

Hon Aupito William Sio
Associate Minister of Justice

Proactive release – Amendments to the list of Approved Information Sharing Agreements in Schedule 2 of the Privacy Act 2020

Date of issue: 13 June 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Amendments to the list of Approved Information Sharing Agreements in Schedule 2 of the Privacy Act <i>Cabinet Paper</i> Office of the Minister of Justice 12 May 2022	Released in full.
2.	Privacy Act (Schedule 2) Order 2022 <i>Attachment to Cabinet paper</i> 12 May 2022	Copies of the Order provided to Ministers with this paper have been withheld in accordance with section 131 of the Legislation Act 2019 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege. The final Order is publicly available from www.legislation.govt.nz .
3.	Privacy Act (Schedule 2) Order 2022 <i>Cabinet Minute LEG-22-MIN-0068</i> Cabinet Office 12 May 2022	Released in full.

In Confidence

Office of the Associate Minister of Justice
Cabinet Legislation Committee

Amendments to the list of Approved Information Sharing Agreements in Schedule 2 of the Privacy Act 2020

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Privacy Act (Schedule 2) Order 2022.

Policy

- 2 The Privacy Act (Schedule 2) Order 2022 (the Order) will make minor and technical amendments to the list of Approved Information Sharing Agreements (AISAs) in Schedule 2 of the Privacy Act 2020.
- 3 An AISA is a legal mechanism that authorises the sharing of personal information between or within agencies to facilitate the provision of public services.
- 4 The Order addresses a technical and minor lapse regarding four AISAs that were approved, revoked or amended under sections 96J – 96L and 96V of the Privacy Act 1993 prior to the commencement of all provisions of the Privacy Act 2020 on 1 December 2020.
- 5 Three of the amendments within the Order relate to AISAs approved or revoked under the Privacy Act 1993 throughout the five-month period between the enactment of the Privacy Act 2020 on 30 June 2020, and the commencement of all of its provisions on 1 December 2020. These changes to AISAs were correctly recorded in Schedule 2A of the 1993 Act but were not able to be recorded in Schedule 2 of the 2020 Act, because the 2020 Act was not in force. A further amendment relates to an AISA updated shortly before this period that was not recorded in either the 1993 or 2020 Act.
- 6 The 2020 Act provides for Schedule 2 to be updated directly through an Order in Council.¹
- 7 The proposed amendments within the Order are as follows:
 - 7.1 Replace the record of the AISA between the Ministry of Education and the Ministry of Social Development made on 8 August 2012 to support services for disengaged youth with the record of an amended AISA

¹ See Privacy Act 2020, s.161.

made on 13 May 2020, which added Oranga Tamariki as a party to the agreement.²

- 7.2 Add the record of the AISA made between the Accident Compensation Corporation; the Department of Internal Affairs; the Ministry for Business, Innovation, and Employment; the Ministry of Education; the Ministry of Social Development; the New Zealand Transport Agency; the Registrar of Motor Vehicles; the Registrar-General; and the Road User Charge Collector to enable these parties to facilitate customer-nominated public services. This agreement was made on 4 May 2020 and approved on 22 June 2020.³
- 7.3 Add the record of the AISA between the Inland Revenue; New Zealand Police; New Zealand Customs Service; and the Serious Fraud Office, for the maintenance of public safety, law enforcement and crime prevention, in particular, the prevention, detection, and investigation of serious crime and the provision of evidence of serious crime. This agreement was made on 27 July 2020 and approved on 10 August 2020.⁴
- 7.4 Remove the record of the AISA between the Inland Revenue and New Zealand Police relating to disclosure of personal information to New Zealand Police for the purpose of prevention, detection, investigation or providing evidence of serious crime made on 2 July 2014. This AISA was revoked through the Order approving the AISA between the Inland Revenue, New Zealand Police, New Zealand Customs Service, and the Serious Fraud Office in paragraph 7.3 above.⁵

Timing and 28-day rule

- 8 The Order will come into force on 17 June 2022. This complies with the 28-day rule.

² See <https://www.youthservice.govt.nz/assets/Uploads/NEET-AISA-2020.pdf>. Note that this was exempt from the requirement that an amendment to an AISA be through an Order in Council under section 96V(5)(c) of the Privacy Act 1993. This is because the change to reflect Oranga Tamariki's role as a separate party to the agreement following its establishment as a separate Ministry from MSD in 2017 was determined by MSD, as the AISA's lead agency, after consulting the Privacy Commissioner, to be unlikely to have any effect on the privacy implications of the agreement. For completeness, this change should now be reflected in Schedule 2 of the Privacy Act 2020 through an amendment by Order in Council.

³ See Privacy (Information Sharing Agreement Facilitating Customer Nominated Services) Order 2020.

⁴ See Privacy (Information Sharing Agreement Between Inland Revenue, New Zealand Police, New Zealand Customs Service, and Serious Fraud Office) Order 2020.

⁵ See Clause 20(2) of the Privacy (Information Sharing Agreement Between Inland Revenue, New Zealand Police, New Zealand Customs Service, and Serious Fraud Office) Order 2020.

Compliance

- 9 The Order complies with:
- 9.1 the principles of the Treaty of Waitangi;
 - 9.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 9.3 the principles and guidelines set out in the Privacy Act 2020;
 - 9.4 relevant international standards and obligations;
 - 9.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 10 I do not consider there to be any grounds on which the Regulations Review Committee could draw the Order to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 11 The Order has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Impact Analysis

- 12 Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it: (a) is suitable for inclusion in a revision Bill (as provided for in the Legislation Act 2012); (b) repeals or removes redundant legislative provisions; (c) is suitable for inclusion in a Statutes Amendment Bill (as provided for in Standing Orders); and (d) has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Publicity

- 13 No publicity is necessary for this change.

Proactive release

- 14 I will proactively release this paper, subject to any appropriate redactions in accordance with the Government's proactive release policy.

Consultation

- 15 The Ministry of Social Development; the Department of Internal Affairs; and the Inland Revenue Department were consulted as lead agencies for each of the AISAs to establish the amendments to be made through the Privacy Act (Schedule 2) Order 2022.

Recommendations

- 16 I recommend that the Cabinet Legislation Committee:
- 16.1 **note** that Schedule 2 of the Privacy Act 2020 does not correctly record the details of three AISAs that were approved or revoked after the enactment, but before the commencement, of the 2020 Act, and one AISA that was updated without Schedule 2 reflecting the change, and that as such, Schedule 2 of the Privacy Act 2020 requires minor and technical amendments;
 - 16.2 **note** that the Privacy Act (Schedule 2) Order 2022 will make amendments to Schedule 2 of the Privacy Act 2020 to give effect to the amendments referred to in paragraph 1 above;
 - 16.3 **authorise** the submission to the Executive Council of the Privacy Act (Schedule 2) Order 2022;
 - 16.4 **note** that the Privacy Act (Schedule 2) Order 2022 will come into force on 17 June 2022.

Authorised for lodgement

Hon Aupito William Sio
Associate Minister of Justice

Attached: Privacy Act (Schedule 2) Order 2022



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Privacy Act (Schedule 2) Order 2022

Portfolio Associate Justice (Hon Aupito William Sio)

On 12 May 2022, the Cabinet Legislation Committee:

- 1 **noted** that Schedule 2 of the Privacy Act 2020 (the Act) does not correctly record the details of:
 - 1.1 three Approved Information Sharing Arrangements (AISAs) that were approved or revoked after the enactment, but before the commencement, of the 2020 Act;
 - 1.2 one AISA that was updated without Schedule 2 reflecting the change;
- 2 **noted** that Schedule 2 of the Act requires minor and technical amendments to take account of the required amendments, as referred to in paragraph 1;
- 3 **noted** that the Privacy Act (Schedule 2) Order 2022 will make amendments to Schedule 2 of the Act to give effect to the amendments referred to in paragraph 1 above;
- 4 **authorised** the submission to the Executive Council of the Privacy Act (Schedule 2) Order 2022 [PCO 23237/6.0];
- 5 **noted** that the Privacy Act (Schedule 2) Order 2022 will come into force on 17 June 2022.

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little (Chair)
Hon Stuart Nash
Hon Kris Faafoi
Hon Michael Wood
Hon Aupito William Sio
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Officials Committee for LEG