

# Coversheet: Making Tax Simpler: Proposals for modernising the Tax Administration Act – collection, use and disclosure of information

Advising agencies	<i>Inland Revenue</i>
Decision sought	<i>Update aspects of the legislative frameworks in the Tax Administration Act dealing with collection, use and disclosure of information</i>
Proposing Ministers	<i>Minister of Revenue</i>

## Summary: Problem and Proposed Approach

<p><b>Problem Definition</b></p> <p><b>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</b></p> <p>Information flows are key to Inland Revenue’s ability to carry out its functions and to fulfil its role in wider government. Business Transformation provides both a need and an opportunity to examine the rules regarding information to ensure they are fit for purpose for a modern tax administration. The current rules, particularly in relation to information disclosure, have developed in an ad hoc fashion and are complex, inflexible and lacking transparency. While the information collection rules generally work well, there is an opportunity to improve transparency with two minor enhancements.</p>
<p><b>Proposed Approach</b></p> <p><b>How will Government intervention work to bring about the desired change? How is this the best option?</b></p> <p>The proposals aim to make the information disclosure and use provisions clearer and more principled and to provide greater flexibility and transparency. A new, more targeted confidentiality rule will better focus the rule on protecting what should be protected, namely taxpayer-specific information, while allowing disclosure of a wider range of non-taxpayer information. A clearer, more principled exceptions framework will provide greater transparency. The proposed enhancements to the information collection rules will also provide greater certainty and transparency regarding Inland Revenue’s regular collection and use of certain third party information.</p>

# Section B: Summary Impacts: Benefits and costs

## Who are the main expected beneficiaries and what is the nature of the expected benefit?

In relation to information sharing the main expected benefits will fall to other agencies who are able to more easily access Inland Revenue’s information for service provision or enforcement. This will also have benefits for customers where it reduces the need to provide the same information to multiple agencies and/or ensures they receive more accurate, up-to-date entitlements.

For information collection the main expected benefits will be administrative for Inland Revenue in having regular access to datasets that can be used for compliance, service delivery and education purposes. There may also be compliance cost reductions to taxpayers from improved service, including from increased pre-population of returns.

## Where do the costs fall?

There may be increased administrative costs to Inland Revenue in developing and administering increased numbers of information shares, however Business Transformation provides the opportunity to do this in a more efficient manner.

New regulations for repeated collection of datasets may impose costs on the entity from which the information is collected. When considering proposed new collection regulations these potential costs will be taken into account.

It is not possible to quantify the costs at this time, as the changes that may result in additional costs will occur when regulations are made under the new information sharing and collection empowering provisions.

## What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

With all information sharing there is a risk of privacy breaches. This also raises a concern that increased sharing or any breaches might reduce the willingness of customers to provide their information to Inland Revenue. Consideration of privacy impacts (including consultation with the Office of the Privacy Commissioner) and potential impacts on the integrity of the tax system are built into the proposed information sharing rules.

## Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

There is no significant incompatibility with the Government’s “Expectations for the design of regulatory systems”.

# Section C: Evidence certainty and quality assurance

## Agency rating of evidence certainty?

Inland Revenue is confident that the evidence supports the proposal. Inland Revenue has extensive experience working with the confidentiality rules and the issues that arise with the current framework. While the total costs and benefits cannot be quantified at this time as they primarily arise from regulations that would be made under proposed empowering provisions, past experience with both ad hoc large dataset collection and with information sharing arrangements entered into under current provisions has seen the generation of significant benefits.

*To be completed by quality assurers:*

## Quality Assurance Reviewing Agency:

Inland Revenue

## Quality Assurance Assessment:

The Quality Assurance reviewer at Inland Revenue has reviewed the *Making Tax Simpler: Proposals for modernising the Tax Administration Act – information collection, use and disclosure* Regulatory Impact Analysis and considers that the information and analysis summarised in the Regulatory Impact Analysis meets the Quality Assurance criteria.

## Reviewer Comments and Recommendations:

The reviewer’s comments on earlier versions of the Regulatory Impact Assessment have been incorporated into the final version.

# Impact Statement: Making Tax Simpler: Proposals for modernising the Tax Administration Act – collection, use and disclosure of information

## Section 1: General information

<b>Purpose</b>
Inland Revenue 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 final decisions to proceed with a policy change to be taken by Cabinet.

## Key Limitations or Constraints on Analysis

The impact analysis is limited because there is some uncertainty about:

- The number of new information sharing arrangements that may be sought by other agencies;
- The timeframe and resource that might be involved in moving existing sharing arrangements from the current rules into the proposed new framework; and
- The scope of datasets to which regular access might be sought under the proposed regulatory framework.

### **Number of information sharing arrangements that may be sought by other agencies**

At any given time Inland Revenue has several proposals from other agencies for information sharing under consideration or development. These are assessed using a set of internally developed principles and prioritised accordingly. Inland Revenue has a dedicated team and governance structure that monitors and prioritises these requests. The number of requests in train at any one time can vary, as can the complexity of the requests. At the time of this analysis there were nine new information sharing proposals at various stages of being considered or progressed.

The current framework means that some of these proposed arrangements can be dealt with by way of regulation; however, others involve statutory amendment. This can be a time consuming process. The proposed new rules will mean arrangements can be more flexible and completed more quickly. However there is some uncertainty about how many new or amended arrangements may be sought and therefore the extent of any administrative impacts. In general this will be able to be managed by the prioritisation process; however, at times agencies or Ministers may not have aligned priorities, placing pressure on resources.

### **Timeframe and resource for moving existing arrangements to the new framework**

Alongside new requests for sharing, Inland Revenue and partner agencies also review and consider potential changes to existing arrangements. For example, changes have recently been made to information sharing with the Ministry of Social Development, moving the arrangements into the Approved Information Sharing Agreement framework rather than the previous information matching rules which required very specific legislative exceptions. It is proposed that existing legislative provisions will be grand-parented into the new rules and then gradually replaced by arrangements under the new framework as and when they are updated. Again, while there is some uncertainty about the timeframe and resource requirements for this work, and when other agencies will look to alter their arrangements, this can generally be prioritised using established procedures. At the time of this analysis, there were nine existing agreements under review, or where alterations have been proposed.

### **Scope of datasets**

Inland Revenue already has the ability to collect and work with large datasets; however, these datasets are generally obtained on an ad hoc basis. The availability and usefulness of 'big data' is an area that is evolving rapidly. Business Transformation will provide Inland Revenue with increased capability to work with such datasets. There is currently scope to obtain and use certain datasets for compliance, educative and pre-population purposes – this is occurring for example in Australia and the United Kingdom. However the benefits of any given dataset will vary and the identification of potentially useful datasets will be an iterative process.

As a general rule, Inland Revenue would have previously trialled the collection of data (or data of a similar type) using its general collection power before seeking a regulation. Previous collection and analysis of the dataset will assist to demonstrate the benefits of collecting the data regularly. Prior collection will also enable prioritisation of datasets for regular collection.

While overseas experience indicates certain areas where repeat dataset collection would be valuable, the number or scope of datasets that might be sought under the proposed new rule is unclear at this time, which constrains the analysis of the benefits.

**Responsible Manager (signature and date):**

Chris Gillion  
Policy Manager  
Policy and Strategy  
Inland Revenue

15 February 2018

## Section 2: Problem definition and objectives

### 2.1 What is the context within which action is proposed?

For most public sector agencies the primary rules governing collection and disclosure of information are found in the Privacy Act 1993 and the Official Information Act 1982. For Inland Revenue, however, the primary rules are contained in Part 4 of the Tax Administration Act 1994.

The efficient and effective administration of the tax system depends on taxpayers disclosing often significant amounts of information to Inland Revenue. Information is provided by both individuals and corporates and may be about themselves or about others, for example, employers provide information both about their own affairs and about their employees. The types of information collected covers a considerable range, including identity and contact information, income details, for social policy customers information about relationships and household income, for businesses detailed commercial information. This need for information and the broad powers Inland Revenue is granted to obtain it are seen as balanced by a strict rule of confidentiality, often referred to as the “tax secrecy” rule.

The right of taxpayers to have their information kept confidential is also specifically recognised in section 6 of the Tax Administration Act in defining the integrity of the tax system.

Over time, increasing numbers of ad hoc exceptions have been added to the tax secrecy rule. The primary exception, in place since the inception of the rule, permits Inland Revenue to disclose information in order to carry out its functions. Many other exceptions, however, relate to disclosure to other agencies for purposes not related, or not directly related, to Inland Revenue’s functions (for example to administer the accident compensation scheme, or the benefits system).

Inland Revenue already shares a significant amount of information, primarily with other government agencies; therefore the proposed changes are not a new concept. The proposals are intended to clarify and update the confidentiality and sharing rules. A key aim is to more clearly balance the trade-offs inherent in decisions about whether to share. The current rules, due to the ad hoc nature of amendments over time, could be seen to lack cohesion, transparency and clear unifying principles. In addition, the breadth of the core rule itself (protecting all matters relating to the legislation administered by Inland Revenue) appears much wider than the rationale for the rule would suggest is necessary.

The previous Government, through initiatives such as Better Public Services, has been focused on improving the use of information within and across agencies. Achieving better outcomes for New Zealanders through wider and smarter use of data is a key focus. The Data Futures Forum, and subsequent Data Futures Partnership have been considering how to get the best value from data in a rapidly changing environment. Rather than taking a siloed approach, agencies are encouraged to work together to provide services.

Other related work includes reviewing the settings in the Privacy Act and the Statistics Act, and a focus on the social investment approach which is strongly data-driven. Draft Customs and Excise legislation before Parliament also contains modernised information sharing rules.

## 2.2 What regulatory system, or systems, are already in place?

The information and confidentiality (“tax secrecy”) rules form a key aspect of the Tax Administration Act framework, with confidentiality of taxpayer information specified as an important aspect of the integrity of the tax system. Inland Revenue has broad powers to obtain the information it needs to fulfil its function of managing the tax system. These powers are balanced with a requirement to keep information confidential.

Inland Revenue has a Regulatory Stewardship Strategy published in August 2017 (EGI-17-MIN-0210) that has assessed the fitness for purpose of Inland Revenue’s regulatory systems. The Tax Administration Act generally falls within the revenue raising and collection regulatory system and the strategy also includes a specific information sharing regulatory system. As noted in the Regulatory Stewardship Strategy, information sharing arrangements aim at improving the efficiency and effectiveness of government and to provide better services and outcomes to customers. This is balanced against the need to maintain taxpayer trust that their information is not disclosed inappropriately. The strategy notes that the rules are constantly being looked at and that this review has been carried out to modernise and clarify the rules to better balance the inherent trade-offs and provide for confidentiality and sharing in a customer centric and intelligence led environment.

## 2.3 What is the policy problem or opportunity?

The Business Transformation programme provides both a need and an opportunity to consider the regulatory settings relating to Inland Revenue’s information. Increasing digitisation of information and processes provides opportunities to better utilise data, both within Inland Revenue to assist taxpayers, and, where appropriate, across government to improve the provision of public services. The current rules regarding information collection, use and disclosure were developed in a paper-based environment, and while many of the underlying principles remain applicable, Business Transformation provides the opportunity to ensure the rules continue to be fit for purpose and make the most of the improved technology.

The confidentiality of taxpayer information is a key component of the integrity of the tax system and remains the norm among international revenue agencies. Information flows are crucial to the efficient and effective administration of the tax system. Confidentiality rules are seen as facilitating this in three ways:

- encouraging people to provide information with the confidence it will be used and protected appropriately;
- acting as a balance for the broad information collection powers of Inland Revenue; and
- acting to protect taxpayer privacy.

The current confidentiality or “tax secrecy” rule is extremely broad and covers all matters relating to the legislation administered by Inland Revenue. However, the reasons for the rule indicate the primary concern is information about taxpayers. The existing rule can lead to tensions between confidentiality and the Official Information Act’s principle of open access to government information. The current rule can also give rise to tensions between confidentiality and wider government objectives that can be achieved through increased



information sharing.

Inland Revenue deals with large numbers of documents, forms, letters and tax returns that contain information about matters such as taxpayers' circumstances, income or assets. Outside of the tax return process, Inland Revenue can require a person to provide any information considered "necessary or relevant" to Inland Revenue's functions. The information collection powers work well and no significant change is recommended. However, two areas have been identified where change is considered of benefit - the regular collection of large datasets and the re-use of information within Inland Revenue. In both cases a key benefit is increased transparency for taxpayers regarding the collection of information about them and the possible uses of this information. The proposed empowering provision for regulations governing repeat collection of large datasets would provide a more efficient mechanism for Inland Revenue to regularly obtain necessary or relevant information for compliance, analytical and educative purposes.

## 2.4 Are there any constraints on the scope for decision making?

There were no particular constraints on the options considered.

In considering the wide spectrum of options the importance of confidentiality rules to robust international tax information exchange (countries can choose not to exchange information with jurisdictions if they are not satisfied with their confidentiality laws) and to the concept of tax system integrity, narrowed the analysis to looking at options which maintained some form of confidentiality rules. The analysis then focused on the degree to which the confidentiality rules might be updated.

Another relevant consideration was ensuring, insofar as appropriate, that the rules are aligned with other government frameworks for information – in particular, the Approved Information Sharing Agreement framework in the Privacy Act, the Official Information Act, and reviews being carried out in relation to bespoke legislation such as the Statistics Act and the Customs and Excise Act. Work relating to the social investment approach, in particular data frameworks to support this approach, and the Data Futures programme were also relevant considerations.

## 2.5 What do stakeholders think?

The treatment of taxpayer information affects all taxpayers and there are various stakeholders that have an interest. The issue will not affect Māori in particular.

Formal public consultation has been undertaken via two Government discussion documents: *Making Tax Simpler: Towards a new Tax Administration Act* released in November 2015 and *Making Tax Simpler: Proposals for modernising the Tax Administration Act* released in December 2016. Both discussion documents had an accompanying online forum.

*Towards a new Tax Administration Act* generated 18 written submissions and 34 comments on the online forum. In relation to information the key themes were:

- Mixed reactions to the proposal to narrow tax secrecy, coupled with particular

concern about the need to protect commercial information and the need for adequate confidentiality protections.

- A mixed response to greater information sharing within government – some submitters were supportive but others felt information sharing should be confined to tax-related purposes only. Concern was expressed about agencies being able to obtain information they would not be entitled to collect in their own right. The importance of transparency around sharing was emphasised.
- Consent-based disclosure of information was favoured by a narrow majority, so long as it was confined to within government. Some submitters considered that a taxpayer's ability to access their information themselves (or have an agent access it) was sufficient.
- There was general support for clarification regarding collection of large datasets and remote access searching. Some submitters were in support of new rules that would provide more transparency but not of expanding the search powers.

*Towards a new Tax Administration Act* provided a high-level framework for key areas of tax administration. The consultation process indicated that the issues were wide-ranging and complex and would benefit from further, more detailed consultation. Therefore a second discussion document *Proposals for modernising the Tax Administration Act* was released in December 2016. The more detailed proposals in this document took into account the feedback received on *Towards a new Tax Administration Act*.

There were 15 written submissions and 19 online comments of *Proposals for modernising the Tax Administration Act*. Submissions were generally supportive of the proposals relating to information, provided appropriate safeguards were in place. Key themes were:

- General support for limiting the coverage of the secrecy rule so long as commercial information was protected.
- Support for clarifying the framework of exceptions and for the proposed cross-government information-sharing framework, so long as other agencies cannot obtain information they are otherwise not entitled to. Consultation was seen as an important component of the framework.
- Support for maintaining and clarifying the rules regarding improper disclosure.
- Submitters generally favoured the proposed regulation-making power for repeat dataset collection and the additional transparency this would provide.

Submitters on both discussion documents comprised a mixture of professional services firms, business, citizen and professional representative bodies, accounting and digital technology businesses, and some private individuals.

Inland Revenue has also recently carried out a statutory review of section 81BA of the Tax Administration Act. This provision enables regulations to be made to authorise sharing with other government agencies and is the basis for the proposals regarding enhanced cross-government sharing. The review<sup>1</sup> included consultation with the two departments with whom agreements have been entered into (ACC and the Ministry of Social Development) and with the Office of the Privacy Commissioner, The Treasury, and the Ministry of Justice. In general there was support for retaining the provision, preferably with some guidance regarding when it would be more appropriate to use section 81BA than the Approved Information Sharing

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<sup>1</sup> <http://taxpolicy.ird.govt.nz/sites/default/files/2017-other-report-review-s81b-taa.pdf>

Agreement framework in the Privacy Act.

The review concluded that section 81BA should be retained pending the outcome of the wider consultation regarding the confidentiality and information sharing rules addressed in this regulatory impact analysis.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

The options for analysis fall into three broad categories – collection, use and disclosure of information and have been analysed within these categories. The three categories can be viewed as stand-alone, and are not interdependent. The recommended package of options (summarised at 5.1) contains options from all three categories.

The most significant parts of the package are the proposals that will make it easier for Inland Revenue to undertake repeat collection of large datasets from external sources and for Inland Revenue to share its information with other agencies.

#### **COLLECTION OF INFORMATION**

The status quo information collection rules broadly work well. One aspect has been identified where there is an opportunity to make the rules more efficient and to improve transparency. This relates to the repeat collection of large datasets – under the status quo this can be done on an ad hoc basis by issuing a section 17 request, but this process is not well suited to situations where the information is sought on a repeating, regular basis. There are two alternative options:

#### ***Collection option 1: Amend the information collection power to provide specifically for repeat collection of large datasets***

This option would see an amendment to the existing information collection power to specifically cover repeated collection of large external datasets. Such collection can already be carried out on an ad hoc basis, however for regular collection of the same datasets it is considered that more specific rules are required. Such collection would continue to be based on the existing “necessary or relevant” standard.

Submitters on *Towards a new Tax Administration Act* generally agreed that a more explicit collection power was appropriate, but did not consider there should be expanded powers as Inland Revenue already has broad collection powers. There was unanimous support for retaining the “necessary or relevant” standard. Several submitters considered that if there were to be more explicit powers in relation to bulk data (external datasets) there should be greater transparency about this collection. Some suggested a process similar to the Australian Tax Office publication of data matching protocols should be followed. These protocols set out the bulk datasets collected and broadly the uses to which this information is put.

#### ***Collection option 2: Introduce a regulation-making power governing repeat collection of large datasets (part of recommended package)***

Under this option, a specific regulation-making power would be introduced, allowing regulations to be made governing repeat collection of large external datasets. This option responds to submissions seeking greater transparency about this form of collection and was

detailed in the second consultation document *Proposals for modernising the Tax Administration Act*. Submitters generally favoured this option, with the attendant increased transparency, provided there was consultation on the development of regulations and consideration of compliance costs.

### **USE OF INFORMATION**

In many cases interactions with a customer are related to a particular purpose, or relate to a particular product type – for example personal income tax or Working for Families tax credits. However the information obtained may also be relevant for other purposes, for example the customer’s student loan or child support accounts. In many cases customers, both business and individual have a range of different interaction needs with Inland Revenue and therefore information can be relevant for a range of purposes related to Inland Revenue’s various functions. Under the status quo there is no express statement about the use of information in the Tax Administration Act. However, the Kiwisaver Act 2006 does contain a rule that information collected under that Act can be used for the purposes of any other Inland Revenue Act (and vice versa)<sup>2</sup>.

#### ***Information use option 1: Express clarification that information gathered for one purpose can be used for other purposes within Inland Revenue (part of recommended package)***

Under this option, the legislation would expressly state the principle that information collection for the purpose of one of Inland Revenue’s functions can be used for any of its other functions. This is consistent with the approach in the equivalent UK legislation which states “information acquired by the Revenue and Customs in connection with a function may be used by them in connection with any other function.”

Submitters were supportive of this option and emphasised the importance of clarity for taxpayers regarding the circumstances in which their information could be used.

### **DISCLOSURE OF INFORMATION**

There are two key areas regarding disclosure for which options have been considered – the scope of the confidentiality rule (that is, what should be the starting point for what can and cannot be disclosed) and the rules regarding sharing information across government. Two additional options for improvements to the rules are also considered.

#### **A: Scope of confidentiality rule**

We have identified a single alternative to the status quo for the scope of the confidentiality rule. This option has been broadened in scope from the original proposal as a result of consultation.

#### ***Disclosure option 1: Better target the confidentiality rule (part of recommended package)***

The initial proposal set out in *Towards a new Tax Administration Act* was to narrow the “tax secrecy” rule to a “taxpayer confidentiality” rule, namely one that was limited to information

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<sup>2</sup> Kiwisaver Act 2006, section 223.

that would identify (directly or indirectly) a taxpayer. Narrowing the rule in this way would continue to protect taxpayer information, the core reason for the confidentiality rules, but more easily allow the release of anonymised, aggregated information, together with information that did not identify taxpayers – for example, policy information, procurement information, training information and finance and planning information.

A more targeted rule is consistent with the confidentiality rules in jurisdictions such as Australia, Canada and the United States. In the United Kingdom the rule extends to information held in connection with the functions of Her Majesty’s Revenue and Customs, however only information that identifies, or could identify, a taxpayer is exempt from disclosure under the freedom of information laws.

Submitters expressed concerns about information that, while it might not identify a taxpayer, could still be very sensitive, in particular commercially sensitive information. Several submissions also highlighted the need for safeguards, and for protections to remain in place for commercially sensitive information. A narrowly drafted rule focused on information that identifies a taxpayer would provide a clear boundary but would risk narrowing the protection too far. In order to adequately protect sensitive taxpayer information, the rule should extend past information that is identifying to a rule such as that in Australia, where the protection protects information “that relates to the affairs of, or identifies an entity”.<sup>3</sup> This means that information that does not directly identify a taxpayer will also be protected, as will information that may not even indirectly identify the taxpayer but relates to their affairs – for example, information about a commercially sensitive process that would not identify the taxpayer but is intellectual property that relates to that taxpayer.

The new targeted confidentiality rule should also retain protection for certain sensitive non-taxpayer information. Inland Revenue holds certain very sensitive information, besides that relating to taxpayers, the release of which could damage the integrity of the tax system. Such information would include audit and investigative techniques or strategies, compliance information, thresholds and analytical approaches. Releasing this information could affect the Crown’s ability to collect revenue, for example by enabling taxpayers to defraud the system.

The Official Information Act allows information to be withheld if the release would prejudice the maintenance of the law, but there is no specific protection for public revenue. In contrast, the Australian Freedom of Information Act 1982 contains a number of protections that are used as grounds by the Australian Tax Office to withhold sensitive non-taxpayer information. Similarly, the United Kingdom freedom of information legislation also contains broader protection for non-taxpayer, sensitive revenue information. The “maintenance of the law” protection may cover some of the sensitive non-taxpayer information outlined above, but it is not clear this would always be the case. The protection of public revenue is considered of sufficient importance that a residual protection should be retained in the confidentiality rule in the Tax Administration Act.

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<sup>3</sup> Taxation Administration Act 1953 (Commonwealth) Schedule 1, Chapter 5, Division 355.

## **B: Information sharing**

The status quo is a combination of specific legislative provisions for each information sharing arrangement and utilising regulatory frameworks set out in section 81BA of the Tax Administration Act and Part 9A of the Privacy Act 1993. The regulatory frameworks provide greater flexibility than specific legislative provisions, however, there is an opportunity to improve the flexibility and usefulness of these rules.

### ***Disclosure option 2: Retain a regulatory sharing model with broader principles and extend to “public service provision” (part of recommended package)***

Section 81BA was put in place prior to the Approved Information Sharing Agreement rules in the Privacy Act. Sharing under 81BA is limited to government agencies, where that agency is lawfully able to collect the information but the provision, collection and verification by that agency is inefficient. While this is, and has been, a useful provision, the criteria are not as flexible as they could be, in particular as regards the limitation to “government agency” and the requirement that it be inefficient for the requesting agency to carry out the collection itself.

Under this option, the basic model of section 81BA (information-sharing authorised by regulation) is retained but some greater flexibility would be introduced to allow sharing for “public service provision” rather than only with government agencies.

Under this option the criteria would be modernised to permit sharing where:

- providing the information will improve the ability of the government to efficiently and effectively deliver services or enforce laws; and
- the information is more easily or more efficiently obtained from or verified by Inland Revenue than from other sources; and
- the amount and type of information provided is proportionate given the purpose for which it is being shared; and
- the information will be adequately protected by the receiving agency; and
- sharing the information will not unduly inhibit the provision of information to the Inland Revenue Department in the future.

These criteria are similar to those in 81BA, the key differences being a relaxation in the requirement that information sharing occur only when direct collection/verification is inefficient, to permitting sharing where it is more easily or efficiently obtained from, or verified by, Inland Revenue, and the introduction of an express proportionality consideration. Consideration of any impacts on future information provision to Inland Revenue, and requirements for adequate protection by the receiving agency are similar to those in section 81BA. Extending the provision to sharing for “provision of public services” rather than limiting to government agencies makes this option more consistent with the Privacy Act Approved Information Sharing Agreement rules.

The Office of the Privacy Commissioner has expressed concern about the proliferation of information sharing frameworks, and expressed a preference for agencies to use the rules in the Privacy Act. Inland Revenue does utilise these rules where appropriate, however they primarily focus on sharing personal information, and are therefore not appropriate for information shares that primarily concern non-personal (business) information. This option provides rules, similar to those in the Privacy Act, to deal with situations where the information to be shared is mainly of a non-personal nature.



***Disclosure option 3: Authorise all sharing by agreement between Chief Executives***

Under this option, a legislative provision would authorise the Commissioner of Inland Revenue to enter into agreements with other Chief Executives regarding the sharing of Inland Revenue's information, without any requirement for regulations. A similar model was proposed by the New Zealand Customs Service, however has been modified during the legislative process to now propose requiring Ministerial authorisation. While this would provide a highly flexible model, the importance of taxpayer confidentiality is considered to be such that a regulatory model, with Cabinet and Regulations Review Committee oversight was more appropriate. A regulatory model is also more consistent with the Approved Information Sharing Agreement model in the Privacy Act, which Inland Revenue will continue to utilise where appropriate, namely where the agreement primarily involves sharing personal information.

***Disclosure option 4: Authorise consent-based sharing for public service provision by agreement between Chief Executives (part of recommended package)***

While an agreement-based model was not considered appropriate for all information sharing (in particular sharing that is done without need to seek consent or advise those whose information is shared), under this option information sharing done with the consent of the taxpayer concerned could be governed by agreement, without need to seek a regulation. This option is intended to facilitate more flexible information sharing for public service provision, carried out with the informed consent of the taxpayer concerned.

This option would cover situations such as, for example, where a regional non-governmental agency (NGO) has a service agreement with the Ministry of Social Development to assist people to find affordable housing and access their housing-related (or other) government entitlements. To provide the best service, the NGO needs access to up-to-date information about the customer, including their income and other social policy entitlements and obligations. The NGO obtains the informed consent of the customer to access this information. Under this option Inland Revenue, the Ministry of Social Development and the NGO (and potentially other NGOs offering the same service) would sign an agreement. Inland Revenue could then provide the information to the Ministry and/or the NGO in accordance with the terms of the agreement.

Consent-based sharing was raised in *Towards a new Tax Administration Act*, noting the risk of coerced consent. It was therefore suggested that limiting consent-based sharing government agencies might be appropriate in the first instance. This was a position supported by submitters, and reiterated in *Proposals for modernising the Tax Administration Act*, with the modification of permitting this form of sharing for the provision of public services (consistent with the regulatory government information sharing proposal and the Approved Information Sharing Agreement framework).

Also noted in *Towards a new Tax Administration Act* was the possibility that the eventual development of integrated online services might largely remove the need for this form of consented sharing as the customer would be to access the information themselves and forward it in a digital format to the agency or agencies with whom they wished to share it. However, this option is not yet available, and while some submitters considered that the existing ability to access one's own information and pass it on (in a non-digital format) sufficient, enabling a consent-based system for sharing information for public service

provision will provide for a more flexible and responsive approach to be taken to improving services for customers seeking optional cross-government services.

### **C: Other options for improvements**

We have identified two additional options to improve the rules relating to information disclosure, primarily focused on providing additional clarity.

#### ***Additional option 1: Provide a more cohesive and transparent framework of exceptions to the confidentiality rule (part of recommended package)***

The current legislative set of exceptions has developed in an ad hoc matter over a long period of time. This has led to a framework that could be seen as lacking in transparency and clear unifying principles. Under this option the legislation would set out four clear categories of exceptions: disclosures for purposes related to the tax system; disclosures to taxpayers and their agents; international disclosures; and disclosures to other government agencies for non-tax-related purposes. Setting out clear categories of exceptions would provide greater transparency and clarity to the legislation.

#### ***Additional option 2: Retain the existing penalties for knowing breach of confidentiality and clarify their application to third parties with access to Inland Revenue's information (part of recommended package)***

This option is largely a reflection of the status quo, updated to take account of changes proposed by disclosure option 1. There are existing penalties for Inland Revenue officers and certain other persons who knowingly fail to maintain secrecy. This option proposes to carry over those penalties to the new confidentiality rules proposed in option 1.

This option also proposes clarification/modernisation to the penalty as it applies to persons other than Inland Revenue officers. As the exceptions to the confidentiality rule have been updated in an ad hoc manner over time, the attendant penalty rules have not always received the corresponding updates. Under this option the penalty rule will be updated to clearly apply to all situations where someone with access to confidential Inland Revenue information knowingly improperly discloses that information. The penalty – imprisonment for a maximum of 6 months, or maximum fine of \$15,000, or both – would remain the same as currently.

### **3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?**

The criteria used to assess the likely impacts are:

- Transparency;
- Efficiency – of both administration and compliance, so options should both reduce compliance costs and administrative effort;
- Flexibility – options should provide a level of flexibility or future-proofing for ongoing changes in information collection and sharing;
- Integrity of the tax system – information is critical to the functioning of Inland Revenue and therefore any impacts on integrity, or perceptions of integrity, that might in some way affect the quality of information Inland Revenue is able to obtain are key considerations.

In general these criteria work together and do not require significant trade-offs. However the



criterion of integrity, as defined in section 6 of the Tax Administration Act, includes the “rights of taxpayers to have their affairs kept confidential”. When it comes to exceptions to confidentiality, including information sharing, there is an inherent trade-off between confidentiality and efficiency or, in some cases, transparency. It should be noted however, particularly in relation to disclosures for tax-related purposes, that the statutory concept of integrity also includes the responsibility of taxpayers to comply with the law.

### **3.3 What other options have been ruled out of scope, or not considered, and why?**

An option that was ruled out of scope early in the analysis was removing the specific tax secrecy rules and instead relying on the Privacy Act. The key issue with this approach is that a considerable amount of taxpayer information held by Inland Revenue relates to companies, trusts and other entities, and would therefore not be covered by the Privacy Act. Therefore, rules for the non-personal information would still be required. There are also potentially issues with the boundary between personal and non-personal information – for example, when considering company information that includes information about the directors.

Other factors that saw this option ruled out of scope early were the importance of confidentiality rules to robust international tax information exchange (noting that countries can choose not to exchange information with jurisdictions if they are not satisfied with their confidentiality laws) and to tax system integrity more broadly. As a result, the analysis was confined to looking at options which maintained some form of confidentiality rules.

## Section 4: Impact Analysis

**Marginal impact: How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?**

### *Collection and use of information options*

	No action	Amend collection power to authorise repeat external dataset collection	Regulation-making power for repeat external dataset collection	Clarify use of information for multiple revenue purposes
<b>Transparency</b>	<b>0</b>	0 This option would not see any greater transparency of collection than the current ad hoc approach.	++ Regulations and associated material are published meaning there is a public record of this type of collection along with information about what the data will be used for.	++ While this is largely viewed as the current position by Inland Revenue, it may not be clear to taxpayers. A clear statement in the legislation will assist transparency.
<b>Efficiency</b>	<b>0</b>	+ Providing specifically for repeat collection would improve administrative efficiency.	++ Where a case for repeat collection is made, this process provides greater administrative efficiency than ongoing ad hoc requests. While provision may impose costs, there may be greater efficiency in a standard process for data holders.	+ Appropriate reuse of data is more administratively efficient than repeat requests for the same information from the customer. This is also more efficient for the customer. Care must be taken, consistent with the privacy principles, to ensure information remains accurate and up-to-date.
<b>Flexibility</b>	<b>0</b>	++ A legislative power would provide some flexibility but may require a greater degree of specificity in the primary legislation than a regulation-making approach.	++ A regulation-based approach provides for greater flexibility in relation to each individual regulatory instrument, as broader principles can be specified in the legislation.	+ This approach gives Inland Revenue clearer administrative flexibility with information.
<b>Integrity</b>	<b>0</b>	+ Access to large datasets enables more compliance, educative and service activity that will improve integrity.	++ Access to large datasets enables more compliance, educative and service activity that will improve integrity. Greater transparency also contributes to improved integrity.	++ Transparency about information use would enhance integrity.
<b>Overall assessment</b>		+	++ <b>Recommended option</b>	++ <b>Recommended option</b>

**Disclosure options – Scope and information sharing**

	<b>Better target the confidentiality rule</b>	<b>Enhanced regulatory sharing model</b>	<b>Authorise sharing by agreement between agencies</b>	<b>Consent based sharing for public service provision</b>
<b>Transparency</b>	++ Inland Revenue can release more information and the rules are clearer about what is protected. Submitters support this option provided commercially sensitive information is protected.	++ This option will see, over time, many of the existing legislative sharing arrangements moved into the regulatory framework which will provide greater transparency because the regulations and agreements are published.	- Agreements could be required to be published which would enhance transparency, however, this model has no Ministerial or Parliamentary oversight which could be seen to reduce transparency.	++ Customers will be aware of the information sharing as informed consent is required.
<b>Efficiency</b>	++ The current rule is inefficient as it protects information it does not need to protect. The narrower rule would allow non-taxpayer information to be released or shared more efficiently.	+ Improved information sharing improves efficiency for both customers who do not have to provide information multiple times, and for government as it can be reused rather than collected multiple times.	++ Improved information sharing improves efficiency both for customers who do not have to provide information multiple times, and for government as it can be reused rather than collected multiple times.	++ Improves efficiency both for customers, who do not have to provide their information multiple times and for wider government as, rather than needing to seek information from customers, it can directly verify from Inland Revenue.
<b>Flexibility</b>	++ The proposal provides greater flexibility to release information while protecting a broad range of information about taxpayers and sensitive non-taxpayer information.	+ A regulatory model is more flexible than legislative exceptions – broadening the application of the regulatory model will enhance flexibility.	++ An agreement based model is more flexible and allows agreements to be updated more quickly.	++ An agreement based model is more flexible than legislative or regulatory options, allowing for faster deployment of new services and changes to agreements.
<b>Integrity</b>	++ The rule remains protective of taxpayer information rather than a wider set of information. This better focus enhances integrity.	+ Enhancing the regulatory model, with clear principles will improve integrity.	-- Oversight of information sharing proposals is considered important to ensure that it does not overstep or risk unduly affecting the ability to collect information, or the quality of information in the future.	++ While there is less oversight than regulatory options, as it is for consented sharing and limited to public service provision, the impact on integrity is considered to be positive.
<b>Overall assessment</b>	<b>++ Recommended option</b>	<b>+ Recommended option</b>	-	<b>++ Recommended option</b>

**Additional disclosure improvement options**

	<b>More cohesive exception framework</b>	<b>Clarify penalty rules</b>
<b>Transparency</b>	++ The current framework lacks transparency and is hard to draw cohesive principles from. This option makes clearer the classes of situation in which exceptions are considered appropriate.	+ The current rules regarding non-Inland Revenue officers are difficult to follow. A clearer rule would be more transparent.
<b>Efficiency</b>	+ A clearer framework (in particular coupled with the preferred information sharing option) will be more efficient to administer.	+ A clearer rule is more efficient to administer.
<b>Flexibility</b>	+ Drawing the exceptions together into a more principled and cohesive framework is intended to provide greater flexibility within the classes of exception than the current very specific ad hoc exceptions.	+ A clear rule that the confidentiality obligation follows the information, as does the penalty, provides greater flexibility than the current rules tied to specific provisions and secrecy certificates.
<b>Integrity</b>	++ Greater transparency and cohesion in the framework enhances integrity.	++ Clearer rules capturing all recipients of confidential information emphasise its importance and enhance integrity.
<b>Overall assessment</b>	<b>++ Recommended option</b>	<b>+ Recommended option</b>

**Key:**

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

## Section 5: Conclusions

### 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The proposed package of options considered to best address the problem, meet the policy objectives and deliver the highest net benefits is:

- *Collection* – collection option two: regulation-making power for repeat collection of external datasets.
- *Use* – use option one: express clarification that information gathered for one purpose can be used for other purposes within Inland Revenue.
- *Disclosure*:
  - *Scope* – disclosure option one: a better targeted confidentiality rule focused on protecting information about taxpayers and sensitive non-taxpayer information.
  - *Information sharing* – disclosure options two and four: an enhanced regulatory sharing model together with consent based sharing governed by agreements. Both options are limited to information sharing for public service provision.
  - Other enhancements – additional options one and two: a more cohesive and transparent framework of exceptions and clarification of the penalty rules, namely retaining the existing penalties for knowing breach of confidentiality and clarifying their application to third parties with access to Inland Revenue’s information.

This package of options has been assessed as providing improved transparency, efficiency and flexibility, while maintaining or improving the integrity of the tax system. In general, stakeholders expressed support for the proposed package, provided sufficient safeguards were in place for commercial information and to ensure that information sharing did not allow other agencies to access information they were not entitled to. The proposals have been designed to ensure these concerns are addressed. Stakeholders were keen to see enhanced transparency around Inland Revenue’s collection, use and disclosure of information and this package of proposals will ensure improvements in this respect.

Inland Revenue has extensive experience with the application of its information collection, use and disclosure rules and therefore has a good understanding of the areas that work well and not so well. This package of reforms has been designed to improve the rules without undermining the fundamental areas that continue to work well, primarily confidentiality of taxpayer information and collection rules based on a ‘necessary or relevant’ standard.

As shown in 5.2 below, the main impacts of the package relate to the proposals that will make it easier for Inland Revenue to undertake repeat collection of large datasets from external parties and for Inland Revenue to share its information with other agencies. The other proposals have limited impacts.

## 5.2 Summary table of costs and benefits of the preferred approach

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

Regulated parties – Information holders	Costs for affected information holders associated with regular repeat dataset provision where regulations are put in place. These costs will vary depending on the information sought and the systems of the information holder. In cases where information is currently sought on an ad hoc basis, making provision regular may have minimal additional impact.	Low	Medium
Regulators – Inland Revenue	There may be increased costs for Inland Revenue associated with increased information sharing.	Low	High
Wider government			
Other parties			
<b>Total Monetised Cost</b>	It is not possible to quantify the costs at this time, as the changes that may result in additional costs will occur when regulations are made under the new information sharing and collection empowering provisions.		
<b>Non-monetised costs</b>		Low	Medium

### Expected benefits of proposed approach, compared to taking no action

Regulated parties - customers	Information sharing can provide compliance cost savings to customers where it reduces the need for them to provide their information to multiple agencies.	High	High
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Regulators – Inland Revenue	Improved information holdings for compliance, educative and pre-population work from repeat dataset collection.	High	High
Wider government – departments and NGO service providers	<p>Improved ability to share information and more flexibility to make changes to existing arrangements. This should lead to improved efficiency across government.</p> <p>By way of example from some of the existing information sharing arrangements in the year ending 30 June 2017:</p> <ul style="list-style-type: none"> <li>• The proactive share with MSD to prevent benefit fraud identified an estimated \$46.3 million in overpayments;</li> <li>• Information Inland Revenue shared with the Ministry of Justice enabled it to collect more than \$11.2 million in overdue fines;</li> <li>• Inland Revenue shared information 39 times in response to 45 valid requests for information from WorkSafe New Zealand and the Labour Inspectorate, which is part of the Ministry of Business, Innovation and Employment. This is helping them to investigate breaches in workplace legislation.</li> </ul>	High	High
Other parties			
<b>Total Monetised Benefit</b>	It is not possible to quantify the benefits at this time, as the specific changes will occur when regulations are made under the new information sharing and collection empowering provisions.		
<b>Non-monetised benefits</b>		High	High

### 5.3 What other impacts is this approach likely to have?

Nothing not already covered elsewhere in this analysis.



#### **5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?**

The preferred options are consistent with the Government's 'Expectations for the design of regulatory systems'. The preferred options should deliver a more appropriately targeted, transparent set of rules for the collection, use and disclosure of information by Inland Revenue.

The preferred options aim to minimise cost across the system, better align with related requirements in the Privacy Act and Official Information Act, conform with established legal and constitutional principles and are generally similar in nature to rules in place in the United Kingdom and Australia.

The preferred options have the scope to evolve in response to changing circumstances or new information on the regulatory system's performance. Regulations provide a more flexible and adaptive approach to managing information sharing, and the proposed regulatory approach to repeat dataset collection provides a more transparent and certain process for both data holders, and those whose information is being collected.

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

The preferred options will need to be implemented by legislative amendment to the Tax Administration Act 1994. For the most part the preferred options will require amendment to, and consolidation of, existing provisions. It is intended that Part 4 of the Act will be substantially redrafted to give effect to the preferred options.

A new empowering provision will be required to enable the making of regulations governing repeat collection of data. The empowering provision for information sharing regulations will require amendments to an existing provision (section 81BA).

Transitional provisions will be required to grandparent existing information sharing arrangements. Over time these can be moved within the new regulatory framework and the provisions removed.

The amendments could be included in the first omnibus taxation bill of 2018. The amendments could apply from date of enactment. Explanation of the amendments and their effect would be contained in a Tax Information Bulletin released shortly after the Bill received Royal assent.

Inland Revenue's internal and external guidance will be updated and where necessary, new guidance developed, to assist staff and taxpayers with the application of the new rules.

Once implemented, Inland Revenue will be responsible for the ongoing operation and enforcement of the rules.

Other agencies with an interest, in particular those with whom information is shared, will, as now, be involved in an ongoing relationship with Inland Revenue relating to the operation of that information sharing. Relevant stakeholders will be involved in consultation where any new information sharing or information collection regulations are proposed.

### 6.2 What are the implementation risks?

There is a risk there could be a large number of agencies that seek new or amended information sharing arrangements following the enactment of the proposed information sharing rules. Inland Revenue has a set of principles that are applied to the prioritisation of information sharing proposals that can be used to help deal with this situation should it arise. As the proposed new rules are an extension of existing rules, rather than a completely new regime, this risk is considered relatively low.

With use and disclosure of information, in particular information sharing, there is always a risk of a privacy or information breach. Consideration of these risks and protections that should be put in place will be built into the proposed rules. Information sharing agreements will also deal with agreed uses and disclosure of information provided by Inland Revenue. The preferred options also include proposals to maintain the obligation for staff to keep Inland Revenue information confidential and to clarify the corresponding

obligation on those in receipt of Inland Revenue information.

# Section 7: Monitoring, evaluation and review

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

Inland Revenue would monitor the effectiveness of the proposed changes in the first 12 months of operation. The monitoring would involve a review of regulations made under the proposed information sharing and dataset collection enabling provisions within that period to ensure they were consistent with the intended policy. The empowering provision for dataset collection regulations will contain a requirement that the operation of the provision is reviewed after 5 years. This will include consultation with external parties and reviewing the costs and benefits of regulations made under the empowering provision.

In general, Inland Revenue monitoring, evaluation and review of new legislation takes place under the generic tax policy process (GTPP). The GTPP is a multi-stage policy process that has been used to design tax policy (and subsequently social policy administered by Inland Revenue) in New Zealand since 1995. The final step in the process is the implementation and review stage, which involves post-implementation review of legislation and the identification of remedial issues. Opportunities for external consultation are built into this stage. In practice, any changes identified as necessary following enactment would be added to the tax policy work programme, and proposals would go through the GTPP.

The Regulations Review Committee would also have a role in monitoring and reviewing any regulations made. The Committee examines all regulations, investigates complaints about regulations, and examines proposed regulation-making powers in bills for consistency and good legislative practice. The Committee reports to the House and other committees on any issue it identifies. The House can “disallow” a regulation, meaning it no longer has force.

## 7.2 When and how will the new arrangements be reviewed?

The proposals relating to both information sharing and repeat information collection are to be governed by regulations. As part of the regulation making process consultation will be required. This will give stakeholders an opportunity to make comment and raise any concerns about the proposed sharing or collection. The proposals also require regulations and underlying agreements to be published, making available a greater level of information about information shared and collected than is currently the case. Greater awareness of these matters provides greater opportunity for people to raise any concerns they may have, either with Inland Revenue, or with a relevant regulator, such as the Privacy Commissioner. As above, the Regulations Review Committee also has a role in this regard.