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**Approved Information Sharing Agreement**

Between

**The Ministry of Social Development**

And

**The New Zealand Customs Service**

Pursuant to Part 9A of the Privacy Act 1993

**March 2019**

**Approved Information Sharing Agreement**

**The Parties**

**The New Zealand Customs Service (Customs)**

(acting through the Comptroller of Customs)

**The Ministry of Social Development (MSD)**

(acting through the Chief Executive of MSD)

**The Agreement**

This Agreement is put in place under Part 9A of the Privacy Act 1993 to enable the Parties to share Information for the purposes of:

1. verifying the entitlement or eligibility of a person to or for any Benefit;
2. verifying the amount of any Benefit to which any person is or was entitled or for which any person is or was eligible;
3. enabling the recovery of any debt due to the Crown in respect of any Benefit; and
4. giving assistance to the Government of a country with which New Zealand has a social security agreement that contains a mutual assistance provision to enable compliance with that agreement.

**Acceptance**

In signing this Agreement, each Party acknowledges that it has read and agrees to be bound by it.

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| For and on behalf of **Customs:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  Christine Stevenson  Acting Comptroller  New Zealand Customs Service  Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
| For and on behalf of **MSD:** |  |  |

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Brendan Boyle

Chief Executive

Ministry of Social Development

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**BACKGROUND**

1. The Government has set out its commitment to ensuring that government agencies share information as efficiently and effectively as possible.
2. The Parties share information under two Current Agreements entered into under sections 280 and 280B of the Customs and Excise Act 1996, which enable them to share specified information for specified purposes.

1. The Parties wish to:
   1. incorporate one of the Current Agreements, the Arrivals/Departures Match, into an Approved Information Sharing Agreement under Part 9A of the Privacy Act 1993;
   2. enable MSD to dispense with the notice period required by s96Q of the Privacy Act before suspending Specified Payments; and
   3. enable the other Current Agreement, the Periods of Residence Match, and further information sharing arrangements to be added to the Agreement at a later date.
2. The Parties will, within 24 months of the commencement of this Agreement, enter into MOUs pursuant to this Agreement that replace the Current Agreements. The MOUs will reflect the new legislative authority for the sharing of Information, established by this Agreement.

**TERMS**

1. **Defined Terms**

In this Agreement, including the Background, unless the context otherwise requires:

**Adverse Action** has the meaning specified in section 96C of the Privacy Act 1993.

**Agreement, Approved Information Sharing Agreement** or **AISA** has the meaning specified at section 96C of the Privacy Act 1993 and means this Information Sharing Agreement between the Parties that is approved by the Order in Council, and includes the Schedules and any amendment made by the Parties.

**Authorised Staff** in relation to a Party, means staff of that Party who are authorised to send or receive Information under this Agreement.

**Benefit** has the meaning given to that term in Schedule 2 of the Social Security Act 2018, and includes—

1. a lump sum payable under ss90 to 93 of that Act
2. any special assistance granted out of a Crown Bank Account from money appropriated by Parliament under s101 of that Act
3. a Student Allowance

**Current Agreements** means the Information Matching Agreements between the Parties on the following topics that are in force at the date of this Agreement that will, within 24 months of the commencement of this Agreement, be replaced with MOUs entered into under this Agreement:

1. **Arrivals/Departures Match** means the Current Agreement entered into under s280 Customs and Excise Act 1996.
2. **Periods of Residence Match** means the Current Agreement entered into under s280B Customs and Excise Act 1996.

**Information** means the information that may be shared between the Parties under this Agreement, including Personal Information, as described in Schedule 1.

**Lead Agency** means MSD.

**Minor Amendments** means amendments to this agreement that relate only to:

1. the fees and charges payable under the agreement; or
2. the name or description of a party to the agreement; or
3. any terms or conditions of the agreement that the lead agency considers, after consulting the Privacy Commissioner, do not, or are unlikely to, have any effect on the privacy implications of the agreement.

**MOU** means a memoranda of understanding the Parties enter into pursuant to this Agreement, which sets out the operational arrangements by which the Parties may share Information. Until an MoU is developed to replace it, the Arrivals/Departures Information Matching Agreement is included in the definition of “MOU”.

**Order in Council** means the Order in Council that approves this Agreement and that is made under section 96J(1).

**Party** means Customs or MSD and **Parties** means both Customs and MSD.

**Personal Information** has the meaning in s2(1) of the Privacy Act 1993.

**Privacy Commissioner** means the Commissioner established under section 12 of the Privacy Act 1993.

**Specified Payment** means Benefit, as defined in this clause, excluding New Zealand Superannuation, Veterans Pension and Student Allowance.

**Student Allowance** means an allowance established by regulations made under section 303 of the Education Act 1989.

**Working Days** means any day of the week other than:

1. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
2. if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
3. a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

2. **Purpose**

The purpose of this Agreement is to:

1. authorise the sharing of Information for the purposes of:
   1. verifying the entitlement or eligibility of a person to or for any Benefit;
   2. verifying the amount of any Benefit to which any person is or was entitled or for which any person is or was eligible;
   3. enabling the recovery of any debt due to the Crown in respect of any Benefit; and
   4. giving assistance to the Government of a country with which New Zealand has a social security agreement that contains a mutual assistance provision to enable compliance with that agreement.

3. **Information to be shared**

Customs may share the Information set out in Schedule 1 with MSD, and MSD may use the Information for the purposes specified at clause 2.

4. **Exemptions and/or modifications to information privacy principles**

For the purposes of this Agreement, information privacy principles 2 and 11, which are set out in section 6 of the Privacy Act 1993, are modified (by the Order in Council that approves this Agreement) as follows:

1. **Principle 2: Source of Personal Information**

It is not a breach of information privacy principle 2 for the Parties to collect Personal Information from each other for the purposes of this Agreement.

1. **Principle 11: Limits on disclosure of Personal Information**

It is not a breach of information privacy principle 11 for the Parties to disclose Personal Information to each otherfor the purposes of this Agreement.

5. **The public services that this Agreement is intended to facilitate**

The public services that this Agreement is intended to facilitate are:

1. the accurate and efficient assessment of entitlements to Benefits; and
2. ensuring client debt is reduced.

6. **Adverse Actions**

1. Section 96Q of the Privacy Act 1993 requires parties to an Information Sharing Agreement to provide written notice to individuals before any Adverse Action is taken against them on the basis of information shared under that agreement, including details of the Adverse Action that the party proposes to take and the Personal Information about the individual on which the action is based. The notice must give those individuals 10 Working Days to dispute the correctness of the information.
2. Section 96R of that Act allows an Approved Information Sharing Agreement to provide that a party to that agreement may give a shorter period of notice or dispense with the notice requirement.
3. The Parties agree that MSD may dispense with the notice requirement under section 96Q in order to immediately suspend all or part of a Specified Payment when MSD identifies a discrepancy (i.e. an individual has been outside New Zealand for longer than allowable to continue receiving that Specified Payment) if, before or immediately after the decision to suspend, MSD gives a written notice to the individual that:
   1. provides details of the discrepancy and the suspension of the Specified Payment and provides information about the client’s right to review the decision to suspend.
4. The Parties agree that MSD will continue to follow the notice requirement under s96Q in relation to all Adverse Actions other than the suspension of a Specified Payment.
5. The Adverse Actions MSD may take under this Agreement are specified atSchedule 2.

7. **Where you can view this document**

This document is available:

1. on the public website of each Party; or
2. in person at MSD, 56 The Terrace, Wellington.

8. **Overview of operational details**

1. The Information to be shared is set out in the MoUs.
2. MSD will compare the Information shared under this Agreement to its own information and use it for the purposes specified in clause 2 of this Agreement. MSD will use existing systems and practices to confirm Information is correct before relying on it.
3. MSD will, with some exceptions (see clause 6), provide written notice to individuals in advance of any Adverse Action proposed to be taken against them.
4. The MOUs will contain operational details about how the Parties may share Information under this Agreement, including:

(i) security arrangements and technical standards in relation to the transfer and use of Information;

(ii) procedures to verify an individual’s identity, to identify any discrepancies in the Information about that individual that is held by each Party, and to update that individual’s records;

(iii) provisions that specify how frequently Information is to be shared and in what format;

(iv) requirements in relation to the retention and disposal of Information;

(v) relationship principles and provisions that clarify the role of each Party under the MOU;

(vi) governance processes, including processes that enable regular review of the MOUs and resolution of any disputes between the Parties;

(vii) provisions that specify how the MOU may be amended or terminated and any requirements (such as confidentiality provisions) that continue to apply after termination; and

(viii) contact details for Authorised Staff.

1. Operational details will be included in the MOUs, rather than in this Agreement, as they may need to be regularly updated over time, and they relate to matters that it is appropriate for the Parties to manage internally within their respective organisations.
2. Information will only be accessible by those staff who need to use it for the purposes of this Agreement.
3. Each Party will be responsible for responding to requests for Personal Information as appropriate in the circumstances, in accordance with Part 4 of the Privacy Act 1993.

9. **Safeguards that will be applied to protect the privacy of individuals and ensure that any interference with their privacy is minimised**

1. **Security Provisions**

Each Party will have mechanisms and procedures for:

1. the secure storage and transfer of Information in accordance with government security standards, as applicable to the particular MOU;
2. the appointment of Authorised Staff;
3. training of Authorised Staff to share Information appropriately and in accordance with this Agreement;
4. ensuring the Information is of adequate quality at the time it is provided to the other Party;
5. ensuring the Information is only used for the purposes specified in this Agreement.
6. **Disclosure**

Neither Party will disclose the Information to any other agency or third party, except as required or permitted by law.

1. **Privacy/security breaches**
2. Each Party will be responsible for the investigation of privacy/security breaches, as appropriate in the circumstances.
3. If a Party has reasonable cause to believe that a breach has occurred or may occur, that Party will:
   1. notify the other party; and
   2. investigate the actual or suspected breach as it deems necessary.
4. The other Party shall ensure that reasonable assistance is provided to the investigating Party in connection with the investigation.
5. The investigating Party will ensure that the other Party is kept informed of any developments.
6. Where an investigation confirms a privacy/security breach has occurred, the investigating Party will notify:
   1. the other Party first; and then
   2. the Privacy Commissioner, if required, in accordance with the Privacy Act and the Privacy Commissioner’s Privacy Breach Guidelines.
7. A Party may suspend its sharing of Information under clause 3 of this Agreement to allow time for a breach to be remedied.
8. **Audit**
9. The Parties will assess the operation of this Agreement annually to check that the safeguards in the Agreement are operating as intended, that they remain sufficient to protect the privacy of individuals, and to ascertain whether any issues have arisen in practice that need to be resolved.
10. This assessment may (as agreed by the Parties) involve a full audit or another form of assessment that is less than a full audit and that enables the exchange of letters of assurance between the Parties.
11. The Parties will co-operate with each other during the assessment process and will take all reasonable actions to make the required resources available.
12. The Lead Agency will use the results of the assessment to report on the operation of this Agreement as part of its annual report, in accordance with sections 96S to 96U of the Privacy Act 1993.

10. **Assistance statement**

The Parties will provide any reasonable assistance that is necessary in the circumstances to allow the Privacy Commissioner or an individual who wishes to make a complaint about an interference with privacy to determine the Party against which the complaint should be made.

11. **Dispute resolution**

(a) Should any dispute arise in relation to this Agreement, the Parties will meet in good faith to attempt to resolve it as quickly as possible.

(b) If the Parties are unable to resolve the dispute within 60 days, the matter shall be referred to the relevant Chief Executives, or their delegates, for resolution.

(c) Subject to clauses 9(c)(vi) and 13(b), the Parties will continue to comply with their obligations under this Agreement despite the existence of any dispute.

12. **Amendments**

(a) Any amendments to this Agreement must be in writing and signed by the Chief Executives of the Parties, or their delegates.

(b) Amendments to this Agreement, other than Minor Amendments, will have no effect unless approved by the Governor-General by further Order in Council.

(c) Amendments to this Agreement will be made in accordance with section 96V of the Privacy Act 1993.

(d) Amendments to the MoUs must be, at a minimum, in writing and signed by the Parties and otherwise made in accordance with the terms of the relevant MoU.

(e) If the Parties are unable to agree on any amendments, the matter will be dealt with under clause 11.

13. **Term and termination**

1. This Agreement comes into force on the date specified in the Order in Council and shall continue in force until the Parties agree to terminate it or the Order in Council is revoked.
2. A Party may suspend, limit, or terminate its participation in this Agreement if it appears to that Party that the terms of the Agreement or the Order in Council are not being met or the sharing of Information under this Agreement is otherwise unlawful.
3. The obligations in the MOUs which concern confidentiality and secrecy shall remain in force notwithstanding the termination of this Agreement.
4. If extraordinary circumstances arise (including but not limited to earthquake, eruption, fire, flood, storm or war) which prevent a Party from performing its obligations under the Agreement, the performance of that Party's obligations shall be suspended, to the extent necessary, for as long as those extraordinary circumstances prevail.

14. **Departmental representatives**

(a) Each Party will appoint a contact person to co-ordinate the operation of this Agreement with the other Party and will ensure that the contact person is familiar with the requirements of the Privacy Act 1993 and this Agreement.

(b) The initial contact persons are as follows:

1. MSD: Lead Advisor, Information Sharing.
2. Customs: Team Leader, Border Assistance.

(c) All notices and other communication between the Parties under this Agreement shall be sent to the contact persons specified above.

(d) The contact persons set out above may be updated from time to time by notice to the other Party and the Privacy Commissioner.

15. **Precedence**

This Agreement takes precedence over the MOUs, to the extent of any inconsistency.

**SCHEDULE 1: INFORMATION**

Customs may share the following Information with MSD:

|  |  |  |
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| Category | Includes | Uses |
| Movement Information | * PAX Movement ID * Record Create/sent time * Record type * Travel Document No. * Citizenship * Nationality * Family Name * Given Names * DOB * Gender * Passport status (either Holder or Endorsement) * Flight/craft details * Date/Time of arrival/departure * NZ Port * Direction (Arrival/Departure) * Origin/Destination | Clause 2(a):   1. verifying the entitlement or eligibility of a person to or for any Benefit; 2. verifying the amount of any Benefit to which any person is or was entitled or for which any person is or was eligible; 3. enabling the recovery of any debt due to the Crown in respect of any Benefit; and 4. giving assistance to the Government of a country with which New Zealand has a social security agreement that contains a mutual assistance provision to enable compliance with that agreement. |

**SCHEDULE 2: ADVERSE ACTIONS**

1. The type of Adverse Action MSD may take is dependent on:

(a) the immediacy of the action required; and

(b) the nature and value of the Information that it receives when considered alongside the facts of the case and the information that it already holds.

2. The types of Adverse Action that MSD may take include, but are not limited to:

(a) suspension of a Benefit;

(b) debt recovery;

(c) investigation; and

(d) prosecution.

3. MSD may use its statutory powers to support these actions.

4. Customs will not take any Adverse Action in relation to this Agreement.