

[In Confidence - Legally Privileged]

Office of the Minister for Social Development

Chair, Cabinet Legislation Committee

APPROVED INFORMATION SHARING AGREEMENT BETWEEN THE MINISTRY OF SOCIAL DEVELOPMENT AND THE NEW ZEALAND CUSTOMS SERVICE: APPROVAL TO SUBMIT AN ORDER IN COUNCIL TO THE EXECUTIVE COUNCIL

Proposal

- 1 In order to establish an Approved Information Sharing Agreement (AISA) between the Ministry of Social Development (MSD) and the New Zealand Customs Service (Customs), I propose that the Cabinet Legislation Committee authorises the submission to Cabinet and the Executive Council of the '*Privacy (Information Sharing Agreement between Ministry of Social Development and Customs) Order 2019*'.
- 2 This Order in Council will approve an information sharing agreement entered under the Privacy Act 1993 between MSD and Customs.

Background

Previous Cabinet and Ministerial decisions

- 3 On 3 December 2018, Cabinet agreed to convert the existing Information Matching Agreement between MSD and Customs into an AISA. This AISA would remove the need to give notice to clients who receive supplementary assistance before suspending their payment when they go overseas for more than 28 days (CAB-18-MIN-0590 refers).
- 4 In the same meeting Cabinet also agreed to release a discussion document and the draft AISA for public consultation. For consistency, the AISA that was released for consultation covered both supplementary assistance payments and main benefits. As MSD already has authority to suspend main benefits immediately under the Privacy Act, including main benefits in the scope of the AISA only shifts this legal authority to the AISA itself.
- 5 The practical change the AISA makes is that it gives MSD the legal authority to suspend supplementary payments immediately. This is a particularly notable issue for New Zealand Superannuation/Veteran's Pension (NZS/VP) clients and those who receive supplementary assistance but are not on a main benefit.
- 6 Cabinet also delegated authority for the Minister for Social Development and Minister of Customs to approve minor and technical changes to the AISA resulting from the public consultation process.
- 7 Public consultation on the AISA was carried out from 4 December 2018 to 25 January 2019. MSD received 62 submissions, of which 24 were deemed to be out of scope. Of the submissions that were in scope, the vast majority supported the proposal.
- 8 In February 2019, the Minister of Customs and I agreed to several minor and technical changes to the AISA. While there are no changes to the AISA based on the public consultation, there have been further minor technical changes to the AISA due to further feedback from agencies. These changes remove unnecessary content and help to clarify the

purpose of the AISA. They do not affect the core policy and processes that were consulted with the public.

Approved Information Sharing Agreement

- 9 An AISA is a legal mechanism enabled under the Privacy Act 1993, authorising the sharing of information between or within agencies for the purpose of delivering efficient and effective public services.
- 10 An AISA provides certainty around the purpose of information sharing, use of information, and management of privacy risks; it can also modify privacy principles when justified (as is the case with this AISA). In addition, an AISA can be amended more easily and in a shorter time frame than legislation, providing a more future-proof framework for sharing information.
- 11 To give effect to an AISA, an Order in Council is required under section 96J of the Privacy Act 1993.
- 12 The final version of the MSD-Customs AISA is attached to this paper alongside the Order in Council.

MSD's current system creates a debt for many clients who go overseas

- 13 Generally, if a client is eligible to receive a benefit while overseas, they will also be able to receive a supplementary assistance payment (such as Disability Allowance and Accommodation Supplement) for up to 28 days while overseas. MSD relies on clients telling MSD when they will go overseas so they can suspend their payment on day 29 (unless the clients meet the required exemption criteria).
- 14 MSD has an Information Matching Agreement (IMA) with Customs which allows Customs to share daily information with MSD of people arriving in and departing from New Zealand. When a client is overseas for more than 28 days, MSD is aware of this.
- 15 Under the Privacy Act, MSD must first give 10 days' notice before taking adverse action (such as suspending a payment). This requirement to give notice creates a debt for clients who go overseas for more than 28 days without telling us.
- 16 This issue was highlighted by the introduction of the Winter Energy Payment (WEP). All NZS/VP clients are eligible for WEP, but unlike main beneficiaries they may not be used to interacting with MSD regularly (including telling MSD when they go overseas). From 1 July to 30 September 2018, MSD established debts for 9,500 clients of \$36 on average, making a total of approximately \$340,000 in WEP-related debt alone.
- 17 Creating an AISA between MSD and Customs solves this issue by giving MSD the legislative authority to suspend payments without providing a notice period. This means that MSD clients will be paid correctly and debt will not be created due to overpayment during this notice period. An AISA does not involve MSD and Customs sharing any more information than they already share through the existing IMA. There are robust safeguards for dealing with personal information set out in the AISA.
- 18 In the event that a payment is suspended incorrectly, it will be resumed (including backpay) when the client notifies MSD.

s 9(2)(f)(iv) [Redacted]

19 s 9(2)(f)(iv) [Redacted]

s 9(2)(h) [Redacted]

20 s 9(2)(h) [Redacted]

21 s 9(2)(h) [Redacted]

22 s 9(2)(h) [Redacted]

23 s 9(2)(h) [Redacted]

[Redacted]

[Redacted]

24 s 9(2)(h) [Redacted]

25 s 9(2)(h) [Redacted]

Timing and the 28-day rule

26 It is proposed that Cabinet refer the Order to the Executive Council on 15 April 2019. The Order will be gazetted on 18 April 2019 and will come into effect on 20 May 2019. This is in line with the 28-day rule.

Compliance

27 The Order complies, where applicable, with the following:

- the principles of the Treaty of Waitangi;
- the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- the principles and guidelines set out in the Privacy Act 1993 (see Privacy Commissioner's comment in paragraph 34);
- relevant international standards and obligations; and
- *Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation*, published by the Legislation Advisory Committee.

28 I also confirm that under section 96N of the Privacy Act 1993 I am satisfied that:

- a) the AISA will facilitate the provision of public services
- b) the type and quantity of personal information to be shared under the agreement are no more than is necessary to facilitate the provision of those public services
- c) the agreement does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy
- d) the benefits of sharing personal information under the agreement are likely to outweigh the financial and other costs of sharing
- e) the public submissions made in respect of the AISA have been considered (as per paragraph 7)
- f) any potential conflicts or inconsistencies between the sharing of personal information under the AISA and any other enactment have been identified and appropriately addressed.

Regulations Review Committee

29 s 9(2)(h)




Certification by Parliamentary Counsel

30 Parliamentary Counsel has certified that the attached Order is correct.

Regulatory Impact Analysis

31 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 Privacy Impact Assessment has been developed alongside the AISA.

Consultation

- 32 Consultation is a key part of the AISA development process. It includes the government agencies and persons or organisations that represent the interests of the parties involved, including individuals whose information is to be shared.
- 33 The Office of the Privacy Commissioner and Customs have been consulted throughout this process.
- 34 The Privacy Commissioner has provided the following comment – “the Privacy Commissioner has been consulted and is pleased with the level and nature of engagement for this AISA. He considers the AISA does not unreasonably impinge on the privacy of individuals and contains adequate safeguards to protect their privacy. s 9(2)(f)(iv)
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- 35 The Department of the Prime Minister and Cabinet (Policy Advice Group) has been informed.
- 36 Public consultation was also undertaken through the release of a discussion document and a draft AISA. The public was invited to give submissions through several channels, including the SuperSeniors newsletter and emails. MSD received a total of 62 submissions, with 24 of these submissions being deemed out of scope. Of the remaining 38 submissions, 34 of these supported the AISA.

Publicity

- 37 The Order will be notified in the *New Zealand Gazette* before it takes effect.
- 38 Following enactment, a copy of the AISA will be available on <https://www.msd.govt.nz/> and <https://www.customs.govt.nz/>.
- 39 I propose to proactively release this Cabinet paper (as required by CO (18) 4).

Recommendations

- 40 It is recommended that the Cabinet Legislation Committee:
- 1 **note** that on 3 December 2018, Cabinet:
 - 1.1 agreed 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
 - 1.2 authorised 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
 - 1.3 agreed 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 (CAB-18-MIN-0590 refers)

- 2 **note** that the Minister of Customs and the Minister for Social Development agreed to several minor and technical changes to the Approved Information Sharing Agreement due to further feedback from agencies. These changes remove unnecessary content and help to clarify the purpose of the Approved Information Sharing Agreement
- 3 **note** that an Order in Council is required under section 96J of the Privacy Act 1993 to give effect to the Approved Information Sharing Agreement
- 4 **authorise** the submission to the Executive Council of the Order in Council titled '*Privacy (Information Sharing Agreement between Ministry of Social Development and Customs) Order 2019*'
- 5 **note** that the Order in Council will come into force 28 days after the Order is notified in the Gazette.

Hon Carmel Sepuloni
Minister for Social Development

Authorised for lodgement