

Regulatory Impact Statement

Information Sharing Agreement between the
New Zealand Gang Intelligence Centre Agencies

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the New Zealand Police.

It provides an analysis of options to enable effective, complete and efficient information sharing by the NZ Gang Intelligence Centre (GIC) and the GIC agencies.

Information sharing agreements between government agencies require the privacy of individuals to be considered and balanced against the need for government agencies to provide high quality services.

Currently, information sharing by the GIC and the GIC agencies is restricted to the application of the law enforcement and health and safety exceptions to Information Privacy Principle 11 in the Privacy Act 1993. Inland Revenue is prevented from participating fully by the Tax Administration Act 1994.

An Approved Information Sharing Agreement (AISA) between the GIC agencies and the GIC would enable greater multi-agency and comprehensive data analysis to occur and in a broader range of subject areas. In addition, by having clear procedures and processes in place, information sharing under an AISA would be more efficient.

An AISA could appear to allow unrestricted disclosures and sharing of information about gang members, their families, their associates and others adversely affected such as victims and witnesses. However, any information shared would be strictly limited to the purpose statement in the Agreement (to reduce gang-related harms) and information flows are tightly controlled through the GIC itself and systems and structures put in place to protect both privacy and information.

Agency operational protocols, which will support the AISA, will be an important safeguard to protect the privacy of affected individuals. These protocols will ensure each agency has appropriate policies and procedures in place to ensure it is able to meet the terms of the Agreement. The Privacy Commissioner has been consulted on the draft protocols and they will be agreed by the Chief Executives of each agency before they are finalised.

The Privacy Commissioner supports the draft Agreement and is comfortable it meets the requirements in the Privacy Act.

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Executive Summary

1. This Regulatory Impact Statement provides an analysis of options that would enable the New Zealand Gang Intelligence Centre (GIC) to maximise its ability to produce intelligence for the participating agencies who can then make decisions to contribute to reducing gang-related harm.
2. An Approved Information Sharing Agreement (AISA), made in accordance with the Privacy Act 1993, is recommended. It would enable effective, complete and efficient information sharing by all the participating agencies. An AISA would also ensure safeguards are in place to protect the privacy of people and information.
3. A draft Information Sharing Agreement has been developed by the participating GIC agencies. Public consultation largely supported it. The Privacy Commissioner supports the draft Agreement and considers the proposed safeguards to protect privacy are intended to mitigate any privacy risks. If an AISA is agreed to, it will be subject to review by the Privacy Commissioner to ensure it is meeting its stated objectives.

Status Quo and Problem Definition

4. In 2014, the Government announced its 2014 Whole-of-Government Action Plan to Reduce Harm caused by New Zealand Adult Gangs and Transnational Crime Groups ('gangs'). The Government noted that New Zealand has a complex gang problem that spans social, economic and justice issues and that gangs create disproportionate harm in New Zealand.
5. As part of the Gang Action Plan, the New Zealand Gang Intelligence Centre (GIC) was established by Cabinet to combine intelligence across government agencies to allow better targeting and coordination of policies directed at reducing gang-related harms. It would also inform decision making on preventative, investigative and enforcement interventions relating to gangs, and to identify vulnerable children, youth and gang family members for social services support [CAB Min (14) 21/19 refers].
6. The GIC was officially launched on 1 March 2016 and its current membership includes the following agencies:
 - Accident Compensation Corporation
 - Department of Corrections
 - Department of Internal Affairs
 - Housing New Zealand
 - Inland Revenue Department
 - Ministry for Vulnerable Children, Oranga Tamariki
 - Ministry of Business, Innovation and Employment
 - Ministry of Education
 - Ministry of Health
 - Ministry of Social Development
 - New Zealand Customs Service
 - New Zealand Police.

7. The Cabinet paper also noted that information sharing arrangements relating to the GIC would need to be addressed.
8. The privacy of individuals, and their personal information, is protected and promoted by the Privacy Act 1993. The Act outlines information privacy principles for how agencies should collect, use, disclose, store and give access to personal information.
9. Currently, information is being shared by the agencies (with the exception of Inland Revenue) and the GIC under Principle 11 of the Privacy Act which allows for non-compliance with the principle that personal information will not be disclosed, if an exception applies. The exceptions in Principle 11 enable agencies to share personal information in specific circumstances, for example, to avoid prejudice to the maintenance of the law, including the prevention, detection, investigation, prosecution and punishment of offences, or to prevent or lessen a serious threat to personal or public health and safety. In these situations, information sharing can occur without informing the affected person even where the person has expressly instructed agencies not to do so.
10. Each agency is therefore required to determine on a case-by-case basis whether information intended to be shared with the GIC meets the criteria for disclosure under one of the exceptions in Principle 11.
11. Sharing information under Principle 11 is limited in scope. For example, social sector agencies may not be able to fully participate in the GIC if they were to rely on the law enforcement or serious threat exceptions in Principle 11. This limits the intelligence the GIC can produce and any corresponding action agencies can subsequently take towards reducing gang-related harms.
12. In addition, Section 81 of the Tax Administration Act 1994 prohibits Inland Revenue from disclosing any information it holds to external agencies to maintain tax secrecy. The only exceptions are where it is specified in the Act or under an approved information sharing agreement made by an Order in Council. For this reason, Inland Revenue cannot currently contribute to the work of the GIC.
13. For the GIC to function effectively, each GIC agency must be able to provide it with relevant information about specific individuals involved with gangs in a timely and efficient manner, and meet the requirements of the Privacy Act. The GIC can then use the information to create intelligence products about that individual and share them with the relevant agency to take further action, such as enforcement activity or the provision of assistance to families connected to gangs.

Objectives for determining an appropriate information sharing mechanism

14. The objectives of an information sharing mechanism between the GIC and the GIC agencies are to:
 - (a) enable the GIC and GIC agencies to effectively contribute to the Government's Gang Action Plan which seeks to reduce the harms caused by gangs
 - (b) share information in an efficient and timely manner

- (c) enable Inland Revenue to participate in the GIC, in accordance with the Tax Administration Act 1994
 - (d) ensure sufficient protection of people's privacy, and ensure a proper level of security and transparency when sharing information.
15. Objectives (a), (b) and (c) can potentially conflict with objective (d) if information is shared too widely or if robust security systems and processes are not established to protect people's privacy. To ensure that a potential conflict is managed appropriately, it is necessary to find a balance between the goal of reducing gang harms and ensuring that people's information is adequately protected.

Options and impact analysis

16. Four options have been identified that may wholly or partly achieve the above objectives.

Option 1: Retain the Status Quo

Option 2: GIC and GIC agencies sign a Memorandum of Understanding (MOU)

Option 3: GIC and GIC agencies sign a MOU & the NZ Police and Inland Revenue agree to an Approved Information Sharing Agreement (AISA)

Option 4: GIC and all GIC agencies agree to an AISA (preferred).

Option 1 – Status Quo

17. Under this option, the GIC and the GIC agencies would continue to operate as they do currently. In summary:
- agencies continue to share a limited amount of personal information on a case-by-case basis
 - the GIC continues to produce intelligence based on the limited information it receives, thereby limiting potential actions that could be taken to reduce gang-related harm
 - Inland Revenue would not be able to share information with the GIC
 - information sharing by GIC agencies is currently not transparent.

18. Option 1 partially meets objective (a) and (d) and does not meet objective (b) or (c).

Option 2 – Memorandum of Understanding

19. Option 2 involves the GIC and the GIC agencies signing a Memorandum of Understanding (MOU) outlining which agencies will share information, the purpose for collecting and disclosing information, and set out agreed practices and responsibilities relating to the sharing and protection of information.
20. The advantages of a MOU over the status quo are that it:
- can help provide clarity over information sharing, for example, why it is being shared, what information is needed, what agencies will do with the information

- can be a public document
- can be made relatively easily because it is not a legal instrument
- is generally signed by an agency Chief Executive or other senior member of an organisation
- can be amended relatively easily, only requiring the agreement of the parties
- does not require any public consultation.

21. However, a MOU cannot provide legal authority to share information where agencies intend to modify or seek an exemption to the information privacy principles. Therefore, the use of personal information would continue to be limited to the purposes specified in Principle 11 of the Privacy Act.
22. Agencies must continue to share information on a case-by-case basis. A MOU therefore would not enable the GIC to function effectively nor would it provide efficiency gains. In addition, Inland Revenue would not be able to share information with the GIC under an MOU.
23. Option 2 meets objective (d), partially meets objective (a), but does not meet objectives (b) or (c).

Option 3 – MOU and a separate Approved Information Sharing Agreement for the NZ Police and Inland Revenue

24. Option 3 involves the agencies signing an MOU (Option 2) with the addition of a separate AISA between the Police (as the lead agency for the GIC) and Inland Revenue.

An Approved Information Sharing Agreement (AISA)

25. 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 or within agencies for the purpose of delivering public services.
26. An AISA describes the specific agencies involved in delivering the public service, why they are delivering it, what personal information they need to share, and what they will do with the information, including how they will manage any privacy risks.
27. An AISA authorises agreed departures from information privacy principles if there is a clear public policy justification and the privacy risks of doing so are managed appropriately. Also, by providing certainty around information to be shared, an AISA removes doubt around whether there are any privacy implications and impediments to information sharing under the Privacy Act. AISAs are also public documents.
28. 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. In addition, the Privacy Act requires an AISA to be made by following a transparent process. This 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
 - making an AISA under an Order in Council.

Analysis of Option 3

29. Under Option 3, the AISA would enable Inland Revenue to share information with the GIC for the purpose of reducing gang-related harm. However, it would not enable the GIC to share intelligence based on information from Inland Revenue with the other GIC agencies.
30. Like Option 2, the GIC agencies would be limited to sharing information in compliance with Principle 11 which is both limiting and inefficient.
31. Option 3 meets objective (d), partially meets objectives (a) and (c) but does not meet objective (b).

Option 4 – An Approved Information Sharing Agreement for the GIC and all GIC Agencies (preferred option)

32. Option 4 involves the GIC and all the GIC agencies agreeing to an AISA. In this case, an AISA would enable GIC agencies to share information for the purpose of reducing gang-related harms.
33. Sharing under an AISA would meet all of the above objectives by:
 - enabling personal information to be shared if it meets the purpose of the AISA which may be broader than what can be shared currently under the Privacy Act
 - enabling more efficient information sharing (provided it meets the purpose of the AISA) through having clear processes and procedures in place instead of only sharing information on a case-by-case basis
 - enabling Inland Revenue to fully participate
 - ensuring appropriate systems and processes are in place to protect people's privacy.
34. Officials prefer using the AISA mechanism to enable information sharing about individuals. It provides a consistent and agreed means of addressing privacy and security concerns. AISAs also enable a better and more transparent overview of the information sharing.
35. Option 4, provided the AISA contains the required information, meets objectives (a), (b), (c) and (d).

Summary of options and impact analysis

36. A summary of the full range of impacts of each of the four options is contained in Table 1 below.
37. Option 4 is the preferred option as officials consider it desirable to have a consistent framework across government for information sharing. It meets all four objectives and has minimal compliance costs.

Table 1: Summary of Options vs Objectives

	Objective (a): Reduce gang-related harms	Objective (b): Efficient use of resources	Objective (c): Include Inland Revenue	Objective (d): Protect privacy	Compliance impacts
Option 1: Status Quo	Partially Information can only be shared in accordance with the Privacy Act therefore limiting the potential use of intelligence created	No Agencies share information on a case-by-case basis	No	Partially Information sharing is currently not transparent	None
Option 2: MOU	Partially Information can only be shared in accordance with the Privacy Act, therefore limiting the potential use of intelligence created	No Agencies share information on a case-by-case basis	No	Yes MOU should include measures to protect information and is a public document	None
Option 3: MOU and Separate AISA between the NZ Police and Inland Revenue	Partially Apart from IR, information can only be shared in accordance with the Privacy Act, therefore limiting the potential use of intelligence created	No Apart from IR, agencies share information on a case-by-case basis	Partially IR would be able to share information with the GIC, but the GIC could not share intelligence based on IR information with other agencies	Yes AISA is a public document approved by Order in Council MOU should include measures to protect information and is a public document	Minimal The Lead Agency must report on the operation of the AISA in their Annual Report

Option 4: AISA between GIC and all GIC agencies	<p>Yes</p> <p>Information can be shared if it meets the purpose of the AISA therefore creating new opportunities to reduce gang-related harms</p>	<p>Yes</p> <p>Agencies can efficiently share information if it meets the purpose of the AISA (not on a case-by-case basis)</p>	<p>Yes</p>	<p>Yes</p> <p>An AISA is a public document approved by Order in Council</p> <p>Operational protocols covering security and handling processes will be published (with redactions if necessary)</p>	<p>Minimal</p> <p>The Lead Agency must report on the operation of the AISA in their Annual Report</p>

Consultation

Public Consultation

38. As agreed by Cabinet in November 2016, public consultation on an initial draft information sharing agreement was held between 15 November and 23 December 2016 [CAB-16-MIN-0579 refers].
39. Along with the draft Agreement, a discussion document was released providing more background information. Both documents were available on the government website www.govt.nz and the same link could be used to make submissions. Submissions could also be made by email or by post.
40. To encourage submissions, the discussion document and the website asked the following questions:
 - 1) Are the individuals that will be covered by the proposed Agreement too restricted, about right, or too broad?
 - 2) Is the range of information about an individual proposed to be shared too restricted, about right, or too broad?
 - 3) Do you agree with how the information will be used under the proposed Agreement?
 - 4) Are the proposed protections on the privacy of individuals affected by the Agreement not strong enough, about right, or too restrictive?
 - 5) Do you have any other comments?
41. Each agency contacted their targeted stakeholders who were advised of the consultation and invited to encourage others to submit. In addition, the Minister of Police made a media release at the start of the consultation period.

Submissions

42. 27 submissions were received, comprising 24 submissions completed online using pre-set dropdown answers and 3 written submissions. The statistical breakdown below is based on the online submissions.
43. The majority of the submissions (75%) agreed with the how the information will be used (Question 3).
44. In terms of the individuals who would be affected by the proposal (Question 1), 50% of submissions considered the balance was 'about right' but a substantial amount considered the proposal was too broad and included too many individuals (33%).
45. One anonymous submitter expressed concerns it may be too broad, for example, it would include a plumber working on a gang premises. The NZ Law Society considered the definition of 'Gang Associate' and 'Gang Related Harm' to be too broad and made suggestions for them to be more specific, Conversely, the Sensible Sentencing Trust submitted the proposal should be extended to include youth gangs, while another anonymous submitter recommended extending the proposal to include a wider range of people including those in Australia.

46. In terms of the range of information that is proposed to be shared (Question 2), the submissions were relatively evenly divided between being 'about right' and being 'too broad' (46% and 42% respectively). The NZ Law Society suggested the proposed information categories, which broadly describe the type of information to be shared, should be more specific.
47. With respect to whether the proposed protections on the privacy of individuals were sufficient (Question 4), the majority of submissions considered the proposal was 'about right' (54%) with a smaller number considering it to be insufficient (29%) or conversely, too strong (13%). The NZ Law Society suggested the proposed operational protocols on the protection of information should undergo public consultation and more information on its contents provided. Another anonymous submitter indicated more specific measures needed to be provided as they are currently vague and open to interpretation.
48. The general comments received across all the submissions included the following:
- one submitter supported the proposal provided gang families will be supported in the community if they turn their lives around (anonymous submitter)
 - the proposal does not intend to deprive gang members and their associates of basic human rights and civil liberties, even though they should not be entitled to the same protections as ordinary law abiding citizens (Sensible Sentencing Trust)
 - the proposed approach is biased and discriminatory and ultimately would unfairly impinge on Maori (anonymous submitter)
 - to protect the confidentiality of refugee and protection matters, the proposal should exclude Immigration New Zealand or only allow information to go to the GIC but not allow the GIC to provide information back to the Immigration NZ (NZ Law Society).

Response to submissions

49. The submissions were considered by all the agencies involved in the consultation. In addition, officials from NZ Police, the Ministry of Business, Innovation and Employment, the GIC and the Office of the Government Chief Privacy Officer met with representatives from the NZ Law Society to discuss their submission in greater detail.
50. Given the overall support for the draft Agreement, no substantial changes were recommended. However, several amendments were made including the following:
- definitions of 'gang-related harm' and 'gang associate': amending these so they are clearer about who is included and who is excluded from the definition
 - individuals affected by the Agreement: clarifying this, for example, that children of gang members are included but not children of gang associates
 - description of Information to be shared under the Agreement: indicating which agency could provide information, as per each information category
 - adverse Actions: adding a new section on adverse actions, including for each agency
 - safeguards to protect privacy: adding specific information about safeguards relating to the storage, transfer and access to personal information.

51. In addition, agencies have agreed to release a redacted version of the Operational Protocols (which will support the AISA by outlining agency systems and processes to protect information) when they are completed.

Privacy Commissioner Consultation

52. In accordance with section 96O of the Privacy Act, NZ Police consulted with the Privacy Commissioner on the revised draft Agreement. Supporting documentation, including the draft Operational Protocols, were also provided.
53. The Privacy Commissioner supported the draft Agreement and considered it met the statutory requirements of the Privacy Act. He added that while there were risks to privacy, the safeguards in the Agreement (combined with the additional safeguards set out in the information regarding Operational Protocols) were intended to mitigate those risks.
54. He said that, given the scope and nature of the information to be shared under the Agreement, he intended to review its operation and the effectiveness of the safeguards 12 months after signing of the Order in Council to confirm it was operating as intended and not unreasonably impinging on individual privacy.

Conclusions and Recommendations

55. An AISA has been considered by the GIC agencies as the best vehicle to enable information sharing by all the agencies. It would enable all the agencies to share information in an efficient and timely manner, and it would enable the GIC to develop intelligence that can be provided to the agencies to take actions to reduce gang harms, such as through taking enforcement activity or providing assistance to families connected to gangs.
56. The GIC agencies have developed a draft Agreement for the purpose of reducing gang-related harm. Public consultation largely supported the draft Agreement. In addition, the Privacy Commissioner supports the proposal.

Implementation Plan

57. The draft Agreement requires an Order in Council for it to become an AISA. The Cabinet Social Policy Committee will consider directing the Parliamentary Counsel Office to draft the Order in Council in June 2017. If agreed, the AISA is expected to take effect in August 2017.
58. When the Order in Council is passed, the AISA will be publicly available on the NZ Police website. In addition, the Operational Protocols will be published when they are completed.

Monitoring, Evaluation and Review

59. Given the size and complexity of the proposed Agreement, officials from the Office of the Privacy Commissioner and the GIC will develop a monitoring regime that is robust, effective and ensures the Agreement operates appropriately.

60. In addition, the Privacy Commissioner intends to review the operation of the Agreement 12 months after it comes into effect by Order in Council.
61. This would cover whether the AISA is meeting its goal in facilitating public services, unreasonably infringing upon privacy, or operating in an unforeseen way. It would also cover whether the costs of sharing are outweighing the benefits. If there are reasonable grounds to believe any of these are occurring, the Privacy Commissioner will prepare a report for the Minister of Police, which will also be tabled in Parliament.