

Making and Accessing Legislation

Learning objectives:

By the end of this unit you will be able to:

- describe the steps on how legislation is made changed or amended
- explain the role of Select Committees in making legislation
- describe how legislation is structured

Relevance of learning to your role:

- All of your decision making is guided by legislation
- You need to have the ability to search and locate legislation that is relevant to your investigation

Behavioural competencies for success:

- Ability to self-source information

Introduction

Legislation is a name for the rules (Acts of Parliament) made by a governing body of this country.

The governing body of New Zealand Parliament is made up of two parts:

- the representative of the Crown - the Governor General
- the House of Representatives - the Members of Parliament

Both parts are necessary for an Act of Parliament to come into existence.

Acts of Parliament

Acts of Parliament ("statutes") are made by a formal process set by Parliament, under its Standing Orders.

The subject matter for Acts of Parliament comes from a variety of sources such as government department policy agencies, Members of Parliament or their parties, or by political pressure from the public.

When a proposal has been accepted by the governing party, it is sponsored by the Cabinet Member in whose jurisdiction the subject matter belongs. If not accepted by the governing party, a Member of Parliament may sponsor a private member's Bill.

A government sponsored bill is drafted by Parliamentary Counsel at the direction of the Cabinet Legislation Committee. After caucus approval and ultimate approval by Cabinet, the bill is introduced by the Cabinet Member into Parliament for its first reading. A private members bill is introduced directly by the Member to Parliament, though it has far less chance of being passed through the various stages.

First Reading

This debate is to decide whether to allow the bill to proceed. If so allowed, the bill is then almost automatically referred to the appropriate Select Committee for perusal and discussion.

Select Committees

Select Committees are set up by the Standing Orders of Parliament. New Zealand's Select Committee system enables Members of Parliament to examine issues in more detail than is possible in the House of Representatives. The system also enables members of the public to have direct input into parliamentary processes.

Appointment of Committees

Select Committees are appointed from the members of the House at the start of each Parliament (after a General Election). Traditionally government always had a majority on Committees and always provided the chair. With the introduction of MMP the government has been forced to make concessions. In 2002 chair positions have been conceded to other parties who are supportive of the government. Junior Ministers outside Cabinet were also appointed to Select Committees. Parties are represented in proportion to party membership in the House. The areas of responsibility are reflected in the 12 subject Committees and five specialist committees as follows:

- Business
- Economic Development, Science and Innovation
- Education and Workforce
- Environment
- Finance and Expenditure
- Foreign Affairs, Defence and Trade
- Governance and Administration
- Health
- Justice
- Maori Affairs
- Officers of parliament
- Primary Production
- Privileges
- Regulations Review
- Social Services and Community
- Standing Orders
- Transport and Infrastructure

The Select Committee that deals with social development is the Social Services and Community Committee.

Committee Business

Committee work includes examining bills (proposed laws). The House refers most bills to the relevant Committee which calls for public submissions. The public usually have one month to make them. Six months is generally allowed for consideration. People can give an oral presentation as well as providing written submissions. This makes the legislative process very accessible and can result in significant changes. The submissions that people make can be accessed on the parliamentary website www.parliament.govt.nz.

After consideration by the Select Committee and any public submissions, the bill (incorporating any changes made by the Select Committee) is reported back to Parliament for its Second Reading.

Second Reading

At the Second Reading, Parliament is asked to accept the bill in principle. If accepted, it is read for the second time, before being dealt with under the Committee stage of the bill. Here, the bill is debated on a clause by clause basis. During this latter phase, amendments can be suggested and either passed or rejected. As this stage, the bill eventually comes into its final form.

Third Reading

Parliament confirms the final form and the debate will be confined to the principles in the bill after the committee stage. After the Third Reading of the bill, Members of Parliament vote on its acceptance.

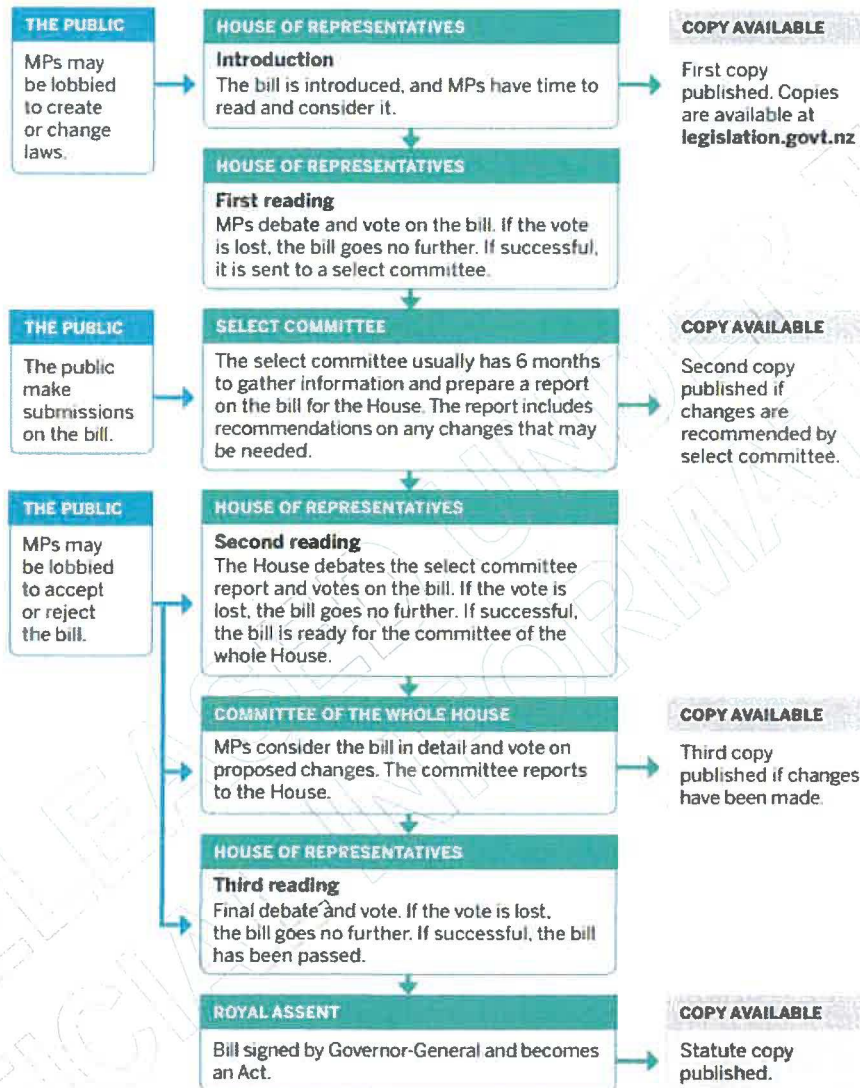
Royal Assent

After acceptance by Parliament at the Third Reading, the bill is assented to by the Governor-General, on behalf of the Queen. Only at this point does the bill become an Act of Parliament. It will either include a date upon which the Act comes into effect; otherwise it will be when the Bill receives the Royal Assent.

The Social Security Act 2018 is an example of an Act of Parliament.

How a bill becomes law

For further information:
www.parliament.nz or
parlinfo@parliament.govt.nz



Regulations

Many Acts of Parliament provide for the making of regulations. Regulations do not go before Parliament but are made by the Governor-General acting by order in council. They are usually drafted by the government department responsible for its administration. They provide more mechanical provisions arising from the Acts of Parliament which provide for them. The Social Security Regulations 2018 are regulations administered by the MSD.

Access to Legislation and Acts of Parliament

Legislation can be amended and it is vital that the most up to date version of legislation is used. All Acts and Regulations are printed by the Government Printer and available through their agents throughout New Zealand. Acts of Parliament are available at larger New Zealand libraries. One of the fundamental skills in applying the law to your work is the ability to read an Act. To do so you need to understand how an Act is presented and where you might find the information sought.

MSD legislation

MSD is governed by the Social Security Act 2018. Prior to 2018 MSD was governed by the Social Security Act 1964. The legislation may be accessed through MAP, at the following link - [MAP - Legislation](#) and can also be found on the government legislation website www.legislation.govt.nz.

Interpretation

For the purpose of this exercise click on the legislation link above and find the Social Security Act ("the Act") and use it to refer to when reading through the content below.

Schedule 2 of the Act contains the Dictionary. This provides the definitions of key words used in the Act. Some examples are:

"Applicant"	in relation to a benefit,— (i) means a person by whom or on whose behalf an application is made for the benefit; and (ii) if the context so requires, includes a beneficiary;
"Application"	means an application for a benefit
"Beneficiary"	means a person who is— (i) a person who has been granted a benefit; or (ii) a person in respect of whom a benefit, or part of a benefit, has been granted;

"Benefit"	<p>means any of the following:</p> <p>(i) a monetary benefit payable under this Act (including, without limitation, payable under a reciprocity agreement adopted by an order made under section 380) other than a funeral grant lump sum payable under section 90</p> <p>Benefit is then defined further with a list of what these actual benefits are, e.g. Job Seeker Support, Supported Living Payment</p>
"Partner"	<p>in the phrase "spouse or partner" and in related contexts, means a civil union partner or de facto partner</p>
"Spouse"	<p>Spouse of a person (for example, an applicant or a beneficiary), means the person's husband or wife</p>

Whenever these words are used in the Act you should read the [Schedule 2](#) definition to discover what the word or phrase means. Usually you will not have to go any further than Schedule 2 to ascertain what a word means but there are exceptions to this.

A phrase or word may have a different definition contained in another part of the same Act. For example, we have already looked at the definition of "applicant" contained in Schedule 2. However [Section 29](#) of the Act which sets out entitlement for Sole Parent Support requirements and contains its own definition of "applicant" which is quite different from that contained in Schedule 2.

Another exception is where you may have to cross reference to other pieces of legislation to ascertain the meaning of a word or phrase, for example, under the definition of income tax in Schedule 2 you are referred to the Income Tax Act 2007. You would then have to look up the Income Tax Act 2007 to ascertain the meaning of income tax.

Other useful definitions can be found in Schedule 2 of the Social Security Act 2018.

Analysis

The next key point in the Act is the Analysis. This is an index of the content of the Act and makes it easy to locate the information you want.

You will note that the Act is divided into eight parts. Each Part has a number and title. Part 2 is headed "Assistance." All entitlements to benefit are contained in this Part.

Each Part is divided into tidy subparts covering specific topics. Again, refer to your Act, an example in Part 2, subpart 3 might be "Sole parent support."

Each subpart is divided into numbered sections. Each section can be subdivided again into subsections (numbers), paragraphs (letters) and subparagraphs (numbers in Roman numerals).

Objects & Principles

Increasingly, Acts may contain sections which spell out certain matters which either attempt to carefully delineate what the Act is designed to achieve (Objects) and for matters to be taken into account when exercising powers under the Act (Principles).

In our new legislation, the Purpose and Principles are found near the beginning of the Act. You should be aware of the existence of the Purpose and Principles as they are contained in both the Social Security Act 2018 and other related legislation that impact on your work, for example, the Official Information Act 1982.

The purpose or object of the Official Information Act 1982 is contained in [Section 4](#) of that Act.

The Principle of 'availability' which governs the Official Information Act is contained in [Section 5](#). This principle is that the information shall be made available unless there is a good reason for withholding it. The provisions of the Official Information Act and Privacy Act 1993 will be considered in more detail in a subsequent unit.

Schedules

The Schedules to an Act will contain detail which is easier to deal with in a Schedule than in the main body of the Act, for example [Schedule 4](#) of the Social Security Act 2018 sets out the Rates of benefits.

They will also often contain amendments to other Acts that have been altered or repealed by the Act in question.

These Schedules will be referred to in the sections of the Act to which they relate as in Section 38 of the Act which states that the rate of Supported Living Payment payable shall be the appropriate rate specified in Part 3 of Schedule 4.

Transitional Provisions

In most Acts provisions are needed to deal with the situation of existing orders, proceedings etc. already commenced when new or amending legislation is brought into force. The question that this raises is whether these orders or proceedings should be dealt with under the existing law or the new Act.

Provisions for such situations are always found near the end of the Act and are called the Transitional Provisions. The current Act was preceded by the Social Security Act 1964. This was preceded by Social Security Act 1938. When our present Act was introduced the Legislature needed to ensure that any proceedings taken earlier, including recovery of any fine, were still enforceable and that all regulations, orders, warrants and other acts of authority originating under the Social Security Act 1964 would remain in force. This is encapsulated in [Section 9](#) of the Act under the heading "Interpretation: references to old law, and using it as a guide".

Commencement

Sometimes an Act has a different date of commencement to the Royal Assent due to the need to have a lead in period. The date of Royal Assent is set out in the front page of an Act. The commencement date is contained in [Section 2](#) of the Social Security Act 2018.

Now you have completed this module, an assessment of your knowledge is required.

For course sign off please complete the following questions,

1. Describe the steps on how a bill becomes Law.
2. Explain how Law is amended
3. Explain how you would access legislation. Learner needs to find a set Section of the Act and read it to confirm they have ability to search legislation.



MSD & Fraud History

Learning objectives:

By the end of this unit you will be able to:

- have a understanding of the history of MSD
- have some knowledge of the history of fraud
- be able to explain MSD's response to fraud

Relevance of learning to your role:

- some background into MSD and fraud will be helpful in understanding how your role fits into the bigger structure

Behavioural competencies for success:

- Inquiring mind
- Motivation

Brief introduction to the Ministry of Social Development

There's an interesting history behind our name, Ministry of Social Development (MSD). Initially a charity from private institutions was the only assistance available to those in need. New Zealand's publicly funded social services only began in 1898 with the Old Age Pensions Act, establishing a single, narrowly focused Old Age Pensions Department which granted 6 pence per week to men and women over 65. Many New Zealanders were excluded on the grounds of race, mental health or "moral character".

In the area of employment, we began by granting the "dole" to the unemployed but later adopted the more inclusive term, "income support".

	Private charity (no government support)	became	Old Age Pensions Department
1909	Pensions	moved to	Post and Telegraph Department
1913	Pensions	became	Pensions Department
1939	Pensions and Employment Division from Department of Labour	became	Social Security Department (SSD) in Social Security Commission
1972	SSD and Child Welfare from Department of Education	became	Department of Social Welfare (DSW)
1998	Housing Policy from Ministry of Housing	moved to	Social Policy Agency within DSW
1998	Income Support and NZ Employment Service and Community Employment Group and Local Employment Co-ordination	became	Department of Work and Income (WINZ)
1999	Social Policy Agency from DSW and Corporate Office from DSW and new Purchasing and Monitoring Group	became	Ministry of Social Policy (MSP)
1999	Children, Young Persons and their Families Agency (CYPFA)	became	Department of Child, Youth and Family Services (CYFS)
2001	Housing Policy from MSP	moved to	Housing New Zealand Corporation
2001	Ministry of Social Policy and WINZ	became	Ministry of Social Development (includes Work and Income)
2006	Child, Youth and Family	merged with	Ministry of Social Development
2014	Social housing assessment and administration of the Income-related Rent Subsidy	moved to	Ministry of Social Development
2017	Child, Youth and Family	became	Oranga Tamariki—Ministry for Children

Click link to read the more on the history - [Doogee - History of MSD](#)

Click link to read the more on the history - [Doogee - Social assistance chronology](#)

Our History - Benefit Fraud and Abuse

1987 MINISTERIAL REVIEW INTO BENEFIT FRAUD AND ABUSE

In August 1987 a report called the Report of the Ministerial Review into Benefit Fraud and Abuse was published. The report documented the findings and the recommendations of the Ministerial Review into Benefit Fraud and Abuse. The review identified and commented on the Department's existing mechanisms for detecting and reducing the incidence of benefit fraud and abuse and recommended areas that could be strengthened to increase their effectiveness and new mechanisms that could be introduced.

The following problems were identified:

- failure to disclose a change in conjugal status; and
- failure to disclose earnings or other income.

The report also found that fraud was confined and that most benefit abuse was opportunistic and involved non-disclosure of a change in circumstances, rather than a misrepresentation of fact.

An analysis of the causes of the problems was carried out, and found:

- client and peer group attitudes were seen as being conducive to and facilitative of fraud and abuse
- the cost of transacting with the system deters clients from disclosing their changes in circumstances
- clients may resort to benefit abuse because their needs were not being met by the system
- many checks and controls did not deter clients from committing benefit fraud and abuse
- clients perceived that there was a very low likelihood that they would be detected if they committed fraud and abuse; and
- clients perceived that the consequences of detection were minimal.

The proposed solutions of the Ministerial Review were:

- the establishment of field detection units
- increased penalties
- improved internal checking and control systems; and
- policy revisions

1996 REVIEW OF NZISS

In June 1996 the New Zealand Income Support Service (NZISS) developed a business case about how they would respond to benefit fraud.

At the time, NZISS employed 324 fraud-related staff. Detection activities included data matching arrangements and staff or public generated allegations.

Responses involved an investigation, resolution and punishment. At the time there was an upward trend in annual workflow against a falling or static trend in client numbers.

The focus for the future was to be proactive in our behaviour, seeking to change attitudes and behaviours of our clients instead of the reactive investigation process which is very expensive.

It was noted that a high-quality investigative response was also required.

The critical success factors in achieving the benefit fraud goals were:

- to ensure high voluntary compliance
- to gain wide support for the NZISS position and response to benefit fraud
- to have strong detection capability
- to maintain and credible and effective investigative capability
- to impose realistic penalties; and
- to define, measure and reward success.

The structure change saw a reduction from 324 FTEs to an estimated 215 FTEs by 30 June 2001. The structure also saw the centralising of the Data Match function, a reduction from 42 district-based teams to 10 area crime teams, the establishment of a National Office Research and development Unit, the development of a benefit crime blueprint, and the establishment of a discrete benefit crime management function with a direct line of reporting to the General Manager NZISS.

2001 BENEFIT CONTROL ACTIVITIES: FUTURE DIRECTION

A paper was written for the Minister on 28 February 2001 regarding a report back on progress made on the following work areas:

- non-fraudulent debt reporting by Benefit Control
- a monetary penalty as the minimum sanction in every case of fraud
- alternative approaches to sanctions for fraud - increased compliance controls and stronger warning letters; and
- a prevention / intervention approach to managing fraud.

The outcomes were as follows:

- Data Match debt was no longer reported as fraud. It was to be reported as 'data match debt'
- No change to our practice surrounding imposing monetary penalties as a minimum sanction. A penalty lengthens the time it takes to collect the debt and having a monetary penalty could result in more reviews of decisions. There was also a view that a monetary penalty would not be seen as a punishment for some clients
- The availability and use of compliance controls like verification of client information, periodic declarations of circumstances, periodic reporting, periodic interviews and home visits could be seen as punishment however have a deterrent value and may contribute to the prevention of future offending.
- The strengthening of the warning letters from July 2001
- Develop a pilot for visiting DPB three to eight weeks into their benefit receipt
- Develop interventions based on transaction analysis including 'cold calling' with a verbal explanation given for the visit. Previously, visits were made after a written explanation for the visit was given.

2007 ESTABLISHMENT OF THE INTELLIGENCE UNIT

The Intelligence Unit was established in 1 July 2007 in response to the emergence of the threat of serious benefit fraud through identity crime and the implications this type of crime had on the public's trust and confidence in the Ministry.

The Ministry decided to create an intelligence-led approach. The intelligence-led approach included:

- Establishing a new unit within Integrity Services called the Intelligence Unit
- Build and balance integrity within our administration of payments to prevent benefit fraud
- Realign the Internal Fraud Unit and transfer it to Integrity Services from Risk and Assurance
- Establish Ministry-wide governance of integrity, security and intelligence.

Prior to the establishment of the Intelligence Unit, the intelligence functions were shared amongst various business units.

- The Intelligence Unit's role was to gather intelligence information to assist with investigations
- Identify emerging fraud trends
- Develop and maintain internal and external relationships
- Develop and implement intelligence policy, programme development and evaluation
- Provide support to other Integrity Services units and to the wider Ministry.

The Intelligence Unit adopted the '3i intelligence model'.

The initial structure of the Intelligence Unit included a National Manager, a Strategic Intelligence Advisor, a Senior Intelligence Advisor, and four Intelligence Analysts.

2009 REVIEW OF BENEFIT CONTROL

In May 2009 a business case was developed to seek support for proceeding with a programme of change for Benefit Control. The two parts of the proposal were organisational change and work process improvement changes.

The case for change highlighted a diminishing baseline and an uneven distribution of staff resources.

The future direction focussed on designing a structure that supported the new fraud risk workflow model, balanced staff resources, recognised the change in client demographics, aligned

the lower risk compliance activity with the appropriate functional area, and met the value for money saving requirement.

The structure saw the ten Benefit Control Units reduced to four National Fraud Investigation Hubs. The hubs were tasked with responding solely to high risk hard end fraud. The new structure saw the elimination of field officers and a reduction in the number of managers, technical officers, quality assurance officers and administration staff. The structure also saw an increase in the number of investigators and the development of new roles (Senior Fraud Investigation Advisors, Forensic Analyst and a Business Development Manager).

A new team was established to support the Hubs called the Fraud Information and Advice team which was formed from members of the disestablished operational support team.

The new National Fraud Investigation Unit structure was launched on 31 August 2009.

KEY DATES

DATE	EVENT
May 1987	Benefit Fraud Amnesty: Clean Slate ran from 1 May until 31 May 1987
Aug 1987	Report of the Ministerial Review into Benefit Fraud and Abuse
1990	Bronwynne Excell decision
1992	The National Data Match Centre was established
4 Jul 1992	Customs Arrivals and Departures Data Match established
20 Apr 1993	Inland Revenue Benefits Data Match established
April/May 1993	Benefit Fraud Amnesty: Penalty-Free Period ran from 26 April until 14 May 1993
1994	Ioane decision
1995	Prisoners/Corrections Data Match established
Jun 1996	Review of NZ Income Support Service and establishment of Benefit Crime as a discrete business unit
1997	Ruka vs Department of Social Welfare [1997] 1 NZLR 154
1998	Benefit fraud media campaign
Feb 2001	Benefit Control Activities: Future Direction
18 Jun 2001	Joychild Review of the Department of Work and Income Implementation of the Court of Appeal Decision: Ruka vs Department of Social Welfare [1997] 1 NZLR 154
Oct 2001	Early Intervention Pilot Programme commenced
Dec 2001	Launch of the Benefit Control Blueprint
Jul 2002	Early Intervention Programme embedded
Feb 2003	Internal Fraud Unit established (Risk and Assurance)
17 Nov 2003	AIMOS went live

DATE	EVENT
Nov 2003	Corrections Data Match moved to AIMOS
20 Sep 2004	Deceased Persons Data Match established
June 2005	Inland Revenue Students Data Match established
Nov 2005	Married Persons Data Match established
Jun 2006	Accident Compensation Corporation Data Match established
Jun 2006	Housing New Zealand Data Match established
Apr 2007	Identity Data Match established
1 Jul 2007	Intelligence Unit launched
Sep 2007	Internal Fraud Unit transferred to Integrity Services
31 Aug 2009	National Fraud Investigation Unit launched consisting of four investigation hubs
1 Nov 2009	Integrity Intervention Unit launched
1 Dec 2009	Implementation of the Fraud Risk Workflow Model
1 Jun 2010	Implementation of the FIRE and MELOW processes
5 Sep 2011	Investigation Management System (IMS) launched and BPCU TRACE made read only

Fraud Risk Workflow Model

Fraud Intervention Services implemented a new workflow model November 2018.

There are 3 work streams designed to manage Fraud's response to allegations received depending on the alleged period of offending and the type of offending

Regional initiative programmes are also part of the response where a benefit risk area is identified for Fraud intervention

The Fraud workflow model aligns to the Ministry's Strategic Direction and the Client Fraud Prevention Strategy 4 strategic goals;

- Everyone plays their part in preventing fraud

- Making it easy for clients to do the right thing
- Making it hard for clients to do the wrong thing
- Removing barriers to independence

The Fraud Workflow model has three distinct service streams that have a specific service approach and outcome strategy for the client and the Ministry:

The three service streams are defined below and further illustrated in diagram below.

Service Stream 1:

Early Intervention effective November 2018

Making it easier for clients to do the right thing

Target Group:

Period of alleged offending is less than 1 year or first-time allegation

All allegation types excluding working and identity fraud

Service Approach:

Phone, email, post, text, entitlement conversation, information from MSD systems- undertaken by FIS – Technical Officers. No inquiries made outside MSD systems

Expected Outcomes:

Entitlement corrected, no overpayment, follow-up to reduce churn.

Service Stream 2:

Facilitation effective February 2019

Providing clients with an opportunity to do the right thing

Target Group:

Period of alleged offending is 1-3 years or subsequent allegations

All allegation types excluding identity fraud

Service Approach:

Face to face meeting, entitlement review, information from client and publicly available information, limited use of S6 – undertaken by FIS – Investigators. Very limited inquiries outside MSD systems permitted.

Expected Outcomes:

Entitlement corrected, no prosecution, follow-up to reduce churn

Service Stream 3:

Investigation effective March 2019

Protecting the integrity of the benefit system

Target Group:

Period of offending is more than 3 years or subsequent allegations

All allegation types including identity fraud

Where information previously received and dealt with by EI/Facilitation.

Previous prosecution

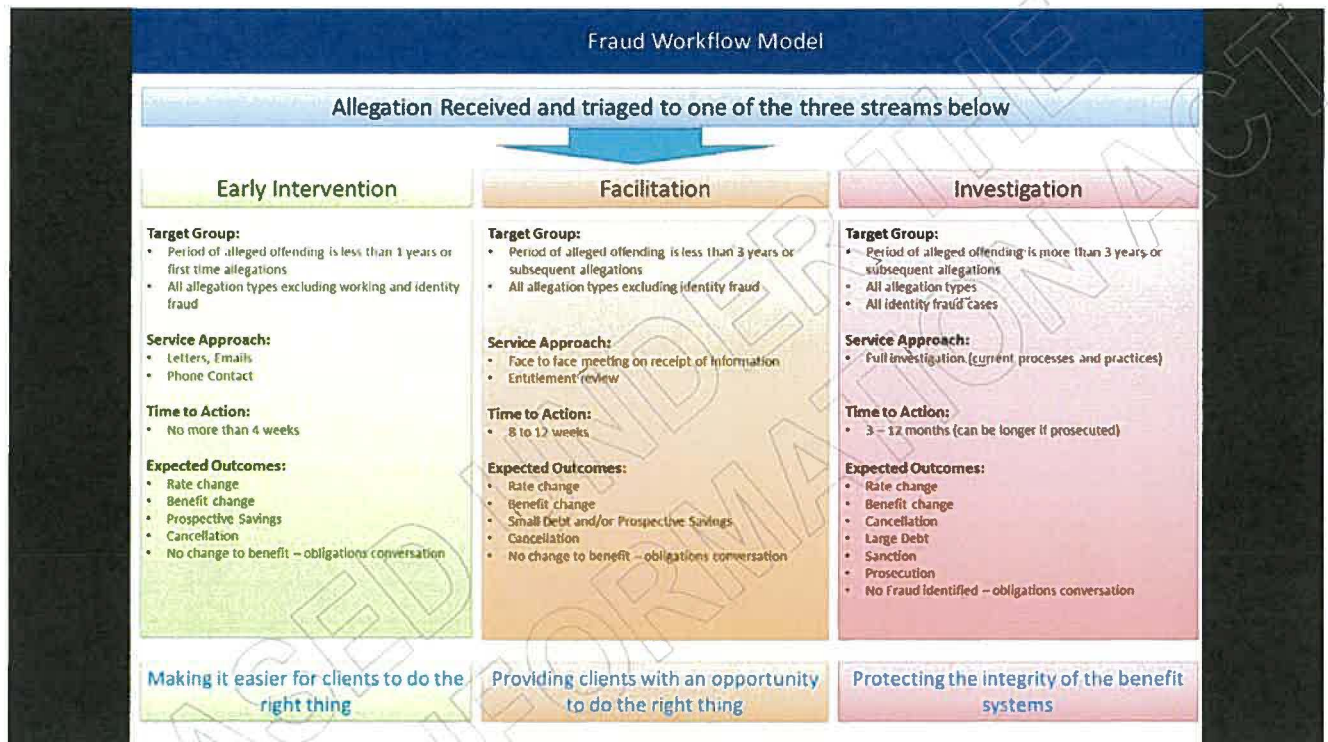
Service Approach:

Full investigation, full use of S6, client contact at completion of investigation with formal interview under caution. Undertaken by FIS - Investigators

Expected Outcomes:

Entitlement reviewed and corrected, overpayment, possible prosecution, follow-up to reduce churn

Fraud will also be implementing specific regional initiative programs where areas of benefit risk are identified and agreed for Fraud intervention/investigation. This aspect of the model is scheduled for work in August 2019.



Further information on the current Fraud Workflow Model can be found in doogle at: [Doogle - Fraud workflow model](#)

Now you have completed this module, an assessment of your knowledge is required.

For course sign off please complete the following:

1. Explain what has happened to the Fraud Intervention Services structure since 2009 – (you will need to do some research and talk to people to find this information)



Obligations, Reviews, and Debt

Learning objectives:

By the end of this unit you will be able to:

- understand why clients are obligated to tell us about changes of circumstances that affect their entitlements
- understand debt/overpayments
- understand how debts/overpayments are recovered

Relevance of learning to your role:

- making the correct decision is important in your role
- knowing what effect failing to advise of a change in circumstances, has on a person's entitlements.
- determining what a person's correct entitlement is/was

Behavioural competencies for success:

- Critical thinking - objective analysis and evaluation
- Analytical – Attention to detail
- Sound judgment – making correct decisions regarding entitlements

Client Obligations

Section 113 of the Social Security Act 2018

Section 113 of the Social Security Act 2018 requires the client to immediately advise MSD of any change in their circumstances which may affect their right to receive a benefit or the rate at which they receive it.

The requirement to comply with this section places an onus on the client to advise of their change in circumstances and is often referred to as the 'client's obligations'.

Section 115 of the Housing, Restructuring and Tenancy Matters Act 1992

Section 115 of the HRTMA requires every person to who social housing is let at an income-related rent to promptly advise the agency of any changes in the person's circumstances, or of any changes in any other applicable person likely to result in the payment of a higher income-related rent by the person who is the tenant.

Section 307 of the Education Act 1989

Section 307 (1) and 307(6) of the Education Act 1989 places the same responsibility on students to advise the Ministry as soon as practicable of any changes in their circumstances that would materially affect their entitlement to a student allowance or loan and/or to the rate at which the allowance or loan is being paid.

Change in circumstances

These sections are of relevance to investigations under the Social Security Act, Housing, Restructuring and Tenancy Matters Act and the Education Act. It applies to benefit, housing and student fraud. When prosecuting it is necessary to determine that the client knew that their change in circumstances would affect their entitlement to or the rate at which they are being paid a benefit, income-related rent allowance, or student allowance or loan to successfully conclude a prosecution.

Often these circumstances will be obvious to a client e.g. when a client commences full-time employment or when a client has a change of address.

Sometimes it is less clear. For example, a client may not understand that receiving and spending an inheritance could affect the rate of payment of their benefit.

The Social Security Appeal Authority decided that an appellant receiving a Domestic Purposes Benefit satisfied their obligations when she notified the Ministry that their earnings exceeded the exemption, rather than when they started work.

Section 113 does not provide for an offence or a penalty; therefore, no prosecution can be started using this section alone. It is however, a prerequisite for proving an offence.

Sections 311-316 of the Social Security Act 2018 – Commencement of Benefits

[Sections 311-316](#) are complex sections that provide regulatory dates which various benefits can commence from. It is administered in conjunction with [Section 313](#) and this part of the Act imposes stand-downs on clients based on certain circumstances.

The general rule under this section is that benefits commence on the later of:

- the date upon which the applicant is entitled to receive a benefit; or
- the date the application for it is received.

[Section 317](#) provides an exception to the date which benefits can be granted from if MSD has in some way at an earlier time, acted in error. The manner in which MSD applies this, has been tested in the High Court.

The present leading case law does not allow MSD to replace one benefit with another in a retrospective manner. (Refer to Retrospective Rate Substitution section of this Unit).

Reviews of Benefits, Income-Related Rent and Allowances

Section 304-308 of the Social Security Act 2018

[Section 304](#) of the Social Security Act 2018 allows the Chief Executive to review any benefit from time to time for the purpose of determining whether a client remains entitled to it, may not have remained entitled to it and/or the rate at which the benefit was paid.

[Section 305](#) is like Schedule 6, clause 1 of the Social Security Act 2018 this section also provides an authority to obtain information from the client by requiring them to answer questions or provide information in the manner specified by the Chief Executive.

Section [306](#) to [307](#) gives provision for the Chief Executive to suspend, terminate or vary the rate of payment from a date determined by the Chief Executive once it has proven that the client was no longer entitled to receive it.

Retrospective Rate Substitution

Upon a completion of any investigation, a decision about previous benefit entitlement would be made. Generally the decisions are made in accordance with Section 306 and [308](#) of the Social Security Act 2018.

Careful consideration needs to be given when making these decisions to ensure that guiding principles of Section [317-318](#) and Sections 304-308 are not compromised.

A leading High Court decision; Department of Work and Income – v- Moody, further outlines (among other issues) how MSD needs to determine a client's previous entitlement to benefit when retrospectively reviewing entitlement. Click link to read the full case law – [Moody](#)

This case confirms that MSD cannot substitute one benefit with another when making a decision about entitlement in a retrospective manner.

For example, MSD could not go back in time and substitute a Job Seeker Support for the cancelled Sole Parent Support once it had been proven that a client did not have a dependent child in their care. However, if Accommodation Supplement was received by the client during the period of the review, then the rate of payment needs to be adjusted retrospectively as this rate change does not contravene Sections 311-316 of the Act.

The correct application of this part of the Act can be complex and assistance should be sought from Fraud Managers, Fraud Specialists and Legal Services when required.

Section 116 of the Housing, Restructuring and Tenancy Matters Act 1992

[Section 116](#) of this act allows the agency at any time to review any income-related rent to ascertain whether it, or some other income-related rent is now appropriate, and from when. This also allows the agency to increase or reduce the rent to an amount calculated on the tenant's correct circumstances.

Section 307AAA of the Education Act 1989

[Section 307AAA](#) of this Act allows MSD to suspend payment of Student Allowance if the recipient has failed or refused to comply with a requirement to produce any document, papers or record.

Debt, Penalty and, Recovery

All relevant Acts have provision for recovery of debt to the Crown. If a person remains entitled to a benefit or allowance after a debt has been established then MSD will recover this by offsetting an amount from their benefit each week.

If payments have been cancelled, the recovery of that overpayment will be referred to MSD's Collections Unit.

The Collections Unit has the ability to deduct money from bank accounts and wages.

Should your investigation result in a large overpayment and the client has substantial assets, you could consider referring this to the New Zealand Police asset recovery team. Fraud Managers need sign off from the National Manager to pursue this type of recovery.

Recovery of overpaid benefit or allowance

It is likely that, if a person has received a benefit, allowance or loan to which they were not entitled, or in excess of the amount to which they were entitled, a debt will be established.

A debt and its recovery can be in respect of any benefit advance, special assistance or any other monies that represents a debt in terms of [Section 353](#) of the Social Security Act 2018 and 307B of the Education Act.

We do not recover overpaid monies whilst a decision is the subject of a review or appeal under both Sections 391-394 and 395-399 of the Social Security Act 2018 and 304 and 305 of the Education Act.

Recovery under these circumstances should only occur if the client agrees to continue recovery of the overpayment.

Sections 353-363 of the Social Security Act 2018

These sections are a wide ranging part of the Act, which present different features of debt recovery. The sections provide for MSD to recover an overpayment. It also allows MSD to impose a monetary penalty if the client has obtained benefit by way of fraud.

This section also makes provision to write off any debt that has been caused because MSD has made an error (refer to Write off section of this unit). MSD must have considered whether the debt should be written off before it commences or seeks recovery of that debt.

Section 307B of the Education Act 1989

This section allows MSD to recovery any student allowance by deduction from any future allowance. It also provides an opportunity to recover any student allowance debt from any future benefit payments.

Student Loan is just that a loan, the recovery of these loans are managed by the Department of Inland Revenue, however if the loan becomes a debt because they were not entitled to section 307B provides that MSD can recovery this from any future allowance or benefit.

More information about debt amounts and recovery

As mentioned above sections 353-363 have provisions to impose a penalty and apply decisions as to whether a debt should be written off. Case law has also provided some guidelines that need to be applied when considering recovery of debt

Recovery and prosecution

We have outlined debt in terms of the Social Security, Housing, Restructuring and Tenancy Matters Act and Education Act. Any debt established under these Acts is a debt to the Crown and referred to as civil debt.

If you refer a case to the District Court, recovery of an overpayment should continue. Generally MSD will not seek a reparation order through the Criminal Judiciary as we will rely on the recovery powers set out in the Acts.

Reparation orders are restrictive. The weekly amount ordered and the period in which it is imposed often means that the entire debt is not recovered. It also requires both the Ministry of Justice and MSD to administer recovery of the same debt.

The level of debt incurred by way of fraud is generally only relevant to the District Court Judge when determining what sentence he/she may impose if the client is convicted of fraud under the Social Security Act.

Leading case law IOANE requires MSD to calculate what a net loss to MSD would be if the client had told the truth. (This process is the opposite of Retrospective Rate Substitution). This is for benefit fraud only. Click link to read the full case law – [Ioane](#)

IOANE is a manual assessment only for sentencing purposes and MSD will continue to seek recovery of the full overpayment. MSD will continue to seek recovery of any debt to the Crown regardless of any sentence that may be imposed by the District Courts in a prosecution case.

Overpayment

The amount of the actual and recoverable overpayment has been the subject of varying law changes and case law decisions. Through case law the amount to be recovered will be established as follows:

- the net amount of benefit i.e., after deduction of tax
- the net amount of benefit in excess after retrospective rate substitution has been assessed
- the net amount of benefit paid in excess after considering whether the overpayment should be written off pursuant to [Section 208](#) of the Social Security Regulations 2018

Debt write-offs

Once a debt is established, it is important to consider whether any grounds exist to write-off the debt before recovery commences.

[Section 208](#) states that MSD cannot recover under the Act a sum comprising that part of a debt that was caused wholly or partly by an error to which the debtor did not intentionally contribute if—

- the debtor received the money in good faith
- the debtor changed his or her position in the belief that he/she was entitled to that sum and would not have to pay or repay that sum to MSD;
- it would be inequitable in all the circumstances including the debtor's financial circumstances, to permit recovery.

What constitutes an office error is outlined in [Section 208](#) (2) of the Social Security Regulations 2018.

- the provision of incorrect information by MSD
- any erroneous act or omission by MSD that occurs when inquiring into a claim for a benefit under [Section 298](#) of the Social Security Act 2018
- any other erroneous act or omission by MSD

All the above criteria have case law to assist interpretation and, generally, a common sense approach to each criterion is likely to result in a proper decision. If there are any difficulties, please approach Legal Services.

Penalties

When the overpayment occurred as a result of fraud, a penalty of up to 3 times the amount of the excess payment can be imposed.

The criteria for imposing a penalty is set out in [Section 354](#) of the Act, and provides that a penalty can be imposed:

- after notice of such imposition of a penalty is given to the client and the client has exhausted any right of review of that decision to impose a penalty
- if the client has not been prosecuted

The criteria for deciding whether fraud has been established is the same as Section 290 of the Act. (This is covered in the Offences module)

Because of the serious nature of both the penalty and the allegation of fraud, the burden of proof lies with MSD. The required level of proof must be persuasive enough to confirm that on the balance of probabilities the client committed fraud.

Test Your Knowledge

Congratulations on completing the obligations, reviews & debt module!

For course sign off, please answer the following questions;

1. What is the importance of client obligations for either SSA or HRTMA?
2. Why do we establish overpayments?
3. Explain when you would apply RRS in making a decision to establish an overpayment.
4. If a person is prosecuted, do they still have to repay the debt? Why?
5. Should we consider debt write off when making a decision to establish an overpayment. Why?



Offences

Learning objectives:

By the end of this unit you will be able to:

- identify what sanction you could impose
- identify offences and the ingredients of an offence
- define the legal terms involved

Relevance of learning to your role:

- making the correct decision on sanctions is important in your role
- having the ability to know what offences can be considered when making a decision to refer a person for prosecution, when fraud has been determined in your investigation

Behavioural competencies for success:

- Critical thinking - objective analysis and evaluation
- Analytical – Attention to detail
- Sound judgment – making correct decisions regarding entitlements
- Professionalism
- Decisive - ability to make correct decisions

Introduction

Throughout all of the phases of your investigation the aim is to determine whether a person has received their correct entitlement or not. If at the end of your investigation you find that the person did not receive their correct entitlement, a decision will be made to establish an overpayment.

The next step will be to determine if that person has obtained that payment by way of fraud. If you find that fraud has been proven, you would need to consider what sanction you will impose.

MSD sanctions fraud by way of:

- issuing a warning letter
- imposing a monetary penalty (for benefit fraud only) or
- referring the case for prosecution

Before imposing any of these sanctions you must first confirm that an offence has been committed.

MSD's policy guidelines will assist you in imposing the appropriate sanction. Click link to read in full - [Exercising discretion to refer for prosecution](#).

If your decision is to impose a sanction that refers the case for prosecution, then the type of charges you will consider need to be determined.

Most fraud offences can be classified by dividing them into two component parts;

- **Actus Reus** (the physical act or omission and the surrounding circumstance)
- **Mens Rea** (a guilty mind or the mental elements)

These two elements make the offence complete and your investigation **must** establish these two components.

As explained in Obligations, Reviews and Debt module it is important that you establish that the person knew and understood their obligations as this will assist in proving that the person had a guilty mind.

Most common offences that you will come across as a Fraud Investigator for MSD will be:

<p>Section 290 of the Social Security Act 2018 - Offences: <i>false statements, misleading, or attempting to mislead, to receive or continue to receive benefits</i></p>	<p>Section 290 sets out two separate offences:</p> <ul style="list-style-type: none"> a) The making of a false statement in any material particular for the purpose of receiving or continuing to receive an advantage. b) Willfully doing or saying anything, or omitting to do or say anything, for the purpose of misleading or attempting to mislead a person to receive or continue to receive an advantage. <p>Click link to read the full section - Section 290</p>
<p>Section 291 of the Social Security Act 2018 - Offences: <i>spouse or partner knowingly benefiting from excess amount obtained by beneficiary's fraud</i></p>	<p>Section 291 sets out the offences for spouses or partners:</p> <p>A spouse or partner commits an offence if;</p> <ul style="list-style-type: none"> (a) that person is a spouse or partner of a beneficiary who obtains an excess amount by fraud; and (b) benefits directly or indirectly from the amount or part of it knowing that, or being reckless about whether, the amount or part is an amount or part <ul style="list-style-type: none"> (i) in excess of the amount to which the beneficiary is by law entitled or to which they have no entitlement; and (ii) obtained by the beneficiary by fraud. <p>Click link to read the full section – Section 291</p>
<p>Section 295 of the Social Security Act 2018 - Time for filing charging document.</p>	<p>Section 295 sets out the time limitation for filing a charging document under either Section 290 or 291 of the Act.</p> <p>The limitation period in respect of an offence against this Act ends on the date that is 12 months after the date on which the facts alleged in the charging document are brought to the knowledge of an officer concerned in the administration of this Act.</p> <p>Click link to read the full section - Section 295</p>

<p>Section 131 of the Housing, Restructuring and Tenancy Matters Act 1992 – Offence to mislead agency for certain purposes or results (from 14 April 2014)</p>	<p>Section 131 is similar to Section 290 of the Social Security Act 2018. It out three separate offences:</p> <ul style="list-style-type: none"> a) makes any statement knowing it to be false in any material particular b) deliberately does or says anything for the purpose of misleading or attempting to mislead the agency c) deliberately omits to do or say anything for the purpose of misleading or attempting to mislead the agency <p>Click link to read the full section - Section 131</p>
<p>Section 25(3)(c) of the Criminal Procedure Act - Time for filing charging document</p>	<p>Section 25(3)(c) sets out the time limitation for filing a charging document under Section 131 of the Housing, Restructuring and Tenancy Matters Act 1992.</p> <p>This states that charging sheets must be laid within 5 years after the date on which the offence was committed...</p> <p>Click link to read the full section - Section 25(3)(c)</p>
<p>Section 307AA of the Education Act 1989 - Offences concerning allowances and student loans</p>	<p>Section 307AA is similar to Section 290 of the Social Security Act 2018. The section also sets out three separate offences;</p> <ul style="list-style-type: none"> (a) knowingly makes a false or misleading statement in an application for a statutory allowance or student loan; or (b) knowingly makes a false or misleading statement in a notification of a change in the recipient's circumstances that materially affects his or her entitlement at any time— <ul style="list-style-type: none"> (i) to a statutory allowance or student loan; or (ii) to be paid a statutory allowance at a particular rate or a particular amount of a student loan; or (c) wilfully fails to comply with section 307(6). <p>Click link to read the full section - Section 307AA</p>

<p>Section 228 of the Crimes Act 1961 – Dishonestly taking or using document (from 1/10/03)</p> <p>Prior to this, Section 229(a) of the Crimes Act 1961 was used.</p>	<p>Section 228 would be used instead of Section 290 of the SSA - making a false statement, as the penalty is greater being a term of imprisonment for a term not exceeding 7 years.</p> <p>Whilst this section sets out two different offences, the main one we use for fraud is:</p> <p>(1) Every one who, with intent to obtain any property, service, pecuniary advantage, or valuable consideration, — (b) dishonestly and without claim of right, uses or attempts to use any document.</p> <p>Click link to read the full section - Section 228</p>
<p>Section 240 of the Crimes Act 1961 – Obtaining by deception or causes loss by deception (from 1/10/03)</p>	<p>Section 240 is also used for more serious fraud and would be used instead of Section 290 of the SSA – wilful omission. Again, this is due to the penalty being greater than the SSA.</p> <p>Whilst this section sets out different offences, the main one we use for fraud is:</p> <p>(1) Every one is guilty of obtaining by deception or causing loss by deception who, by any deception and without claim of right, — (a) obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly;</p> <p>Click link to read the full section - Section 240</p>
<p>Section 66 of the Crimes Act 1961 – Parties to offences</p>	<p>Section 66 is another Crimes Act offence we may use for anyone who has been party to offending. This could include a person's agent or partner/spouse. The wording set out in this section is;</p> <p>Every one is a party to and guilty of an offence who—</p> <p>(a) actually, commits the offence; or (b) does or omits an act for the purpose of aiding any person to commit the offence; or (c) abets any person in the commission of the offence; or (d) incites, counsels, or procures any person to commit the offence.</p> <p>Click link to read the full section - Section 66</p>

There are other possible offences and charges in the Crimes Act that could be committed such as forgery, altering a document or using an altered document but these do not occur very often. You can discuss any additional charges of this nature with Legal Services.

Ingredients of an offence

To establish the commission of an offence, all offences require each ingredient to be proven. Ingredients are simply words or phrases that are written into statute which, together, create an offence. These words or phrases later form the basis of the 'charge' when a person is prosecuted.

Ingredients of offences can be likened to baking a cake. If one ingredient is missing the cake turns out a failure. Likewise, with an offence, if an ingredient is not proven, the person will not be convicted. Each offence has different ingredients, as shown in the following two examples:

The ingredients contained in Section 290 of the Social Security Act 1964 are:

- person (The accused)
- makes any statement knowing it to be false in any material particular
- wilfully does or says - wilfully omits to do or say anything
- purpose of misleading
- attempting to mislead - purpose of receiving
- continuing to receive
- an advantage

The ingredients contained in Section 228 of the Crimes Act 1961, are:

- intent to defraud
- taking or obtaining of any document
- use or attempted use of any document
- capability of the document to obtain privilege, benefit, pecuniary advantage or valuable consideration
- purpose of using the document is to obtain privilege, benefit, pecuniary advantage or valuable consideration for the offender or any other person

Ensuring the person's identity is crucial, in all investigations. Certain cases, for example multiple benefits using false details, would require the investigator to be 100% certain of the person's true identity.

Further definitions of terms are shown in the following table:

Makes:	As soon as a person signs a statement, application, renewal etc., they are deemed to have made the contents of those documents their statement.
Statement:	The word statement is sufficiently wide to cover any form of representation, whether written or oral.
Knowing it to be false:	An investigator needs to prove the person's true circumstances, in order to show that the information given to MSD was false. ie: If a person states that they are a solo parent, the investigator needs to gather evidence to prove the falsity of the statement.
Material Particular:	Something that is material particular is something that goes to the root of the offence. e.g. A tenancy agreement supporting an application for Accommodation Supplement, is a document that goes directly to the grant of an Accommodation Supplement and therefore if false, would be a statement in a material particular.
Wilful omission	A wilful omission in this context means a deliberate failure to tell MSD about something which the person concerned knows should be the subject of advice to MSD. In that instance it would normally be a reasonable inference that the person's purpose was to mislead. The crucial question is whether the person was aware of the need to inform MSD of the matter in question. It is critical to ascertain in your investigation, that the person had sufficient knowledge of the entitlement criteria, for the benefit they were receiving.

Misleading	<p>Once knowledge is established, it follows that any false statement in a material particular made by the person would be for the purpose of misleading.</p> <p>If MSD was not misled, due to the person's false statements, the person could still be charged with attempting to mislead an officer of MSD.</p>
Continuing to receive	<p>An investigator needs to show that the false statements made by a person were for the purpose of receiving or continuing to receive an advantage as specified under Section 290(3) of the Social Security Act (referred to above).</p> <p>A charge relating to receiving would generally be used on applications for benefits. Conversely, a charge relating to continuing to receive would relate to applications for annual reviews, resumption or continuation of benefits.</p>
Advantage	<p>The word "advantage" in this section, relates to any benefit paid under the Social Security Act.</p>
Dishonestly	<p>Similar to "intent to defraud" – the ordinary meaning of dishonest is "not honest" or "deceiving". To deceive means to deliberately mislead. To mislead means to give false information or lead into error.</p>
Without claim of right	<p>In relation to any act, means a belief that the act is lawful, although that belief may be based on ignorance or mistake of fact or of any matter of law other than the enactment against which the offence is alleged to have been committed</p>
Intent to obtain pecuniary advantage	<p>'Pecuniary advantage' means a monetary or economic advantage. This might include, for example, gaining cash, credit or physical property.</p>

Takes or obtains a document	These words retain their common meaning. For example, 'takes' would include someone taking cheques or other documents from letterboxes. 'Obtains' would include fraudulent obtaining or acquiring with consent, for example if you receive something which is mistakenly addressed to you but to which you have no right, and you use it anyway.
Uses or attempts to use document	A document provides information or evidence and serves as an official record. A document makes you aware of things that you would not otherwise know. This means that it does not matter what form the document takes, so long as it can be used to obtain a privilege, benefit, pecuniary advantage or valuable consideration. For example, under section 228 an EFTPOS machine could be a document.

Test Your Knowledge

Congratulations on completing the Offences module!

For course sign off, and to test your knowledge, please return to the main page to complete the quiz.

1. What are the two main tests that need to be considered when making a decision on sanctions.
2. Explain the factors for each of these tests
3. Explain the maximum sentences for the different offences you could charge a person for benefit/housing/student fraud under.



Official Information and Privacy Acts

Learning objectives:

By the end of this unit you will be able to:

- be able to understand the relationship between the OIA & Privacy Act
- be aware of the Privacy Principles
- be able to action a request in accordance with the Acts
- be familiar with the withholding provisions of each Act

Relevance of learning to your role:

- Protecting the privacy of personal information is a requirement
- Understand how to respond to any OIA & Privacy Act requests
- Have an awareness of risk management when releasing information under these Acts

Behavioural competencies for success:

- Critical thinking - objective analysis and evaluation
- Analytical – Attention to detail
- Decisive - ability to make correct decisions
- Accountability

Introduction - Official Information Act

The Official Information Act 1982 came into force on 1 July 1983. The Privacy Act came into force on 1 July 1993.

This legislation was passed in response to concerns regarding the rapid advances in technology which provided information networks. Freedom of information and protection of privacy had also become a human rights issue. There have also been increasingly strong incentives to exploit personal information which has created a need for control of the information we hold.

Individuals expect that information about them is accurate and relevant, accessed by those with authority and not communicated beyond those who need to know. The right of individuals to access and correct personal data is a most important privacy safeguard.

Working for MSD means that you will be required to be familiar with both Acts in your work.

Historically the Official Information Act (OIA) dealt with all information held by public sector agencies including personal information. The Privacy Act (PA) now deals with personal information held by public sector agencies and agencies in the private sector. The Privacy Act gives individuals rights with respect to their own information and imposes obligations on MSD to ensure good handling of this information. The provisions relating to personal information that had been contained in the OIA have now been incorporated in the PA. The OIA now deals with requests for official information and information requested by someone who is not the subject of that information.

Description

A description of what the OIA is all about is contained in the 'Long Title' which explains that the Act is to:

- make official information more freely available
- provide for proper access by each person to official information relating to that person

- to protect official information to the extent consistent with the public interest and the preservation of personal privacy
- to establish procedures for the achievement of those purposes
- to repeal the Official Secrets Act 1951

[Section 5](#) of the OIA enshrines the principle of availability. This is that the information shall be made available unless there are good grounds for withholding.

Meaning of Official Information

The OIA defines the term “official information” which includes:

- any information held by a Ministry, or a Minister of the Crown in his or her official capacity, or an organisation
- any information held outside New Zealand by any branch or post of a Ministry, or any organisation

Before the introduction of the Privacy Act this definition also included a definition of personal information which was “any information about an identifiable person” as the Act dealt with both.

This has now been incorporated into the Privacy Act which governs personal information and is defined as “information about an identifiable individual.” This is a very wide definition and includes any information that identifies a person.

Making a request under the OIA

[Section 12](#) of the OIA governs the making of requests for official information.

Any person being a New Zealand citizen, a permanent resident of New Zealand or a body corporate can make a request for official information.

Such a request can be stated as being urgent and the applicant must state the reasons for the urgency, otherwise a response must be made as soon as reasonably practicable but no later than 20 working days from the receipt of the request, to comply with the request or to provide reasons for declining it.

MSD has a duty to give reasonable assistance to applicants making official information requests.

The request need not be in writing and can be made verbally.

The requester may specify what form that they wish to receive the information in i.e., by inspection, providing copies of or summaries/paraphrasing.

When actioning a request files which contain information to be withheld from disclosure should be noted and the reasons for the withholding of that information should be specified. Reasons must be given to the requester as to why MSD is refusing to disclose the information and the requester must be told of his/her right to complain to the Ombudsman about that refusal.

The OIA gives protection to those who make information available in terms of the Act providing that they do so in good faith. No civil or criminal proceedings can be brought against that person.

Information that can be made available

Any official information including:

- documents
- publications setting out functions of public sector agencies
- any document or manual containing guidelines, rules, principles in respect of decision making by public sector agencies. This would include MSD's Manuals.
- finding of facts in respect of, and reasons for any decision and a reference to the information on which the findings were based

Information that can be withheld

Section 6 of the Official Information Act provides conclusive reasons for withholding official information if the making available of that information would be likely:

- to prejudice the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial
- to endanger the safety of any person

In addition to the above, there are other conclusive grounds contained with section 6 of the OIA.

[Section 9](#) of the OIA provides other reasons for withholding official information.

These include:

- the protection of the privacy of natural persons, including that of a deceased natural person
- the protection of information which is subject to an obligation of confidence or where the making available of the information would be likely to prejudice the supply of similar information and it is in the public interest that such information should continue to be supplied, or would be likely otherwise to damage the public interest
- to maintain the effective conduct of public affairs by protecting officers and employees from improper pressure or harassment and allowing the free and frank expressions of opinions between members of an organisation
- to maintain legal professional privilege (between solicitor and client)
- to prevent disclosure or use of official information for improper gain or improper advantage

The grounds contained within section 9 are subject to a “public interest” test. These grounds may apply in a given situation unless the public interest in disclosure outweighs the reasons for withholding. This requires a 2-stage test:

- **Does the withholding ground apply? AND**
- **Would the public interest outweigh the application of this withholding ground?**

Introduction - Privacy Act

The Privacy Act (“the Act”) came into force on 1 July 1993 and its main purpose is to promote and protect individual privacy. The Act makes some fundamental changes to the way in which MSD is required to deal with personal information. This includes the way that MSD collects, stores, uses and discloses personal information. Personal information is defined in the Act as “information about an identifiable individual”.

The Act applies to every person, in his or her individual capacity, as well as to the public and private sector organisations that (with rare exceptions) are all caught within the definition of “agency” as defined in [Section 2](#) of the Act. The Act has major implications for MSD especially

with respect to the personal information collected and used in the investigation of clients.

Personal information may be collected only for a lawful purpose connected with the function and activity of the agency and only if necessary for that purpose. As a general rule, information must be collected directly from the person concerned, and the person told why the information is needed and what will happen to it. All individuals have the right to see the information collected about them and to seek correction if they consider that the information is wrong. If the information is believed to be correct the agency is not required to change it; however, the individual is entitled to have a copy of the request for correction and their version of events placed on the file so that it is accessed at the same time as the information deemed to be incorrect.

The Act has established 12 Information Privacy Principles that set out the "rules" for collecting, storing using and disclosing personal information. Some of these principles have exceptions to them.

It also provides for the appointment of a Privacy Commissioner and empowers the Commissioner to investigate complaints of interference with privacy.

The Act enables Codes of Practice to be issued covering specific agencies. The codes can impose a higher or lower standard of duty than those set out in the Privacy Principles, for example, the Health Information Privacy Code.

Privacy Act Principles

The 12 principles contained in the Act governing the collection, storage, use and disclosure of personal information are as follows:

Principle 1 - Purpose of collection of personal information	<p>The collection of personal information must be necessary for the purpose for which it is collected, and that purpose must always be relevant to the function or activity of the agency.</p> <p>This principle was enacted to prevent the indiscriminate collection of personal data.</p>
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	<p>When collecting information the questions that you need to ask are:</p> <ul style="list-style-type: none"> (a) What is the function/activity of MSD? (b) Is the information being collected for the fulfillment of the function/activity of the agency? (c) Is the information being sought necessary for that function/activity? <p>If the answer to the two last questions is "no", it will be necessary to consider whether the collection of the information complies with this principle.</p>
Principle 2 - Source of personal information	<p>The general rule is that personal information should be collected directly from the individual concerned unless one of the stated exceptions apply.</p>
Principle 3 - Collection of information from subject	<p>Where personal information is collected from the individual concerned reasonable steps must be taken by MSD to ensure that the individual is advised of, among other things, the purpose of the collection, what law authorises the collection, the intended recipients of the information and the individual's right to have access to and request correction of that information.</p> <p>Unless an exception applies, the obligation is to be clear about the reasons for collection personal information from an individual, what will happen to it and to explain their rights with respect to it. The general rule is that there should be "no surprises" for the individual concerned in the way that their personal information is handled by MSD.</p>
Principle 4 - Manner of collection of personal information	<p>Personal information shall not be collected by an agency unlawfully or unfairly.</p>

	<p>"Unlawful" means in breach of a statute or regulation. "Unfair" means could include misstating the purpose of collection or being overbearing or threatening.</p>
<p>Principle 5 - Storage and security of personal information</p>	<p>Reasonable safeguards may include keeping paper files and computer passwords secure. This is important in light of MSD's open plan environment especially where work spaces are interspersed with public areas.</p> <p>This Principle includes an implicit obligation to train staff so that they are clear about MSD's information handling policies and procedures.</p> <p>Principle 5 also governs how information is stored and destroyed. It requires MSD to consider any action that may impact on the information's security.</p> <p>Click link for further information - Privacy and security of information training - Doogle</p>
<p>Principle 6 - Access to personal information</p>	<p>This principle creates an "entitlement" to access personal information. This entitlement can be enforced in a court of law where the information is held by a public sector agency (Section 11(1) Privacy Act).</p> <p>Principle 6 is subject to the good reasons for refusing access to personal information contained in Part IV of the Act. These reasons will be covered in more detail below when discussing how to deal with a request for information.</p> <p>Section 115 of the Act protects requesters and providers of personal information from legal liability arising from the provision of personal information in good faith pursuant to a request under Principle 6.</p>

Principle 7 - Correction of personal information	<p>The effect of this section is that MSD is under no obligation to correct information it believes to be accurate, however must attach the individual's statement of correction.</p> <p>If MSD corrects any personal information at the request of an individual, it has an obligation to inform any other agency to which the information has been disclosed.</p>
Principle 8 - Accuracy etc., of personal information to be checked before use	<p>Information about an individual must not be used without taking reasonable steps to ensure that it is accurate and up-to-date, complete, relevant and not misleading.</p>
Principle 9 - Agency not to keep personal information for longer than necessary	<p>The Privacy Act does not provide specific time limits for which to keep information, it states that an agency must set their own retention periods based on the reasons for having the information in the first place.</p> <p>This principle is overridden by the Public Records Act 2005 which sets out MSD's obligations with respect to keeping information for specific periods of time. You should also be aware of MSD's national policy on the retention and destruction of documents.</p> <p>Click link for further information - File destruction - Doogle</p>
Principle 10 - Limits on use of personal information	<p>The general rule is that MSD cannot use personal information for another purpose unless it believes on reasonable grounds that one of the above exceptions applies.</p> <p>In the event of a complaint to the Privacy Commissioner, the onus will be on MSD to prove that the exception relied upon was applicable in the circumstances.</p>
Principle 11 - Limits on disclosure of personal information	<p>"Disclosure" means release outside MSD. This principle provides that personal information should not be disclosed to those outside MSD, except in certain circumstances. These</p>

	<p>exceptions are almost identical to those in Principle 10.</p> <p>The general rule is that MSD cannot disclose personal information unless it believes on reasonable grounds that one of the above exceptions applies.</p> <p>In the event of a complaint to the Privacy Commissioner, the onus will be on MSD to prove that the exception relied upon was applicable in the circumstances.</p>
Principle 12 - Unique identifiers	<p>A unique identifier is any identifier assigned to an individual for the purpose of uniquely identifying that individual, for example, a client's benefit customer number.</p> <p>This principle seeks to prevent agencies issuing identifiers that have been assigned by another organisation.</p> <p>The principle provides that no two unique identifiers can be the same, e.g. Inland Revenue cannot use the same number for a client as Work and Income has assigned to that client.</p>

Click link to read the full section – [Information privacy principles](#)

What is Information?

Neither the Official Information Act nor the Privacy Act defines the term "information". The Court of Appeal has stated that the ordinary dictionary meaning was intended which is, "that which informs, instructs, tells or makes aware."

Information includes, of course, documentation. Both Acts define "document" as including:

- any writing on any material
- any information on tape, computer etc., and any material generated from tape, computer etc., as a result
- any label or description
- any book, map, plan, graph or drawing

- any visual image such as film, photograph which can be reproduced

Documents are just one aspect of “information”. In the High Court, information has been expressed as “not confined to the written word but embraces any knowledge however gained or held.” Therefore, information could be anything which is stored in some way including unrecorded material in a person’s memory.

Classification

Where a variety of information is held by a Government Ministry any request for release of that information may involve either or both Acts.

When dealing with requests, it is important to correctly classify each piece of information in order to find out which of the Acts apply to it.

Classification depends on:

1. Who holds the information?

Government Departments (the public sector) hold both official and personal information. The Official Information Act does not apply to the private sector, only to public sector agencies. MSD holds both official and personal information about its clients.

2. What is the information about?

Information about an identifiable person is personal information and is governed by the Privacy Act. Where the information is about a “corporate person” such as a company, society, trust, incorporate or corporate body, any request is to be dealt with under the Official Information Act.

3. Who wants access to the information?

There is a right of access to personal information by the individual concerned subject to the provisions of the Privacy Act allowing it to be withheld. These provisions will be discussed in more detail below.

The “individual concerned” is the individual to whom the information relates. Under the Privacy Act, only the individual concerned (or

someone acting with their authority) has the right of access to personal information held about them.

Where the information is personal but about someone other than the requester and is held by MSD then release would have to be considered under the Official Information Act.

Information about an individual held by MSD will be a combination of official and personal information but which legislation governs the release, or not, depends on who is requesting it. As a general rule, if it is requested by the individual concerned or a person acting with their authority, disclosure is to be determined under the Privacy Act. If it is by someone else, disclosure is to be determined under the Official Information Act.

Receiving a Request

The request does not need to be in writing and can be made orally. Officers must ensure that they give reasonable assistance to a person making a request.

Requests can only be made by:

- a New Zealand citizen
- a permanent resident in New Zealand
- a person who is in New Zealand

Requests can be made through a properly authorised agent pursuant to [Section 45](#) of the Privacy Act. Where a person is acting on behalf of another, care should be taken to check the authorisation which generally should be in writing. Where a Member of Parliament or a solicitor advises that they are acting for the requester, usually no written authority is needed. Under this section you also need to be satisfied of the identity of the individual making the request and that any information intended for that individual is received by them or their agent only.

A decision on the request must be made as soon as reasonably practicable but not later than within 20 working days and communicated to the requester.

A request can be refused if the information is not readily retrievable or the information does not exist or cannot be found. There is an

expectation that a reasonable effort is made to locate or retrieve the information.

If the information is not held by MSD but by another agency or it is more closely connected with the functions of another agency, then the request must be transferred to that agency no later than 10 working days after receiving the request. You must inform the requester of the transfer.

Withholding Provisions

When actioning a request, you need to be aware of the withholding provisions provided in Part 4 of the Privacy Act. Information requested can be withheld if there are good reasons for doing so. The good reasons include:

Section 27: Release would be likely to:

- prejudice national security or defense
- prejudice international communication in confidence
- prejudice maintenance of law
- endanger the safety of any individual

Section 28: Withholding is necessary to:

- protect trade secrets
- protect commercial position of the supplier of the information

Section 29: Withholding on the grounds of:

- the disclosure of the information would involve an unwarranted disclosure of the affairs of another individual or deceased individual
- protection of evaluative material supplied on a confidential basis (evaluative material is narrowly defined as covering, for example, job interviews and insurance material)
- protection of the physical or mental health of requester or rehabilitation or safe custody of requester
- protection of interests of person under 16 years
- legal professional privilege
- request being frivolous or vexatious or the information requested is trivial

- confidentiality by conditions placed upon material held in a library, museum or archive

If MSD seeks to withhold information from the individual making a request under Principle 6, the reasons for doing so must be conveyed to them.

The individual concerned can have MSD's decision to withhold information, reviewed by the Privacy Commissioner. In this event, MSD will be required to show that the reason for withholding is valid.

[Section 42](#) of the Act governs the way that the information can be supplied including inspection, copies, transcripts, extracts or orally. The information should normally be provided in the form preferred by the requester.

MSD is not allowed to charge for providing personal information, unlike the supply of information under the Official Information Act.

Impact on Social Security Act

Schedule 6, clauses 2-5 of the Social Security Act 2018

[Section 7](#) (1) of the Privacy Act provides that nothing in Principle 6 (access to personal information) or Principle 11 (limits on disclosure) detract from any provision that is contained in any enactment that authorises or requires personal information to be made available. In other words, if another Act authorises or requires personal information to be made available, the Privacy Act does not apply.

This section allows us to continue to use Schedule 6, clauses 1 and 2 of the Social Security Act to obtain personal information from any other person but MSD's Code of Conduct **must** be used when using Schedule 6, [clause 2](#). It sets out the rules where MSD is requesting information about any person relating to benefits or debts owed to the Crown.

Schedule 6, clause 6-7 of the Social Security Act 2018

These sections provide the power for MSD to obtain information for matching purposes. This can relate to obtaining lists of employees from employers. Information matching guidelines are contained in Part 10 of the Privacy Act along with authorisation for information matching programmes. [Schedule 6, clause 6](#)

Schedule 6, clause 1 of the Social Security Act 2018

The duty imposed by [clause 1](#) that a person must answer all questions the person is asked by MSD would fall within Section 7 of the Privacy Act.

Resources

If you do run into difficulty when dealing with any aspect of the Official Information Act or Privacy Act, assistance can be obtained from:

- a Fraud Intervention Services Manager
- a Fraud Intervention Specialist
- Legal Services

Test Your Knowledge

Congratulations on completing the Official Information and the Privacy Act!

For course sign off, and to test your knowledge, please return to the main page to complete the quiz.

1. Explain the differences between the OIA and the Privacy Act?
2. What are two principles of the Privacy Act, that you will need to use in your role as an investigator, and why?
3. Name three good reasons to refuse a request for personal information?
4. Explain the process for managing a MSD privacy breach?