

30 March 2011

Hon Simon Power  
Minister of Justice  
Parliament Buildings  
**WELLINGTON 6160**

Dear Minister

### **Proposed information exchange between Croatia and the Ministry of Social Development**

The Ministry of Social Development is currently negotiating a social security agreement with the Croatian Pension Insurance Institute. The purpose of the agreement is to share responsibility for social security pensions for people who have entitlements from both countries.

Under the Social Welfare (Transitional Provisions) Act the agreement cannot come into force unless I have reported to the relevant Ministers about:

- whether the agreement complies with New Zealand requirements and is in the public interest
- the adequacy of privacy protection in Croatia.

Overall I am satisfied that the proposed agreement is justified and acceptable and that it is reasonable to proceed to sign the agreement and issue the Order in Council.

#### **Public interest**

The programme can meet the public interest criteria for information matching. The overall programme of international information exchanges for superannuation is financially significant for New Zealand and also has important equity implications.

#### **Adequacy**

I am also satisfied that Croatia will provide adequate protection of privacy, but note several differences in legal protections:

- Croatia does not confirm the accuracy of matching before taking action
- Croatia does not have the same limitations on the re-use of unique identifiers that New Zealand law provides
- Croatia does not provide a right of appeal when a breach of privacy is complained of.

#### **Croatia does not confirm the accuracy of matching before taking action**

I am concerned that the Croatian authorities do not have a process to confirm New Zealand has provided information about the correct person when responding to a Croatian request. I note however that the matching will be conducted manually because only a few people are affected, so the level of risk is no greater than the normal risk of clerical error.

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To mitigate this concern, MSD has agreed to negotiate a provision in the agreement for Croatia to check back with MSD if there is any discrepancy between information held by Croatia and the information provided by MSD. This is a reasonable solution.

**Croatia does not have the same limitations on the re-use of unique identifiers that New Zealand law provides**

New Zealand law has a prohibition on unique identifiers being re-used (for a different purpose) by another agency. Croatian law recognises unique identifiers as personal data, but does not seem to constrain the re-use of unique identifiers by an agency holding them.

To mitigate this concern, MSD has agreed to negotiate a provision in the agreement to prohibit agencies from re-using the unique identifiers. This is a reasonable means of providing appropriate protection.

**Croatia does not provide a right of appeal when a breach of privacy is complained of**

New Zealand law provides for an appeal process if a complainant does not agree with a decision made by the Commissioner about whether privacy has been breached. Croatian law does not allow an appeal against a decision by the Croatian Data Protection Agency in a similar situation.

However, such a right of appeal is a European Union requirement, so if Croatia is to join the EU in 2012 as expected, then Croatia will need to provide for appeals. In the meantime there is no ideal way to address the gap in the law. There are two safeguards in place to address any problems that arise:

- MSD has agreed to monitor amendments to Croatian legislation to provide for a right of appeal so it will know when that gap is fixed. While not ideal, the problem should be of short duration, and we would expect MSD will be aware of any disputes that arise.
- MSD will notify people wishing to take advantage of this arrangement that this short-term risk exists. This will help people to weigh up the advantages and disadvantages of the arrangement.

**Conclusion**

I do not oppose an Order in Council for this agreement.

For further information please contact Katrine Evans, Assistant Commissioner (Legal and Policy) on 04 494 7081.

Yours sincerely



Marie Shroff  
**Privacy Commissioner**