



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIA TO ORA



Inland Revenue
Te Tari Taake

**MEMORANDUM OF UNDERSTANDING
FOR CHILD SUPPORT AND DOMESTIC MAINTENANCE**

Between

Inland Revenue

and

The Ministry of Social Development

**PURSUANT TO AN APPROVED INFORMATION SHARING AGREEMENT UNDER
PART 9A OF THE PRIVACY ACT 1993 AND
SECTION 81A OF THE TAX ADMINISTRATION ACT 1994**

Version 6.0, February 2019

This Memorandum of Understanding is made on 20 February 2019

Between The Sovereign in right of New Zealand acting by and through the Commissioner of Inland Revenue (or her authorised delegate) (**IR**)

And The Sovereign in right of New Zealand acting by and through the Chief Executive of the Ministry of Social Development (or his authorised delegate) (**MSD**)

It is agreed as follows:

1. Interpretation

1.1 In this MOU, unless the context requires otherwise:

AISA or Approved Information Sharing Agreement means the information sharing agreement between the Parties dated July 2017 that was made under section 81A of the TAA and Part 9A of the Privacy Act 1993 (as amended from time to time), was approved by the Order in Council, and came into force on 31 August 2017.

Commissioner has the same meaning as in the TAA.

Common Purpose has the meaning given to that term in clause 3.2.

Contact Person for each Party is the person named as a contact person for that Party in Schedule One.

CS Act means the Child Support Act 1991.

Dispute has the meaning given to that term in clause 18.

Inland Revenue Acts has the same meaning as in the TAA.

Liable Person means a person liable for child support and/or domestic maintenance.

MOU means this Memorandum of Understanding and includes Schedule One.

Order in Council means the Order in Council that approved the AISA and was made under sections 96J to 96L of the Privacy Act 1993, dated 31 July 2017, or any amendments or replacements.

Party means either IR or MSD individually.

Parties mean IR and MSD together.

Payee means a person who is entitled to receive domestic maintenance.

Previous MoU means the Memorandum of Understanding between the Parties executed in August 2017.

Receiving Carer means a parent, or non-parent carer of a qualifying child, normally entitled to receive child support from a liable parent.

Secure Transmission Method means an online file transfer, USB Iron key or other secure means of transmitting information which:

- a. in relation to the transfer of "Restricted" information (as defined in the current New Zealand Government Security Classification System), is consistent with the standards (including encryption measures) in the current New Zealand Information Security Manual (NZISM) or its equivalent; and
- b. in relation to the transfer of other information that is not restricted, the Parties will make reasonable efforts to ensure is consistent with those standards; and
- c. the Parties have agreed detailed operating protocols for in consultation with the Privacy Commissioner.

SS Act means the Social Security Act 2018.

SWIFTT means Social Welfare Information For Tomorrow Today, which is the core assessment and payment system for benefits and pensions.

TAA means the Tax Administration Act 1994.

UCB means unsupported child's benefit granted under the SS Act.

1.2 In this MOU, unless the context requires otherwise, references to:

- a. Clauses and Schedules are to clauses and Schedules to this MOU;
- b. The singular includes the plural and vice versa; and
- c. Any statute includes any amendment to, or replacement of, that statute and any subordinate legislation made under it.

2 Background

2.1 The Previous MoU provided a confirmation of the necessary role that the MSD has in assisting IR to administer the child support scheme to meet its objectives.

2.2 In general, the Previous MoU concentrated on the administrative process required to exchange information, the steps that MSD would take to ensure that Receiving Carers or Payees in receipt of a sole parent rate of benefit were included in the child support scheme, and that Liable Persons who are beneficiaries would meet their liability through benefit deductions.

2.3 In July 2017, the Parties entered into the AISA. As part of the AISA, they agreed that the Previous MoU would be replaced with a Memorandum of Understanding entered into pursuant to the AISA. In August 2017 the Parties entered into the Previous MoU to reflect that the sharing of information was authorised pursuant to the AISA.

2.4 The Parties:

- a. Acknowledge that there is a need to update the Previous MoU to reflect the necessity of including various miscellaneous matters (including an "ad-hoc" information request facility and clarification of MSD's operational process for applying for a formula assessment, particularly including the use of exemption information for clients who would otherwise be subject to a benefit reduction). These updates will improve operational efficiency and service to mutual clients;
- b. Acknowledge that the timely provision of relevant information to IR will prevent and minimise financial hardship arising from overpayments and underpayments of child support; and
- c. Have agreed to enter into this MOU, which supersedes the Previous MoU from the date that it is signed.

2.5 The purpose of the CS Act is to:

Memorandum of Understanding for Child Support between Inland Revenue and the Ministry of Social Development

- a. Assess the minimum level of financial support payable by certain parents in respect of their children; and
 - b. Provide for collection and payment of child support and domestic maintenance.
- 2.6 The living allowance rates set out in section 35A of the CS Act are used to calculate a formula assessment of child support. The rates depend on whether or not a person is in receipt of a supported living payment paid at the sole parent rate. The relevant benefit rates are reflected in Parts 1, 2 and 3 of Schedule 4 of the SS Act.
- 2.7 From 1 April 2015, there are three living allowance rates. These are:
- a. The supported living payment on the grounds of health condition, injury or disability paid at the sole parent rate; and
 - b. The supported living payment on the ground of caring for a person requiring fulltime care and attention at home paid at the sole parent rate; and
 - c. Benefits paid at a sole parent rate (for example, sole parent support or jobseeker support) to a single beneficiary with one or more dependent children.
- 2.8 For the avoidance of doubt there is no requirement for a person to apply for child support if they are in receipt of the supported living payment on the ground of caring for a person requiring fulltime care and attention at home paid at the sole parent rate as this is not a benefit re-captured for the Crown. However, this information is required to ensure that the correct living allowance is applied to the child support calculation for the either a Liable Person or Receiving Carer.
- 2.9 IR is primarily responsible for administering the CS Act. IR assesses and collects child support or domestic maintenance from a Liable Person and passes it on to a Receiving Carer, Payee or the Crown. The four core processes of IR are:
- a. Registrations;
 - b. Assessments;
 - c. Collections; and
 - d. Disbursements.
- 2.10 MSD is responsible for:
- a. Advising clients (except those exempted) of their obligation to make an application for child support when a client applies for a social security benefit, as defined in the CS Act;
 - b. Providing information as required under the TAA, CS Act and SS Act;
 - c. Deducting child support from instalments of benefits payable to Liable Persons in accordance with section 131 and section 154 of the CS Act;
 - d. Imposing sanctions under sections 192-194 of the SS Act on applicable Receiving Carers and/or Payees who fail to comply with section 9 of the CS Act.

3 Purpose

- 3.1 The purpose of this MOU is to ensure that the needs and obligations of the Parties' common clients are fulfilled in terms of the CS Act, the SS Act and the Privacy Act 1993. In addition, the Parties may use information that is shared under this MOU for the purposes of the AISA.
- 3.2 The Parties aim to ensure that:

- a. Receiving Carers or Payees receive the correct amount of child support due to them; and
- b. Liable Persons pay the correct amount of child support owing; and
- c. Liable Persons pay promptly in order to achieve the aims in subclauses a. and b. above; and
- d. All relevant information is exchanged between the Parties in a timely manner.

(together, the **Common Purpose**).

3.3 The Parties' aims will be achieved by:

- a. Acknowledging that both Parties are working towards the Common Purpose;
- b. Encouraging a co-operative working relationship between both Parties;
- c. Ensuring both Parties are aware of their responsibilities and carry them out consistently; and
- d. Ensuring both Parties are accountable for their area of responsibility.

3.4 This MOU specifies the services and information that MSD will provide to IR to enable them to administer child support (for example, collect child support applications for sole parents who apply for a benefit). The MOU also specifies the processes for IR to follow when requesting information from MSD and the processes that the Parties should follow when undertaking electronic data transfers.

4 Principles

4.1 The following principles underpin this MOU and guide the relationship between the Parties as it affects policy development, implementation, practice and process.

4.2 Both Parties will:

- a. Encourage an environment of co-operation and joint problem solving.
- b. Ensure that this MOU is regularly reviewed and updated in accordance with clause 15
- c. Encourage regular meetings at appropriate levels of the Parties.
- d. Ensure the efficient exchange of information in a manner that is secure and maintains the integrity of the information.
- e. Ensure an open line of communication approach to all interactions.
- f. Seek consultation on issues that may impact on the other Party.
- g. Support clients to understand each Party's legislation and policies.

5 Legislative Authority

5.1 IR has the authority to obtain information from MSD under the following:

- a. The AISA;
- b. IR's information collecting powers and the Tax Administration Act and other relevant legislation;
- c. IR can require MSD to supply information for the purposes of the administration and enforcement of the Inland Revenue Acts or any other lawful duty of the Commissioner when requested to do so by IR.

6 Clients who are not required to apply for a formula assessment

- 6.1 A client is not required to apply for a formula assessment of child support in relation to a parent of the child, and can be considered exempt from that application process, where:
- a. The client is a recipient of the supported living payment granted on the ground of caring for a person requiring fulltime care and attention at home (under section 40 of the SS Act);
 - b. The client is a sole parent beneficiary and if MSD is satisfied the person meets any of the exemptions specified in section 9(5B) of the CS Act 1991, those exceptions being:
 - 1 that there is insufficient evidence available to establish who in law that parent is;
 - 2 if the client made an application for a formula assessment of child support or took steps to make an application for a formula assessment of child support in relation to that parent, there would be a risk of violence—
 - (i) to the client;
 - (ii) if the client is a sole parent, to any of the client's children;
 - (iii) if the client is in receipt of an unsupported child's benefit, to the client's partner, the client's children, the qualifying child, a parent of the qualifying child, or a sibling of the qualifying child.
 - 3 That parent died before the application for social security benefit was made;
 - 4 The child was conceived as a result of incest or sexual violation;
 - 5 The client cannot make an application for a formula assessment of child support in relation to that parent because of a compelling circumstance, other than a circumstance mentioned elsewhere in this clause;
 - c. The client is receiving Job Seeker Support Student Hardship (under section 25 of the SS Act);
 - d. When the client's spouse is in prison but still in a relationship with the client and they resume their relationship when the prison term is completed (under the Interdepartmental relationship protocol agreement between Inland Revenue Child Support and the Ministry of Social Development 2002).

7. Applications for Child Support

Legal Requirements

- 7.1 Section 9 of the CS Act requires that certain eligible Receiving Carers must apply for child support when they apply for a benefit. To help the client and IR fulfil this requirement, MSD agrees to the procedure set out below for taking an application for child support.

Application for formula assessment of child support

- 7.2 MSD will assess whether a client is required to apply for a formula assessment of child support. Clients identified as exempt from applying for a formula assessment under clause 6 will not be required to make a child support application and MSD will not give child support application forms to those clients.
- 7.3 MSD staff will give child support application forms to all other qualifying clients so they can apply for child support under section 9 of the CS Act.

- 7.4 MSD is responsible for advising clients of their obligation to make an application for child support when the client applies for a social security benefit.
- 7.5 Subject to clause 7.2, MSD will advise sole parent clients that a reduction in their benefit will apply under sections 192-194 of the SS Act if the client refuses or fails to either identify the other parent in law and/or apply for child support.
- 7.6 Subject to clause 7.2, MSD will reduce the sole parent benefit in terms of section 192-194 of the SS Act if the client refuses or fails to apply for child support.
- 7.7 MSD will check that the client has completed the child support application form so that requests for information are minimised and as a courtesy to clients. MSD will ask the client to fully complete the application and write "not known" where appropriate.
- 7.8 MSD will copy proof of who the other parent is in law, if this is provided by the client at the same time as the client applies for child support. This proof will be dated and noted "original sighted" and signed by the MSD staff member and recorded against the application form.
- 7.9 MSD will sight verification of the bank account and sign and date the appropriate part of the child support application.
- 7.10 MSD will date the application for child support and send it with attached proof of parentage, when provided by the client, to IR promptly.

Updating SWIFTT

- 7.11 Subject to clause 7.2, MSD will update the child support application field to Y(es) on the CSAAC (Child Support Application add/change) screen at registration or grant of a benefit as defined in section 2 of the CS Act (automated default). Clients exempted under clause 7.2 are excluded from the update. This indicator enables benefit rate details to be passed by Secure Transmission Method to IR and ensures IR is made aware of all sole parent and UCB clients (including those who have not left a child support application with MSD).
- 7.12 MSD will change the child support application field to N(o) if a client is exempt for the reasons outlined in clause 7.2 or when the client is no longer a sole parent or UCB caregiver. IR will advise MSD when they have refused to accept an application. MSD will consider reducing the benefit under sections 192-194 of the SS Act. Sections 192-194 allow MSD to reduce a benefit if a client does not legally identify the other parent of a child and/or apply for child support when required to by section 9 of the CS Act.
- 7.13 IR will advise MSD's Centralised Services to reset the child support application field to Y(es) if IR subsequently accepts an application after they have advised MSD that IR has refused to accept an application.

8 Receiving Carer

- 8.1 MSD will provide IR on the first working day of each week, or on another day agreed by the Parties, with a file provided via a Secure Transmission Method advising changes made to the Receiving Carer's or Payee's sole parent benefit or UCB rate for the previous week. This information is provided to allow IR to ensure that the correct amount of child support is paid by a Liable Person to a Receiving Carer and to prevent financial hardship and debt arising from the overpayment or underpayment of child support. The sharing of this information is authorised by the AISA.
- 8.2 The secure file will contain the following information:
- a. Social Welfare number (SWN);
 - b. Social Welfare district office;
 - c. IRD number;
 - d. date of birth;

- e. sex;
- f. surname;
- g. first name, middle name(s);
- h. benefit type code;
- i. benefit start date (the date a new rate of benefit is effective from);
- j. benefit end date (the date an altered rate of benefit is valid to);
- k. weekly benefit rate (Benefit rate) (the rate of parent benefit payable per week);
- l. created date (secure file creation date);
- m. created time (secure file creation time);
- n. benefit change reason code (the reason why a change was made i.e. grant, suspension, resumption, cancellation, no longer on a sole parent rate, transfer to another benefit, review of rate);

8.3 The following information (where available) shall be added to the secure file fields (as set out in clause 8.2) by the Parties at a future date. The information is:

- a. surname of partner of Receiving Carer or Payee;
- b. first name, middle name(s) of partner of Receiving Carer or Payee;
- c. date of birth of partner of Receiving Carer or Payee;
- d. IRD number of partner of Receiving Carer or Payee;
- e. contact details of partner of Receiving Carer or Payee (including address, phone number and email);
- f. first name of child of Receiving Carer or Payee;
- g. second name of child of Receiving Carer or Payee;
- h. date of birth of child of Receiving Carer or Payee;
- i. start date of child care by Receiving Carer or Payee;
- j. stop date of child care by Receiving Carer or Payee.

9 Current Liable Person

9.1 Section 131 of the CS Act requires a Liable Person's financial support liability to be deducted from any instalment of any benefit under the SS Act. The CS Act requires MSD to act as if it were an employer of a Liable Person receiving benefits. This requires information about financial support deductions to be exchanged as set out in the following paragraphs in this clause 9.

9.2

Section 6(e)

9.3

- 9.4 MSD will record all deduction notices received from IR against the respective Liable Person's SWIFTT record. The same deduction notice shall remain in force until revoked or amended by IR regardless of the type of benefit paid. This will ensure that MSD continues to apply the deduction when the Liable Person transfers from one benefit to another.
- 9.5 MSD will be advised by IR of one deduction rate for each financial support liability. This deduction rate may include financial support current liability and arrears. MSD will not be required to keep record of amounts deducted for arrears.
- 9.6 MSD will deduct from a Liable Person's benefit the amount specified in a deduction notice sent by Secure Transmission Method from IR to MSD subject to clause 8 and section 165 of the CS Act.
- 9.7 MSD will produce a report called the Liable Person Deduction Change Report following a weekly/fortnightly payment extract. MSD will action this report within 10 consecutive days of producing it, to the best of their ability. This report lists cases where financial support could not be deducted at the specified rate because of one of these reasons:
- the financial support rate exceeds 40% of the benefit, which is protected as per section 165 of the CS Act;
 - other deductions on the client's benefit need to be reduced to allow financial support to be deducted (for example, court fines); or
 - the requested financial support rate previously could not be deducted because the benefit was too low, but the benefit has since increased and financial support can also be increased.
- 9.8 MSD will ensure that financial support deductions take preference over any other deductions in accordance with section 157 of the CS Act.

10 Request for Information

- 10.1 MSD has agreed to provide IR via Secure Transmission Method with the following information that may be requested if it cannot or has not been provided by electronic exchange. The authority under which this information is requested is set out for each request.

Receiving Carer or Payee:

- name;
- address;
- request and confirm receiving a sole parent benefit or UCB;
- social welfare number;
- benefit type;
- date of birth of children;
- sole benefit rate for a specified period, not prior to 1 July 1992, if the Receiving Carer indicator has not been set;
- confirm Receiving Carer indicator set;
- date of event;
- date child excluded from benefit, if more than two children;
- child support applications if not received by IR (section 9 of the CS Act) and client states application completed at an MSD office.

Liable Person:

- a. name;
 - b. address;
 - c. confirm receiving a benefit;
 - d. social welfare number;
 - e. benefit type;
 - f. pay day; and
 - g. bank account number to which benefit is or has been paid.
- 10.2 IR will make all manual requests via Secure Transmission Method. Requests for any information not detailed above but obtainable under the AISA will be made on the referral from under "other", with the notation "This information has not been specifically agreed to between MSD and IR but is allowed under the AISA". Any information requests made under the TAA will be sent via Secure Transmission Method, with the request authority clearly stated.
- 10.3 MSD will provide a response to these requests for information by Secure Transmission Method, to the best of their ability and in keeping with the intention of this MOU, within 7 working days of receipt.

11. Ad Hoc Information Requests

- 11.1 The Parties may contact each other on an ad hoc basis (in a manner to be agreed by the Parties) if either Party has any queries or feedback regarding the information provided by either Party pursuant to this MOU. Either Party may request the other Party to provide clarification or further information (as authorised pursuant to this MOU) to assist that Party to resolve a query.
- 11.2 Prior to any disclosure of information to the requesting Party in clause 11.1, the requestee Party must be satisfied that the request is for the purposes of this MOU (as specified in clause 3) and relate to information authorised to be shared under this MOU.

12. Payment of Child Support to MSD

- 12.1 IR can direct a Receiving Carer's or Payee's child support payments to MSD for the purpose of paying any of that person's debts due to the Crown under the SS Act. This can only be done where the Receiving Carer or Payee has provided written authorisation for this to be done (section 148 of the CS Act) and a one off lump sum payment is to be made to MSD.
- 12.2 IR will not make periodic payments on behalf of a Receiving Carer or Payee to MSD.
- 12.3 IR can direct a Liable Person's child support credits to MSD for the purpose of paying any of that person's debts due to the Crown under the SS Act. This can only be done where the Liable Person has provided written authorisation for this to be done (section 216A of the CS Act).
- 12.4 Should a Liable Person or Receiving Carer or Payee successfully challenge in a court of law any payment of child support credits made to MSD under clause 12.3, then MSD agree to repay that amount to IR.

13. Complying with legislative obligations and consultation

- 13.1 The Parties are responsible for complying with their obligations under the Privacy Act 1993, the Official Information Act 1982, and where applicable the TAA, CS Act and the SS Act.

- 13.2 Each Party will consult with the other if either Party receives a complaint or request under the Privacy Act 1993 or the Official Information Act 1982 relating to this MOU prior to making a decision on that complaint or request. No consultation will be necessary where a person makes a request under Information Privacy Principle 6 of the Privacy Act 1993 for their personal information and the relevant Party intends to supply the requested personal information.

14. Breaches

14.1 A Party must:

- a. immediately notify the Contact Person of the other Party in writing on becoming aware of any potential, threatened or actual misuse or unauthorised disclosure of the other Party's information; and
- b. co-operate with the other Party in preventing or limiting such misuse, unauthorised disclosure or breach, which may include investigating the misuse or unauthorised disclosure.

- 14.2 Where an investigation is undertaken under clause 14.1.b, IR's and MSD's Contact Person will provide each other with reasonable assistance and keep the other informed of progress.

15. Variations to the MOU

- 15.1 Any Party proposing a variation to this MOU must give reasonable notice of the proposed variation and the reason for the proposed variation.

- 15.2 Subject to clause 18.3, any variation to this MOU must be in writing and signed by the Chief Executive and the Commissioner, or their authorised delegates.

16. Review

- 16.1 The Parties agree to review, and (if necessary) update, this MOU annually or at such other time as the Parties agree in writing.

17. Security, retention and destruction of records

- 17.1 Each Party must comply with the requirements of the Privacy Act 1993, the Public Records Act 2005, and where applicable the SS Act, the CS Act and the TAA for the purposes of security, retention or destruction of information provided under this MOU.

- 17.2 The obligations in this MOU concerning the security, use and destruction of information shall remain in force notwithstanding the termination of this MOU.

18 Resolving a Dispute

- 18.1 If an issue or dispute arises in relation to this MoU (**Dispute**), the Contact Persons will meet in good faith and negotiate to resolve the Dispute as quickly as possible.

- 18.2 If a Dispute cannot be resolved within 10 working days, the Dispute may be referred, in writing, to the relevant business owner for each Party.

- 18.3 If a Dispute cannot be resolved within 20 working days of referral to the business owners, the Dispute may be referred, in writing, to the Commissioner and MSD's Chief Executive to seek a final resolution.

- 18.4 Despite the existence of a Dispute, the Parties will continue to comply fully with their obligations.

19. Contact Persons

- 19.1 Each Party's Contact Person will be responsible for overseeing the operation of this MOU. In particular, the role of each Party's Contact Person includes, but is not limited to:
- a. co-ordinating reviews of the security and other procedures applicable to this MOU where either Party believes on reasonable grounds that such a review is necessary;
 - b. establishing and maintaining communication and understanding between the two Parties; and
 - c. resolving any Dispute or difference between the Parties.
- 19.2 The Contact Person for each party, and their contact details, are set out in Schedule One.
- 19.3 A Party may change its Contact Person, or any of their contact details, at any time by giving the other Party's Contact Person written notice of the change.

20. Commencement

- 20.1 MSD and IR agree that:
- a. this MOU commences the date that it is signed by both Parties; and
 - b. the Previous MoU terminates on the commencement of this MOU.

21. Reporting

- 21.1 Both Parties will monitor the sharing of Information under this MOU and may report independently within their respective organisations on the sharing of Information under this MOU.
- 21.2 As Lead Agency under the AISA, IR may be required by the Privacy Commissioner to report on the sharing of Information under this MOU, including for the broader purposes authorised under the AISA.
- 21.3 To assist with IR's reporting under clause 21.2, MSD will provide IR with relevant information regarding the sharing of Information under this MOU.

EXECUTED as a Memorandum of Understanding

Signed for **Inland Revenue**
by:

Echo Brooke-White, GROUP LEAD, INFORMATION SHARING, INLAND REVENUE



Date:

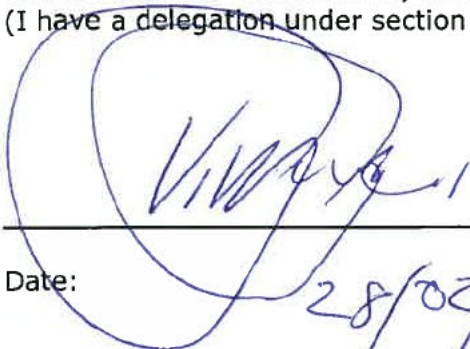
20/2/2019

Signed for the **Ministry of Social Development**
by:

Viv Rickard

DEPUTY CHIEF EXECUTIVE, SERVICE DELIVERY, MINISTRY OF SOCIAL DEVELOPMENT

(I have a delegation under section 41 of the State Sector Act 1988 to sign for the Ministry).



Date:

28/02/19

Schedule One: Contact Details

The Contact Person for each party is as follows:

For IRD:

Name: [Redacted]
Position: Process Integrity Manager, Process Integrity
Phone: [Redacted]
Email: [Redacted]@ird.govt.nz

For the MSD:

Name: Vic Rickard
Position: Deputy Chief Executive, Service Delivery
Phone: [Redacted]
Email: [Redacted]@msd.govt.nz