Privacy Commissioner
Te Mana Matapono Matatapu

Submission to the Social Services Committee about the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill by the Privacy Commissioner

1. Introduction

1.1 This submission primarily relates to the privacy implications of the information sharing provisions in the Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill.

1.2 This Bill extends the Youth Service[1] to:

- all 19 year old beneficiaries with children; and
- 18 and 19 year old beneficiaries without children who are considered at significant risk of long-term welfare dependency.

1.3 I support the aim of this Bill to offer support to young beneficiaries who, without this intervention, are likely to have poor life outcomes such as scarring[2] and social deprivation.

1.4 Proposed changes to information sharing arrangements are intended to better support the Act's purpose of engaging young beneficiaries in employment, education and training by removing legislative ambiguities.

1.5 This submission also discusses the privacy implications of predictive risk modelling and money management for Youth Service clients who are over 18 years of age.

Key recommendations

- Existing Youth Service information-sharing mechanisms should be transferred to the approved information sharing agreement framework;
- 18 and 19 year old Jobseeker clients who are rated as 'at-risk' of long-term welfare dependency should be informed of their provisional risk rating and given an opportunity to comment before being assigned to a final Work and Income service stream;
- 18 and 19 year old 'at-risk' Jobseeker clients and 18 and 19-year old Sole Parent Support clients should be exempt from surveillance of their finances and transactional history through Youth Service 'money management' unless they have problems managing their finances or have consented to this intervention.

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[1] The Youth Service is 'wrap-around support which helps young people into education, employment or training', for further information see http://www.youthservice.govt.nz/
[2] For more about the scarring effect of economic inactivity of young people see http://employment.govt.nz/publication-view.asp?ID=186

2. Information-sharing arrangements

2.1 My predecessor's 2012 submission about the Social Security (Youth Support and Work Focus) Amendment Bill raised concerns about that Bill's proposed information-sharing regime for the Youth Service package. The Privacy Commissioner believed that the separate information-sharing regime was unnecessary because of the soon-to-be-created Information Sharing Bill and inadequate because it was confusing and lacked appropriate safeguards.

2.2 After the 2012 submission, MSD worked with the Office of the Privacy Commissioner to design the legislative information-sharing provisions in the Social Security Act 1964 around the approved information sharing agreement (AISA) framework to enable a potential transfer of information-sharing arrangements to an AISA.

2.3 Changes to the Social Security Act 1964 made in this Amendment Bill mean that the existing information sharing arrangement between the Chief Executives of the Ministry of Social Development and the Ministry of Education (MOE) will be shifted to the AISA framework.

2.4 Moving to the AISA framework will mean that existing information-sharing mechanisms which facilitate Youth Service work will:

- provide for independent oversight;
- maintain individuals' right to complain under the Privacy Act;
- be clear and consistent; and
- allow agencies to engage effectively with vulnerable young people.

2.5 My office is supporting MSD to develop this AISA which will better protect the privacy of Youth Service clients. Transferring to the AISA framework will not be automatic but we expect that it will be relatively straightforward as the existing information-sharing arrangement was created with the AISA framework in mind. It is planned that the Youth Service AISA will be in place before the extension of the Youth Service is implemented.

2.6 Insertion of the new clause 25 (saving of existing information-sharing agreement) into Schedule 32 of the Social Security Act 1964 enables the existing information-sharing agreement made under section 123F to become an AISA under section 96D (information sharing between agencies) of the Privacy Act 1993 and therefore to attract the applications of other relevant provisions of Part 9A (information sharing) of the Privacy Act 1993.

2.7 Remedial changes proposed in this new Bill are necessary to replace existing Youth Service information-sharing mechanisms with an AISA. These changes include:

- removing overlap and duplication between section 123G of the Social Security Act 1964 and section 96O (consultation on proposed information sharing agreement) the Privacy Act 1993;
- avoiding any inconsistency between section 123H of the Social Security Act 1963 and section 96W (review of operation of approved information sharing agreement) of the Privacy Act 1993; and
- amendments to section 125c (release of personal information to and by contracted service provider) in clause 20 of the new Bill and section 125D (information sharing in relation to young person) in clause 21 of the new Bill repeal section 123G (consultation on proposed agreement) of the Social Security Act 1964.

3.0 Predictive risk modelling

3.1 Predictive risk modelling (PRM) is defined by MSD[3] as the 'use of automated tools to help identify people at risk early enough to allow for effective intervention'.

3.2 Section 123F of the Social Security Act 1964 currently allows information sharing between the Chief Executives of MSD and Ministry of Education (MoE) for the purposes of identifying young people who have ceased to be enrolled in either the compulsory education system or in a tertiary education organisation who may need extra support to move into education, employment or training.

3.3 This new Bill introduces an additional purpose for the information-sharing arrangement between the Chief Executives of MSD and MoE: 'assessing a young person's risk of long-term welfare dependency'. Section 123F will be amended to allow this purpose to be added to this information-sharing arrangement.

3.4 The new purpose allows PRM to be used to identify 18 and 19-year old Jobseeker recipients who may benefit from further support from the Youth Service due to their high-risk of long-term welfare dependency.

3.5 'At-risk' 18 and 19 year old Jobseeker clients will be transferred to the Youth Service. It was estimated by MSD[4] that 2,794 Jobseeker clients aged 18 and 19 years are 'at-risk' of long-term welfare dependency.

3.6 Paragraph 32 of the regulatory impact statement (RIS) for this Bill states that risk factors for long-term welfare dependency include:

- low education levels;
- benefit history;
- previous contact with Child, Youth and Family; and
- parents or siblings with a benefit history.

3.7 PRM results (e.g. a 'at-risk' or not 'at-risk' rating) is one of a suite of evaluative measures that Youth Service contractors and MSD case managers will use to identify young people who may need additional support (e.g. education, counselling and budgeting advice) to move into employment, education and training.

3.8 As we noted in our 2013 submission about the Vulnerable Children Bill[5] PRM can produce false positives (an individual being flagged as 'high-risk' when they are not) and false negatives (an individual not being flagged as 'high-risk' when they are). This why I am reassured to see that PRM will not be the only tool used to assess whether a young person is 'at-risk' of long-term welfare dependency.

3.9 MSD Case Managers and Youth Service contractors have discretion to determine whether to raise or lower a young person's risk-rating given that a statistical tool such as PRM cannot measure factors such as a young person's social presentation. It is the ultimate responsibility of MSD to ensure that the people making these decisions are

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[3] See further information about PRM http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/research/predicitve-modelling/

[4] See paragraph 34 of the Regulatory Impact Statement for this Bill http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-msd-eys-jun15.pdf

[5] See the Privacy Commissioner's 2013 submission about the Vulnerable Children Bill https://privacy.org.nz/news-and-publications/reports-to-parliament-and-government/vulnerable-children-bill-150-1-submission-to-the-social-services-committee-/

appropriately qualified and that they have rigorous processes to follow to ensure that these ratings are applied fairly and consistently. My office is happy to work with MSD to help ensure that these processes are as privacy-enhancing as possible; for example, providing advice about the weight PRM results should be given to determine a client's overall risk-rating.

3.10 MSD stated in paragraphs 90-92 of the RIS for this Bill that the different treatment of 18 and 19 year old Jobseeker recipients depending on their likely risk of long-term welfare dependency can be justified '...in light of the high expected future liability of the cohort that are determined to be 'at-risk' of long-term welfare dependency'. The eligibility for different types of support differs greatly between Jobseeker and Youth Service clients. For example, Youth Service clients can gain exemption from the work obligations that all Jobseeker clients are subject to.

3.11 There is evidence[6] that the Youth Service helps young beneficiaries make more successful transitions to education, employment and training, as well as helping them to remain independent. However, I have concerns about the operationalisation of this approach in relation to information privacy principle 8 (ensuring information is accurate, complete, relevant, up to date and not misleading) of the Privacy Act 1993.

3.12 Currently, Youth Service clients are expressly advised on the Youth Service participant form of their right to access and correct any information that may be held about them under information privacy principle 6 of the Privacy Act 1993. Benefit recipients under 20-years of age who are streamed into the Youth Service will not be proactively advised of their risk-rating and the reasons why they were found to be 'at-risk'.

3.13 My Office has received 489 information privacy principle 6 (access to personal information) complaints and enquiries between the years 1999 and 2015 for personal information held by MSD (including Work and Income). This is an indication there is a perception by some beneficiaries that gaining access to personal information held by MSD is difficult. Improving this perception could be achieved by more transparent use of personal information by MSD.

3.14 The accuracy and relevancy of an 18 and 19 year old Jobseeker client's assigned risk-rating will differ depending on each client's personal circumstances. Clients may have insight about what barriers exist for them which prevent them from gaining employment and what types of support they need. As the risk rating is determinative of what service stream 18 and 19 year old Jobseeker recipients are assigned to it would better respect 'at-risk' clients' privacy and autonomy if they had an opportunity to discuss their provisional risk-rating and potentially amend this rating before they are assigned to a particular service stream.

3.15 Beneficiaries who are 18 and 19 years of age that are streamed into either the Youth Service or the Jobseeker benefit stream may be confused about why they are being treated differently. This is made more likely if they are not told why they are being streamed into different services,

3.16 It is likely that many of the 'at-risk' Youth Service clients who are 18 and 19 years of age have already been involved with the Youth Service while they were under 18-years old. Those clients with previous experience in the Youth Service will hopefully mean that they are happy to remain in it rather than being moved to the Jobseeker

[6] See the results of the 2014 evaluation of the Youth Service https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/evaluation/youth-service/index.html

benefit. However, it can not be assumed that all of these clients will have experience in the Youth Service and that they will want or believe they need the extra services offered through the Youth Service.

3.17 Beneficiaries are already subject to prejudicial stereotyping[7]. Providing 'at-risk' 18 and 19 year old Jobseeker clients with a reasonable opportunity to control how they are categorised and then to what service stream they are assigned would likely prevent exacerbating the feeling of social exclusion and discrimination that many beneficiaries already experience. For the reasons outlined above, 18 and 19-year old Jobseeker clients who are rated as 'at-risk' of long-term welfare dependency should be informed of their provisional risk rating and given an opportunity to comment before being assigned to a final Work and Income service stream.

4. Money management

4.1 Under section 179 of the Social Security Act 1964 Youth Service clients can be subject to money management.

4.2 Money management involves:

- automatic payment of essential bills such as rent and utilities by MSD or Youth Service contractors; and
- clients must use a payment card[8] for groceries which only allows certain types of purchases at specified retail outlets.

4.3 18 and 19 year old Youth Service clients subject to money management have less freedom to spend their money as they choose and are also subject to more financial surveillance than their Jobseeker counterparts.

4.4 Youth Service contractors and MSD have access to payment card transactional information and use it to make assessments about financial competence.

4.5 Exemptions from money management[9] are only granted when an individual has earned their budgeting incentive; shown 'consistent, sound financial judgement'; been judged by MSD and Youth Service contractors as 'engaging with the Youth Service provider as required'; and 'the young person has not had an activity obligations failure in the last six months'.

4.6 In the case of under-18 Youth Service clients this type of intervention is more justifiable as this will often be the first time that these young people have had to manage their own finances. Money management along with budgeting education allows them to learn how to manage their affairs while ensuring that all essential bills are paid.

4.7 In respect to 18 and 19 year old Sole Parent Payment and 'at-risk' 18 and 19 year old Jobseeker recipients this assumption is not as applicable. There will be a difference in the amount of surveillance that these two groups are subject to when compared to

[7] See the results of the 2013 UMR survey by the Human Rights Commission in 'Beneficiaries attacked on all sides' (New Zealand Herald, 6 February 2013) http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10863719

[8] See http://www.workandincome.govt.nz/individuals/payment-card/youth-service-payment-card.html

[9] See http://www.workandincome.govt.nz/map/youth-service/youth-payment/earning-the-right-to-receive-payment-directly-01.html

Jobseeker and Sole Parent Payment recipients who have been assessed as not 'at-risk' or are over 19 years old.

4.8 There is evidence that blanket application of money management could be discriminatory to over-18 Youth Service clients. Australian research[10] has shown that their similar payment card scheme (the BasicsCard) is perceived by 'compulsory' BasicsCard participants as disempowering and unfair. Research[11] states that these types of income management schemes have 'a propensity for function creep, garnering large volumes of data on user's approved (and declined) purchasing decisions, complete with dates, amounts, times and location.'

4.9 There are two instances where evaluation[12] of money management has shown the intervention to be effective at helping people responsibly manage their finances:

- when people voluntarily participate in the scheme; or
- when the participant is 'experiencing adverse outcomes from financial harassment and/or having problems managing their finances' such as:
  - the individual is in an abusive relationship;
  - has drug and alcohol addictions; or
  - has significant negative debt or a poor credit history.

4.10 Given that money management negatively impacts on an individual's privacy and autonomy use of money management as a tool should be targeted to those with demonstrable need, Using money management only when people have a proven history of financial difficulty or have consented to its use better respects older Youth Service client's privacy and autonomy.

4.11 Youth Service clients over 18 years of age should be exempt from money management unless they have demonstrable need for the intervention or have consented to voluntary money management.

4.12 I am happy to appear at the Social Services Committee to discuss this submission if required.

John Edwards
Privacy Commissioner

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[10] For research about the effects of the Australian income management and BasicsCard scheme see Luke Buckmaster and Carol Ey 'Is income management working' (Canberra, June 2012) http://apo.org.au/research/income-management-working

[11] For research about the type of scrutiny BasicsCard participants are subject to see Mike Dee 'Welfare Surveillance, Income Management and New Paternalism in Australia' (Surveillance and Society 11(3), 2013, pp 272-286) http://library.queensu.ca/ojs/index.php/surveillance-and-society/article/view/welfare_aus

[12] For the evaluation of new income management see research by the Social Policy Research Centre at the University of New South Wales 'Evaluating New Income Management in the Northern Territory: First Evaluation Report' (July 2012, pp xv-xxiv) https://www.dss.gov.au/sites/default/files/documents/11_2012/nim_first_evaluation_report.pdf