



NEW ZEALAND INCOME INSURANCE – data and information sharing with Iwi/Māori

Purpose:

- To provide initial information on a recent proposal raised by the Iwi Leaders Group (ILG) related to engagement with Iwi/Māori on data and information sharing with Iwi/Māori. The proposal represents a shift from the current information sharing arrangements. We have set out possible options for data and information sharing with Iwi/Māori and seek your direction on any areas where you'd like further advice.
- There is a spectrum of options for approaching information sharing with Iwi/Māori for NZII. This note outlines early thinking on three options for data and information sharing with Iwi/Māori.
- If Ministers are not able to provide direction ahead of the end of year break, we will continue to progress with the status quo (**option 1**) through the NZII Bill.

Background on privacy and information sharing in the NZII Bill

Ministers made policy decisions in relation to information sharing in October 2022 [briefing 2223-1111 refers], which were then confirmed by Cabinet in November [CAB-22-MIN-0484 refers].

There is a degree of data collection and information-sharing that is necessary for NZII to operate effectively. The collection of 'personal information' will be necessary for the administration of the scheme (supporting levy setting, eligibility, entitlements and case management) and scheme performance (supporting monitoring, labour market statistics and scheme policy development).

Personal information is any information which tells us something about a specific individual. Several information sharing arrangements between government agencies are proposed to ensure that the scheme is efficient, effective in its purpose and accessible and that individuals are not burdened with supplying the same information to different agencies. There will be legislative provisions to allow for this collecting and sharing of information between government agencies.

The *Privacy Act 2020* holds that information should only be used for the purpose for which it is collected, and only shared and used for another purpose where an express legal authorisation is provided.

Recent feedback from the Iwi Leaders Group

Officials hosted an in-person, all-day hui on 29 November 2022, with the Pou Tangata Skills and Employment Iwi Leaders Group (the SE ILG) and representatives from the Data Iwi Leaders Group (Data ILG). The hui focused on data and information sharing requirements for NZII.

The ILG provided feedback that they want the NZII Bill to be strengthened with a specific requirement that information collected on Iwi/Māori by the scheme (relating to both scheme administration and performance) can be accessed and used by Iwi/Māori. The SE ILG have expressed a desire for the data and information approach to align with Māori data sovereignty principles, where Māori have ownership and influence over what data is collected, how it is collected, and how it is used.

From this initial discussion, the key elements of their proposal are:

- ensure access to aggregate and anonymised data and information held on Iwi/Māori by the scheme to enable analysis and research from an Iwi/Māori perspective, and
- ensure data is collected to enable a view of whānau outcomes (beyond the individual experience of a claimant) and that the data and information approach aligns with Māori data sovereignty principles.

The proposal represents a significant shift beyond previous decisions (which focussed on information sharing between government agencies). We have set out possible options for data and information sharing with Iwi/Māori and seek your direction on the areas where you would like further advice.

Legal provisioning for information sharing should:

- be necessary for, and limited to, arrangements required to achieve the legislation's defined purpose and express objectives
- be transparent and easily understood by individuals and provide for individual agency where appropriate
- be efficient for ACC and partner agencies to implement – unless there is a compelling reason the provisions should be consistent for the two schemes
- minimise compliance costs for businesses and workers
- be feasibly implemented within the timeframe
- be flexible to support continuous improvement of services, and
- minimise risks of privacy breaches and misuse of personal information.

Option 1: The status quo (maintain existing draft provisions in the NZII Bill and rely on other existing legislation) - Preferred

- **Description:** This option relies on the NZII Bill, the Privacy Act 2020, the Official Information Act 1982 and the Stats NZ Integrated Data Infrastructure to access information.
- **Legislative impact:** No legislative change. This relies on the disclosure provisions that already exist within the Privacy Act 2020.

Option 2: Include in the legislation a commitment to establish information sharing arrangements with Māori

- **Description:** Specify in legislation that arrangements will be made to share information with Māori and require engagement with Māori groups on the collection, use and disclosure of data.
- **Legislative impact:** This would require complex legislative change.

Option 3: Support the capability and capacity of Māori in data collection and information-sharing in legislation - Not recommended

- **Description:** Legislation would recognise the Crown's responsibility to consider and provide for Māori interests (by modelling the approach off the *Data and Statistics Act 2022*).
- **Legislative impact:** This would require complex legislative change.

Next Steps

- Following direction on your preferred option, we will meet with the SE ILG and Data ILG in the new year to further discuss and seek their views on the options outlined above. The hui will also discuss the nature of the information requested by the ILGs and other Māori groups to understand the purpose of what the information may be used for.
- If you would like officials to continue to explore option 2 and/or 3 (which would require a legislative provision), we would need that direction now in order to progress drafting in early January (informed by engagement with the ILGs and the Office of the Privacy Commissioner). We would then provide you with further advice in late January, if required.
- If Ministers are not able to provide direction ahead of the end of year break, we will continue to progress with the status quo (option 1) through the NZII Bill.
- Note that any late additions to the Bill could complicate already tight timeframes. This could impact the quality of any late additions, as officials are unlikely to have adequate time to fully test them with agencies and the ILGs.

Annex 1 – NZII data and information sharing with Māori options

	Option 1: Status quo (Preferred)	Option 2: Include in the legislation a commitment to establish information sharing arrangements with Māori	Option 3: Support the capability and capacity of Māori in data collection and information-sharing in legislation (Not recommended)
<i>Description and key features</i>	<p>Under the status quo, there are existing mechanisms through the draft NZII Bill, the <i>Privacy Act 2020</i> and the <i>Official Information Act 1982</i> which will enable access to information:</p> <ul style="list-style-type: none"> • NZII Bill: The Bill requires ACC to report to the Minister annually on the performance of the scheme for Māori over the course of the preceding year. The report would be made publicly available, and we expect that ACC will engage with Māori on what is reported on. • Privacy Act: Disclosure provisions already exist within the Act and enable government agencies to disclose personal information if the information is de-identified, or it is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify individuals. • Official Information: Enables researchers access to de-identified personal information. • The Integrated Data Infrastructure (IDI): The IDI holds de-identified microdata about people and households. Selected researchers can use the IDI to conduct research. It may be possible to link NZII data to the IDI, then StatsNZ could consult with the Data/SE ILG to determine what data the scheme needs to allow Māori to produce research. 	<p>Specify in legislation that arrangements will be made to share information with Māori and require engagement with Māori groups when developing information rules related to the collection, use and disclosure of data.</p> <p>The <i>Oversight of Oranga Tamariki System Act 2022</i> (not yet in force) provides a recent example of this. This Act requires the Monitor of Oranga Tamariki to make reasonable efforts to develop arrangements with Māori for the purposes of sharing information and requires the Monitor to engage with these groups when developing information rules related to the collection, use and disclosure of data.</p>	<p>The ILG have indicated their interest in modelling the data collection and information-sharing approach off the <i>Data and Statistics Act 2022</i>. This new legislation recognises the Crown's responsibility to consider and provide for Māori interests. The duties of the Statistician relating to te Tiriti o Waitangi/the Treaty of Waitangi include:</p> <ul style="list-style-type: none"> • recognising the interests of Māori in the collection of data, the production of statistics, and access to and use of data for research as tools for furthering the wellbeing of Māori, and the interests in how data is approached for the production of statistics and research • building and maintaining the capacity of StatsNZ to understand te Tiriti/the Treaty and perspectives of Māori in relation to data for statistics and research, and to engage with Māori about the use of data to provide useful insights about the wellbeing of Māori, and • foster the capability and capacity of Māori to collect and use data for the production of statistics, access and use data under the Act for research, and engage with the Statistician under the Act. <p>The Act sets out principles of engagement with Māori, which requires that engagements must begin early and be meaningful, should include early discussion of how the Chief Statistician and Māori can most effectively engage, and should include consideration of partnership opportunities.</p>
<i>Initial comments</i>	<p>This option does enable access to de-identified personal information to support research and analysis.</p> <p>This option would not introduce a specific provision in the legislation about the disclosure of personal information to Iwi/Māori and relies on the disclosure provisions that already exist within the <i>Privacy Act 2020</i>.</p> <p>The SE ILG have recommended the scheme take a whānau centric approach and have proposed that the scheme gather scheme performance information on whānau outcomes (broader than the outcomes of the individual receiving income insurance). It is unclear whether we can gather whānau outcome information under the status quo. Data collection under the status quo is done in line with the principles of data minimalisation. Whānau outcome information could be collected if there was justification under the <i>Privacy Act 2020</i>, but further engagement with the SE ILG, the Data ILG and the Office of the Privacy Commissioner (OPC) is necessary to determine the need for this.</p> <p>ACC are taking a whānau centric approach to the design and delivery of NZII. Further work is needed with the ACC on how their whānau centric approach aligns with and works with what is necessary for NZII to collect.</p> <p>This option is most achievable within the current timeframes.</p>	<p>This option could enable access to de-identified personal information to support research and analysis.</p> <p>This option would introduce a specific provision in the legislation about the disclosure of personal information to Iwi/Māori.</p> <p>Going further than existing provisions could be required to generate the sort of information the SE ILG sees as necessary, especially if the collection and disclosure of whānau centric information is not determined to be justified under the <i>Privacy Act 2020</i>.</p> <p>An approach such as outlined in the <i>Oversight of the Oranga Tamariki System Act 2022</i> would give Māori/Iwi more influence over what and how data is collected and how it is used. This could potentially enable the collection of whānau outcome information, through the development of information rules that include it in the data collected.</p> <p>With information sharing arrangements already drafted in the NZII Bill, we consider that this option may not be achievable within current time frames.</p>	<p>This option does enable access to de-identified personal information to support research and analysis.</p> <p>This option could introduce specific provisions in the legislation to:</p> <ul style="list-style-type: none"> • recognise the interest of Maori in the collection of data for NZII and access to and use of NZII data collected for NZII to further the wellbeing of Maori • engage with Māori about the use of data to provide useful insights about the wellbeing of Maori, and • foster the capability and capacity of Māori to collect and use NZII data. <p>This option could enable the collection of whānau outcome information, as Māori would have influence over the type of data collected. This would still need to be tested against the <i>Privacy Act 2020</i>.</p> <p>Officials' view is that modelling the approach for NZII off this Act would be inappropriate, given that the Act is designed around StatsNZ's role as the official producer of government statistics. Integrating this level of complexity for data collection and information-sharing for the scheme would be an overreach of the function of NZII. Considering the comparatively small amount of data in question, that the role of ACC is different to the Chief Statistician, and that the purposes of StatsNZ and NZII differ significantly, this does not seem justifiable.</p> <p>This option would require significant engagement to develop further policy advice and draft legislation. We consider it is not achievable in the current timeframes.</p>
<i>Further work needed</i>	<ul style="list-style-type: none"> • Note that we have not yet discussed these options in detail with the ILG and plan to do so in the new year based on your direction. We can't advise at this stage on which option is likely to best meet the expectations of the Data ILG and the SE ILG. Further discussion would be necessary with them to determine this. • Whānau outcome information could be collected if there was justification under the <i>Privacy Act 2020</i>, but further engagement with the ILGs and OPC would be necessary to determine the need for this. • For all options, officials would need to engage with Iwi/Maori to co-design how information is disclosed on how well the scheme is meeting objectives for Māori. 		