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By email: privacy@justice.govt.nz

Sharing Court Information with Statistics New Zealand – consultation

Thank you for your letter of 2 December, inviting the New Zealand Law Society's feedback on a proposal to supply permitted court information to Statistics New Zealand's Integrated Data Infrastructure, by way of a proposed draft Approved Information Sharing Agreement (AISA) under the Privacy Act 1993.

The Ministry proposes to share "permitted information"¹ from the courts with Statistics New Zealand, so that the information can be used in the Integrated Data Infrastructure (IDI), a large research database holding detailed data from the public and private sector. Authorised researchers will be able to access de-identified datasets in order to address a range of research and policy questions. The consultation materials state that the IDI has strong privacy protections in place, and that the personal information to be shared will be anonymised and can only be used for statistical and research purposes.

General comments

The Law Society has considered the proposed draft AISA and the supporting Privacy Impact Assessment (PIA) and Complete Privacy Risk Assessment (Risk Assessment). The key question is whether the draft AISA contains adequate safeguards to protect the privacy of individuals whose personal information is proposed to be shared. That information is likely to be sensitive in nature, and any concerns will relate to the practical challenges in ensuring appropriate data transfer systems are in place to protect privacy.

It is the responsibility of the Ministry to safeguard the sensitive personal information contained in the courts' databases, and to ensure that its transfer to third parties such as Statistics New Zealand and use are subject to careful controls and monitoring. It is important that there is transparency and accountability about the transfer and use of the information.² The Law Society notes that the

¹ Pursuant to the District Court Act 2016 (s 237, Schedule 1) and the Senior Courts Act 2016 (s 174, Schedule 2): "permitted information" comprises the permanent court record; information that in respect of a person certain orders (i.e. protection, restraining, extended supervision, non-contact, public protection orders) have been made; and information that any probation report exists in respect of a person.

² It is not clear whether transfer and use of the information has already been taking place: see Complete Privacy Risk Assessment, R-002: "The Ministry of Justice and Statistics New Zealand have

proposed AISA and Memorandum of Understanding will make clear who is responsible for what in terms of storage and security,³ and in that regard the proposal to formalise the mechanisms and safeguards for the information sharing is a positive step.

Transfer of non-permitted information or suppressed information

The PIA identifies as a significant risk the possibility that the Ministry transfers by error the wrong court information to the IDI – either transferring information that is outside the scope of the “permitted information” listed in the legislation, and/or transferring information that is permitted but which has been suppressed.⁴

The draft AISA states that the Ministry may not share any permitted information which is subject to a suppression order,⁵ and proposes a range of safeguards, including the following:

- The Ministry and Statistics New Zealand will create a Memorandum of Understanding (MOU) which details roles and responsibilities for data sharing under the AISA, and will “ensure careful design and implementation of the extract process to ensure that only permitted information, and no suppressed information, is shared”; and
- “Permitted information will be extracted from source systems by Ministry of Justice staff and prepared for transfer. Care will be taken to exclude permitted information that is suppressed.”⁶

The draft MOU is not available for review, but the PIA recommends the following actions be taken to minimise privacy risks in relation to suppressed information:⁷

- “Conduct scenario analysis to establish how the extract process should deal with all forms of suppression, including cases where it is not documented in CMS [Courts Management System];
- Document the design and detailed requirements for the extract process and have these reviewed and approved by representatives from the Office of Legal Counsel, Ministry of Justice Policy, Sector Group and Court Operations;
- Ensure robust quality assurance of all code and assumptions, especially around suppression;
- Conduct ongoing compliance spot checks of the data sets created; and
- Develop detailed plans for reversing transfers if a mistake is made, in consultation with Statistics NZ.”

As is acknowledged in the documents, it will be important to implement a robust system for ensuring that suppressed information is not transferred in error. The PIA notes that “transfer of suppressed information in particular could result in significant reputational damage to the Ministry of Justice, the courts and Statistics New Zealand”.⁸ It would also breach the AISA, with resulting consequences.⁹

existing secure processes in place for transferring sensitive personal data. However, at present these are negotiated on a case-by-case basis.”

³ Complete Privacy Risk Assessment, R-002, p2.

⁴ Privacy Impact Assessment, p13.

⁵ Draft AISA, clause 10.

⁶ Ibid, clauses 12.1, 12.2, 13.1.

⁷ Privacy Impact Assessment, R-005, R-006, p14.

⁸ Ibid, p13.

⁹ Draft AISA, clauses 19 – 20.

There are however a range of backstop protections in the IDI to protect privacy if suppressed information were to be mistakenly shared,¹⁰ to minimise the potential impact on affected individuals. It is important to note in particular that all research and statistical output is confidentialised so that no individual can be identified.¹¹

Review of the AISA

As noted in the draft AISA and supporting materials, the Integrated Data Infrastructure (IDI) is subject to very strict privacy controls. The draft AISA lists the existing IDI privacy controls, and records that they will be maintained by the Ministry and Statistics New Zealand.¹² In future however changes might be made to the operation of the IDI that impact on privacy, and it would be sensible for the AISA to incorporate a review clause to cover that eventuality. That could be specified in clause 24, as part of the annual review process.

Conclusion

The Law Society would appreciate being kept informed of developments as the AISA and MOU are finalised, and in particular would appreciate receiving a copy of the documents in their final form. Contact can be made in the first instance through the Law Society's Law Reform Manager, Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz / 04 463 2912).

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kathryn Beck', written over a horizontal line.

Kathryn Beck
President

¹⁰ The IDI privacy controls are listed in the Privacy Impact Assessment, p4, and in the draft AISA, clause 12.6.

¹¹ Complete Privacy Risk Assessment, p7.

¹² Draft AISA, clause 12.6.