

17 September 2024

Office of the Privacy Commissioner
Wellington

By email: guidance@privacy.org.nz

Gang Harm Insights Centre approved information sharing agreement (AISA):
section 158 review

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the review by the Office of the Privacy Commissioner of the operation of the Gang Harm Insights Centre (**GHIC**) interagency information sharing agreement (**AISA**) under section 158 of the Privacy Act.
- 1.2 This submission has been prepared with input from the Law Society’s Human Rights and Privacy Committee.¹

2 Background

- 2.1 The AISA has been in force since early 2019.² Administered by the GHIC (a unit within the New Zealand Police), it allows government agencies party to the AISA to share personal information that they hold about the gang community — meaning gang members, gang associates, and their children, young people and other family members.
- 2.2 The resulting information that may be gathered by the GHIC is extensive. The Law Society supports the review by the Privacy Commissioner to assess matters including whether the AISA is giving effect to its intended purposes, and specifically whether:³
 - (a) it continues to facilitate the provision of a particular public service or services;
 - (b) the type and quantity of personal information being shared under the AISA are no more than is necessary to facilitate the provision of that public service or those public services;
 - (c) the agreement and its operationalisation do not unreasonably impinge on the privacy of individuals and whether the safeguards that were included in the AISA remain sufficient to adequately protect privacy; and

¹ For more information on the Law Society’s sections and committees, please visit our website: www.lawsociety.org.nz/branches-sections-and-groups/.

² “Information Sharing Agreement between the Gang Intelligence Centre Agencies” (7 November 2018), available at police.govt.nz.

³ “Privacy Commissioner Review of Operation of the Gang Harm Insights Centre Approved Information Sharing Agreement (Review of GHIC AISA): Terms of Reference”, available at www.privacy.org.nz.

- (d) the benefits of sharing personal information under the agreement are likely to continue to outweigh the financial and other costs of sharing it.

3 Consultation questions

Do you think the AISA is achieving its purpose? If not, why not?

- 3.1 The Law Society's perspective on this question relates to whether the AISA is drafted in a way that *can* achieve its purpose, rather than whether it is doing so. Other consulted agencies will be more able to comment on what the AISA is achieving in practice.
- 3.2 The purpose of the AISA is to authorise the sharing of personal information between GHIC agencies and the GHIC to:⁴
 - (a) enable a more collaborative, cross-agency approach to preventing or reducing gang related harm to individuals, families, communities or society generally;
 - (b) enable enforcement of the law; and
 - (c) produce data on crime trends.
- 3.3 The Law Society considers that the AISA provisions are both very broad and consistent with its stated goals. There is an equally important question of whether, in some ways, they may be unduly broad. This is considered below.
- 3.4 To some extent, the AISA limits interagency collaboration, as it does not cover the sharing of information directly between participating GHIC agencies.⁵ However, the Law Society considers that this is in line with the Privacy Principles and is the correct approach. Further, the provision for the GHIC to share information with multiple different agencies means that those agencies can action tasks in relation to the same piece of information. The ability of agencies to act in a co-ordinated way where needed is not inhibited.
- 3.5 In the AISA, the terms "Gang Associate", "Gang Member", and "Gang-Related Harm" are self-evidently focused on gang-related harm and gang criminal activity. They are also very broadly defined,⁶ allowing for a substantial amount of information to be gathered about a large group of people. There is little doubt this approach may contribute to achieving the second and third purposes of the ASIA of enforcing the law and producing data on crime trends. Part 8 of the agreement, which sets out how GHIC agencies are to use the information, lists seven objectives, six of which explicitly mention gang-related harm.⁷ Parts 8 and 9 allow the AISA to achieve its second and third purposes.

⁴ AISA at 13; see also public services the agreement is intended to facilitate at 15. Noting that terminology in the AISA has not been updated to reflect the change in acronym from "GIC" (Gang Intelligence Centre) to "GHIC", this submission uses the current term, GHIC, for consistency.

⁵ See AISA Figure 1; and further the Terms of Reference: "The intent of the AISA was not to enable broad bilateral information sharing between the parties, rather, it was to provide legal authority for highly managed information sharing and intelligence generation with the GHIC at the centre of all information flows."

⁶ AISA at 7.

⁷ AISA at 22.

Part 6 of the AISA describes the categories of information that may be shared. The information shared may be about any Gangs, Gang Members, Gang Associates, and Victims. Part 7 also describes some information that can be shared with the GHIC by Inland Revenue, and subsequently shared with other GHIC agencies. Do you think this is the right information to share, and is it about the right people?

- 3.6 As a general comment, Parts 6 (which describes information and intelligence that may be shared) and 7 (other information from Inland Revenue that may be shared about business and other services provided to a gang-related taxpayer) of the AISA are not precise. The AISA's purposes call for a broad-brush approach to the type of information it covers, which Part 6 certainly takes. Further, as earlier noted, the terms "Gangs", "Gang Members", "Gang Associates", "Victims" and "Intelligence"⁸ are all widely defined, which allows for more information to be caught by the AISA.

Is the right information being shared?

- 3.7 While acknowledging the likely utility of a broad-brush approach to achieve the aims of the agreement, the Law Society queries whether Part 6 may capture too much information. The categories of information covered by that part are sweeping: for example, extending to information about assets, communications that an individual has made, their contact details, education, employment, family relationships, financial relationships and transactions, health and disability, housing, social assistance, movement and travel. Some of these, such as education and health and disability information, seem somewhat removed from the purposes of the AISA.

- 3.8 The Law Society considers that the information that can be shared under Part 7 is appropriate. While it is broad in nature, it appears directed to the AISA's objective at its root. Part 7 allows GHIC agencies to be proactive in detecting and enforcing the law.

Is it about the right people?

- 3.9 Information shared may be about any gangs, gang members, gang associates and gang victims. There is a lot of information that may be shared regarding people who are perhaps not the main targets of the AISA. This creates the potential for overreach.
- 3.10 For example, "Family Relationship" information or intelligence could concern people who have no criminal agenda or whose connection to a gang is unclear. "Victims" include any person who may be harmed by, or as a result of, an activity undertaken by a gang or gang member. It appears that any assessment by GHIC and GHIC agencies of the level of risk of such harm occurring (or in other words, the proximity of the person to gang activity) is left as an operational matter.
- 3.11 Part 7 in general appears adequately targeted. However, it still includes — within the definition of a relevant taxpayer whose information may be shared — "a person with whom a gang member or gang associate has had a Family Relationship" as defined in section 12 of the Family Violence Act 2018. This would include ex-partners,⁹ regardless of whether the current gang member or associate was involved in a gang at the time of their relationship. It could include family members innocent of any involvement in gang activity.

⁸ See AISA at 8 and 16: "intelligence" may not meet an evidential standard but it has been assessed as being relevant and of value for a lawful purpose.

⁹ Family Violence Act 2012, s 12(c) and (d).

3.12 This breadth of information that GHIC is managing is especially concerning given that information, once gathered, can be sent to all GHIC agencies. This raises the likelihood that perhaps the right information is not always being shared. Whether or not this is the case in practice appears to rely on the discretion of the GHIC Manager. The Law Society recommends consideration of whether the AISA should be tightened in some respects to confine it to the appropriate scope.

Part 12 of the AISA describes safeguards that will be applied to protect the privacy of individuals. Do you think these safeguards are sufficient?

3.13 As noted above, the broadly defined terms of the AISA allow for the agreement to cover an amount of personal information that, in the Law Society's view, warrants caution. In this respect, the requirement to specify restrictions on GHIC intelligence products is helpful. GHIC intelligence products — that is, reports generated by the GHIC on the initiative of the GHIC manager or in response to requests for intelligence from GHIC agencies — “will include appropriate instructions/caveats including restrictions on: who in the receiving agency may see or use the Intelligence, how the Intelligence may be used, what security provisions apply, how long the Intelligence may be held, and when it must be destroyed”.¹⁰ However, this general requirement to “appropriately” address certain points still leaves wide discretion.

3.14 The Law Society recommends considering the following ways that safeguards in the AISA could be strengthened:

- (a) The obligation under the heading “Accuracy and reliability of Information” should specify that the obligation to provide up-to-date information is ongoing. As it stands, there is no obligation on a GHIC agency to correct any information after it is initially provided to the GHIC.
- (b) The obligation under the heading “Storage of Personal Information” should specify that the GHIC agencies will use best practice safeguards to protect the information.
- (c) The AISA should provide that any data will be deleted once it is no longer reasonably required by GHIC agencies for the purposes of the AISA. If such a clause is added, it should specify that data will be deleted in a secure manner.
- (d) The AISA should contain some acknowledgement of the consequences of a privacy breach. If a privacy breach occurs, or if a GHIC agency fails to uphold the safeguards provided for in the agreement, individuals may suffer significant harm.
- (e) The obligations under “Security Provisions” appear to act as a catch-all, pointing to agreements between the GHIC agencies that contain investigation and complaint processes. The same applies to the obligations under the heading “Privacy Breaches”. However, the terms relating to how GHIC agencies deal with privacy breaches and individuals' rights in relation to them should be made public. If these terms are in other agreements, they should be published alongside the AISA and read together. As it stands, the AISA does not tell an individual how GHIC agencies will deal with a breach, or how they can enforce their rights if one occurs.

¹⁰ AISA at 8.

(f) The AISA should provide that if a GHIC agency experiences a privacy breach, any flow of information to them will stop until the breach is corrected.

3.15 Thank you again for the opportunity to provide this brief comment. I acknowledge, on behalf of the Law Society, the importance of the work being undertaken by this review.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jesse Savage', written in a cursive style.

Jesse Savage
Vice President