



## Privacy (Information Sharing Agreement between Inland Revenue and Ministry of Social Development) Order 2017

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 31st day of July 2017

Present:

Her Excellency the Governor-General in Council

This order is made under sections 96J to 96L of the Privacy Act 1993 on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Revenue made in accordance with section 96N of that Act.

### Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Information sharing agreement approved	5
<i>Parties and lead agency</i>	
5 Parties to agreement and designation of lead agency	5
<i>Purposes for which information may be shared</i>	
6 Purposes for which information may be shared	5
<i>Nature of modifications</i>	
7 Modification of information privacy principle 2 (source of personal information)	6
8 Modification of information privacy principle 11 (limits on disclosure of personal information)	6

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	<i>Public services that agreement facilitates</i>	
9	Public services that agreement is intended to facilitate	6
	<i>Description of personal information shared under agreement</i>	
10	Personal information that may be shared under agreement	6
	<i>How personal information shared under agreement may be used</i>	
11	How parties may use personal information	7
	<i>Adverse actions</i>	
12	Adverse actions	7
13	Procedure before adverse action taken	8
	<i>Miscellaneous</i>	
14	How to access agreement	10
15	Schedule 2A of Privacy Act 1993 amended	10
	<b>Schedule</b>	11
	<b>Amendment to Schedule 2A of Privacy Act 1993</b>	

## Order

### 1 Title

This order is the Privacy (Information Sharing Agreement between Inland Revenue and Ministry of Social Development) Order 2017.

### 2 Commencement

This order comes into force on 31 August 2017.

### 3 Interpretation

(1) In this order, unless the context otherwise requires,—

**Act** means the Privacy Act 1993

**agreement** means the information sharing agreement approved under clause 4

**assess** includes reassess and determine

**benefit** means—

- (a) a benefit within the meaning of paragraphs (a) and (b) of the definition of benefit in section 3(1) of the Social Security Act 1964; and
- (b) any other amount that is payable or may be paid under the Social Security Act 1964, including—
  - (i) a funeral grant that may be paid under section 61DB, 61DC, or 61DD of that Act; and
  - (ii) any special assistance grant that may be paid under any welfare programme approved under section 124(1)(d) of that Act

**contact information** means information that may be used to contact an identifiable individual or that individual's nominated representative, including names, email and postal addresses, and telephone numbers

**dependent child** has the same meaning as in section 3(1) of the Social Security Act 1964

**domestic relationship** means a current or previous relationship between an identifiable individual and another person who is or was—

- (a) the individual's spouse or partner; or
- (b) the child of the individual or of the individual's spouse or partner; or
- (c) the parent of the individual; or
- (d) any other family member of the individual; or
- (e) another person who ordinarily shares or shared a household with the individual

**employer** means a person who engages another person to do work under a contract of service or a contract for service

**identifying information** means information that identifies, or relates to the identity of, an individual, including names, aliases, and the date and location of the individual's birth and death

**information about employment** includes information about—

- (a) an individual's current or previous engagement in a contract of service or a contract for service; and
- (b) the employer's name, trading name, contact details, and IRD number; and
- (c) the name by which the employer knows or knew the individual; and
- (d) the date on which the individual started and ceased employment with the employer; and
- (e) details of the income that the individual earned with the employer and the period of payment; and
- (f) the individual's tax code for the period

**information about finances and income** means financial information about an individual, including—

- (a) the individual's bank account number; and
- (b) any debt due to the Crown resulting from the overpayment of any benefit or subsidy or the underpayment of tax; and
- (c) information about the income of that individual, including—
  - (i) salary and wages income; and
  - (ii) interest, dividends, and Maori authority distributions; and
  - (iii) business income; and

(iv) other taxable and non-taxable income

**information about social assistance** means, in relation to an individual who has received benefits or subsidies,—

- (a) information about the benefits and subsidies received by the individual, including the amount paid, recovery of over-payments, current and previous account status, entitlements, payment methods, and account balances; and
- (b) information about whether that individual has or had—
  - (i) 1 or more dependent children; and
  - (ii) a spouse or partner

**information about tax** means information about an individual's current or previous tax affairs, including tax class, tax year, tax paid, tax refunds, tax adjustments, and IRD number

**information privacy principle** means an information privacy principle in section 6 of the Act

**Inland Revenue** means the Inland Revenue Department

**IRD number** has the meaning given to tax file number by section 3(1) of the Tax Administration Act 1994

**lead agency** means Inland Revenue

**Maori authority** has the same meaning as in section YA 1 of the Income Tax Act 2007

**parent**—

- (a) means, in relation to an identifiable individual, that individual's mother, father, guardian, or step-parent; and
- (b) includes a person who is acting in the place of a parent

**party** means a party to the agreement under clause 5(1)

**personal information** has the same meaning as in section 2(1) of the Act

**Revenue Acts** means the Acts described in section 81(1C) of the Tax Administration Act 1994

**subsidies** means 1 or more of—

- (a) Working for Families tax credits payable under the Income Tax Act 2007 and the Tax Administration Act 1994; and
- (b) community services cards available under the Social Security Act 1964; and
- (c) student loans payable under the student loan scheme as defined in section 4(1) of the Student Loan Scheme Act 2011; and
- (d) student allowances payable under the Education Act 1989; and
- (e) child support payable under the Child Support Act 1991; and

- (f) income-related rent payable under the Housing Restructuring and Tenancy Matters Act 1992; and
- (g) social housing available under the Housing Restructuring and Tenancy Matters Act 1992

**tax obligations** means tax obligations arising under the Revenue Acts

**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

**Working for Families tax credit** has the meaning given to WFF tax credit in section MA 8 of the Income Tax Act 2007.

- (2) Any term that is used but not defined in this order has the same meaning as in Part 9A of the Act.

#### **4 Information sharing agreement approved**

- (1) The information sharing agreement described in subclause (2) is approved.
- (2) The agreement is the Information Sharing Agreement Between Ministry of Social Development And Inland Revenue Department made in July 2017.
- (3) The agreement comes into force on the day on which this order comes into force.

#### *Parties and lead agency*

#### **5 Parties to agreement and designation of lead agency**

- (1) The parties to the agreement are—
  - (a) Inland Revenue; and
  - (b) the Ministry of Social Development.
- (2) The lead agency is Inland Revenue.

#### *Purposes for which information may be shared*

#### **6 Purposes for which information may be shared**

The agreement authorises the sharing of personal information for 1 or more of the following purposes:

- (a) assessing eligibility for, and entitlement to, benefits and subsidies (in relation to applicants for, and current and past recipients of, benefits and subsidies):

- (b) assessing and enforcing any obligations related to benefits and subsidies, including recovering any associated debt (in relation to applicants for, and current and past recipients of, benefits and subsidies):
- (c) assessing and enforcing tax obligations, including recovering any associated debt:
- (d) registering new customers or updating customer contact information and identifying information (including in relation to taxpayers and applicants for, or current or past recipients of, benefits or subsidies).

*Nature of modifications*

**7 Modification of information privacy principle 2 (source of personal information)**

- (1) Information privacy principle 2 is modified in accordance with subclause (2).
- (2) It is not a breach of information privacy principle 2 for either party to collect personal information from the other party for 1 or more of the purposes in clause 6.

**8 Modification of information privacy principle 11 (limits on disclosure of personal information)**

- (1) Information privacy principle 11 is modified in accordance with subclause (2).
- (2) It is not a breach of information privacy principle 11 for either party to disclose personal information to the other party for 1 or more of the purposes in clause 6.

*Public services that agreement facilitates*

**9 Public services that agreement is intended to facilitate**

The public services that the agreement is intended to facilitate are—

- (a) the accurate and efficient assessment of eligibility for, and entitlement to, benefits and subsidies; and
- (b) the accurate and efficient assessment and enforcement of tax obligations, including recovering any associated debt; and
- (c) the accurate and efficient assessment and enforcement of obligations relating to benefits and subsidies, including recovering any associated debt.

*Description of personal information shared under agreement*

**10 Personal information that may be shared under agreement**

The following types of personal information may be shared under the agreement:

- (a) contact information:

- (b) identifying information:
- (c) information about domestic relationships, including—
  - (i) the current and previous names, aliases, contact details, and dates of birth of persons with whom an identifiable individual has or had a domestic relationship; and
  - (ii) in relation to any of those persons, information about employment, information about finances and income, information about social assistance, and information about tax:
- (d) information about employment:
- (e) information about finances and income:
- (f) information about social assistance:
- (g) information about tax.

*How personal information shared under agreement may be used*

#### **11 How parties may use personal information**

- (1) This clause applies to the use of personal information described in clause 10.
- (2) A party may use personal information for 1 or more of the purposes in clause 6.

*Adverse actions*

#### **12 Adverse actions**

- (1) This clause states the adverse actions that the parties can reasonably be expected to take as a result of the sharing of personal information under the agreement.
- (2) The Ministry of Social Development can reasonably be expected to take steps to—
  - (a) assess eligibility for, or entitlement to, benefits and subsidies that are applied for or received:
  - (b) assess whether obligations in relation to benefits and subsidies that are applied for or received have been met:
  - (c) enforce any unmet obligations in relation to benefits and subsidies that are applied for or received.
- (3) The steps referred to in subclause (2) may include (without limitation)—
  - (a) investigation:
  - (b) refusal to grant, or suspension or cessation of, or review or reassessment of entitlement to, a benefit or subsidy:
  - (c) debt recovery:
  - (d) prosecution.
- (4) Inland Revenue can reasonably be expected to take steps to—

- (a) assess whether tax obligations have been met:
  - (b) assess eligibility for, or entitlement to, subsidies that are applied for or received:
  - (c) assess whether obligations in relation to subsidies that are applied for or received have been met:
  - (d) enforce any unmet tax obligations or unmet obligations in relation to subsidies that are applied for or received.
- (5) The steps referred to in subclause (4) may include (without limitation)—
- (a) investigation:
  - (b) refusal to grant, or suspension or cessation of, or review or reassessment of entitlement to, a subsidy:
  - (c) reassessment of tax obligations (which may result in the requirement to pay a higher amount of tax):
  - (d) debt recovery:
  - (e) prosecution.

### **13 Procedure before adverse action taken**

- (1) In this clause,—
- (a) subclause (2) specifies the circumstance in which a party will (in accordance with section 96R(a)(ii)) not give notice (under section 96Q of the Act) of adverse action against an individual as a result of the sharing of personal information about the individual under the agreement; and
  - (b) subclause (3) specifies other circumstances in which Inland Revenue may (in accordance with section 96R(a)(ii)) dispense with the giving of notice (under section 96Q of the Act) of adverse action against an individual as a result of the sharing of personal information about the individual under the agreement; and
  - (c) subclause (5) specifies the procedure that a party must follow before taking adverse action against the individual in any circumstance where the party will not give or may dispense with the giving of notice (as specified in subclause (2) or (3)).
- (2) A party will not give notice of adverse action if,—
- (a) based on personal information shared, the party has reasonable grounds to suspect that a crime has been, is being, or will be committed; and
  - (b) the personal information shared is relevant to the party's decision making on preventative, investigative, or enforcement interventions related to that crime; and
  - (c) advance notice of an adverse action might defeat the purpose of the intervention.
- (3) Inland Revenue may dispense with the giving of notice of adverse action—

- (a) if—
    - (i) Inland Revenue identifies a discrepancy between the information shared and information supplied to Inland Revenue; and
    - (ii) the discrepancy is relevant to decision making on the suspension of a payment to an individual of all or part of an interim instalment of a tax credit under any of subparts MA to MF and MZ of the Income Tax Act 2007; and
    - (iii) the adverse action proposed is suspension of that payment; or
  - (b) if paragraph (a) applies and—
    - (i) Inland Revenue decides to suspend a payment to an individual of all or part of an interim instalment of a tax credit under any of subparts MA to MF and MZ of the Income Tax Act 2007; and
    - (ii) on the basis of the discrepancy identified from the personal information shared, Inland Revenue proposes to take further adverse action.
- (4) Subclause (3) does not limit subclause (2) (*see also* subclause (6)).
- (5) The procedure that a party must follow before taking adverse action (whether or not Inland Revenue gives notice of the adverse action) is as follows:
- (a) the party must comply with all of the party's applicable policies and guidelines and the Solicitor-General's Prosecution Guidelines (as applicable); and
  - (b) in addition to paragraph (a), if the adverse action is the further adverse action referred to in subclause (3)(b)(ii),—
    - (i) Inland Revenue must give written notice to the individual, immediately after the decision to suspend the payment (or must have given written notice to the individual before that decision was made), that—
      - (A) provides details of the discrepancy on which the decision was based; and
      - (B) provides details of the suspension of payment of the tax credit; and
      - (C) provides details of the further adverse action that Inland Revenue proposes to take; and
      - (D) states that the individual has 5 working days from receipt of the notice to show cause why payment of the tax credit should not have been suspended or why the further adverse action should not be taken, or both; and
    - (ii) Inland Revenue must not take the further adverse action (or any of it) until expiration of those 5 working days.

- (6) However, subclause (5)(b), to the extent that it might otherwise apply, does not apply if the adverse action is taken by Inland Revenue in the circumstance referred to in subclause (2).

*Miscellaneous*

**14 How to access agreement**

- (1) A copy of the agreement is available online at <http://www.msd.govt.nz> and <http://www.ird.govt.nz>
- (2) A copy of the agreement is also available at the Inland Revenue Department, 55 Featherston Street, Pipitea, Wellington 6011.

**15 Schedule 2A of Privacy Act 1993 amended**

- (1) This clause amends the Privacy Act 1993.
- (2) In Schedule 2A, after the item relating to Information Sharing Agreement for Sharing Permitted Information with Statistics New Zealand, insert the item set out in the Schedule of this order.

**Schedule  
Amendment to Schedule 2A of Privacy Act 1993**

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<p>Information Sharing Agreement Between Ministry of Social Development And Inland Revenue Department made in July 2017</p>	<p>The accurate and efficient assessment of eligibility for, and entitlement to, benefits and subsidies</p>	<p><a href="http://www.msd.govt.nz">http://www.msd.govt.nz</a> <a href="http://www.ird.govt.nz">http://www.ird.govt.nz</a></p>	<p>Inland Revenue</p>	<p>(a)</p>	<p>contact information:</p>
<p>The accurate and efficient assessment and enforcement of tax obligations, including recovering any associated debt</p>			<p>(b)</p>	<p>identifying information:</p>	
<p>The accurate and efficient assessment and enforcement of obligations relating to benefits and subsidies, including recovering any associated debt</p>			<p>(c)</p>	<p>information about domestic relationships, including—</p> <p>(i) the current and previous names, aliases, contact details, and dates of birth of persons with whom an identifiable individual has or had a domestic relationship; and</p> <p>(ii) in relation to any of those persons, information about employment, information about finances and income, information about social assistance, and information about tax:</p>	
			<p>(d)</p>	<p>information about employment:</p>	
			<p>(e)</p>	<p>information about finances and income:</p>	
			<p>(f)</p>	<p>information about social assistance:</p>	
			<p>(g)</p>	<p>information about tax.</p>	

Michael Webster,  
Clerk of the Executive Council.

### **Explanatory note**

*This note is not part of the order, but is intended to indicate its general effect.*

This order, which comes into force on 31 August 2017, approves a new information sharing agreement under the Privacy Act 1993 (the **Act**).

The agreement is between the Inland Revenue Department and the Ministry of Social Development. It authorises the 2 agencies to share information for purposes that relate to assessing entitlements to benefits and subsidies, assessing and enforcing tax obligations and obligations related to benefits and subsidies (including the recovery of any associated debt), registering new customers, and updating contact and identifying information.

This order includes provisions stating—

- the information privacy principles that are modified in respect of the parties to the agreement:
- the public services that the agreement is intended to facilitate:
- how the parties may use the personal information:
- the adverse actions that the parties may take as a result of the sharing of the personal information:
- the circumstances in which a party does not need to give written notice to an individual before it takes adverse action against the individual on the basis of personal information shared, and the procedure that a party must follow before taking that adverse action.

This order inserts into Schedule 2A of the Act information regarding the agreement that is required to be inserted under section 96L of the Act.

### **Regulatory impact statement**

The Inland Revenue Department produced a regulatory impact statement on 17 February 2017 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://taxpolicy.ird.govt.nz/publications/year/2017>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

**Privacy (Information Sharing Agreement between  
Inland Revenue and Ministry of Social Development)  
Order 2017**

2017/176

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 3 August 2017.  
This order is administered by the Inland Revenue Department.

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Wellington, New Zealand:

Published under the authority of the New Zealand Government—2017