

# **Information sharing between Inland Revenue and the Ministry of Business, Innovation and Employment**

**A GOVERNMENT DISCUSSION DOCUMENT**



**Te Kāwanatanga o Aotearoa**  
New Zealand Government

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discussion document



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The document is available  
at <https://www.taxpolicy.ird.govt.nz/consultation/2024/information-sharing-ir-mbie-aisa>

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## Chapter 1 Introduction

- 1.1 The Government wants to deliver better public services more efficiently. Government agencies are expected to work together and achieve better outcomes for New Zealanders. The Government also expects all New Zealanders to meet their legal obligations.
- 1.2 A practical way for government agencies to work together to help achieve these high-level objectives is through information sharing of specific information, for specific purposes. Such collaboration also allows for more prudent use of taxpayer funds by agencies.

### Summary of the proposal

- 1.3 Both Inland Revenue and the Ministry for Business, Innovation and Employment (MBIE) hold information that, if provided to the other agency, would help the other agency better discharge their functions and duties. Currently, the Tax Administration Act 1994 and the Privacy Act 2020 do not allow the sharing of this information between the agencies.
- 1.4 MBIE has responsibility for a range of services and functions which could be significantly improved through the use of information shared by Inland Revenue which is custodian to a large amount of taxpayer information.
- 1.5 Inland Revenue currently exchanges information with certain areas of MBIE for different purposes but expanding the range of purposes would be beneficial. In turn, Inland Revenue's administration of the tax system could also benefit by receiving certain information from MBIE.
- 1.6 More specifically, the Government believes that certain problems reported by both agencies could be alleviated through expanded information sharing. These problems include, but are not limited to, 'phoenix companies'<sup>1</sup>, levels of non-compliance, and the inability of the agencies to communicate certain information to New Zealand businesses. These issues are discussed in more detail in Chapter 2.
- 1.7 This discussion document sets out the objectives of a proposed approved information sharing agreement (AISA). It sets out the proposed parameters of the information sharing agreement and explains why government considers that it is needed. Public views are sought on all aspects of implementing this information sharing agreement, including safeguards to protect confidentiality.
- 1.8 The proposed AISA is expected to deliver the following benefits:
  - Improving the administration and governance of the tax system, some MBIE administered registers, the criminal proceeds regime, and the insolvency regime.
  - Enabling and co-operation on compliance and enforcement work, including:

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<sup>1</sup> This includes where company directors transfer the assets of a company to a new company at under market value, or simply leave the debts of the old company behind, with the intention of defeating the interests of creditors of the old company.

- ensuring the efficient and effective prevention, detection, investigation, and prosecution of offences under the Crimes Act 1961 and legislation that either agency administers (where either agency has reasonable grounds to suspect that an offence has occurred, is occurring or will occur)
  - ensuring that appropriate penalties and administrative sanctions are imposed on individuals and entities under legislation that either agency administers, and
  - assisting with decision-making and collaboration on strategic approaches to compliance work and to enforcing the obligations of common customers.
- Allowing relevant information to be delivered to New Zealand businesses.
  - Enabling the development of public policy (including potential costings and impact modelling for public policy proposals).

## Document outline

- Chapter 2 outlines the background of the proposal, detailing the current information shares in place, where these are proposed to be expanded, and what business units within Inland Revenue and MBIE provide and receive what information.
- Chapter 3 details the information proposed to be shared and the benefits of sharing the information.
- Chapter 4 discusses the privacy safeguards that would be in place if the proposed AISA comes into force.
- Appendix 1 summarises the options analysis.
- Appendix 2 summarises the existing information shares, the proposed information shares, and the purpose for use of information.
- Appendix 3 includes a summary of the registers and the information from each register that is proposed to be shared.
- Appendix 4 contains the proposed AISA between Inland Revenue and MBIE.

## Questions for submitters

1.9 While submissions can cover any aspect of this discussion document, we are especially interested in views on:

- Do you consider that the issue outlined is of concern?
- Do you think that information sharing would address the problem?
- Do you support each of the categories of information sharing outlined in Chapter 3?
- Are there sufficient safeguards for the protection of people's information?

## Making a submission

- 1.10 The Government invites submissions on the proposals in this document, including the specific questions asked and any other issues raised in the document.
- 1.11 Include in your submission a brief summary of the major points and recommendations you have made. Please indicate if officials from Inland Revenue and MBIE can contact you to discuss the points raised, if required.
- 1.12 The closing date for submissions is **13 December 2024**.
- 1.13 Submissions can be made by:
- emailing:  
policy.webmaster@ird.govt.nz with "Information sharing between Inland Revenue and MBIE" in the subject line; or
  - sending to:  
Information sharing between Inland Revenue and MBIE  
C/- Deputy Commissioner, Policy  
Inland Revenue Department  
PO Box 2198  
WELLINGTON 6140
- 1.14 This consultation process is done under section 150 of the Privacy Act 2020, which requires consultation on any proposed AISA before it can be finalised.
- 1.15 Submissions may be the subject of a request under the Official Information Act 1982. Please clearly indicate in your submission if any information should be withheld on the grounds of privacy, or for any other reason (contact information such as an address, email, and phone number for submissions from individuals will be withheld). Any information withheld will be determined using the Official Information Act 1982.

## Chapter 2 Background

- 2.1 The Government proposes that Inland Revenue and the Ministry of Business, Innovation and Employment (MBIE) enter an approved information sharing agreement (AISA), under the Privacy Act 2020, to share more information effectively and carry out their respective responsibilities.
- 2.2 The proposed AISA would help with some current issues faced by the agencies. It would consolidate existing memorandums of understanding and incorporate additional information shares, leading to improved administration of the tax system, some MBIE administered registers, the criminal proceeds and insolvency regimes, and more effective compliance and enforcement work. It would benefit New Zealand businesses by enabling the provision of helpful information to support them. The AISA will also help enable the development of public policy.

### Current issues

- 2.3 As mentioned in Chapter 1, the underlying issue is that there is information held by Inland Revenue and MBIE which cannot currently be shared with the other agency. If this information was shared with the other agency, it would have the potential to help both agencies better discharge their functions and duties, save on costs, and improve their efficiency. Some of the specific issues where information sharing could help are discussed below.

### Phoenix companies

- 2.4 The Government is concerned about poor and illegal business practices by some company directors, often called 'phoenixing'. This includes where company directors transfer the assets of a company to a new company at under market value, or simply leave the debts of the old company behind, with the intention of defeating the interests of creditors of the old company. These so called 'phoenix companies' have a range of negative impacts for New Zealand businesses and consumers.
- 2.5 Although there is anecdotal evidence of phoenix companies, the true scale of the problem is not known. There is not one fixed definition of 'phoenixing' and its wider conception outside of specific provisions in the Companies Act 1993. There is, therefore, little quantitative evidence about it. This also makes it hard to collect data on phoenixing and leads to confusion amongst market participants. The phoenixing provisions in the Companies Act 1993 aim to address the potential harm caused by a new company having a similar name to an old company, which can lead to consumers and others being misled about who they are dealing with. However, there are other types of behaviours that can also be called "phoenixing", such as when a company sells its assets below value to a new company, or simply walks away from the company leaving the debts behind.
- 2.6 There is concern this harmful practice continues to occur and that more could be done to prevent it, particularly when the behaviours are repeated. There is no reliable data demonstrating the scale of phoenixing in New Zealand, but whenever this occurs it can cause significant harm to businesses, individuals, and the New Zealand

economy. Even low levels of this type of harmful activity impacts on the integrity of the corporate governance regulatory system.

- 2.7 The AISA would authorise Inland Revenue to give MBIE information that could help combat phoenixing. Specifically, Inland Revenue will be able to give MBIE information that will enable it to better identify phoenix companies, prohibit a person from acting as a director, and bring prosecutions for offences under the Companies Act 1993 that address phoenixing.
- 2.8 The AISA would also allow Inland Revenue to access director information on the Companies Register to compare contact details, including phone numbers, email, and IP addresses, of a prohibited director with those of the person in control of the new entity. This will help Inland Revenue identify if a prohibited director is associated with, and controlling, a newly incorporated company. This would help determine whether the matter should be referred to MBIE for enforcement action.

### **Compliance and enforcement**

- 2.9 Barriers to information-sharing also prevent co-operation between the agencies on compliance. Both agencies are responsible for the stewardship of their respective regulatory systems and undertake enforcement action against directors and companies who are non-compliant. There can be overlap between the agencies' jurisdictions, but due to their inability to communicate with one another regarding enforcement and prosecution, the agencies have sometimes separately investigated or prosecuted the same director. This is time-consuming for both the agencies and the director concerned.
- 2.10 This inability to share information allows opportunities for non-compliance. Both agencies are responsible for conducting investigations and initiating proceedings to address non-compliance in their respective areas. However, existing information sharing agreements are limited and do not permit such usage.
- 2.11 For instance, MBIE can prohibit a person from acting as a director when:
- the person has been a director of a company which failed as a result of mismanagement, or
  - MBIE seeks orders to have a person disqualified from acting as a director on various grounds including where they have committed specified offences.
- 2.12 There are some situations where Inland Revenue can prosecute a director for non-compliance but, due to the current restrictions, cannot share this information with MBIE. Because of this, the Market Integrity Branch within MBIE is sometimes not aware of individuals who should be considered for prohibition. This allows these individuals to continue their activities, undermining the integrity of the tax system.
- 2.13 There is concern that there are many cases where a director should be prohibited but, due to the current restrictions, the agencies are unable to share information that will help to build cases against these directors.

### **Providing information to New Zealand businesses**

- 2.14 Inland Revenue holds information about New Zealand businesses that currently cannot be shared. This includes information such as contact details, industry segment information, business type and size. The MBIE Business and Consumer



Branch could use this information to contact businesses directly to provide them with tailored information from across government and the private sector, critical to their success, including compliance requirements and support available.

- 2.15 The lack of an agreement reduces agencies' ability to provide targeted services to New Zealand businesses and assist in complying with their obligations. As Inland Revenue cannot currently share this information, these interventions cannot take place, leading to greater costs for both agencies. Businesses undergoing compliance activities would also incur extra costs if dealing with both agencies.
- 2.16 During COVID-19, there was an exemption made under the Tax Administration Act 1994<sup>2</sup> that allowed Inland Revenue to share some New Zealand business information with MBIE's Business and Consumer Branch. This information sharing proved beneficial for the Business and Consumer Branch to inform businesses of the support they had available to them during that period. This exemption has now lapsed.

### **Policy development**

- 2.17 Another area where there are perceived benefits from information sharing is in public policy development. The agencies both develop policy that affects businesses operating in New Zealand. The agencies collect data to help inform the development of policy interventions. However, as each agency cannot access information held by the other, their ability to develop targeted policy interventions and accurately gauge the cost of new measures or their impact on business is limited.

### **Options analysis**

- 2.18 The agencies considered five possible options to address issues with their information sharing arrangements:
- maintaining the status quo
  - using the Commissioner of Inland Revenue's powers to collect information
  - making regulations to permit bulk data collection
  - amending primary and secondary legislation, and
  - establishing an AISA.
- 2.19 Each option was evaluated based on its effectiveness in facilitating existing information sharing between the agencies, as well as its ability to enable further information sharing in accordance with current legislation. A full options analysis can be found in **Appendix 1**.
- 2.20 The options analysis determined that an AISA was the best way to enable the agencies to share the information that would help one another carry out their responsibilities.
- 2.21 The AISA regime in the Privacy Act 2020 was designed as a flexible mechanism to enable the secure sharing of information to better facilitate the provision of public services.

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<sup>2</sup> COVID-19 sharing provision to support MBIE's communication with businesses on COVID-related initiatives.

- 2.22 An AISA can modify the information privacy principles in the Privacy Act 2020<sup>3</sup> (by Order in Council), enabling the sharing of personal information that would not otherwise be allowed under that Act. The information privacy principles to be modified in the proposed AISA are:
- **Principle 2 – Source of personal information:** It will not be a breach of information privacy principle 2 for the agencies to collect personal information from each other for the purposes of the AISA.
  - **Principle 10 – Limits on use of personal information:** It will not be a breach of information privacy principle 10 for the agencies to use personal information that they obtain for one purpose for the purposes of the AISA.
  - **Principle 11 – Limits on disclosure of personal information:** It will not be a breach of information privacy principle 11 for the agencies to disclose personal information to each other for the purposes of the AISA.
- 2.23 An AISA gives transparency about the information that may be shared and the purposes of the sharing. It also provides further safeguards, which protect the security of the information shared under the AISA. Such transparency and safeguards are designed to encourage public trust in the information sharing process.
- 2.24 The Office of the Privacy Commissioner (OPC) was consulted during the initial AISA drafting process and is pleased to see that the Privacy Commissioner’s recommendations have been adopted with respect to information collected and disclosed for policy development purpose not being able to be used for any other purpose by the parties to the proposed AISA; restrictions on further on-sharing of information; use of anonymised information wherever practicable and taking all reasonable steps to prevent the re-identification of individuals in any research or statistical material published.
- 2.25 An AISA is agreed between the proposed parties after consultation with the public and further consultation with OPC. Once approved through an Order in Council, the AISA will take effect as secondary legislation. This requires approval from Ministers and Cabinet.
- 2.26 An AISA can be amended once it comes into force, but if the amendments have any privacy implications, they must go through a robust consultation process (including with OPC) before they can be approved. Amendments require Cabinet to authorise the Governor-General to make an Order in Council approving the amendment to the AISA.
- 2.27 Information proposed to be shared in this AISA is detailed in Chapter 3, with more detail included in **Appendices 2 and 3**.

## Advantages of an AISA

- 2.28 An AISA can provide the following advantages:
- facilitating agency co-operation and efficiency in shared public service delivery while meeting privacy expectations

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<sup>3</sup> Privacy Act 2020, section 22.

- legal authority to share where there is a lack of authority or incomplete authority
- certainty and assurance about how information will be protected, reported and deleted
- accountability and transparency for the public about information sharing arrangements
- potential to accommodate multiple parties – either as signatories to the agreement, or through a representative party
- flexibility to tailor privacy safeguards in the AISA depending on the privacy risks involved, and
- flexibility to make minor changes without further legislative instruments.

### **Proposed parties to the AISA**

2.29 The proposed parties to the AISA are Inland Revenue and two branches in MBIE, the Market Integrity Branch (**MIB**) and the Business and Consumer Branch (**BCB**) (the parties). Given the size and scope of MBIE, it is appropriate to narrow the application of the AISA to the relevant branches and business units below:

- MIB’s relevant business units are:
  - the Business Registries unit (known as the New Zealand Companies Office), which administers a number of registers
  - the Criminal Proceeds, Integrity, and Enforcement unit (CPIE), which manages criminal proceeds and undertakes compliance and enforcement functions for the Registrars of the registers administered by the Companies Office and the Official Assignee
  - the Insolvency and Trustee Service unit (ITS), which administers certain types of bankruptcy and some company liquidations
- BCB’s relevant business unit is the Small Business Services unit (known as business.govt.nz), which supports New Zealand businesses.

2.30 If there are any changes to the branches and business units, which undertake the functions listed above, the parties would look to update the names used in the AISA.

### **Current state and limitations**

2.31 Inland Revenue and MIB already exchange information through three memorandums of understanding (MOUs). These MOUs allow Inland Revenue and MIB to work together to manage removals from the New Zealand Companies Register and the Limited Partnerships Register, investigate specific offences under the Companies Act 1993, and manage insolvencies. BCB has also previously been able to use information from Inland Revenue, through an MOU, to send newsletters, updates, and other communications to businesses on COVID-19 related initiatives.

2.32 Although there are three MOUs in place to facilitate an exchange, the agencies cannot share additional information beyond the scope of the MOUs as the Tax Administration Act 1994 and Privacy Act 2020 do not allow this.

- 2.33 The tax system must keep taxpayers' information confidential to encourage voluntary compliance with tax rules. The Tax Administration Act 1994 requires Inland Revenue staff to keep all sensitive revenue information confidential, including information that is reasonably capable of identifying a person or entity. Inland Revenue can share such information with agencies such as MBIE only where an exception in the Act applies.
- 2.34 The Privacy Act 2020 ensures responsible information sharing between the agencies. They are typically unable to share much of the personal information they hold about individuals with each other.
- 2.35 Inland Revenue has information-gathering powers to obtain MBIE-held information using section 17B of the Tax Administration Act 1994. However, using section 17B can lack transparency and public scrutiny. Inland Revenue takes the view that this power should be used judiciously and that other, more transparent, avenues for obtaining information on an ongoing basis (such as an AISA) should be considered in appropriate cases.
- 2.36 The agencies have identified that if they could share some additional information, they would be able to better discharge their functions and duties. They have carefully considered what information would be needed and defined the purposes of the sharing. They have also considered what sharing would require the authority of an AISA, as opposed to what can already be shared under the Privacy Act 2020 or the Tax Administration Act 1994.

## Chapter 3 The proposals

- 3.1 An AISA can effectively address current legal restrictions, as it is one of the few exemptions to the confidentiality obligations in the Tax Administration Act 1994. Additionally, an AISA can modify restrictions in the Privacy Act 2020 that would otherwise prevent information sharing. Moreover, an AISA would enable Inland Revenue and MIB to consolidate their existing information sharing agreements (replacing the three MOUs), enable information sharing with BCB, and include additional provisions for a broader range of purposes under a single agreement.

### Proposed AISA

- 3.2 The existing and additional shares under the proposed AISA can be categorised according to the type of information being shared between Inland Revenue (IR), MIB, and BCB. Table 1 summarises each category of proposed information share and the associated parties. Full details of each category can be found in **Appendix 2**.

**Table 1: Overview of main proposals**

Subsections of Chapter 3	Data sharing parties and information flow		
<b>Chapter 3.1</b> Information sharing between IR and the Companies Office in MBIE			
1. Register information	IR	←	NZ Companies Office (Companies Office) in MIB
2. Removal and restoration information		↔	
3. Contact details		→	
4. Large company information		→	
<b>Chapter 3.2</b> Information sharing between IR and CPIE in MBIE			
5. Information relevant to offences and the imposition of administrative sanctions or penalties	IR	↔	Criminal Proceeds, Integrity, and Enforcement (CPIE) in MIB
6. Failed entity information		↔	
7. Information concerning GST tax status		↔	
<b>Chapter 3.3</b> Information sharing between IR and ITS in MBIE			
8. Information relevant to bankruptcies and company liquidations	IR	↔	Insolvency and Trustee Service (ITS) in MIB
<b>Chapter 3.4</b> Information sharing between IR and business.govt.nz in MBIE			
9. Entity information enabling direct communication with New Zealand businesses	IR	→	business.govt.nz in BCB
<b>Chapter 3.5</b> Information sharing between IR and MBIE's MIB and BCB			
10. Any of the information that can be shared under Categories 1 to 9 for the development of public policy	IR	↔	MIB and BCB

- 3.3 The rest of this chapter discusses each of these data sharing categories in more detail. Each section includes narrative around the current arrangements, proposed changes, use of information, and related benefits.
- 3.4 Inland Revenue, MIB, and BCB will consider all feedback and may make changes to the proposed AISA based on this. The parties will then communicate feedback to relevant Ministers when the proposed AISA is put forward for their approval. Cabinet will also need to authorise Ministers to make a recommendation to the Governor-General to make an Order in Council approving the AISA.

## Chapter 3.1: Information sharing between IR and the Companies Office in MBIE's MIB

Category of information shared	Description	Information flow
1. Register information	Expansion of existing share	IR ← MIB
2. Removal and restoration information	Expansion of existing share	IR ↔ MIB
3. Contact details	New share	IR → MIB
4. Large company information	New share	IR → MIB

3.5 The Companies Office is a unit within MBIE's Market Integrity branch (MIB), which is responsible for the administration of a number of public corporate registers.

### Category 1: Register information (expansion of existing share)

#### *Existing information sharing*

3.6 Inland Revenue regularly uses its information collection powers under the Tax Administration Act 1994 to obtain information held by the Companies Office on, or in relation to, the Companies Register. Inland Revenue uses this information to assist in the administration of the tax system, including to assist with service delivery and to support its compliance and enforcement functions. For example, Inland Revenue uses the Companies Register information to update its contact details for taxpayers and to identify who owns or controls an entity or to check for associations between individuals and companies.

3.7 The types of information sought by Inland Revenue include both personal and non-personal information. The information is mainly sourced from publicly available parts of the Companies Register, but it also includes other information, such as a director's date and place of birth, which is held by the Registrar but not available to the public.

3.8 The existing information sharing will be incorporated into the proposed AISA.

#### *Proposed new information sharing under the AISA*

3.9 Under the proposed AISA, Inland Revenue would have more effective access to the Companies Office publicly available information on the following registers<sup>4</sup>:

- New Zealand Companies Register, established under the Companies Act 1993
- Incorporated Societies Registers, being the register established under the Incorporated Societies Act 1908 and the newer register established under the Incorporated Societies Act 2022, and
- Incorporated Charitable Trust Boards Register (Charitable Trusts Register), established under the Charitable Trusts Act 1957.

<sup>4</sup> The register information that can be viewed by the public includes information in data fields and documents, which have been filed for an entity. Under the proposed ASIA, Inland Revenue would only receive the information in data fields, meaning they would not receive copies of documents filed.

- 3.10 The Companies Office would also give Inland Revenue certain information held by the Registrars that is relevant to these registers, but which is not publicly available.
- 3.11 Details of the types of information to be shared in respect of each register is set out in **Appendix 3**. The types of information are split into those that are publicly available on the registers, and those that are not publicly available.
- 3.12 Inland Revenue will use the information from the Companies Office to:
- verify and update the contact details it holds for taxpayers and other parties
  - assist with service delivery and the provision of services to taxpayers
  - help businesses to comply with their tax obligations
  - support Inland Revenue’s compliance and enforcement functions, including prevention, detection and enforcing offences under any legislation it administers (currently or in the future) and other non-compliance with tax obligations, and
  - assist in tax policy development and assessing the impact of tax policy products.
- 3.13 Full details of this information share can be found in **Appendix 2**.

***Reasons for the proposed sharing***

- 3.14 The registers held by the Companies Office are the legislatively designated sources of information for entities such as companies, charitable trust boards, and incorporated societies. They contain information relating to the ownership and control of entities in New Zealand.
- 3.15 The registers are comprehensive sources of information, populated by information supplied by people wanting to incorporate an entity, register information about an entity, or to otherwise gain or maintain registration status. Other information is also collected by the Companies Office to assist with the administration of the registers (such as contact email addresses).
- 3.16 The three registers proposed to be included are those with details of entities and individuals most likely to have distinct tax and reporting obligations.
- 3.17 As of 31 March 2024, there were 726,827 companies registered on the Companies Register, and there were more than 1,230,371 searches of the register during March 2024 alone. These figures evidence the prevalence of companies as the most used corporate structure for businesses in New Zealand and the value of the information on the Companies Register to Inland Revenue.
- 3.18 Specific registers, such as the Charitable Trusts Register, provide information that Inland Revenue can use to identify non-for-profit entities misusing corporate structures to minimise tax obligations. When used together, information from across the registers is valuable in providing a complete picture of a taxpayer and their interests. Information on the Incorporated Trust Boards Register could assist in the unmasking of non-compliant activity associated with trusts.
- 3.19 As the three registers do not include IRD numbers, Inland Revenue requires access to certain personal information to accurately identify entities and individuals. For instance, the Companies Office would provide company directors’ names, dates of



- birth, and addresses. Inland Revenue needs this information to accurately link register information to its taxpayer information.
- 3.20 To help Inland Revenue in linking register information to taxpayer information, the Companies Office will also provide presenter details. A presenter is any person who files a document or information for registration, and presenter details can include name, IP address and email address. Presenter details would be especially useful in verifying the origin of information received from taxpayers.
- 3.21 Although the three registers are available to the public, and can be searched by anyone, they are built for one-off public enquiry and are built with search criteria that is limited. It is not possible to obtain a full copy of a register through a standard search, to return compilations of register information, or to return bulk register information. The registers are not built for use by government agencies, such as Inland Revenue, to search at scale or to search across registers.
- 3.22 The proposed AISA would allow Inland Revenue greater access to data to help it carry out compliance and enforcement work. This could include the ability to search across the registers, and in bulk, or to merge register information with information from a variety of sources to create information about business networks.
- 3.23 Access to the register information will help Inland Revenue to accurately identify which people control which entities (for example, by checking the IP address), giving the agency greater clarity of overall business compliance in New Zealand. This knowledge will better enable Inland Revenue to enforce compliance with tax requirements, which impacts tax revenue and provides an unfair advantage to non-compliant businesses. Minimising this unfair advantage improves the New Zealand business environment.
- 3.24 The proposed AISA would also allow Inland Revenue to use presenter details and match the IP address of a director filing information with the Companies Office with potentially false and misleading tax returns filed with Inland Revenue. This information can be useful to inform the prosecution of a person filing incorrect tax returns or avoiding paying tax.
- 3.25 Information from the registers would also be used to assist the development of future policy. The registers contain a wealth of information submitted by the entities themselves, which would be of great assistance in developing and assessing the impact of policy products.

## **Category 2: Removal and restoration information (expansion of existing share)**

### ***Existing information sharing***

- 3.26 MIB's Companies Office and Inland Revenue have an existing information sharing arrangement that supports the processes under the Companies Act 1993 and the Limited Partnership Act 2008 to remove entities from the Companies Register and the Limited Partnerships Register.
- 3.27 The existing information sharing arrangement ensures that Inland Revenue is aware of which companies and limited partnerships are proposed to be removed from the Registers. Inland Revenue would be able to object to a removal where there are grounds to do so, for instance, if tax is still owed, or there is evidence the company is still trading.

- 3.28 Under the existing information sharing arrangement, the Companies Office also gives Inland Revenue a list of all current objections Inland Revenue has lodged to the removal of an entity from the relevant registers. This acts as a checkpoint between agencies so Inland Revenue can track its objections and withdraw any that are no longer relevant, enabling removal of entities from the registers at the appropriate time.
- 3.29 The current information sharing arrangement helps ensure that entities are not wrongfully removed from the register and that objections to removals are withdrawn in a timely manner.
- 3.30 The Companies Office also gives Inland Revenue a list of companies and limited partnerships that have been removed or restored to the registers, enabling Inland Revenue to update its records.
- 3.31 The existing information sharing arrangement concerning company and limited partnership removals will be incorporated into the proposed AISA.

### ***Proposed new information sharing under the AISA***

- 3.32 The proposed AISA would allow the Companies Office to give Inland Revenue lists of entities:
- proposed to be removed from, or restored to, the registers
  - for which Inland Revenue has an existing objection, and
  - that have been removed from, or restored to, the registers.
- 3.33 Inland Revenue would use this information to lodge and monitor objections, and to update its records on companies and limited partnerships.
- 3.34 The proposed AISA would also allow Inland Revenue to give the Companies Office information about an entity:
- that is relevant to Inland Revenue's objection to its removal or restoration, and
  - where Inland Revenue considers there may be grounds for the Registrar to initiate removal from, or restoration to, the register.
- 3.35 The Companies Office would use this information to support the statutory processes for restoring and removing companies and limited partnerships to the registers, including identifying entities for which there are grounds to remove or restore.
- 3.36 Full details of this information share can be found in **Appendix 2**.

### ***Reasons for the proposed sharing***

- 3.37 This category of information sharing will help to ensure that companies and limited partnerships are appropriately removed from, retained on, or restored to, the registers. This in turn, assists in maintaining the integrity of these registers.

## **Category 3: Contact details (new share)**

### ***Existing information sharing***

- 3.38 No information is currently shared for this category.

### ***Proposed new information sharing under the AISA***

- 3.39 The register information that the Companies Office is proposing to share with Inland Revenue under Category 1, includes contact details for entities and individuals.
- 3.40 If Inland Revenue considers that any contact details may be incorrect, the proposed AISA will allow Inland Revenue to give the Companies Office the correct contact details according to their records. Inland Revenue will also give the reasons why it considers MIB's contact details may be incorrect.
- 3.41 The Companies Office would use the information it receives from Inland Revenue to verify or correct the contact details on the registers.
- 3.42 Full details of this information share can be found in **Appendix 2**.

### ***Reasons for the proposed sharing***

- 3.43 Sharing this information would improve the integrity of contact details held on, or in relation to the Companies Register, the Incorporated Societies Registers and the Register of Incorporated Charitable Trusts Boards. This in turn should improve customers' experience with the parties.

## **Category 4: Large company information (new share)**

### ***Existing information sharing***

- 3.44 No information is currently shared for this category.

### ***Proposed new information sharing under the AISA***

- 3.45 "Large companies" are companies that meet certain asset and revenue thresholds under section 198 of the Companies Act 1993 and section 45 of the Financial Reporting Act 2013. Large companies must file audited financial statements under the Companies Act 1993, which are then made available on the Companies Register.
- 3.46 The proposed AISA would allow Inland Revenue to give the Companies Office information that will help it identify which companies may qualify as "large companies" under the Companies Act 1993. The information Inland Revenue would provide will include information about the value of companies' assets and annual revenue.
- 3.47 The Companies Office would use information provided by Inland Revenue to determine which companies are "large companies" and check whether they have been complying with their financial reporting obligations under the Companies Act. If necessary, when filings have not occurred, the information may also be used to take appropriate compliance and enforcement action against the company concerned.
- 3.48 Full details of this information share can be found in **Appendix 2**.

### ***Reasons for the proposed sharing***

- 3.49 It is important that large companies comply with their financial reporting obligations. Audited financial statements provide persons interested in the performance of a large company, such as lenders or investors, with reliable and transparent financial information.

- 3.50 The Companies Office is tasked with enforcing the financial reporting obligations of large companies. However, it does not hold information about every company's asset and revenue levels. This means it is often difficult for the Companies Office to identify large companies for the purposes of the Companies Act 1993.
- 3.51 Inland Revenue, however, does hold the type of information needed to identify large companies. The proposed AISA would give Inland Revenue the ability to share this type of information with the Companies Office to enable better enforcement of financial reporting obligations.

**Question for submitters**

Do you support the proposed four categories of information sharing outlined in this section? Please explain your answer.

## Chapter 3.2: Information sharing between IR and CPIE in MIB's MIB

Category of information shared	Description	Information flow
5. Information relevant to offences and the imposition of administrative sanctions or penalties	Expansion of existing share	IR ↔ MIB
6. Failed entity information	New share	IR ↔ MIB
7. Information concerning GST tax status	New share	IR ↔ MIB

3.52 MIB's Criminal Proceeds, Integrity, and Enforcement unit (CPIE) is the enforcement arm for the Companies Office and the Insolvency and Trustee Service (ITS). The unit is responsible for compliance and enforcement work under the Companies Act 1993, the Insolvency Act 2006, and other relevant legislation. CPIE also has responsibilities under the Criminal (Proceeds) Recovery Act 2009.

### **Category 5: Information relevant to offences and the imposition of administrative sanctions or penalties (expansion of existing share)**

#### ***Existing information sharing***

3.53 CPIE and Inland Revenue have an existing information sharing agreement that allows:

- CPIE to request information from Inland Revenue where it suspects certain serious offences have been, are being, or will be committed under the Companies Act 1993, and
- Inland Revenue to proactively provide CPIE with information where it suspects those same offences have been, are being, or will be committed.

3.54 This current sharing applies to offences under sections 138A(1), 377, 382(4), 383(6), 385(9), 385AA(9) and 386A(2) of the Companies Act 1993. These are serious offences punishable by up to five years imprisonment.

3.55 This information sharing is authorised by an exception in the Tax Administration Act 1994.

3.56 The existing information sharing will be incorporated into the proposed AISA.

#### ***Proposed new information sharing under the AISA***

3.57 Under the proposed AISA, Inland Revenue and CPIE will be able to share with one another:

- information relevant to the enforcement of any offences under the Crimes Act 1961 and any legislation that warrants imposition of administrative sanctions or penalties that Inland Revenue or CPIE administer (not just serious offences punishable by up to five years imprisonment), including insolvency and tax-related offences

- information relevant to the imposition of administrative sanctions and penalties (such as prohibition from being a director) under legislation that Inland Revenue or CPIE administer, and
- information about each party's compliance and enforcement approach and activities, including:
  - the party's current priorities for compliance and enforcement
  - the party's resources dedicated or available to compliance and enforcement matters
  - any policies and guidelines relevant to compliance and enforcement
  - current enforcement and compliance activities, and
  - details of compliance or enforcement activities against an entity or individual where they know or reasonably suspect the other may also be carrying out compliance or enforcement activity.

3.58 Inland Revenue and CPIE may each use the information they receive from the other to:

- prevent, detect, investigate, and provide evidence of offences or of breaches giving rise to administrative sanctions or penalties that may require compliance or enforcement action by that party
- prosecute or impose administrative sanctions or penalties
- help decision-making on the party's approach and strategy to compliance and enforcement, and
- collaborate with the other party on compliance and enforcement actions such as co-ordinating prosecutions or bringing joint prosecutions.

3.59 Information shared under this category could be used to prosecute an individual or entity. Given the seriousness of such a consequence, the proposed AISA imposes a threshold when either party wants to share information that it thinks the other party may use for the purpose of prosecuting an offence. In that situation, a party may share the information only if it:

- has reasonable grounds to suspect that an offence has been, is being, or is likely to be committed, and
- believes the information is relevant to the other party being able to detect, investigate, or prosecute that offence.

3.60 Full details of this information share can be found in **Appendix 2**.

### ***Reasons for the proposed sharing***

3.61 Inland Revenue and CPIE both hold information that is relevant to each other's enforcement and compliance functions. However, Inland Revenue can currently only share limited Companies Act offence-related information with CPIE. In turn, CPIE can generally only share such information with Inland Revenue where permitted under the Privacy Act 2020.

3.62 The proposed AISA would enable the parties to exchange information about a broader range of behaviour, misconduct, and offending, better enabling each party

- to identify more situations warranting enforcement or compliance action and to put forward more robust prosecutions.
- 3.63 For example, where a person has been a director in multiple company failures, or a single failed company with a substantial tax debt, Inland Revenue is likely to hold relevant information (such as about tax debt), which it can helpfully share with CPIE, enabling it to prohibit that person from being a director or managing a company under the Companies Act 1993.
- 3.64 The proposed AISA would also benefit Inland Revenue by allowing it to use presenter details and match the IP address of a director filing information with the Companies Office with potentially false and misleading tax returns filed with Inland Revenue. This information can be useful to inform the prosecution of a person filing incorrect tax returns or avoiding paying tax.
- 3.65 Inland Revenue administers legislation that is designed to uphold the integrity of the tax system by imposing penalties on individuals and entities that incur but do not discharge the debts they owe. Inland Revenue is aware of cases where entities are being used as vehicles for non-compliant tax activities. Individuals who use the protections of limited liability to incur debts to other businesses and the tax system, and who avoid discharging them, place the integrity of the tax system at risk. It also gives non-compliant businesses a competitive advantage over compliant ones.
- 3.66 In these situations, Inland Revenue undertakes investigations and enforcement to minimise future tax risk and demonstrate that it will act to protect the integrity of the tax system. Although Inland Revenue has limited ability to prevent the repetition of this behaviour and the risks it poses to other businesses, creditors, and the tax system, CPIE may be able to prohibit an individual from being a manager or director of a company.
- 3.67 CPIE administers legislation that is designed to uphold the integrity of the corporate governance regulatory system, for example, by preventing financial harm due to the misuse of incorporation and limited liability. Entities that are in a 'better' financial position by not discharging their debts place compliant entities at a disadvantage. This can significantly damage the financial lives of individuals who invest or trade with such entities or are employed by them.
- 3.68 While there can be an overlap between their jurisdictions, both Inland Revenue and CPIE are currently limited in what offence and compliance-related information they can share with one another. Inland Revenue and CPIE are not always aware of entities and individuals who should be considered for compliance or enforcement action under legislation they administer. This means some people may get away with non-compliance on occasion, undermining the integrity of the tax system and the corporate governance regulatory system.
- 3.69 For example, the AISA will allow Inland Revenue to share information with CPIE that is relevant to CPIE's consideration of whether a director of a failed company has breached the phoenix company provisions in section 386A of the Companies Act 1993 or whether an exception to the general offence provisions applies. In general terms, section 386A prohibits directors of failed companies from being a director of, or being involved in, the formation or management of a phoenix company with the same or a similar name as the failed company in specified periods. The legislation

provides for certain exceptions, including where the phoenix company has been known by that name and has not been dormant for specified periods. Under the ASIA, Inland Revenue would be able to provide CPIE with information such as trading and accounting records for an entity, which would evidence whether it had been dormant.

- 3.70 Current limitations to information sharing also impede Inland Revenue and CPIE's ability to collaborate and co-operate on compliance and enforcement activities, such as co-ordinating prosecutions or bringing joint prosecutions. On occasion, Inland Revenue and CPIE have separately investigated or prosecuted the same director for the same corporate mismanagement, albeit in relation to different offences.
- 3.71 Establishing a closer working relationship through the AISA will help Inland Revenue and CPIE avoid disconnected proceedings against the same person or entity. This will result in improved public services through more efficient use of expertise and resources. This in turn will help uphold the integrity of the corporate governance regulatory system and the tax system.

## **Category 6: Failed entity information (new share)**

### ***Existing information sharing***

- 3.72 No information is currently shared for this category.

### ***Proposed new information sharing under the AISA***

- 3.73 The proposed AISA would allow Inland Revenue to give CPIE information about any company or limited partnership that Inland Revenue reasonably suspects may be a failed entity. A failed entity is a company that meets any of the criteria in section 385(1) of the Companies Act 1993 or a limited partnership that meets any of the criteria under section 103D(1) of the Limited Partnerships Act 2008. These criteria include companies and limited partnerships that are insolvent and have been put into some form of administration, such as liquidation or voluntary administration.
- 3.74 CPIE would use the information to support the exercise of the Registrars' powers under:
- section 385 of the Companies Act 1993, which allows the Registrar to prohibit a person from being a director of a company or from being involved in the management of a company, and
  - section 103D of the Limited Partnership Act 2008, which allows the Registrar to prohibit a person from being a general partner of a limited partnership or from being involved in the management of a limited partnership.
- 3.75 These powers of prohibition can be used by the Registrar only where there is evidence that mismanagement was wholly or partly responsible for the failure of a company or limited partnership.
- 3.76 Mismanagement includes failures to pay taxes or failures to keep records that correctly record the transactions of a company or limited partnership. In most cases where a power of prohibition has been exercised, mismanaged entities have failed to account for taxes.
- 3.77 Inland Revenue holds information that is directly relevant to the exercise of the Registrar's powers of prohibition. This includes information about a company or



limited partnership's tax affairs and finances, and other information that shows the mismanagement of failed entities.

3.78 CPIE would use information from Inland Revenue to investigate failed entities and persons involved in their management (including their directors and general partners). This information could be used as evidence of mismanagement and to support the Registrar's prohibition powers.

3.79 Full details of this information share can be found in **Appendix 2**.

#### ***Reasons for the proposed sharing***

3.80 This new information share would better support the Registrar's use of the prohibition powers in section 385 of the Companies Act 1993 and section 103D of the Limited Partnerships Act 2008. Use of these powers helps in upholding the public's confidence in the integrity of New Zealand's corporate system, given prohibition is aimed at removing persons from office who are not fit to be a director or general partner. The regime serves to protect the public from unfit or unscrupulous directors, deterring others, and setting appropriate standards of behaviour.

3.81 This share would also assist in upholding the integrity of the tax system, as it would assist in prohibiting those responsible for trading to the detriment of the Crown from obtaining an unfair trading advantage.

### **Category 7: Information concerning GST tax status (new share)**

#### ***Existing information sharing***

3.82 No information is currently shared for this category.

#### ***Proposed new information sharing under the AISA***

3.83 Under the proposed AISA, Inland Revenue would be able to share information with CPIE about whether an entity or individual is required to account for GST for the sale of property that is subject to an order of sale under the Criminal Proceeds (Recovery) Act 2009 that is to be discharged by the Official Assignee.

3.84 CPIE would use the information it receives from Inland Revenue to assist in accounting for GST in the sale of the entity's or individual's property.

3.85 Full details of this information share can be found in **Appendix 2**.

#### ***Reasons for the proposed sharing***

3.86 This information share will help CPIE to comply with applicable GST obligations when selling property that has been forfeited. This reduces the risk of MBIE being liable for unpaid GST on any such sale.

#### **Question for submitters**

Do you support the proposed three categories of information sharing outlined in this section? Please explain your answer.

## Chapter 3.3: Information sharing between IR and ITS in MBIE's MIB

Category of information shared	Description	Information flow
8. Information relevant to bankrupts and company liquidations	Expansion of existing share	IR ↔ MIB

3.87 The Insolvency and Trustee Service (ITS) is a unit in MIB. ITS is responsible for administering personal bankruptcy procedures and company liquidations where the Official Assignee has been appointed as liquidator.

### Category 8: Information relevant to bankrupts and company liquidations (expansion of existing share)

#### *Existing information sharing*

3.88 ITS and Inland Revenue have an existing MOU that assists them to effectively discharge their respective responsibilities and statutory functions. The current information sharing includes:

- ITS provides Inland Revenue with lists of persons adjudicated bankrupt, those admitted to the no asset procedure or who have entered a debt repayment order, and those who are undischarged or whose bankruptcy has been annulled. It also gives Inland Revenue lists of companies for which the Official Assignee has been appointed as liquidator. ITS also provides Inland Revenue with a copy of the sealed order for consent for a bankrupt regarding their employment status.
- Inland Revenue provides ITS with information about the GST status of bankrupt taxpayers, advice about the revenue content of tax refunds, and specific information relating to changes in bankrupts' employment status and their KiwiSaver funds as requested by the Official Assignee.

3.89 All existing information sharing between Inland Revenue and ITS relating to insolvency matters will be captured in the AISA.

#### *Proposed new information sharing under the AISA*

3.90 The proposed AISA will enable ITS to continue to provide the same information it currently does to Inland Revenue, such as lists of adjudicated bankrupts. Inland Revenue will use this information to maintain its records, undertake operational activities, and to discharge its statutory responsibilities.

3.91 The proposed AISA will also allow Inland Revenue to give ITS any information that may be relevant to the Official Assignee's administration of a bankruptcy, or a company liquidation being administered by the Official Assignee. Inland Revenue will also be able to share information that is relevant to the Official Assignee's statutory functions and duties in relation to bankruptcies or liquidations. The type of information that Inland Revenue might give ITS includes:

- information about a third party that is or may be relevant to the Official Assignee's administration of a bankruptcy or liquidation

- any information regarding tax debts or relevant financial information held in relation to an individual or entity
  - any known bank account details for an individual or entity, and
  - information about any civil action that Inland Revenue has previously taken against an individual or entity.
- 3.92 ITS will use this information to support the Official Assignee's administration of bankruptcy estates and company liquidations, and for compliance and enforcement under the Insolvency Act 2006 and the Companies Act 1993.
- 3.93 Additionally, the proposed AISA would allow Inland Revenue to share information when a person who is currently bankrupt has died. ITS will use this information to help the Official Assignee discharge the person from their bankruptcy where they have not filed a statement of affairs.
- 3.94 Full details of this information share can be found in **Appendix 2**.

***Reasons for the proposed sharing***

- 3.95 For the purposes of the Tax Administration Act 1994, the Official Assignee is classed as:
- the personal legal representative of a bankrupt taxpayer, and
  - the agent of a company where that company has been put into liquidation, and the Official Assignee has been appointed as liquidator.
- 3.96 This means that Inland Revenue is permitted to disclose to the Official Assignee information about a bankrupt taxpayer or a company for which the Official Assignee is the liquidator.
- 3.97 However, the applicable exceptions in the Tax Administration Act 1994 do not permit Inland Revenue to disclose information to the Official Assignee that is not directly about the bankrupt taxpayer or company in liquidation, even though it may indirectly impact their affairs. For instance, Inland Revenue is unable to give the Official Assignee information about a third party's dealings with a bankrupt that might affect that bankrupt's insolvency compliance (for example, if Inland Revenue held information about a third party purchasing an asset from a bankrupt taxpayer). This sort of information can be helpful to the Official Assignee.
- 3.98 Section 171 of the Insolvency Act 2006 empowers the Official Assignee to obtain documents by notice in writing from any person relating to the property, conduct or dealings of a bankrupt. This power is in addition to the Official Assignee's power to summons people to be examined or produce documents in person and allows the Official Assignee to gather information on bankrupt persons. Section 261 of the Companies Act 1993 also provides the Official Assignee with a similar power in relation to companies in liquidation.
- 3.99 However, the Official Assignee's information gathering powers do not overcome the limits on disclosure in the Tax Administration Act 1994. As a result, the Official Assignee cannot use these powers to get information from Inland Revenue that it may want to better carry out its responsibilities.

- 3.100 The proposed AISA would ultimately clarify and consolidate the basis on which information can be shared between Inland Revenue and the Official Assignee. It would enable the proactive sharing of relevant information about third parties that might affect insolvency compliance. An AISA would also enable the improved administration of the personal and corporate insolvency regimes.

**Question for submitters**

Do you support the proposed category of information sharing outlined in this section?  
Please explain your answer.

## Chapter 3.4: Information sharing between IR and business.govt.nz in MBIE's BCB

Category of information shared	Description	Information flow
9. Entity information enabling direct communication with New Zealand businesses	Expansion of previous share	IR → BCB

3.101 business.govt.nz is part of the Small Business unit within MBIE's Business and Consumer branch (BCB). It supports New Zealand businesses by providing expert guidance and tools.

### Category 9: Entity information enabling direct communication with New Zealand businesses (expansion of previous share)

#### *Previous information sharing*

3.102 Under COVID-19 legislation, clause 23B was inserted into Schedule 7 of the Tax Administration Act 1994 which allowed information to be shared between Inland Revenue and other agencies where needed to support the pandemic response. This power was introduced temporarily to deliver COVID-19 support to businesses.

3.103 In March 2020, as part of this all-of-government response, Inland Revenue and MBIE's BCB entered an MOU enabling the sharing of information for the purpose of contacting businesses impacted by COVID-19. The information shared included:

- full legal name and trading name (if applicable)
- business contact details, physical address, email address or other addresses
- New Zealand Business Number (NZBN)
- an 'in business' indicator
- business type (for example, ANZSIC code<sup>5</sup>)
- number of employees, and
- organisation type indicator (for example, self-employed, small/medium enterprise, large enterprise).

3.104 The aim of sharing this information was to enable business.govt.nz to reach businesses with tailored COVID-19 related information and support. The sharing of information helped BCB reach about 500,000 more businesses who were not subscribed to the business.govt.nz newsletter, enabling them to better access support, information, and updates from government as it related to COVID-19. The newsletters also provided support and recovery information, and often included updates from other government agencies. These newsletters were well received, with an average engagement rate consistently above 50%. Recipients were able to easily unsubscribe at any time.

<sup>5</sup> ANZSIC is the Australian and New Zealand Standard Industrial Classification.

3.105 The MOU between Inland Revenue and BCB that enabled this share was underpinned by COVID-19 legislation. However, in a post-COVID-19 context, this MOU and entity information shares between Inland Revenue and business.govt.nz has ended.

### ***Proposed new information sharing under the AISA***

3.106 It is proposed that Inland Revenue will give business.govt.nz the information listed above for every entity and individual in business in New Zealand, excluding the NZBN number.

3.107 Additionally, it is proposed that Inland Revenue will give business.govt.nz the following information:

- business age
- location of business (by region)
- segment (i.e. micro-business, families, individuals, significant enterprises, small-medium)
- revenue (by bands), and
- financial ratios (e.g. from IR10 tax return form).

3.108 business.govt.nz will use this information to send direct communications to New Zealand businesses, and to provide tailored support, guidance, and advice from across government and the private sector critical to their success, including compliance requirements and support available.

3.109 Full details of this information share can be found in **Appendix 2**.

### ***Reasons for the proposed sharing***

3.110 This share under the AISA would ensure business.govt.nz can contact all relevant businesses on an on-going basis, that is, not just in a COVID-19 context. The ongoing communications from business.govt.nz would be targeted to the relevant businesses' circumstances, enabling businesses to better comply with their obligations and to access the support available to them.

3.111 Research suggests that businesses are likely to be more compliant, successful, and resilient if they have access to the right advice at the right time.<sup>6</sup> Most business owners want to comply with rules and make their businesses a success. However, many struggle to afford expert advice for all issues. Even if this advice is freely available, businesses may not be aware of where to look, what their obligations are, how to act on them, or what they should trust.

3.112 business.govt.nz was established to bring together information in one place to support small businesses. The business.govt.nz newsletter alerts businesses to law changes, new support and issues they may not know about. Each year more and more small businesses use business.govt.nz to find out about law changes and support available for them.

3.113 There is a significant benefit and public interest in businesses receiving information that assists them to comply with their legal obligations and succeed. The best way

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<sup>6</sup> Inland Revenue's Young Business Journeys research and business.govt.nz's New Business Journeys research (which followed on from the Young Business Journeys research).

business.govt.nz can help businesses is by communicating directly with them, and tailoring information to their needs as much as possible. To do this business.govt.nz needs to be able to reach all businesses and having access to their contact information can assist this process. Having access to information about the nature of the business (e.g. size and type) better helps business.govt.nz to target information to those who will find it most useful.

**Question for submitters**

Do you support the proposed category of information sharing outlined in this section?  
Please explain your answer.

## Chapter 3.5: Information sharing between IR and MBIE's MIB and BCB

Information shared	Description	Information flow
Any of the information that can be shared under Categories 1 to 9 for the development of public policy.	New share	IR ↔ BCB and MIB

- 3.114 This is not an explicit category of information share in the proposed AISA. It is open to either Inland Revenue or either of MBIE's branches (MIB or BCB) to ask one another for any of the information that can already be shared under any of Categories 1 to 9 if they want to use it to help develop public policy. The information shared may be used for potential costings and impact modelling for public policy proposals.
- 3.115 Where information is shared for the purpose of helping develop public policy, the party giving the information must anonymise the information if practicable. The party receiving it can only use it for public policy purposes and must not subsequently publish or disclose it in a way that any individual or entity can be reasonably identified.

### Question for submitters

Do you support the proposal to exchange information for the purpose of public policy development? Please explain your answer.



## Chapter 4 Privacy safeguards

- 4.1 Inland Revenue, MIB, and BCB take the protection of New Zealanders' information seriously. The proposed AISA would include a range of safeguards to minimise any risks of loss, misuse, or improper disclosure of the information that is shared.
- 4.2 Individuals would continue to have:
- the right to seek access to, and correction of, their personal information under the Privacy Act 2020, and
  - the ability to use the agencies' internal complaint procedures if they have concerns about how their information has been treated.
- 4.3 If any serious privacy breach were to occur, the party involved would need to notify the Privacy Commissioner and the affected individuals. The steps that would need to be taken to minimise and mitigate any risk to those individuals from a serious privacy breach include:
- designated senior personnel in the party would meet to assess the issue and manage the response
  - information-sharing would be immediately suspended if there were any risk of on-going breaches, and
  - the Office of the Privacy Commissioner would be notified if it is a notifiable privacy breach under Part 6 of the Privacy Act 2020.

### Operational protocols to be developed

- 4.4 The parties would agree operational protocols under the proposed AISA before sharing any information. The operational protocols will provide details on the methods of information sharing, including:
- security arrangements and technical standards for the transfer of information
  - procedures to verify an individual or entity's identity, to identify any discrepancies in the information that is held by each party, and how to update that individual or entity's record
  - provisions that specify how frequently the information is to be shared and in what format
  - requirements for the retention and disposal of information shared, and
  - the appointment and training of authorised staff, so that they can share information appropriately and according to the AISA.

### Limits on use and disclosure of information shared

- 4.5 The sharing of information would be permitted only for the purposes set out in the proposed AISA. Each party's use of the information it receives under the AISA would be limited to the particular purposes for that category of information (see the purposes set out in **Appendix 2**).

- 4.6 The parties will not be able to disclose the information shared under the AISA to any third party, unless the disclosure was:
- necessary or incidental to the party's permitted use of the information
  - to other parts of MBIE where that is reasonably necessary for a lawful business purpose connected to the purposes of the AISA
  - to the individual or entity that is the subject of the information, or their agents or advisors, or
  - permitted or required by law.
- 4.7 Staff who knowingly disclose Inland Revenue information outside what is permitted by the proposed AISA would face potential criminal liability for breaching taxpayer confidentiality under section 143C or 143D of the Tax Administration Act 1994. On conviction, they could be liable to a term of imprisonment of up to six months and a fine not exceeding \$15,000.
- 4.8 Staff who knowingly disclosed information outside of what is permitted by the proposed AISA would also be in breach of the Public Service Code of Conduct.<sup>7</sup>

### **Secure transfer of information**

- 4.9 The parties propose to transfer the information that is shared under the AISA using a secure transmission method that complies with government security standards, such as SEEMail<sup>8</sup>, Secure File Transfer Protocol, or B2B framework. The transmission method may change over time as new and improved technology becomes available. Information would be shared only by authorised staff.

### **Pre-requisites to apply before information is shared that may lead to prosecution**

- 4.10 Some of the information shared under the AISA could potentially be used by Inland Revenue and MIB to prosecute an individual or entity for an offence under legislation that the party administers. This would be a potentially serious consequence for the affected individual or entity.
- 4.11 The proposed AISA, therefore, imposes a threshold when either party wants to share information that it thinks the other party may use for the purpose of prosecuting an offence. In that situation, the party may share the information only if it:
- has reasonable grounds to suspect that an offence has been, is being, or is likely to be committed, and
  - believes the information is relevant to the other party being able to detect, investigate, or prosecute that offence.

### **Written notice to be given to individuals before adverse action is taken**

- 4.12 Section 152 of the Privacy Act 2020 requires agencies that are party to an AISA to provide written notice to individuals before any adverse action is taken against them based on personal information shared under that AISA. The type of things that might

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<sup>7</sup> [The Standards of Integrity and Conduct](#), as defined in the Public Service Act 2020, s17(2)

<sup>8</sup> <https://www.ict.govt.nz/services/show/SEEMail>

constitute an adverse action include investigating a breach of legislation, bringing a prosecution, or imposing an administrative sanction or penalty.

- 4.13 The written notice must include details of the proposed adverse action, and the personal information on which the action is based. It must also give the individual 10 working days to dispute the correctness of that information.
- 4.14 Section 153 of the Privacy Act 2020 allows an AISA to provide that a party may dispense with this written notice requirement. The proposed AISA allows a party to dispense with the notice only where the sharing of personal information gives them reasonable grounds to suspect that:
- either:
    - an offence has been, is being, or is likely to be committed under legislation that the party administers; or
    - a person has engaged, is engaging, or will engage in activity that means they may be subject to an administrative sanction or may warrant the imposition of a penalty under legislation that the party administers
    - the personal information is relevant to the party’s decision-making on preventative, investigative or enforcement interventions related to that offence, administrative sanction, or penalty, and
    - advance notification by the party to the subject of the adverse action would be likely to defeat the purpose of the intervention.
- 4.15 Other than in these circumstances, Inland Revenue and MIB will be required to give the necessary written notice to the affected individual before taking an adverse action.
- 4.16 For example, Inland Revenue or MIB might dispense with giving written notice of an adverse action if to do so would likely interfere with an investigation of a suspected offence.

### **Ongoing assessment of the AISA**

- 4.17 The agencies will assess the operation of the AISA annually to check it is operating as intended, and to check that the safeguards remain sufficient to protect the privacy of individuals. This assessment may involve a full audit or some other form of assessment.
- 4.18 The assessment may include the completion of the security Certification and Accreditation process.
- 4.19 The results of the assessment will inform Inland Revenue’s report (as lead agency for the AISA) on the operation of the AISA in its annual report.

#### **Question for submitters**

Would there be sufficient safeguards for the protection of people’s information under the proposal? Is there anything else that should be considered?