



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

Reducing Debt for MSD clients travelling overseas

Privacy Impact Assessment

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What is a Privacy Impact Assessment?

Privacy Impact Assessments (PIAs) look at the way privacy is processed in new initiatives or projects and encourage conversations on the mitigation of any identified risk. PIAs are simply good business practice and provide a privacy “health check” on an initiative or project. A PIA is not a legal compliance checklist; it is intended as an assurance and risk-management tool, to support sound and sustainable policy and practice developments.

PIAs are undertaken to:

- identify and manage risks, particularly those to individuals – addressing risks to an initiative is an essential component of overall project management and, in this case, the identification of the project’s privacy impacts. Where negative privacy impacts are unavoidable, a PIA can provide clarity as to the business need that justifies them;
- avoid unnecessary costs – conducted early in a project, a PIA will identify problems that can be more easily avoided than if discovered at a later stage;
- identify inadequate solutions – privacy by design at the earliest project stages avoids ‘work-arounds’ to remediate problems discovered too late;
- enhance trust, confidence and integrity of MSD’s systems - by designing privacy protection measures at the beginning of a project will avoid initiatives progressing with privacy flaws which may impact on affected individuals and may eventually attract negative media and public attention;
- meet and exceed privacy and legal requirements – a review of compliance with privacy legislation will provide confidence, internally and externally, that the information privacy principles in the Privacy Act have been accommodated.

The purpose of this document is to comprehensively consider how this initiative/project will affect the privacy of individuals and how we achieve our objectives whilst also protecting that privacy. The PIA process also places particular emphasis on how any privacy impacts will be mitigated by MSD. It is also an opportunity to discuss privacy-enhancing approaches. Note that the PIA is intended to focus on the impacts on individuals, and is not a document in defence of the policy and/or initiative.

Glossary

Term	Meaning
AISA	Approved Information Sharing Agreement
Current Match	The information matching process originally authorised under section 280 of the Customs and Excise Act 1996 and continuing in operation after the passage of the Customs and Excise Act 2018
Customs	New Zealand Customs Service
IMA	Information Matching Agreement
MSD	Ministry of Social Development

NZS/VP	New Zealand Superannuation/Veterans Pension
PIA	Privacy Impact Assessment
WEP	Winter Energy Payment

Why has MSD completed a PIA?

The Ministry of Social Development (MSD) wants to ensure the process it follows before suspending payments does not create unnecessary debt for clients when they travel overseas.

Working-age beneficiary clients are generally not eligible to receive payments while they are overseas. These clients must advise MSD about their travel plans before leaving New Zealand. This is so their benefit eligibility can be properly assessed before they leave (there are certain circumstances in which payments can continue while the client is overseas).

New Zealand Superannuation (NZS) and Veterans Pension (VP) clients do not have an obligation to contact MSD before travelling, unless they plan to be overseas for more than 26 weeks or receive supplementary assistance (e.g. the Winter Energy Payment, Accommodation Supplement, Temporary Additional Support and Disability Allowance). These clients, as well as working-age non-beneficiary clients, are generally eligible to continue receiving supplementary assistance for 28 days while overseas.

MSD currently receives arrival/departure information from the New Zealand Customs Service (Customs) and suspends working-age beneficiary client payments on the day after a client leaves New Zealand.¹

However, for the supplementary assistance payments NZS/VP and working-age non-beneficiary clients receive, the law requires MSD to follow a particular process before suspension. For clients who have not told MSD about their travel plans, their payments continue while this process is carried out, so clients are over-paid and come home to a debt they must pay back to MSD.

Coming home to a debt is both frustrating and inconvenient for clients. MSD wants to ensure the process it follows before suspending supplementary assistance payments does not result in clients incurring unnecessary debt when they leave the country, even if they don't tell MSD they are leaving.

MSD proposes to ensure it has the legal authority required to suspend payments immediately by entering into an Approved Information Sharing Agreement (AISA) with Customs. This will align MSD's process for supplementary assistance payments for all clients with the current process for main benefits. 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 principal purpose of this PIA is to consider the privacy impacts of this proposed arrangement.

¹ During consultation on this PIA, a question arose as to whether, in relation to supplementary assistance payments, this practice aligns with MSD's legal authority. MSD intends to fully assess this issue and any potential impacts on clients. Note that the proposed Approved Information Sharing Agreement cannot alter the statutory criteria for eligibility. It can only authorise the information sharing and suspension of payments once eligibility expires.

Version 2 of the PIA: the problem with section 308 of the Customs and Excise Act 2018

Since the original PIA was completed, some unexpected issues have arisen as a result of the way section 308 of the Customs and Excise Act 2018 is drafted.

The parties intended section 308 to be a straight re-enactment of section 280 of the Customs and Excise Act 1996, under which the current information match process was authorised.² However, they have discovered that section 308 is inadvertently drafted the wrong way round.

The current process is that Customs sends all information about arrivals and departures to MSD, MSD matches that information against its client records to verify its clients' entitlement to benefits and manage those entitlements accordingly.

In contrast, section 308 states that MSD will send a list of its clients to Customs, Customs will match the information against its arrival and departure records, and inform MSD about any clients who have crossed the border.

Neither Customs nor MSD wish to conduct the match in the way that section 308 permits. Among other considerations, sharing information as set out in section 308:

- would require resource-intensive and costly changes to Customs' existing IT systems
- would create a major change to the privacy rights of MSD clients, since Customs would collect information about those clients that it has no other reason to hold – and new methods would therefore need to be devised to mitigate the resulting privacy risks.

If the Customs and Excise Act were completely silent, and this was a new information sharing arrangement, there is no doubt that the parties could develop an AISA to authorise that information sharing for the stated purposes. As it is, the error in section 308 has created some confusion, as an AISA generally has to align with any primary legislation.

However, the parties have decided to proceed on the basis that:

- section 308 is fundamentally different from what they do now, and they do not wish to take advantage of the way in which it would permit them to share information
- instead they will create an AISA to govern their information sharing, and which will allow them to immediately suspend payments, so that clients do not incur unnecessary and inconvenient debt.

That is, MSD and Customs intend to proceed in exactly the way described in the first version of this PIA and in the draft AISA which they distributed for consultation. They will share information in the way they do now, but suspend payments immediately rather than allowing a 10 day period for comment (during which time a debt is accumulating). However, at the time the payment is

² The existing match continues to be authorised by the savings provision in the Customs and Excise Act 2018, schedule 1, clause 20(1); the current drafting of section 308 does not affect its validity.

suspended, MSD will let the client know what it has done, so that the client has the opportunity to challenge the decision and have any error corrected.

Scope and Assumptions

This PIA has been prepared to assess the potential impacts on client privacy of removing the requirement for a notice period before suspending supplementary assistance payments.

In addition, the new version of the PIA considers whether there are any additional privacy risks created by developing an AISA (as described), rather than conducting the information sharing under section 308 of the Customs and Excise Act 2018.

While the following topics are covered at a high level, there is no detailed privacy analysis of them as there is no material change to them under this proposal:

- The current sharing performed under the Arrivals/Departure Information Matching Agreement, including the type of information shared, the method of transfer or the intended use of the information. The terms of the current agreement will be transferred into the new AISA without change.
- The adverse action process allowable under s103(1A) of the Privacy Act, which will be transferred into the new AISA without change.

Background/Context

Since 1992 Customs has shared information with MSD under an Information Matching Agreement (IMA), authorised by section 280 of the Customs and Excise Act 1996.

The current IMA, known as the “Arrivals/Departures Match”, allows Customs to give MSD information about travellers arriving in/departing from New Zealand on a daily basis. This information includes the travellers’ full name, date of birth, gender, travel document number and flight details.

MSD matches the full name and date of birth against its client database to identify which travellers are also MSD clients. Where MSD is satisfied there is a match,³ it uses the other information for the purposes set out below:

- to verify the entitlement or eligibility of a person to or for any benefit;
- to verify the amount of any benefit to which any person is or was entitled or to which any person was or is eligible; and
- to recover debts due to the Crown in relation to benefits.

The Arrivals/Departures Match is important because working-age beneficiary clients are generally not eligible to receive payments while overseas and there are limits on how long a NZS/VP or working-age non-beneficiary client can be overseas before their entitlement to a particular payment ends.

³ See discussion below and Appendix 1 re “match levels”

When a client in receipt of main benefit notifies MSD of their travel plans and has an acceptable reason⁴ to keep getting their main benefit, MSD will continue to pay this and their supplementary assistance. Where a client in receipt of a main benefit tells us before they leave NZ but their situation means they are not eligible to continue to receive their main benefit while they are absent from New Zealand, their supplementary assistance can still continue to be paid (where they continue to be eligible for it) for 28 days.

However, where a client does not advise MSD prior to leaving NZ, MSD will immediately suspend their payments (main benefit and any supplementary assistance) on the day after they leave New Zealand. This is possible due to the information received from Customs and an exception to the process MSD would otherwise have to follow before suspending a payment. This exception is found in section 103(1A) of the Privacy Act, but does not apply to all payments made by MSD.⁵

If a NZS/VP or working-age non-beneficiary client does not notify MSD of their travel plans, MSD must follow the process set out in the Privacy Act before suspending any payments they receive. This process requires MSD to send clients a letter once a discrepancy has been found (i.e. a client has not returned to New Zealand within the required timeframe) advising them of MSD's intention to suspend their payment(s) and giving them 10 days to respond to MSD before that action is taken. This process is called the "adverse action process" and the time given to clients to contact MSD is called the "notice period". MSD must continue to make payments during the notice period, which leads to clients coming home to a debt.

The purpose of this process is to act as a safeguard. It gives clients the opportunity to tell MSD the information it is relying on is inaccurate and their payments should not be suspended.

In reality, the Arrivals/Departures Match, which has been operating for over 25 years, has a high rate of accuracy and very few clients dispute the actions MSD takes as a result of the information it receives from Customs.⁶

The impact of client debt created by payments continuing during the notice period has been minimal due to the relatively low number of NZS/VP and working-age non-beneficiary clients receiving supplementary assistance payments who travel overseas. However, the introduction of Winter Energy Payment, to which all NZS/VP clients are eligible, has significantly increased the number of people affected.

In July 2018, as part of the Ministry's Families Package, a new supplementary payment called the Winter Energy Payment (WEP) was established. WEP helps people to heat their homes by increasing the funds available to them over the winter months.

Clients don't need to apply to receive the payment. It is paid automatically to all MSD clients on a main benefit, NZS or VP during the winter months of May to September.⁷ Clients can choose to opt

⁴ These are set out in section 77 of the Social Security Act 2018 and the Social Security (Effect of Absence of Beneficiary from New Zealand) Regulations 2013

⁵ As noted above, MSD is currently assessing its reliance on this section in relation to immediately suspending beneficiary client supplementary assistance. While the policy intent in this area is clear (to suspend all payments at once), it appears the legislation as currently drafted may not reflect that intent. MSD's intention is for the AISA to ensure the current practice is well supported from a legal perspective.

⁶ The accuracy of the match is discussed in more detail below.

⁷ Payments started in July this year.

out of the payment, but the aim is to give people more money to help them heat their homes during winter.

Because of the existing limitation on receiving payments while working-age beneficiary clients are outside of New Zealand, the WEP travel restrictions have had the greatest impact on NZS/VP clients.

To maintain eligibility for WEP, NZS/VP clients must not be away from New Zealand for more than 28 days in a row during the winter period. This is similar to the existing rules for other supplementary assistance, such as Accommodation Supplement, Temporary Additional Support and Disability Allowance.

The introduction of WEP has increased the number of NZS/VP clients eligible to receive supplementary assistance by more than 350,000 people.

Many of the approximately 500,000 NZS/VP clients who receive WEP are not used to contacting MSD prior to shorter periods of international travel.

Since WEP was introduced in July 2018, approximately 9,500 MSD clients have incurred a debt of, on average, \$36 while out of the country because of the process MSD must follow before suspending payments. This equates to a total of approximately \$340,000 of client debt that could have been avoided by removing the notice period requirement.

The debt must be paid back and this is causing a high level of frustration and inconvenience for clients on their return home and has led to approximately 60 client complaints so far.

In particular, clients have told MSD:

- *“it was something of shock to learn that I needed to tell the Ministry that I would be away for more than [sic] 28 days without a penalty and the need to pay back on my return”*
- *“if MSD want to be gnarly and stupid and say that well look we are going to give you some energy payments and in the next breath say well if you are away we are going to ping you”*
- *“people have to live and having a letter like this shoved down your throat 3 days after you get back, how crazy is that?? I'm angry, incredibly angry”*
- *“I didn't realise that big brother was looking over my shoulder after working all my bloody years”*
- *“I've worked all my bloody life and you know you get to superannuation age and you got big brother looking over your shoulder saying how you're getting more or you're not getting enough or you're getting too much or some bloody thing”*
- *“they told us you don't need to ring us unless you are going to be out of the country more than 26 weeks”*

While the issue of unnecessary debt created by the notice period was highlighted by the introduction of WEP, the creation of unnecessary debt is an issue across all of MSD's client groups. MSD intends to use this opportunity to standardise MSD's practice for all supplementary payments to reduce the chance of coming home to a debt for all clients.

Standardisation of the practice through an AISA will involve a change for NZS/VP and working-age non-beneficiary clients and a strengthening of the legal basis for the current practice for working-age beneficiary clients.

No new privacy risks as a result of using the AISA as authorisation rather than sharing under section 308 of the Customs and Excise Act

It is not practicable within the timeframes required to redraft section 308 of the Customs and Excise Act so that it correctly reflects the way in which the parties share information, however s.308 will be amended as soon as possible to describe the data match correctly.

Nor is it desirable to change the current information sharing to fit with what section 308 allows. To do so would require substantial and costly redesign of systems and processes. Also, sharing under section 308 would require MSD to supply a list of all its clients to Customs on a daily basis. Even if few details about those clients were provided, this would create new and potentially substantial privacy risks that would need to be assessed and mitigated.

It is also undesirable to continue to share information under the existing agreement without changing the requirement to give clients notice before taking adverse action. Clients are incurring debt, which is at best inconvenient and at worst may result in hardship. This is the very problem that the proposed AISA was designed to resolve, and on which the public was consulted.

Customs and MSD have therefore decided to continue with their original proposal to use the AISA to provide for sharing arrival and departure information.

That AISA will almost entirely reflect the current information sharing. In particular Customs and MSD will share the same information, for the same purposes, and with the same types of safeguards. The only material change is that the AISA will include a new feature permitting immediate suspension of most payments once entitlement expires (with clear exceptions for New Zealand Superannuation, Veterans Pension and Student Allowance).

As a result, the only new privacy issues (already canvassed during consultation) are those raised by immediate suspension of payments. The rest of this PIA focuses on a discussion of those risks and the steps necessary to mitigate them.

Moving the legal authorisation for the information sharing to an AISA (rather than conducting it as an information match) does not in itself create any new privacy risks either for travellers arriving in or departing from New Zealand, or for MSD clients.

How accurate is the current Match?

Over the last five years to 30 June 2018, an average of 64,722 letters of adverse action have been sent each year across the Arrivals/Departures match programme. Of those, an average of 67.6, or 0.1% of letters sent, have been successfully challenged.

The part of the Arrivals/Departure match where payments are already immediately suspended is even more accurate. Over the past five years to 30 June 2018 an average of 53,374 letters of adverse

action have been sent each year. Of those, an average of 11.8, or 0.02% of letters sent, have been successfully challenged.

It is important to note that, while adverse action letters have been compared to successful challenges to describe accuracy of the match, not all challenges relate to an inaccuracy in the match itself. This means the match is likely more accurate than described above.

How much debt could the change avoid?

To illustrate the difference immediate suspension makes, in the 2017/2018 year, only approximately \$190,000 of overpayments were established for payments suspended immediately,⁸ without a notice period, compared to over \$2.3 million of over payments that were established for those subject to the notice period.⁹ While the change will not eliminate all of this debt, the opportunity to reduce it is clear.

In relation to the proposed change, MSD has considered how the overall average match accuracy could have affected this year's creation of WEP debt if MSD had suspended immediately, without applying the required notice period. Applying the average of 0.1% of successful challenges over the last five years, had MSD suspended WEP immediately without applying the required notice period this year, MSD could have established a total of less than \$400 of debt incorrectly. In comparison, MSD could have avoided creating at least \$340,000 debt in the remaining 99.9% of cases.

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 WEP debt could be incurred will be two months longer.

Adverse Action Process

Section 96Q of the Privacy Act 1993 requires parties to an 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 individuals 10 Working Days to dispute the correctness of the information before any adverse action is taken against them.

A similar requirement exists in relation to Information Matching Agreements and is currently applied by MSD before suspending supplementary payments for NZS/VP and working-age non-beneficiary clients.

Section 96R of the Privacy 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.

It is this process that is a major cause of debt when clients travel. MSD proposes to dispense with the notice requirement before suspending supplementary payments. Both the current process and the proposed new process are set out below.

⁸ This debt mostly relates to the pay-cycle and cannot be avoided.

⁹ This debt includes NSZ/VP debt, which will not be affected by the proposed changes.

Current process

To meet the obligations under the Privacy Act, the current process MSD follows before suspending NZS/VP and working-age non-beneficiary supplementary assistance payments is:

1. Client leaves New Zealand and MSD receives travel information from Customs
2. MSD identifies client has left New Zealand¹⁰
3. At day 29, MSD identifies client has been out of New Zealand for more than 28 days using information received from Customs.
4. MSD sends a letter to tell the client they have been identified as being out of New Zealand for more than 28 days and, if they do not contact MSD in the next 10 days, their payments will be suspended.
5. At day 39, if the client has not contacted MSD and/or has not returned to New Zealand, MSD suspends their payments and sends the client a letter to advise them of this.
6. An overpayment is created (due to the notice period and possibly pay cycles¹¹) which must be repaid to MSD. A further letter is sent to the client to advise them of this.
7. Client comes home to find letters and must repay debt.

Proposed new process¹²

MSD proposes to change the process it follows before suspending all supplementary assistance payments¹³ by removing the 10 day notice period currently required before suspending payments:

1. Client leaves New Zealand and MSD receives travel information from Customs
2. MSD identifies client has left New Zealand¹⁴
3. If the client has not returned to New Zealand, at day 29, MSD suspends the client's payments and sends a letter to advise them of this.
4. Client comes home and has no debt to pay for the notice period.¹⁵

Privacy Analysis

A high-level privacy analysis of the current matching programme is set out below, followed by a more detailed analysis of the impacts of removing the notice period from the adverse action process in relation to supplementary payments.

High-level privacy analysis: Current matching programme

Creating an AISA to replace the current matching programme does not, in itself, create privacy risk. In fact, the process required to create/amend an AISA is seen by many to be as transparent and robust from a privacy perspective as Information Matching Agreements (IMAs).

¹⁰ The safeguards in place to ensure MSD has identified the correct client are discussed below.

¹¹ The client may have a small debt caused by pay cycle – see explanation in FAQ 2 of the Discussion Document.

¹² This process aligns with the current process MSD follows in relation to working-age beneficiary clients

¹³ MSD intends the AISA to standardise the process for supplementary payments across all clients, including strengthening the legal basis for its current practice in relation to working-age beneficiary clients.

¹⁴ The safeguards in place to ensure MSD has identified the correct client are discussed below.

¹⁵ The client may have a small debt caused by pay cycle – see explanation in FAQ 2 of the Discussion Document.

Accordingly, MSD sees only benefits to transferring its sharing with Customs, currently performed under an IMA, into an AISA.

A high-level privacy analysis of the existing programme to be transferred to the AISA follows:

Principle 1: Purpose of collection of personal information

Customs currently collects personal information for the purposes of creating and maintaining a record of all people who enter and leave the country. This collection is necessary for a lawful purpose connected to Customs' functions.

MSD collects personal information from Customs for the purposes of:

- a. verifying the entitlement or eligibility of a person to or for any Benefit;
- b. verifying the amount of any Benefit to which any person is or was entitled or for which any person is or was eligible; and
- c. enabling the recovery of any debt due to the Crown in respect of any Benefit.

As entitlement and eligibility are directly linked to the client being present in New Zealand, the information received from Customs is necessary for these purposes.

This collection is necessary for a lawful purpose connected to MSD's functions.

There is therefore no breach of principle 1.

Principle 2: Source of personal information

Under the AISA, MSD will continue to collect personal information from Customs. Such action is inconsistent with the general rule in principle 2 to collect personal information directly from the person concerned.

While most clients have an obligation to advise MSD when they travel, it is MSD's experience that this only happens in a small percentage of cases meaning it is not reasonably practicable for MSD to rely solely on collecting this information directly from clients.

For the purpose of the AISA, principle 2 will be modified (by the Order in Council that approves the AISA), to confirm MSD can collect information from Customs rather than the individual concerned.

Principle 3: Collection of information from subject

MSD does not collect information directly from the individual concerned. The provisions of Principle 3 therefore have no application.

Principle 4: Manner of collection of personal information

MSD's collection of this information may be seen as intrusive, in breach of principle 4. However, MSD considers it to be reasonable in the circumstances given the public benefit of ensuring clients do not continue to receive payments they are not entitled to while overseas.

In relation to individuals who travel, but are not clients of MSD, there are safeguards in place to ensure their information is stored securely, access to it is limited to staff who require it and it is not used by MSD.

Principle 5: Storage and security of personal information

In line with existing practices and requirements under the IMA, MSD will continue to take all reasonable precautions to protect personal information in order to keep it secure, with current safety measures remaining in place. As existing security policies and procedures will remain in place, MSD will continue to comply with Principle 5.

In particular, the information is transferred from NZ Customs via online secure https to MSD with an encryption level that is to New Zealand Information Security Manual (NZISM) standard.

A standard process is in place for provisioning access to the match data and only authorised staff (up to seven people) have access to the system that holds match data.

Principle 6: Access to personal information

MSD will follow its usual process for responding to requests for under principle 6.

Principle 7: Correction of personal information

MSD will follow its usual process for responding to requests under principle 7.

Principle 8: Accuracy, etc., of personal information to be checked before use

Principle 8 is the key principle relevant to the proposal. It will be explored in detail below.

Principle 9: Agency not to keep personal information for longer than necessary

MSD will comply with Principle 9 by holding personal information only for so long as it is required and in accordance with the relevant provisions of the current IMA until a new MOU is drafted to replace it. The current IMA requires:

- MSD to destroy match information 60 days after an identified match, unless a decision has been made to take adverse action
- MSD to destroy back-up of raw data within 30 weeks of the match being successfully loaded into its systems

Principle 10: Limits on the use of personal information

Customs is disclosing information to MSD, so principle 10 has no application to Customs' role in this arrangement.

MSD will only use the information provided by Customs for the purposes it was collected by MSD:

- Verify the entitlement or eligibility of a person to or for any benefit;
- Verify the amount of any benefit to which any person is or was entitled or to which any person was or is eligible; and
- Recover debts due to the Crown in relation to benefits.

The information sharing will therefore occur in line with principle 10 of the Privacy Act; it is not necessary to exempt MSD from complying with principle 10.

However, there is some risk of confusion for clients since MSD is using information to which it would not normally have access in the course of its dealings with them. MSD would therefore prefer that

the AISA should provide an exemption from principle 10, so that clients are specifically alerted to the fact that MSD will be using information in a way that they might not have expected. It does not change the fact that MSD can only use the information for the purposes permitted in the AISA.

Principle 11: Limits on disclosure of personal information

Customs currently discloses personal information pursuant to an authorised information matching provision. For the purpose of the AISA, principle 11 will be modified (by the Order in Council that approves the AISA), to enable Customs to share information with MSD without breaching principle 11.

Principle 12: Unique identifiers

The match is conducted using name and date of birth only. While travellers' passport numbers are supplied by Customs, they are not used as a part of the matching process and are not assigned to clients by MSD. Customs also provides a PAX Movement ID for each record. This is to enable MSD and Customs to easily communicate about a particular record and will not be assigned to clients by MSD. No unique identifiers will be generated or assigned as a result of the new AISA. This proposal complies with Principle 12.

Detailed privacy analysis: Removing the notice period

In relation to the proposal to remove the 10 day notice period currently required before suspending supplementary assistance payments, the only relevant Information Privacy Principle in the Privacy Act 1993 is IPP 8, which states:

An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.

While the proposal of removing the notice period before suspending payments reduces the privacy protection for clients, MSD has reasonable cause to believe the impact will be minimal as the information it receives from Customs is highly accurate and MSD has processes in place to ensure the information is matched to the correct client.

The key risks in relation to principle 8 are:

- Customs supplying inaccurate information to MSD; and
- MSD identifying the wrong client.

These risks are mitigated by processes followed by MSD once the information has been received.

In particular, MSD treats the information it receives from Customs differently depending on how closely it matches information held in MSD's client databases.

What this means is that when MSD receives information from Customs it is compared (or “matched”) against MSD’s client systems and assigned what is known as a “match level” from 1 to 13.¹⁶

A match level of 1 tells MSD there is a perfect match – i.e. the first name, middle name, last name and date of birth are exactly the same in both systems. Match level 1 is acted on immediately. Match Group 2 (consisting of levels 2-8) have only one data-point difference and Match Group 3 (levels 9-13) have two data-point differences.

MSD ignores Match Group 3 and all records that do not fall within any of the three groups (i.e. there are three or more data-point differences between the information), Records from Match Group 2 are subject to further checks to ensure MSD has the right client before any action is taken.

These further manual checks involve an MSD staff member checking MSD records for information to confirm the correct client has been matched and to check if the client has advised MSD of their travel. This process includes looking for a passport held, notes recorded, alias names and comparing other secondary verifying information received from Customs with MSD records. If the correct client has been matched and has not advised MSD of their travel, MSD will commence the adverse action process. If the incorrect client has been matched or the client has advised MSD of their travel, the adverse action process is not necessary.

While there remains a small risk a payment may be suspended incorrectly, the majority of clients will be able to contact MSD prior to their next payment date. When MSD is contacted by a client that has been incorrectly matched an assessment will be made identifying any payments the client has missed due to the suspension.

Where a payment has been missed, a corresponding payment can usually be made to the affected person’s bank account overnight, in addition to restarting the regular benefit payments. In such cases MSD will cover any costs incurred by the affected party, for example bank fees and penalty payments. Once these costs have been identified and agreed, payment will be made into the client’s bank account overnight.

Also, the proposed change relates to supplementary assistance payments only, not NZ Superannuation or Veterans Pension. In the very rare case an incorrect suspension is made, the process change would not affect the client’s main income source.

Finally, MSD proposes to monitor the process change closely and review it after two years, to ensure it is not resulting in an unacceptable number of payments¹⁷ being suspended incorrectly.

Other Considerations

The application of the notice period, while compliant with the Privacy Act and the Social Security Act, is resulting in a high number of clients coming home to a debt. This is a significant consideration for MSD.

¹⁶ Match Levels are set out in Appendix 1 of the PIA.

¹⁷ See discussion below re “acceptable numbers”.

The purpose of the adverse action process is to protect individuals. However, in this case, MSD can clearly see from the statistics of adverse action letters sent vs successful challenges of payment suspensions, the notice period is actually causing far more clients a disadvantage than clients it is helping.

MSD has considered a number of other options, such as sending emails to clients instead of letters, a shorter notice period or contacting the client ahead of day 28, but all presented significant operational challenges and none actually solve the problem as well as removing the notice period.

In considering the benefit to clients in not coming home to a debt against the privacy protection afforded by the notice period, MSD has explored a risk tolerance level so that, it can have a baseline when reviewing the change to ensure it is not resulting in an unacceptable number of payments being suspended incorrectly.

Communications Strategy

Prior to the AISA taking effect, MSD will take measures to inform clients of the changes and how they could be affected. Although the exact methods of communication have not yet been finalised, they may include:

- emails to clients
- emails to stakeholder groups/advocates
- story in Super Seniors newsletter
- updating MSD and Work and Income websites,
- featuring the changes as a “news story” on the Work and Income website
- material available at service centres
- updating current information on the [Safetravel](#) website (Work and Income section)
- updating current information on www.govt.nz (Before you travel section)

Risk Assessment

The table below sets out the risks identified through the privacy impact assessment and the risk exposure after considering the effect of relevant mitigations. In doing so, MSD has applied a tolerance level of 1% of successful challenges compared to adverse action letters sent. MSD arrived at this number by reviewing successful challenges from previous years of the match operation. This is a high estimate and it is expected the actual number of payments suspended incorrectly will be lower than 1%.

Risk Ref	Privacy Risk Description	Inherent Risk Rating (consequence /likelihood)	Mitigations	Residual Risk Rating (consequence /likelihood)	Rationale for risk rating
R01	<p><u>Inaccurate travel information used</u> Risk: MSD receives incorrect travel information from Customs and relies on that information, without checking it with clients first, to suspend a supplementary assistance payment incorrectly. Effect: client does not receive supplementary assistance payment they are entitled to.</p>	<p>Medium (Moderate/ Unlikely*)</p>	<p>M01 – Known Accuracy M03 – Reversibility M04 – Isolated Impact M05 – Monitor/Review</p>	<p>Low (Moderate/ Rare*)</p>	<p>Despite mitigations, the consequence rating stays at Moderate because not paying correct entitlement breaches MSD's legal obligations.</p>
R02	<p><u>Inaccurate identity verification</u> Risk: MSD receives correct travel information from Customs, but identifies the wrong client in its system and relies on that information, without checking it with clients first, to suspend a supplementary assistance payment incorrectly. Effect: client does not receive supplementary assistance payment they are entitled to.</p>	<p>Medium (Moderate/ Unlikely*)</p>	<p>M02 – Match Levels M03 – Reversibility M04 – Isolated Impact M05 – Monitor/Review</p>	<p>Low (Moderate/ Rare*)</p>	<p>Likelihood is reduced to Rare through mitigations as there is a less than 5% chance of more than 1% of payments being suspended incorrectly in the next 12 months.</p>

R3	<p><u>Risk associated with the wording of section 308</u></p> <p>Risk: The inadvertent error in the drafting of section 308 of the Customs and Excise Act creates legal confusion about whether any AISA (as delegated legislation) can only mirror its terms, or whether an AISA can provide a separate authorisation to share</p> <p>Effect: Potential for disallowance of AISA</p>	<p>Medium</p> <p>(Moderate/ Unlikely)</p>	M06 – Create AISA as clearly separate authority	<p>Low</p> <p>(Moderate/ Rare)</p>	<p>An AISA can normally provide a distinct legal authority for information sharing, but it should not contradict any applicable primary legislation.</p> <p>Using an AISA is best result for privacy. However, this is a unique and unexpected situation and a degree of legal confusion remains. Only amendment or repeal of s308 would remove that legal risk altogether (to be done as soon as possible).</p>
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*The likelihood rating is based on the risk of MSD incorrectly suspending a payment in relation to more than 1% of positive matches.

Mitigations

Mitigation Ref	Mitigation Name	Mitigation Description	Mitigation Reduces:
M01	Known Accuracy	The knowledge and experience gained over the 25 years the match has been running means MSD has good reason to believe the information it receives from Customs is accurate and can be relied upon.	Likelihood
M02	Match Levels	MSD treats the information it receives from Customs differently depending on how closely it matches information held in MSD's client databases.	Likelihood
M03	Reversibility	As the payments are suspended, rather than cancelled, they can be resumed by MSD easily in the rare case a payment is suspended incorrectly. Clients simply need to call MSD or go to their local service centre and usually payment can be resumed the same day.	Consequence
M04	Isolated Impact	The change relates to supplementary assistance payments only, not NZ Superannuation or Veterans Pension. In the very rare case an incorrect suspension is made, the process change would not affect the client's main income source.	Consequence
M05	Monitor/ Review	MSD proposes to monitor the process change closely and review it after two years, to ensure it is not resulting in an unacceptable number payments being suspended incorrectly.	Likelihood
M06	Create AISA as separate authority	Establish the AISA as proposed to govern the information sharing.	Likelihood

Completion

I confirm that a robust process has been followed and this Privacy Impact Assessment is an accurate representation of the privacy risks associated with this project.

This confirmation is on the basis that the information provided in this Privacy Impact Assessment is an accurate reflection of the project and that the controls and mitigations will be implemented into the design.

Name	Role	Date	Signature
Pennie Pearce	Chief Privacy Officer		

Acceptance

I confirm that the information provided in this Privacy Impact Assessment is an accurate reflection of the project. The controls and mitigations will be implemented into the design.

Name	Role	Date	Signature
s 9(2)(a)	Project Manager		

I accept the privacy risks have been satisfactorily identified and addressed in this Privacy Impact assessment and accept any residual risk.

Name	Role	Date	Signature
Warren Hudson	General Manager Integrity and Debt		

Appendix 1: Match Levels

Compared Data Items or Portions of Data Items	Match Level Number
Group 1	
MSD & Customs Surnames MSD & Customs First Names MSD & Customs Second Names MSD & Customs Date of Birth	1
Group 2	
MSD & Customs Surnames MSD & Customs First Names up to two letters out MSD & Customs Second Names MSD & Customs Date of Birth	2
MSD & Customs Surnames MSD & Customs First Names on soundex MSD & Customs Second Names MSD & Customs Date of Birth	3
MSD & Customs Surname MSD & Customs First Names MSD & Customs Date of Birth	4
MSD & Customs Surnames MSD & Customs First Names MSD & Customs Second Names MSD & Customs any two sections of the Date of Birth	5
MSD & Customs Surnames same first four letters, up to two letters out on rest of surname MSD & Customs First Names MSD & Customs Second Names MSD & Customs Date of Birth	6
MSD & Customs Surnames same first four letters, soundex on rest of surname MSD & Customs First Name MSD & Customs Second Names MSD & Customs Date of Birth	7
MSD & Customs Surnames MSD First Name & Customs Second Name MSD Second Name & Customs First Name MSD & Customs Date of Birth	8