

Impact Summary: Customer-Nominated Services AISA

Section 1: General information

Purpose

The Department of Internal Affairs (DIA) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing Cabinet's final policy decisions on the Customer Nominated Services Approved Information Sharing Agreement (CNS AISA).

Key Limitations or Constraints on Analysis

The proposed CNS AISA is the second in a series of AISAs that will replace existing information sharing agreements that are no longer fit for purpose. Cabinet endorsed this broad approach in March 2018 [GOV-18-MIN-004] and in June 2019 when it approved the release of the draft CNS AISA for public consultation [GOV-19-MIN-0025].

The Privacy Act 1993 sets the framework for what an AISA can contain and the issues it can address, such as authorising exemptions from any of the information privacy principles. The Act also sets out the process that must be followed to make an AISA. To come into force, an AISA must be created by Order in Council and its operation is subject to review by the Privacy Commissioner.

Responsible Manager (signature and date):

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Service Delivery and Operations – Kāwai ki te Iwi

Department of Internal Affairs – Te Tari Taiwhenua

Date:

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Background

The sharing of information to facilitate public services is a cornerstone of a unified public sector, which is a major focus of State Services Commission-led reforms. It is also strongly supported by the Government Chief Data Steward-led Data Investment Framework, which strongly endorses reuse of information collected and held by government agencies to support a number of outcomes of the public sector, such as improved service delivery to customers and greater efficiency and effectiveness of the sector.

Existing legislation

The primary legislation governing the principles and controls under which personal information can be shared is the Privacy Act. Section 78A of the Births, Deaths, Marriages and Relationships Registration Act 1995 (BDMRRA) authorises the establishment of information sharing agreements and AISAs to share information collected under this Act. Each of the sets of legislation governing the relevant functions of the parties to the AISA may contain specific restrictions, which are reflected in the AISA.

Currently, most information sharing between the parties to the proposed CNS AISA is authorised through a series of Information Matching Agreements (IMAs). The existing IMAs authorise sharing one set of data with one agency for one purpose. Most current sharing of personal information held by DIA is based on bulk information transfer and matching.

The problem / opportunity

IMAs are narrow and inflexible, and difficult to maintain and update. In summary, existing information sharing arrangements—

- lack transparency—the proliferation of arrangements, including IMAs, makes it difficult for people to know how, and with whom, their personal information is being shared and used
- frequently result in more information than necessary being shared (because information is shared in bulk, rather than on a “need to know” basis)
- are administratively cumbersome, and
- are a barrier to service transformation (eg, real-time question and answer information sharing facilitated through new technologies) that will reduce or remove the need for individuals to repeatedly provide the same information and documentation (at their own expense) to multiple agencies.

The problems with the existing authorising environment will be compounded by the Privacy Bill, which is expected to come into effect by mid-2020. No new IMAs will be able to be created under the new Privacy Act. Existing IMAs may be able to be amended for an unspecified period, but their narrow scope precludes significant changes.

The proposed CNS AISA is an opportunity to future-proof information sharing arrangements while improving privacy protections. It will simplify the authorising environment for the

sharing of government-held information to facilitate a variety of customer services.

Initially, the proposed CNS AISA (which will replace 18 existing information sharing arrangements) will cover six agencies and three statutory entities. However, it has been drafted with the intention it can be expanded to include additional parties, and/or new uses of personal information as agencies upgrade their services and technology.

2.2 Who is affected and how?

Customers of participating agencies

The participating agencies are: Accident Compensation Corporation (ACC); DIA, including the Registrar-General, Births, Deaths and Marriages; Ministry of Business, Innovation and Employment (MBIE), specifically Immigration New Zealand (INZ); Ministry of Education (MoE); Ministry of Social Development (MSD); NZ Transport Agency (NZTA), including the Registrar of Motor Vehicles and the Road User Charge Collector.

The proposed CNS AISA will help streamline services for people applying for services such as a benefit (including superannuation), New Zealand citizenship, driver licences and other services provided by the parties to the agreement. A customer can expect the agency they are interacting with to directly access the relevant information held by DIA (or MBIE, in the case of citizenship applications). This will reduce and/or eliminate delays and added costs for customers accessing services. The proposed CNS is expected to substantially increase privacy protections (eg, through reduced need for bulk information sharing).

Individuals who have already accessed services will also benefit as the proposed CNS AISA will enable participating agencies to update information shared previously (eg, DIA could notify a name change). This will substantially reduce the risk agencies will rely on/use outdated information when interacting with individuals, and determining entitlements.

Participating agencies

Agencies will also benefit from the substantial reduction in risk of relying on outdated information. However, the main benefit for participating agencies is the AISA's flexibility and ability to respond to new technologies such as those that allow real-time identity checks.

The proposed CNS AISA is a key enabler of agencies' service transformation programmes, including the use of new technologies, consistent with the cross-government Service Innovation Work Programme. For example, Te Ara Manaaki, DIA's transformation programme, is establishing a customer-centric operating model that will enable customers to provide, access and control data about themselves. Similarly, MSD is embarking on a programme of work (Te Pai Tawhiti) to put the client at the centre of everything MSD does. This includes sharing information in positive and respectful ways, and using new technology in people-centred ways.

2.3 Are there any constraints on the scope for decision making?

As outlined in 2.1 above, Cabinet has endorsed the broad approach of replacing the bulk of DIA's existing information matching agreements with AISAs [GOV-18-MIN-004].

In June 2019, Cabinet confirmed this broad approach to information sharing for customer nominated services when authorising public consultation on the draft CNS AISA [GOV-19-MIN-0025].

Specific constraints for the development of an AISA are set out in the Privacy Act 1993.

Section 3: Options identification

3.1 What options have been considered?

The main objective of the Customer Nominated Services AISA is to improve services sought by customers of the participating agencies (ACC, DIA, MBIE, MoE, MSD, NZTA) by reducing the need for individuals to provide information that government already holds in order to access services.

Because all collection, use and sharing of personal information by government agencies is regulated by the Privacy Act 1993, it is not possible to use non-regulatory mechanisms to authorise sharing of personal information. Consequently, non-regulatory options were not considered.

The option of including a broader range of parties in the AISA was considered, but discounted. At this point, no other agencies whose use of DIA-held information aligns to the purposes and intent of this AISA have indicated readiness to be involved. There is scope to add further parties to an AISA after that primary agreement has been finalised.

The criteria against which options were evaluated are:

- (a) Efficiency – minimises duplication of effort by users of services and agencies
- (b) Flexibility – able to support changing customer needs and new technologies over time
- (c) Transparency – easy to understand how personal information will be shared and used
- (d) Achievability – certainty of delivery within a reasonable time frame (up to two years) to support planned service improvements (eg through Te Ara Manaaki)
- (e) Privacy protection – supports the deployment of new, privacy-protective information sharing modes such as real-time API-based information sharing
[Application Programming Interface (API) technology use in this context is a rapid way of checking identity and entitlement details when an individual applies for a service.]

The following options were considered:

- Option 1: Status quo
- Option 2: Amend primary legislation
- Option 3: Establish an AISA

Option 1: Status quo

Description

This would involve continuing to use and update existing IMAs to share information between the parties to the proposed CNS AISA. There is the possibility of creating new IMAs up to the point where the new Privacy Act becomes law. As IMAs typically take around nine months to develop, this offers limited benefit.

Analysis

This option would not support future services that will be more privacy protective and allow streamlining of customer services, as the ability to create new IMAs will be removed before this functionality is fully available. It would retain the inflexibility of IMAs and all the

inefficiencies of having multiple agreements. It would continue to lack transparency for people wishing to understand how their personal information may be used and shared.

Option 2: Amend primary legislation

Description

This would involve amending several pieces of primary legislation, expected to include the BDMRRA 1995, the Passports Act 1992, the Citizenship Act, 1977, the Immigration Act 2009 and possibly other legislation such as the Land Transport Act 1998, the Land Transport Management Act 2003 and the Social Security Act 2018. This list is indicative, as the range of amendments would depend on the appetite for change of this nature and availability of policy resources.

Analysis

While it might be possible to achieve most of the service improvements targeted by the proposed CNS AISA, this solution is likely to be very complex, is likely to require duplicated effort and would not offer transparency to people wishing to understand how their personal information may be used and shared.

There is a real question about the achievability of this option, given the length of the process of legislative change, the changing priorities in the queue for change of this nature, and the potential for other priorities and political events to derail or delay the process of primary legislative change. There is also a limited case for change of this nature, given that existing legislation (the Privacy Act) already provides a vehicle intended to authorise information sharing between agencies.

Option 3: Establish an AISA

Option 3 is the preferred option, and is discussed in detail in section 3.2 below.

Summary

The following table summarises the options analysis. Option 3 meets all the criteria.

	Option 1: status quo	Option 2: Amend legislation	Option 3: AISA
(a) Efficiency – reduce duplication	-	-	++
(b) Flexibility – for future needs	-	++	++
(c) Transparency - easy to understand	-	-	++
(d) Achievability – timeframes	++	-	++
(e) Privacy – supports API sharing	-	++	++
TOTAL	2 + 4 -	4 + 3 -	10 +

Key: ++ meets criteria
+ partially meets criteria
- does not meet criteria

3.2 Which of these options is the proposed approach?

Preferred option – Option 3: Establish an AISA

Option 3 is the preferred option.

Description

An AISA is a legal mechanism made by Order in Council under Part 9A of the Privacy Act that authorises the sharing of information between agencies to facilitate the provision of public services. Section 78AA of the BDMRRA allows the Registrar-General to disclose birth, death, marriage, civil union, and name change information under an AISA.

The proposed CNS AISA would enable DIA and the Registrar-General to proactively provide personal information to the participating agencies, and would allow DIA to receive information from INZ and NZTA. AISAs identify the agencies involved in delivering the public services, why they are delivering them, what personal information they need to share, and what they will do with the information, including how they will manage any privacy risks.

The detail of the specific information that may be provided and received by each party to the CNS AISA, and the uses and purposes for which the shared information may be used by that party, is set out in a series of schedules to the AISA, with each party having its own schedule.

Analysis

An AISA can authorise agreed departures from information privacy principles (IPPs) in the Privacy Act if there is a clear public policy justification and the privacy risks of doing so are managed appropriately. In this case, three key IPPs are engaged:

- Under IPP 2, personal information should usually be collected directly from the individual concerned. In this case it is the party providing the information that collects the information from the individuals concerned, not the party using it.
- Under IPP 10, information collected by a party should usually only be used for the purpose for which it was originally collected. The AISA proposes to allow information to be used for other specified purposes.
- Under IPP 11, personal information should not usually be disclosed to another person or agency. The AISA proposes to enable the disclosure of personal information for the purposes specified in the AISA.

By providing certainty around information to be shared, an AISA removes doubt around privacy implications and impediments to information sharing under the Privacy Act. AISAs are also public documents.

An AISA can only be made if it meets a certain standard, including having checks and balances in place to protect the privacy of individuals. The Privacy Act prescribes a transparent process to make an AISA, which includes:

- Consulting with the Privacy Commissioner, who can review an AISA once it comes into effect and make other recommendations for change
- Undertaking consultation with affected persons
- Requiring an Order in Council to bring the AISA into force.

DIA has worked with the other parties to create a draft CNS AISA that was published alongside a Privacy Impact Assessment and a public discussion document for the purposes

of public consultation.

Assuming the CNS AISA and Order in Council are approved, we will work with the other parties to transfer existing bulk information sharing arrangements across to the new agreement. We will then work through an agreed order of priority to design and develop other bulk information shares authorised through the AISA. Once new technology is ready, we will design and deliver API-based services for sharing that the CNS AISA authorises. This rolling programme of work to enhance information sharing and services will be authorised by the CNS AISA, and supported by specific operating documentation.

The proposed CNS AISA will reduce duplication of effort by combining multiple existing and possible new agreements into a single agreement. This will provide greater transparency for people wishing to understand how their personal information may be used and shared. Because the CNS AISA provides greater flexibility around modes of information sharing, it will provide for newer, more privacy protective modes of information sharing, and will be better placed to respond to future customer needs. The complete process of developing an AISA typically takes approximately eighteen months. This timeframe will allow parties to work on designing future services that will be enabled by the AISA.

Option 3 (CNS AISA) meets all five criteria. It will allow delivery of improved customer services in a cost-effective manner without impacting on the privacy and security of personal information or undermining the principles of the Privacy Act. The CNS AISA has processes that produce predictable and consistent outcomes for regulated parties. Legal obligations and regulator expectations and practices will be readily available, easy to navigate, and clear and easy to understand. The proposed CNS AISA, and the information sharing it will facilitate, is a key enabler of government's move to a unified public service and its Service Innovation Work Programme.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

The CNS AISA will facilitate improved service delivery to customers of participating agencies and efficiency and integrity benefits to agencies. These benefits are not quantifiable at this point, and the timing of their realisation will depend on when agencies are able to change their processes. That said, many of the benefits of the CNS AISA, including simplifying information sharing, allowing new sharing and improving transparency, can be delivered with little or no process or technology change, so little or no marginal cost.

Affected parties <i>(identify)</i>	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

Regulated parties	There are no added costs for customers of parties to the AISA	Low
Regulators	There is a one-off administrative cost to government to develop the AISA. Costs of any future technology developments to improve services will vary, depending on what information sharing technology each party may already have in place. The AISA does not compel technology of process changes or specify when they occur.	Low, met within baselines Low to medium, expected to be met within baselines
Wider government	Not applicable	
Other parties	Not applicable	
Total Monetised Cost	<i>Not applicable</i>	
Non-monetised costs	<i>Not applicable</i>	

Expected benefits of proposed approach, compared to taking no action

Regulated parties	Streamlined customer interactions with government services, reduced compliance costs (including less need to purchase certificates), faster access to services	Medium to high, depending on the transaction
	Greater transparency around government information sharing	Medium

	MSD and MoE advise that the benefits for their clients will not be realised until long-term changes enabled by the AISA can be implemented. For MSD clients, benefits can be as simple as not requiring to pay for a Birth Certificate any more to time saved as identity checks go online and enable clients to receive their entitlements earlier so they don't go into debt.	
Regulators	More timely and accurate identity and entitlement information will mean fewer errors with customer interactions, more efficient service delivery and better protection against fraudulent interactions and transactions. Reduced duplication of information sharing agreements, future proofing. As new processes are implemented, some savings can be expected where processes can be streamlined. Once development costs have been covered, this is likely to enable a reduction in existing charges for information shared.	High
Wider government	Some improvement in public trust in privacy protections and accuracy of government services	
Other parties	Not applicable	
Total Monetised Benefit	Not applicable	
Non-monetised benefits	Not quantifiable, but considerable.	Medium to high, depending on service improvement options taken by participating agencies.

4.2 What other impacts is this approach likely to have?

As newer and more privacy-protective services permitted by the proposed AISA come into effect, they are expected to provide benefits to individuals seeking services, and should have a positive impact on trust in the New Zealand government.

By removing barriers to information sharing to support government outcomes, the CNS AISA will also support moves, led by SSC, to improve collaboration and integration across the public sector. The CNS AISA will also support the work led by the Government Chief Data Steward to enable information sharing and reuse across government.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Agency Consultation

DIA consulted with the following agencies in the early stages of designing the draft CNS AISA, and at the point of providing the draft Cabinet paper seeking approval for public consultation: Accident Compensation Corporation, Ministry of Business, Innovation and Employment, Ministry of Education, Ministry of Social Development, NZ Transport Agency, Ministry of Justice, the Treasury, New Zealand Police, Statistics New Zealand, Te Puni Kōkiri, the Ministry for Pacific Peoples, the Ministry for Women, the New Zealand Qualifications Authority, the Tertiary Education Commission, the Social Investment Agency, Oranga Tamariki—Ministry for Children, the Ministry of Foreign Affairs and Trade, the State Services Commission, the Office of the Privacy Commissioner, the New Zealand Security Intelligence Service, and the Department of the Prime Minister and Cabinet (Policy Advisory Group).

There was a very small amount of comment from Te Puni Kōkiri and the Ministry for Women around how new processes, such as providing customer consent, would be designed. This is not part of the CNS AISA itself, but will be an important part of implementing some new modes of sharing it will enable. All agencies were supportive of the proposed AISA and no other issues were raised. Each of the partner agencies has been involved in all stages of drafting of the proposed CNS AISA and the associated Privacy Impact Assessment and public discussion document.

Public Consultation

Public consultation on the draft CNS AISA began on 20 June 2019, and closed on 1 August 2019.

Along with the draft CNS AISA, a discussion document and a Privacy Impact Assessment were released as part of public consultation, providing more background information. The Cabinet paper seeking approval for public consultation has also been proactively released. All documents were made available on the Department's website <https://www.dia.govt.nz/proposal-to-share-information>. Submissions could also be made by email or by post.

To encourage submissions, a press release was issued and a wide range of stakeholder agencies were directly emailed inviting them to consider making a submission. This included a small number of Iwi who have Letters of Commitment with DIA indicating their direct interest in any legislative change affecting taonga held by DIA, including records relating to births, deaths, marriages, civil unions and name changes. It also included Māori organisations with an interest in government-held information.

The discussion document and the website invited feedback on the following specific areas:

- 1) New uses for information sharing
- 2) When information will be shared
- 3) Range of personal information to be shared under the proposed Agreement

4) Proposed privacy protections.

Submissions

One submission was received via email from a private individual. The submitter supported the CNS AISA and responded positively to all questions in the discussion document. They also suggested that increased sharing of data to third parties be considered, giving the example of a third party doing contracted work for the member party.

DIA and the participating agencies agree there is no need to provide original information shared under the AISA to a third party. Where a third party requires that personal information, it should be obtained directly from the source agency to ensure accuracy and timely receipt. The existence of the CNS AISA will not preclude participating agencies entering into other information sharing arrangements. If a third party is working on behalf of a party to the proposed CNS AISA, they can utilise information received under the AISA to support the party for the purposes specified in the AISA.

Privacy Commissioner

In accordance with section 96O of the Privacy Act, the Department consulted with the Privacy Commissioner on the draft Agreement. The Privacy Commissioner expressed support for the Department's approach and provided the following comment on the previous Cabinet paper (April 2018):

The Privacy Commissioner is pleased with the level and nature of engagement to date. The Commissioner is particularly pleased to note that bulk information shares operating under the existing Information Matching Agreements will be phased out over a period of time and replaced with alternative sharing technologies.

The Commissioner is also keen to ensure that the level of oversight regarding information sharing is not reduced through this rationalising arrangement, and looks forward to working with agencies as they develop the detail following public consultation.

We have continued to keep the Privacy Commissioner informed about the outcomes of consultation and progress with the AISA, through regular meetings and more formal communications as needed.

Technical refinement of the draft CNS AISA

After the public consultation process concluded, the Department identified some minor changes that, if made, would ensure that the CNS AISA was better aligned with other agreements of a similar nature, to facilitate drafting of the Order in Council. In summary the changes that were made improved definitions, added references to relevant legislation and ensured that there was greater consistency in language throughout the document.

The revised draft, including technical amendments but not substantive changes to the core policy proposals, has been provided to the Office of the Privacy Commissioner.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The CNS AISA will be implemented in law through an Order in Council that will be drafted by the Parliamentary Counsel Office. This is expected to be completed around March 2020.

The changes to existing information sharing and new information sharing that the CNS AISA will enable will not occur as a one-off change, but as a rolling series of improvements over time. The likely sequence is:

- Agreement by parties to a sequence of migration of information sharing under existing IMAs into the CNS AISA (this does not require technology or process change, but will involve developing operating procedure documentation)
- Design and deployment of new bulk information sharing allowed by the CNS AISA
- Design and development of services using new technology options such as API

At each stage of change, specific operating documentation will be developed in consultation with the Privacy Commissioner. Communications strategies will be developed for any new or significantly changed services, including updating privacy notices for customers on websites and application forms.

The development of processes for seeking and recording customer consent for information sharing will be a key feature of the implementation of several the changes provided for by this AISA. DIA will continue to collaborate with partner agencies to ensure a consistent approach is taken as far as possible.

The CNS AISA and supporting documents such as Privacy Impact Assessments will be made publicly available on the websites of the parties to give people a transparent view of how their personal information may be used and shared.

As most of the parties to the CNS AISA have existing IMAs already in operation, the initial operational focus will be to continue with existing bulk sharing arrangements. New bulk sharing arrangements (where an agency is not yet receiving permitted information) will be set up as agencies are ready to put these in place, and as specific operating documentation for each share is completed or updated.

As existing information shares are replaced, the relevant IMAs and any other forms of agreement will be cancelled as they will have been superseded. This will ensure that there are no active overlapping information sharing agreements.

Any new technology systems used for information sharing will be thoroughly tested before going live. New systems may be required to support bulk matching as DIA and other agencies retire old technology platforms over time. The most significant technology change will be the addition of API-based real time information sharing, which will allow live verification of a person's details while they are in the process of applying for a service from another agency that is a party to the AISA.

All of the information sharing under this CNS AISA will enable agencies to update customer records where information has changed, to verify customer details in the context

of dealing with a customer's application or request for service, and to take any other authorised action relating to the information shared, as specified in the AISA.

Specific development and implementation work will be the responsibility of each partner agency, with DIA keeping an overview as lead agency. For DIA, development will initially sit within the Department's transformation programme, Te Ara Manaaki and will continue as part of the information partnerships management function that is located in the Service Delivery and Operations branch of DIA.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

As lead agency, DIA will conduct a regular review of the operation of the CNS AISA and will include a report within their annual report at agreed times specified by the Privacy Commissioner. Initially, we would expect to make an annual report, with the frequency of reporting reducing if and as agreed once we are confident that the AISA is functioning as intended. Because this is a rolling programme of change, rather than a one-off change, we would expect to report more frequently at the time of any significant new change, such as the introduction of API-based services.

Reporting about information sharing will be informed by information from the supporting systems about how processes have been operating and any impacts for customers. Detailed arrangements for monitoring and reporting will be agreed with the parties and the Privacy Commissioner. The nature and level of monitoring and reporting will be proportional to the nature and level of risks involved. This will be further defined at the stage when the relevant operating procedures are developed.

DIA and all other parties to the AISA will regularly conduct first line assurance and internal audits of the operation of the AISA to confirm that the safeguards in the AISA are operating as intended and remain sufficient to protect the privacy of individuals. This will enable the agencies to check whether any issues have arisen in practice that need to be resolved.

7.2 When and how will the new arrangements be reviewed?

As discussed above, DIA will regularly review the operation of the CNS AISA and share its reports on this with the Privacy Commissioner and within the annual report. We expect to provide an initial review within twelve months of the AISA passing into law. Further reviews will be conducted, outside of the regular cycle if required, when significant new changes allowed by the AISA are introduced over time.

Any issues around the operation of the CNS AISA raised through this process or through any other communications from stakeholders will be considered by DIA as lead agency and other participating agencies as relevant. This may result in updating of operating documentation, or in a review of the AISA itself and subsequent changes to the Order in Council. If any significant issues are identified, these will be reported on to the Privacy Commissioner.

Any questions or concerns of customers will be dealt with on a case by case basis under the provisions of the AISA and any other relevant legislation. The AISA will be made available on the Department's website and in hard copy if required. The AISA provides a number of safeguards to ensure appropriate handling of personal information, and will be supported by detailed operating documentation. The CNS AISA itself provides for an investigation of the operation of the agreement to be carried out by the Office of the Privacy Commissioner, should this be required.

There is also potential for the scope of the CNS AISA to be expanded in future, including adding other agencies, further information and further information sharing purposes. This opportunity will be addressed as interest and needs of other agencies and their customers

are raised with DIA as lead agency. DIA would inform other participating agencies of such interest and work with the Privacy Commissioner to ensure an appropriate approach is taken to updating the AISA and OIC.