section 145 of the Privacy Act 2020). The amended AISA is intended to be in place from 1 April 2023 to facilitate the implementation of the Child Support Pass-on initiative on 1 July 2023.

**As part of Budget 2022, Cabinet has agreed to pass on child support to sole parent beneficiaries and treat it as income for benefit purposes**

- 9 Currently, sole parent beneficiaries must apply for child support. The child support payments made to Inland Revenue for sole parent beneficiaries are retained by the government to offset the cost of paying benefits. This aligns with one of the objectives of the Child Support Act 1991, which is to ensure that the costs to the State of providing an adequate level of financial support for children and their carers is offset by the collection of a fair contribution from liable parents.
- 10 However, the same rules do not apply for other beneficiaries, such as parents on a couple rate of benefit. Instead, child support payments are passed onto them and treated as income for welfare purposes.
- 11 In March 2022, Cabinet agreed to fund the Child Support Pass-on Budget initiative [CAB-22-MIN-0091 refers]. This initiative will pass on child support administered by Inland Revenue<sup>1</sup> to beneficiaries for periods from 1 July 2023 and remove their obligation to apply for child support.
- 12 Cabinet also agreed to MSD treating child support as income for benefit purposes. This will be informed through an information share from Inland Revenue to MSD.
- 13 To support the charging of child support as income, child support will generally be charged as income over four or five weeks from the commencement date of the client's benefit. This will align the child support payment (which is for a calendar month) with the period MSD will charge child support as income for.

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<sup>1</sup> Formula assessments and voluntary arrangements. In the paper child support only refers to child support Inland Revenue administers.

## **Charging child support as income *as soon as it is received* will require dispensing with the notice period for an adverse action such as reducing or stopping a benefit**

- 14 Section 152 of the Privacy Act 2020 requires parties to provide written notice to individuals before any adverse action is taken against them on the basis of personal information shared under an AISA, 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. This is to allow clients an opportunity to dispute the information to ensure the agencies are acting on accurate information.
- 15 The existing MSD and Inland Revenue AISA already allows the agencies to share information about their mutual clients and would enable the sharing of child support payment information and the charging of these payments as income. However, the AISA requires 10 working days' notice before an adverse action is taken.
- 16 Treating the child support payment as income as soon as it is received is reliant on removing the notice period. If MSD was required to give clients 10 working days before applying the income charge, it would likely disadvantage clients. The delay would result in the child support payments being charged as income well after the payments were received by the client. This would lead to a disconnect between the receipt of child support and any reduction of their financial assistance, which may cause an overpayment in financial assistance which could in turn result in clients owing a debt.
- 17 It is proposed that the AISA is amended to remove the notice period for adverse actions when MSD charges child support as income as a result of an information share.

### **There is minimal risk associated with removing the notice period...**

- 18 To ensure information shared is accurate, the child support information Inland Revenue will share with MSD must match three identifiers<sup>2</sup> on a client's MSD record before MSD automates the charging of their child support as income. Anything less than this will be processed by an MSD staff member.
- 19 Additionally, a data cleansing activity<sup>3</sup> will be undertaken between Inland Revenue and MSD ahead of implementation, to ensure the agencies hold up to date information about mutual clients. This will help support higher quality data matching between the agencies. Data cleansing will be ongoing in cases where Inland Revenue does not hold a client's MSD client number.
- 20 All clients who have had their benefit reduced due to a child support payment will receive a letter informing them of the reduction. The majority of MSD clients will receive a notification that their benefit has been reduced due to a child support payment before they receive their benefit payment. This gives the majority of clients an opportunity to check if their child support information shared by Inland Revenue is accurate before any adjustments are made to their benefit.

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<sup>2</sup> Such as name, date of birth, MSD client number and IRD number.

<sup>3</sup> Data cleansing is the activity to correct data if it is not correct, for example due to bad formatting, being outdated, a duplicate or recorded in error.

- 21 A small number of clients will be notified that their benefit has reduced after they have received their benefit. This may result in incorrect information such as another person's child support payment amount, or an incorrect child support amount, being matched to a client, leading to their benefit being reduced incorrectly. However, MSD considers that incorrect matches are highly unlikely.
- 22 Clients will be able to contact MSD if an income charge has been applied incorrectly and have this amended. MSD or Inland Revenue will update the relevant client details to prevent future incorrect charges within the next working day.<sup>4</sup> Further, clients will have the right to review an income charge via the Review of Decision process.<sup>5</sup>
- 23 Further details about the risks of removing the notice period and mitigations are outlined in the attached Privacy Impact Assessment (PIA).

### **...and there are significant benefits**

- 24 We consider the benefits of removing the notice period to clients and MSD outweigh the potential harm. While the notice period's intent is to ensure MSD is acting on accurate information, enforcing the notice period would negatively impact clients as the disconnect between a client receiving their child support payment and it being charged as income against their benefit would result in some clients incurring debt. This change aligns to the principles of the Debt to Government work programme in the focus on preventing debt from occurring so that it does not create future problems for those in hardship.
- 25 The public consultation will provide the opportunity for any concerns to be raised about the removal of the notice period.
- 26 MSD will ensure that removal of the notice period will be communicated effectively to affected clients and that the process for reviewing changes to financial assistance if there is an error is accessible. More details on this are in the attached PIA.

### **The Privacy Act 2020 requires consultation on the proposed AISA amendment**

- 27 Under the Privacy Act 2020, amendments to an existing AISA require consultation with affected parties, including the Privacy Commissioner. This includes government agencies and persons or organisations representing the interests of individuals whose information will be shared.
- 28 The guidance document titled *Simplifying the process for MSD clients who receive child support*, will help facilitate the public consultation.
- 29 The guidance document contains the proposed AISA amendment, information on the AISA, the amendment's benefits, and how the amendment fits with the existing information matching between the two agencies. The guidance document also contains the categories of information to be matched, what the information will be used for, and safeguards.

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<sup>4</sup> Any debt that occurs as a result of data mismatch or system failures is required to be reviewed by MSD to determine if it is recoverable or not. If the debt is a result of an MSD error and would likely cause client hardship it would likely be determined as non-recoverable.

<sup>5</sup> <https://www.workandincome.govt.nz/about-work-and-income/complaints/review-of-decisions.html>

30 The proposed consultation period is July to August 2022 and it is expected to take four weeks. We propose to announce the public consultation on the AISA following Cabinet approval of this proposal. We also intend to seek feedback from a range of stakeholders, including the following advocacy and interest groups:

- Birthright
- Chartered Accountants Australia and New Zealand
- Community Law
- Fairer Futures (which include Auckland Action Against Poverty, Child Poverty Action Group, New Zealand Council of Christian Social Services)
- Māori Reference group (MSD)
- FinCap
- Māori Women’s Welfare league
- National Beneficiary Advocacy Consultative Groups
- Pacific Reference group (MSD)
- the New Zealand Council of Women
- the New Zealand Law Society
- the Privacy Foundation of New Zealand.

**Feedback from the general public and affected clients**

31 The general public and affected clients will be given the opportunity to provide feedback on the removal of the notice period through an online survey.

32 People will also have the opportunity to provide feedback on the changes via written submission. A link for the survey and how to make public submission will be on MSD and Inland Revenue’s external websites and linked via the government consultation “Have Your Say” pages.

**Process and timeline for introducing the AISA**

33 The Office of the Privacy Commissioner (OPC) will oversee the development of the AISA amendment. OPC has provided feedback on the draft AISA amendment, guidance document and PIA. Following public consultation, MSD and Inland Revenue will continue to work with the Privacy Commissioner to address any concerns.

34 An AISA amendment 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 Employment and the Minister of Revenue to make minor and technical changes to the AISA amendment in response to analysis of feedback from the public consultation process.

35 The proposed timeline for the AISA, subject to the required approvals, is:

July - August 2022	Public consultation on the draft AISA amendment – guidance document and PIA to support this process
November 2022	Minister for Social Development and Employment and Minister of Revenue consider a paper outlining feedback from submissions and instruct PCO to draft

	the Order in Council.
January 2023	Drafting instructions to Parliamentary Counsel Office.
March 2023	Cabinet considers legislation paper and Order in Council. Order in Council and AISA included in the <i>New Zealand Gazette</i> .
April 2023	Amended AISA in place.

### Financial implications

- 36 There are minor costs from public consultation, and these can be met within existing base lines.

### Legislative implications

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

### Impact analysis

#### Regulatory Impact Statement

- 38 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it would substantively duplicate the PIA.

#### Population Implications

- 39 Women make up 88 percent of all sole parent beneficiaries (around 84,200 of a total of 95,700) and are positively impacted by the Child Support Pass-on initiative.
- 40 Of the 41,550 sole parent families likely to be positively impacted by passing on child support, around 20,300 are Māori and around 3,700 are Pacific sole parent families.
- 41 There are approximately 3,800 people receiving Supported Living Payment impacted by this change. Supported Living Payment is for people who have, or care for someone with, a health condition, injury or disability that impacts on their ability to work more than 15 hours per week.
- 42 Disabled people encounter many barriers in their daily lives compared with non-disabled people. Supports can be fragmented and difficult to navigate, and multiple eligibility criteria for different services makes it difficult for disabled people to know what support services they are entitled to. Removing the notice period will make it simpler for these payments to be assessed and maintained as income for benefit purposes which will remove the administrative burden for clients.

### Human rights implications

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

## Consultation

- 44 The Child Poverty Unit and the Child Wellbeing Unit in the Department of the Prime Minister and Cabinet, the Treasury, Ministry for Pacific Peoples, Ministry for Women, Te Puni Kōkiri, Ministry of Justice, Te Arawhiti – the Office for Māori Crown Relations, Ministry of Business, Innovation and Employment, Ministry of Housing and Urban Development, the Ministry of Youth Development, the Ministry for Ethnic Communities, the Office for Disability Issues, the Office for Seniors, the Youth Service and Oranga Tamariki—Ministry for Children have been consulted on this paper. The Policy Advice Group in the Department of the Prime Minister and Cabinet has been informed.

## Privacy Commissioner Statement

- 45 The Privacy Commissioner provided feedback focused on MSD’s use of automated decision-making to automate the charging of Child Support as income.

*45.1 The use of automated decision-making where it relates to adverse actions against vulnerable people, such as beneficiaries, requires a very strong case in terms of benefits. The Privacy Commissioner will consider dispensing of the 10 day notice period requirement for an adverse action when the parties of the Approved Information Sharing Agreement have supplied sufficient evidence to demonstrate that the benefits of the waiver of the notice period outweigh the impact on the rights and wellbeing of individuals. The Commissioner looks forward to considering the feedback of stakeholders raised during the public consultation period.*

- 46 MSD and Inland Revenue will continue to work with OPC to ensure that their concerns are addressed and relevant safeguards are implemented.

## Communications

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

## Proactive Release

- 48 We propose this Cabinet paper is released within the 30-day proactive release period.

## Recommendations

It is recommended that the Committee:

- 1 **Note** Cabinet agreed as part of Budget 2022 to pass on child support payments to sole parent beneficiaries and for child support to be automatically charged as income for benefit purposes [CAB-22-MIN-0091 refers].
- 2 **Note** section 152 of the Privacy Act 2020 requires 10 working days’ notice be provided to clients to allow them to dispute the correctness of the personal information prior to an adverse action being taken

- 3 **Note** providing clients with the 10 working days' notice of an adverse action would create a disconnect between when child support is received and when it is charged as income which would lead to some clients incurring debt
- 4 **Agree** in principle to amend the existing Approved Information Sharing Agreement between the Ministry of Social Development and Inland Revenue to remove the 10 working days' notice period for adverse actions when the Ministry of Social Development automatically charges child support as income as a result of an information share from Inland Revenue
- 5 **Agree** to release the attached draft amendment to the Approved Information Sharing Agreement between the Ministry of Social Development and Inland Revenue, and the associated guidance document for public consultation
- 6 **Note** that the consultation period will run from July to August 2022
- 7 **Authorise** the Minister for Social Development and Employment and the Minister of Revenue to make minor and technical changes to the proposed Approved Information Sharing Agreement amendment following public consultation
- 8 **Invite** the Minister for Social Development and Employment and the Minister of Revenue to make minor changes to the guidance document and proposed Approved Information Sharing Agreement amendment prior to its public release
- 9 **Invite** the Minister for Social Development and Employment and the Minister of Revenue to issue drafting instructions to the Parliamentary Counsel Office for an Order in Council to amend the Approved Information Sharing Agreement.

Hon Carmel Sepuloni  
Minister for Social Development and  
Employment

Hon David Parker  
Minister of Revenue

Authorised for lodgement

Authorised for lodgement