

Impact Summary: Student loans and allowances

Section 1: General information

Purpose
The Ministry of Education and the Ministry of Social Development are responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with policy changes regarding student loans and allowances, in particular, relating to the limitation period for laying charges against education providers intentionally providing false or misleading information regarding information requests, and holding and using client information.
Key Limitations or Constraints on Analysis
There are no limitations or constraints.
Responsible Manager (signature and date):
Dr Andrea Schöllmann, Deputy Secretary Education System Policy Ministry of Education


Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?
There are two policy problems these proposals will address: <ul style="list-style-type: none">the limitation period for laying charges under section 226B and 236 of the Education Act 1989 (1989 Act) is too short and is inconsistent with other similar provisions; andthe gap in section 307A of the 1989 Act that does not allow for information collected in relation to social housing to be used for student loans and allowances purposes. The proposal is to amend Part 25 (Student loans and allowances) and related provisions of the 1989 Act via the Education and Training Bill. Part 25 of the Act is administered by the Ministry of Social Development (MSD). The amendments are required to update the legislation to make it more workable and to address legislative anomalies. Specific amendments are required regarding the limitation period for laying charges in relation to offences committed under sections 226B and 236 and holding and using information under section 307A. <i>Limitation period for laying charges</i> Sections 226B and 236 of the 1989 Act enable the prosecution of institutions and private training establishments for intentionally providing false or misleading information, in response to information requests. The 1989 Act does not specify a time period for laying charges when

seeking to prosecute these offences. This means that the Criminal Procedure Act 2011 (CPA) applies. The penalties for these offences makes them category one offences under the CPA, which provides for charges to be laid within six months of the date that the offence was committed.

The current limitation period is inconsistent with the limitation period for prosecuting similar student loans and allowances offences in relation to applicants under section 307AA of the 1989 Act. It is also inconsistent with the limitation period for prosecuting similar offences under the Social Security Act 2018 (also administered by MSD). In each of these cases, charges may be laid up to 12 months after MSD becomes aware of the offending.

Investigations of this sort are complex and take some time to complete. The current limitation period for laying charges in relation to offences committed under sections 226B and 236 is therefore incompatible with the likely timeframe required to file a prosecution.

Holding and using information

Section 307A of the 1989 Act allows MSD to:

- hold client information for the purposes of the administration of social security benefits, student allowances and student loans on the same system or systems;
- hold social security benefit, student allowance and student loan client information about the same person on the same file; and
- use that client information interchangeably for the purposes of assessing entitlement to any of the three types of support, and the recovery of debt.

Section 307A in conjunction with other provisions in Part 25 also enables the above information to be used for prosecuting offences and imposing penalties.

When the current provisions were enacted, it was established that client information held by MSD should be able to be held in one place and used for the different client assessments and related activities that are undertaken by MSD.

There is now a gap in the legislation in relation to social housing client information. Section 307A does not include social housing client information held by MSD because the responsibility for social housing assessments was transferred to MSD after these provisions were enacted. This means that the original intention of providing authority to store and use client information together cannot be realised. This has resulted in inefficiencies for MSD and inconvenience for clients, from whom MSD has to seek information for one purpose that it already holds for another purpose.

Under the Housing Restructuring and Tenancy Matters Act 1992, MSD can already use social housing information to perform its functions under the Social Security Act and vice versa. This proposal will close the gap that currently exists in relation to using social housing information for the administration of student loans and allowances, and vice versa. Officials from the Ministry of Education and MSD have consulted the Office of the Privacy Commissioner (OPC) on these proposals. OPC is comfortable with the proposals.

2.2 Who is affected and how?

Limitation period for laying charges

Very few people would be directly affected by this proposal as they relate to the action of education providers. There have not been any prosecutions to date using these offence provisions. It is not known how many education providers have avoided prosecution simply because of the short limitation period.

Holding and using information

This proposal would benefit MSD and its clients (only those clients who are both students and in receipt of social housing support would be affected). As a result of the law, MSD must administratively separate these clients' information. This is inefficient and leads to administrative costs for MSD because some client information is not able to be easily used in appropriate assessments and related activities. This also leads to a more complicated client experience for affected clients.

2.3 Are there any constraints on the scope for decision making?

There are no constraints on the scope for decision making.

There are no interdependencies or connections to existing issues or ongoing work.

Section 3: Options identification

3.1 What options have been considered?

Limitation period for laying charges

Option A - Status Quo

The status quo was discounted as investigations relating to offences committed under sections 226B and 236 of the 1989 Act are complex and take some time to complete. The current limitation period for laying charges (six months from the date that the offence was committed) is therefore incompatible with the likely timeframe required to detect offending and file a prosecution. Additionally, the current limitation period is inconsistent with the limitation period for prosecuting other student loans and allowances offences.

Option B – provide for the laying of charges for offences under sections 226B and 236 of the 1989 Act to occur up to 12 months after the date that MSD becomes aware of the offending

Under this option the legislative inconsistency that exists between prosecuting offences these offences and prosecuting other offences related to student loans and allowances under the 1989 Act, and offences under the Social Security Act, would be removed by making the time frames for laying charges consistent i.e. up to 12 months after the date that MSD becomes aware of the offending.

We did not consider alternative time frame options because 12 months from becoming aware of the offending is the optimal time frame for laying charges for these types of offences and a different timeframe would not address the current inconsistency.

Holding and using information

Option A - Status Quo

This option was discounted as the gap that currently exists in the legislation in relation to social housing client information would not be addressed. Section 307A does not include social housing client information held by MSD because the responsibility for social housing assessments was transferred to MSD after these provisions were enacted.

When the current provisions were enacted, it was established that client information held by MSD should be able to be held in one place and used for the different client assessments and related activities that are undertaken by MSD. Under this option the original intention of providing authority to store and use client information together cannot be realised. Therefore, current inefficiencies for MSD and inconvenience for clients (MSD has to seek information for one purpose even though it already holds this information for another purpose) would persist.

Option B: amend the legislation to provide that client information held by MSD for the purposes of the administration of social housing, social security benefits and student loans and allowances, can be:

- *held on the same system or systems;*
- *held on the same file; and*
- *used interchangeably by MSD for the purposes of assessing entitlement, recovering debt, prosecuting offences and imposing penalties.*

Under this option, information held by MSD for the purposes of the administration of social housing, social security benefits and student loans and allowances, would be able to be held on the same system or systems, and all four types of information about the same person can be held on the same file and can be used interchangeably by MSD, for the purposes of assessing entitlement to any of the four types of support, recovering debt, prosecuting offences and imposing penalties.

Under the Housing Restructuring and Tenancy Matters Act 1992, MSD can already use social housing information to perform its functions under the Social Security Act and vice versa. This option will enable the gap that currently exists in relation to using social housing information for the administration of student loans and allowances, and vice versa, to be closed.

3.2 Which of these options is the proposed approach?

Preferred option for the limitation period for laying charges

Our preferred option is Option B. The legislation would be amended to provide that the timeframe for laying charges in relation to offences under sections 226B and 236 is up to 12 months after MSD becomes aware of the offending.

This is the best option as it is the only option that will support effective enforcement by allowing MSD a longer timeframe for investigating and prosecuting potential offences. This option will also remove the legislative inconsistency and make the time frames for laying charges consistent for all offences related to student loans and allowances under the 1989 Act. It will also make the timeframes consistent with those that apply under the Social Security Act 2018.

Preferred option for holding and using information

Our preferred option is Option B. The legislation would be amended to enable MSD to hold client information for the purposes of the administration of social housing, social security benefits, and student loans and allowances on the same system(s), on the same file and to be able to use the information interchangeably for the purposes of assessing entitlement, recovering debt, prosecuting offences and imposing penalties.

This option closes the gap that currently exists in relation to social housing client information and enables the original intention of the provisions, of providing authority to store and use client information together, to be realised. This means that current inefficiencies for MSD and inconvenience for clients (MSD has to seek information for one purpose even though it already holds this information for another purpose) would be addressed.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties (identify)	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact \$m present value, for monetised impacts; high, medium or low for non-monetised impacts
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Additional costs of proposed approach, compared to taking no action

Regulated parties	With one exception, there will be no costs for the regulated parties for either proposal. The exception is that those who offend under sections 226B and 236 of the 1989 Act would potentially be at greater risk of being prosecuted.	N/A
Regulators	There may be marginal additional costs for MSD which would be potentially prosecuting more offences under sections 226B and 236 of the 1989 Act as the timeframe for investigations would be extended. There have not been any prosecutions to date using these offence provisions and it is not possible to estimate an increase in numbers of prosecutions, however the extended time for investigation has the potential to lead to such an increase.	Low
Wider government	N/A	N/A
Other parties	N/A	N/A
Total Monetised Cost	N/A	N/A
Non-monetised costs	There may be marginal additional costs for MSD which would be potentially prosecuting more offences under sections 226B and 236 of the 1989 Act as the timeframe for investigations would be extended.	Low

Expected benefits of proposed approach, compared to taking no action

Regulated parties	The regulated parties will benefit from the proposal relating to the holding and using of information as they will not have to	Low
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	provide MSD with information that they have already provided for another purpose. This means that it will be more convenient and reduce costs for regulated parties and their time will not be used providing the same information again.	
Regulators	<p>The proposal relating to laying charges will better enable MSD to enforce these provisions by having a longer timeframe for investigating potential offences. As MSD will be better enabled to enforce these provisions potential offenders may be deterred from acting unlawfully.</p> <p>The proposal will enable more efficient use and holding of client information, including managing compliance and the investigation of potential fraud.</p>	Low
Wider government	In relation to the proposal for extending the timeframe for laying of charges for offences committed under sections 226B and 236 there may be an overall benefit to government as MSD will be better enabled to prosecute fraud offences. This will support public confidence in government services.	Low
Other parties	N/A	N/A
Total Monetised Benefit	N/A	N/A
Non-monetised benefits	<p>Regulated parties will benefit from not having to provide information to MSD that they already have.</p> <p>MSD and the wider government would benefit from MSD having a longer timeframe for investigating potential offences committed under sections 226B and 236 of the 1989 Act. Potential offenders would be more likely to be prosecuted and there would be less people able to abuse the system without facing legal consequences.</p>	Low

4.2 What other impacts is this approach likely to have?

None.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

We have consulted the Office of the Privacy Commissioner, which is comfortable with the proposal relating to the holding and using of information.

The proposals relate to technical amendments that do not significantly change existing policy, so no public consultation has been undertaken.

Commencement of the provisions is yet to be confirmed.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

Legislative vehicle

The proposals will be implemented through the Education and Training Bill.

Communications

The Ministry of Education and MSD will jointly develop a communications strategy announcing the proposed changes. This will likely include informing relevant stakeholders.

Enforcement strategy

MSD will enforce the proposed changes. MSD is experienced at enforcing and prosecuting of offences under the Social Security Act 2018 and other student loans and allowances offences under section 307AA of the 1989 Act.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

Arrangements that would be required for the review, monitoring and evaluating of the impact of both proposals are already in place. MSD carries out reviews and reports internally, and as part of cross-agency work, on investigations and any resulting prosecutions. The proposal relating to the laying of charges will be part of this process.

MSD reviews, monitors, and evaluates compliance with legislation and fitness-for-purpose of its system for holding and using information, therefore the monitoring and evaluating of the impact of the proposal relating to the holding and using information will be part of the already established MSD monitoring system.

7.2 When and how will the new arrangements be reviewed?

MSD carries out regular reviews and reports internally, and as part of cross-agency work, on investigations and any resulting prosecutions. MSD also regularly reviews, monitors, and evaluates compliance with legislation and fitness-for-purpose of its system for holding and using information.

If, as a result of monitoring and feedback from stakeholders, it becomes apparent that the proposed changes have unintended or unexpected consequences, the new arrangements would be reviewed.

Stakeholders will be able to provide feedback and bring up any issues with either proposal as part of BAU processes, this includes both regulated parties and regulators.