Regulatory Impact Statement

Greater information sharing between Inland Revenue and the Ministry of Social Development

Agency Disclosure Statement

This regulatory impact statement has been prepared by Inland Revenue.

It provides an analysis of options that would enable Inland Revenue to more quickly and proactively share information with the Ministry of Social Development. The information would be shared to improve the accuracy of social assistance payments, and enable Inland Revenue to proactively advise the Ministry of Social Development of suspected benefit fraud.

Extensive public consultation was undertaken as part of the legislative process for the Taxation (Tax Administration and Remedial Matters) Act 2011. The consultation specifically included coverage of Inland Revenue sharing information with the Ministry of Social Development. In addition, an anonymous sample of 4,000 cases, independent research and consultation with agencies across the public sector were undertaken. The sample, consultation and research were taken into account in developing the approach to information sharing and provide support for the proposal in this regulatory impact statement.

In sharing information in this way, there is a trade-off between the privacy rights of individuals and the need for government agencies to provide efficient, high quality services. However, the recommended design of the approach would provide considerable efficiencies for the government, whilst having a minimal effect on an individual's right to privacy. This is because the Ministry of Social Development would only receive information that it is lawfully entitled to collect in its own right and Inland Revenue would not collect additional information on behalf of the Ministry of Social Development.

We have not identified any other significant gaps, assumptions, dependencies, constraints, caveats or uncertainties. The preferred option in this statement does not impose additional costs on businesses, impair private property rights, restrict market competition, or reduce the incentives on businesses to innovate and invest or override fundamental common law principles.

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STATUS QUO AND PROBLEM DEFINITION

1. One of the main policy objectives underlying the Government's Making Tax Easier discussion document, released in July 2010, was to bring about efficiencies across government agencies that interact with the tax system. A key part of this is to enable greater sharing of information across government agencies. The ability to share information is subject to the limitations set by privacy and secrecy laws.

2. The social assistance system relies on accurate information to ensure that recipients receive the correct benefits. Recipients of benefits are required to report any changes in their income, and their benefit entitlements are adjusted accordingly. In practice, people tend to report their wages after they receive them. This means that there may be a time lag from when wages are received to when the benefit is reduced, which may result in a benefit overpayment. Accurate information also means that benefit fraud can be detected and prevented.

3. In the last financial year, there were $217 million in overpayments, $22 million of which was fraud. In addition, Inland Revenue and the Ministry of Social Development completed an anonymous sample of 4000 cases. The data sampling exercise showed that information that Inland Revenue holds would be of use to the Ministry of Social Development to better manage benefit entitlements, increase compliance (and reduce fraud), reduce overpayments (and their value) and assist in the recovery of Crown debt. For example, there were a number of people in the sample who had current overpayments with the Ministry of Social Development and were not making repayments, but were receiving income at a level that would require debt repayment.

4. Inland Revenue currently shares information with the Ministry of Social Development via the information matching provisions in section 81(4) of the Tax Administration Act. These agreements are expensive and cumbersome to develop and operate. The data matches take a considerable time and the shared data may be out of date by the time the information is received. Also, the Ministry of Social Development is required to initiate the data match, which means that Inland Revenue is unable to proactively share personal information to assist in the detection of fraud and deter fraudulent behaviours.

5. This regulatory impact statement addresses the problem of how Inland Revenue may more quickly and proactively share information with the Ministry of Social Development in order to improve the accuracy of social assistance payments, and enable Inland Revenue to proactively advise the Ministry of Social Development of suspected benefit fraud.

6. The information to be shared would be limited to beneficiaries and those with benefit debt known to Inland Revenue. It would consist of:

- income details;
- family details;
- personal details;
- parental income for those under the age of 24 applying for a student allowance; and
- information Inland Revenue has regarding suspected cases of benefit fraud.

OBJECTIVE

7. The objective is to provide faster and proactive information sharing from Inland Revenue to the Ministry of Social Development in order to:

- improve the accuracy and timeliness of social assistance payments and adjustments, and therefore lower debt levels (as beneficiaries with over or under-payments would be identified earlier); and
- allow for the proactive sharing of information to increase the detection and prevention of benefit fraud.

REGULATORY IMPACT ANALYSIS

8. Inland Revenue has identified three possible options to meet the objectives:

Option 1: Use the new information sharing framework in section 81BA of the Tax Administration Act.

Option 2: Use the information matching provisions in section 81(4) of the Tax Administration Act.

Option 3: Wait for information sharing amendments to be made to the Privacy Act 1993.

Option 1: Use the new information sharing framework in section 81BA of the Tax Administration Act

9. Under Option 1, an Order in Council under section 81BA of the Tax Administration Act would be made to enable Inland Revenue to proactively communicate information to the Ministry of Social Development.

10. The recently enacted Taxation (Tax Administration and Remedial Matters) Act 2011 includes a new information sharing framework to facilitate Inland Revenue sharing information with another Government agency. Under the framework, sharing information requires legislative approval by an Order in Council, and is limited to information that the agency already has the legal authority to collect.

11. The advantages of using this new information sharing framework are the proactive nature of the sharing, flexibility, speed and accuracy. Inland Revenue is able to proactively provide information to the Ministry of Social Development without the need for the Ministry to first initiate a request for a data match.

12. Under this option, the impact on privacy is minimised since the Ministry of Social Development would only receive information that it is lawfully entitled to collect in its own right. Also, Inland Revenue would not collect additional information on behalf of the Ministry of Social Development.

13. Under the proposed arrangement, people providing information to Inland Revenue would be notified that their information may be shared with the Ministry of Social Development. The Ministry of Social Development would also advise its clients that it can source tax information from Inland Revenue.

14. Option 1 is the preferred option, as officials consider that it provides the greatest opportunity for improvements to government efficiency and the integrity of the tax and benefit systems, while also offering safeguards to protect individuals' privacy rights.

Option 2: Use the information matching provisions in section 81(4) of the Tax Administration Act

15. Under option 2, information matching would be used. Information matching, however, is ill-suited to proactive, timely information sharing between agencies.

16. This is because information matching is designed to identify errors rather than to identify and correct inaccurate benefit payments in a timely way.

17. Further, because information matching requires the Ministry of Social Development to initiate the request, the Ministry must be first aware that the information is required. In a number of cases (as the statistical match highlighted), it is the information that Inland Revenue holds that provides the Ministry of Social Development with that initial awareness.

18. Information matching is also slow and expensive, taking 12 to 18 months to implement.

19. As a result, option 2 does not provide the desired efficiency improvements and is not recommended.

Option 3: Wait for the Information sharing amendments to the Privacy Act

20. The Privacy (Information Sharing) Bill 2011 is an omnibus bill that amends the Privacy Act and the Tax Administration Act. This bill was introduced in August 2011, but at the time of writing has not had its first reading.

21. As option 3 relies on the bill receiving Royal assent, there is potential for considerable delay.

22. Officials therefore do not recommend this option.

CONSULTATION

23. Public consultation on the concept of greater information sharing between government agencies, and specifically Inland Revenue sharing its data with a range of government agencies, was previously undertaken as part of the legislative process for the Taxation (Tax Administration and Remedial Matters) Act 2011.

24. A discussion document sought submissions on the proposal of Inland Revenue sharing data with the Ministry of Social Development. An online public forum was established for the public to discuss options and vote on proposals. The majority of submitters were in favour of the proposal. Submitters commented that it could increase efficiency and eliminate the need for individuals to provide complex and duplicated information to multiple agencies. Business NZ commented that feedback from their members:

> "consistently tells us that they view various government departments as 'the Government', so any sharing of information for government purposes is often assumed to take place anyway."

25. A number of submitters saw merit in greater sharing between government agencies but also felt that, in order to protect individual privacy rights, sharing should occur only with the informed consent of the individuals involved. In response to this, Inland Revenue and the Ministry of Social Development will ensure that the proposed information sharing is well publicised and those applying for benefits are made aware of the proposed information sharing.

26. Some submitters also wanted to ensure that only relevant information is shared. The requirements of the Order in Council (and related Memorandum of Understanding) under

Option 1 would ensure that the information shared is relevant to the purpose of information sharing.

27. Qualitative research has been undertaken by Victoria University of Wellington on public attitudes to sharing personal information in the course of online public service provision.[1] In general, research participants had a benign view of public sector information sharing intentions and practices. There is a high level of trust in the New Zealand Government sector, and a perception that the Government is working in the best interests of its residents. In general, participants were "privacy pragmatists", that is, they were prepared to provide personal information in return for enhanced public service provision, or other personal or collective benefits. However, they were not unconcerned about their privacy, and clearly pointed to the need for public service agencies to "play privacy by the rules".

28. Inland Revenue has also commissioned independent research[2] to investigate the impact of a range of changes on the integrity of the tax system. The research focused on changes such as: developing an all-of–government approach and providing joined up services; changes to ICT (Information and Communications Technology) and how these might deliver government services; and increased information sharing as proposed by the Privacy Act amendments. This research concluded:

> "As a general rule the public sees potential changes as a positive method of enhancing the way in which Inland Revenue operates in its role of collecting taxes and distributing benefits within the scope of its current role. It will provide a means of improving the status quo. In so doing this will improve the integrity of the tax system."

29. The independent research and public consultation indicate that there is little risk of the proposed Order in Council having a detrimental influence on the integrity of the tax system or voluntary compliance rates. In general, submitters to the public consultation were in favour of the proposal, and noted that it could increase efficiency and eliminate the need for individuals to provide complex and duplicated information to multiple agencies.

30. Consultation within the public sector has also been undertaken. Officials have consulted with the Office of the Privacy Commissioner, Ministry of Justice and Treasury. The Office of the Privacy Commissioner supported the aims of increasing the speed, accuracy and administrative efficiency of information exchanges from Inland Revenue to the Ministry of Social Development. The Office of the Privacy Commissioner is broadly comfortable with the proposed information sharing between Inland Revenue and the Ministry of Social Development. The Officer of the Privacy Commissioner agrees that the initiative would improve the efficiency of an important public service, and should produce significant public benefits.

31. During consultation, the Office of the Privacy Commissioner raised concerns regarding limiting the amount of information shared so that only relevant information is shared. This will be resolved through the addition of schedules to that effect within the Memorandum of Understanding between Inland Revenue and the Ministry of Social Development. The Office of the Privacy Commissioner raised two further operational issues which the agencies are working through - undertaking an assessment of privacy risks across the entire process, and developing a monitoring and reporting framework. The framework and the outcome of the risk assessment will also be incorporated into the Memorandum of Understanding.

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[1] Lips, Eppel, Cunningham & Hopkins-Burns, *Public attitudes to the sharing of personall information in the course of online public service provision: Final report (2010)*, Victoria University of Wellington (Retrieved from http://e-government.vuw.ac.nz/research_projects_2010/FINAL_IRD_Report.pdf).

[2] Litmus, *Impact of Change on the Integrity of the New Zealand Tax System (August 2011)*, unpublished paper, Inland Revenue.

32. The Ministry of Social Development has worked in partnership with Inland Revenue in developing the proposed information sharing and is fully supportive of the proposal.

CONCLUSIONS AND RECOMMENDATIONS

33. Officials recommend making an Order in Council to support information sharing under Option 1. We consider that this option would enable faster, more proactive information sharing from Inland Revenue to the Ministry of Social Development, is consistent with the intent of the new section 81BA of the Tax Administration Act and is consistent with the Government's policy driver of better public services.

IMPLEMENTATION

34. The preferred information sharing option (Option 1) does not require Inland Revenue to alter its current information collection practices (other than to inform taxpayers of its ability to share tax information with the Ministry of Social Development). As noted, Inland Revenue would not collect additional information on behalf of the other agency. Inland Revenue would also continue to ensure that the data collected is accurate and secure, and that it remains so once shared. Inland Revenue would establish processes to monitor and audit the use of its data by the Ministry of Social Development, and ensure that Inland Revenue's tax secrecy obligations are maintained.

35. Also, as noted, under the proposed arrangement the Ministry of Social Development would only receive information that it is lawfully entitled to collect in its own right. People providing information to Inland Revenue would be notified that their information may be shared with the Ministry of Social Development. The Ministry of Social Development would also advise its clients that it can source tax information from Inland Revenue.

36. The Ministry of Social Development currently provides beneficiaries with 10 days' notice for most adverse actions that result from an authorised information match (with the exception of the Department of Corrections prison roster match, where benefits are immediately suspended but reinstated if a challenge is made). The Ministry of Social Development will continue to ensure that information received from Inland Revenue is verified with the individual before any adverse action is taken unless verification would prejudice any investigation. This will continue to ensure that information acted on is accurate and certain.

37. It is proposed to take a phased approach to sharing information between the agencies. This will enable continued refinement of the information shared and ensure that the information continues to provide the Ministry of Social Development with the greatest value. At the outset, Inland Revenue will share information for which there is strong evidence of suspected fraud, and income details of beneficiaries who are receiving social assistance and some form of income.

MONITORING, EVALUATION AND REVIEW

38. The new information sharing framework is subject to the review provision in the Tax Administration Act. The proposed review would be carried out after the new framework has been in operation for five years, and would be tabled in the House of Representatives by the Minister of Revenue, after consultation with the Office of the Privacy Commissioner. Such a review would allow for consideration of whether the objectives of the new framework have been achieved. Since the review would be made public, it should be transparent as to how the new framework is being applied.