



**MINISTRY OF SOCIAL  
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

23 APR 2021

Dear

On 12 January 2021, you emailed the Ministry of Social Development (the Ministry) requesting information, under the Official Information Act 1982 (the Act) the following information:

1. *Please supply all documents relating to any meetings, correspondence, and contacts by MSD staff with Ministers, Government officials, Business New Zealand or any other NGO regarding planning of the design, implementation and auditing of the Wage Subsidies.*
2. *Were the Declaration forms prepared by MSD staff with expertise in preventing overpayments and dealing with fraud or were they prepared by or with the assistance of another organisation? Were they checked by independent firms of accountants and lawyers or by MSD experts or by anyone else to ensure that overpayments could not be retained, and fraud would rarely occur?*
3. *Please provide all documents relating to meetings, correspondence and contacts about how each Declaration was worded and how the final form of each Declaration was arrived at.*
4. *Please provide documents relating to any advice or direction received by or sought by the MSD from any Minister or Government Department or other organisation relating to any of the following:*
  - a. *Whether the quick payment of Wage Subsidies on what was described by some as a high trust model, should be taken to mean that no action was to be later taken to ensure that normal standards were followed regarding the prudent and correct payment of taxpayer money to every recipient.*
  - b. *Whether the MSD should write to every recipient of a Wage Subsidy to clarify an update the wage subsidy rules, as agreed, and request them to provide evidence that they did not sign a false Declaration and have not wrongly obtained or retained all or part of the Wage Subsidy*
  - c. *Whether recipients of the wage subsidy for 12,20 or 22 weeks should be advised that they can only retain payments for those weeks when they were*

*closed and their workers were at home and unable to do any work for the business.*

- d. Whether the rules and standards relating to investigations, audits and prosecutions should be different or more relaxed for the Wage Subsidy when compared to Benefits.*
  - e. Whether complaints should be largely ignored and only a small proportion investigated.*
  - f. Whether no or very few prosecutions should occur*
- 5. If the public interest test for Wage Subsidy prosecutions is different to the public interest test for Benefit prosecutions, please provide the relevant documents for each and the documents relating to decisions made about the Wage Subsidy public interest test.*

I will answer your questions in turn.

- 1. Please supply all documents relating to any meetings, correspondence, and contacts by MSD staff with Ministers, Government officials, Business New Zealand or any other NGO regarding planning of the design, implementation and auditing of the Wage Subsidies.*

Please find the following documents, which are in scope of question one of your request, enclosed in this response:

- Report, *Wage Subsidy and leave payment schemes – overview of assurance and audit processes*, dated 24 April 2020.
- Report, *Wage Subsidy extension: Report back on scheme integrity*, dated 29 May 2020.

Some information has been withheld under section 9(2)(k) of the Act to prevent the disclosure or use of official information for improper gain or improper advantage.

The names of some individuals are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Furthermore, please find links to the following proactively released Cabinet papers which are also in scope of your first question. As such, your request for this information is refused under section 18(d) of the Act on the basis that the information requested is publicly available.

<https://covid19.govt.nz/assets/resources/proactive-release/Transitioning-to-an-Enhanced-Wage-Subsidy-Scheme-Paper-and-Minute.pdf>

<https://covid19.govt.nz/assets/resources/proactive-release-2020-october/WS05-Paper-and-Minute-COVID-19-Wage-Subsidy-Minor-Implementation-and-Integ....pdf>

<https://covid19.govt.nz/assets/resources/proactive-release/COVID-19-financial-support-Paper-A-Business-Continuity-Package-Targeted-wage-subsidy-scheme-Updated-design-settings.pdf>

The Ministry is refusing your request for documents relating to meetings and correspondence under section 18(f) of the Act, as in order to provide you with this information substantial manual collation would be required. The Ministry would need to divert personnel from their core duties and allocate extra time to find all relevant emails and meeting documentation in scope of this part of your request. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. The greater public interest is in the effective and efficient administration of the Ministry.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

2. *Were the Declaration forms prepared by MSD staff with expertise in preventing overpayments and dealing with fraud or were they prepared by or with the assistance of another organisation? Were they checked by independent firms of accountants and lawyers or by MSD experts or by anyone else to ensure that overpayments could not be retained, and fraud would rarely occur?*

Legal advice was provided by both the Ministry's lawyers and Crown Law in the preparation of the declaration forms for the COVID-19 wage subsidies.

3. *Please provide all documents relating to meetings, correspondence and contacts about how each Declaration was worded and how the final form of each Declaration was arrived at.*

I refer to the publicly available information at <https://covid19.govt.nz/updates-and-resources/legislation-and-key-documents/proactive-release/wage-subsidy-and-leave-schemes/>. The Ministry is unable to provide you with any further documentation in scope of this part of your request as it is all subject to legal professional privilege. As such, this part of your request is refused under section 9(2)(h) of the Act. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

4. *Please provide documents relating to any advice or direction received by or sought by the MSD from any Minister or Government Department or other organisation relating to any of the following:*
  - a. *Whether the quick payment of Wage Subsidies on what was described by some as a high trust model, should be taken to mean that no action was to be later taken to ensure that normal standards were followed regarding the prudent and correct payment of taxpayer money to every recipient.*

The information you have requested does not exist. As such, the Ministry is refusing this part of your request under section 18(e) of the Act.

- b. *Whether the MSD should write to every recipient of a Wage Subsidy to clarify an update the wage subsidy rules, as agreed, and request them to provide evidence that they did not sign a false Declaration and have not wrongly obtained or retained all or part of the Wage Subsidy*

The Ministry has identified one document as being in scope of this part of your request. However, this document is refused in full under section 9(2)(f)(iv) of the Act, as the document is currently under active consideration. The release of this information is

likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

- c. Whether recipients of the wage subsidy for 12,20 or 22 weeks should be advised that they can only retain payments for those weeks when they were closed and their workers were at home and unable to do any work for the business.*
- d. Whether the rules and standards relating to investigations, audits and prosecutions should be different or more relaxed for the Wage Subsidy when compared to Benefits.*
- e. Whether complaints should be largely ignored and only a small proportion investigated.*
- f. Whether no or very few prosecutions should occur*

The information you have requested in these parts of your request does not exist. As such, the Ministry is refusing these parts of your request under section 18(e) of the Act.

- 5. If the public interest test for Wage Subsidy prosecutions is different to the public interest test for Benefit prosecutions, please provide the relevant documents for each and the documents relating to decisions made about the Wage Subsidy public interest test.*

The Ministry follows the Solicitor-General's Prosecution Guidelines when deciding whether to prosecute. Please find the guidelines for your reference below:  
[www.crownlaw.govt.nz/publications/prosecution-guidelines/](http://www.crownlaw.govt.nz/publications/prosecution-guidelines/).

In addition, please find the document *MSD Wage Subsidy Recovery and Response Panel: Terms of Reference* (undated) attached. This document outlines the purpose and process of the Ministry's Wage Subsidy Recovery and Response Panel, with guidance for Panel members to apply the Solicitor-General Guidelines.

You will note that some information which is not regarding the 'public interest test' has been removed as it is deemed to be outside of scope of your request.

With regard to prosecutions that relate to benefits, please refer to the Ministry's prosecution policy which is outlined in the link below:  
[www.msd.govt.nz/documents/about-msd-and-our-work/about-msd/our-responsibilities/msd-prosecution-policy-1.pdf](http://www.msd.govt.nz/documents/about-msd-and-our-work/about-msd/our-responsibilities/msd-prosecution-policy-1.pdf)

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents

available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding the design of the Wage Subsidy policy, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to read 'George Van Ooyen', with a long horizontal flourish extending to the right.

George Van Ooyen  
**Group General Manager**  
**Client Service Support**



# Report

**Date:** 24 April 2020

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Social Development

## Wage subsidy and leave payment schemes – overview of assurance and audit processes

### Purpose of the report

- 1 This report provides Ministers with an overview of the wage subsidy and leave payment schemes to date, with a focus on the assurance and audit processes in place.

### Executive summary

- 2 MSD has been administering the wage subsidy and leave payment schemes established to support the government response to COVID-19.
- 3 The schemes were established using a high-trust model, with payments made to applicants as quickly as possible to ensure support for those suffering the immediate economic impacts of COVID-19.
- 4 We established pre-payment checks, including validation with Inland Revenue, to help ensure we are only making payments to genuine businesses and employees, and to prevent duplicate or multiple applications.
- 5 We have commenced a programme of post-grant audit work.
- 6 We have worked with the Ministry of Business, Innovation and Employment (MBIE) and Inland Revenue (IR) to develop a complaints process with respect to employment law breaches, compliance with the obligations in the wage subsidy and tax law obligations.
- 7 MSD is using these processes to inform which applications need to be referred for further enforcement and investigation, and a strategy is being developed to help guide this.

### Recommended actions

It is recommended that you:

- 1 **Note** the contents of this report
- 2 **Agree** to quarterly reporting on audit and complaints work, with ad hoc reporting available upon request to support queries

Agree / Disagree

- 3 **Agree** to forward a copy of this briefing to Ministerial colleagues with an interest in this work

Agree / Disagree



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Viv Rickard  
DCE Service Delivery

29/09/2020  
Date

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Hon Carmel Sepuloni  
Minister for Social Development

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Date

## Background

- 8 MSD has been administering the wage subsidy and leave payment schemes that the government created as part of the response to COVID-19. These include the wage subsidy, leave subsidy, modified wage subsidy, and essential workers leave payment schemes.
- 9 Administration of the schemes has been supported by IR, through information sharing and processing, and MBIE, through coordinated management of complaints relating to employers' use of subsidy payments.
- 10 The key elements of each scheme, including when modifications were made, are summarised in Appendix 1.
- 11 The schemes were set up by creating new appropriations for MSD alongside decisions made by Cabinet that established the eligibility criteria. There is no specific standalone legislation for the schemes, consistent with how a large proportion of public money is expended.
- 12 Applicants complete declarations when applying requiring them to confirm that:
  - 12.1 they meet the eligibility criteria
  - 12.2 they have discussed the application with named employees, who consent to sharing information in the application and for the purposes of verification
  - 12.3 the employer consents that the details in the application may be verified with other agencies
  - 12.4 the employer is aware that they may be audited and prosecuted for fraud if they have provided false information
  - 12.5 the employer will notify MSD if circumstances change that affect their eligibility
  - 12.6 the employer will repay any amount which they are not entitled to
  - 12.7 the employer consents to their business details and any amount being paid being published on a public website.

- 13 The declaration explains that applicants may be subject to civil proceedings for the recovery of any amount they receive that they are not entitled to and/or to prosecution for offences under the Crimes Act 1961.<sup>1</sup>
- 14 Applicants also consent to their business names being published online.
- 15 By 22 April 2020<sup>2</sup>, there were 524,227 total applications, of which:
  - 15.1 applications approved totalled 415,924, consisting of;
    - 15.1.1 wage subsidy 288,803
    - 15.1.2 modified wage subsidy 206,171
    - 15.1.3 leave subsidy 26,140
    - 15.1.4 essential workers leave payment 3,113
  - 15.2 applications declined totalled 31,678
  - 15.3 applications closed totalled 69,025
  - 15.4 applications pending totalled 7,600
  - 15.5 payments to date totalled \$10.298b
  - 15.6 people benefiting from the paid applications totalled 1,666,808.

## Overview of assurance and audit processes

- 16 The schemes were established using a high-trust model, with payments made to applicants as quickly as possible to ensure support for those suffering the immediate economic impacts of COVID-19.<sup>3</sup>
- 17 MSD established a number of pre-payment checks, including validation with Inland Revenue, to help ensure we are only making payments to genuine businesses and employees, and to prevent duplicate or multiple applications (refer to Appendix 2).
- 18 In addition, from 30 March all employers claiming for 80 employees or more were subject to a desk-based review and contact by MSD prior to payment.
- 19 MSD also commenced a programme of random and targeted post-grant audits, led primarily by an MSD team of 104 Fraud Intervention Services staff supported by in-house lawyers and with advice from the Crown Law Office.
- 20 This work is supported by an external review MSD commissioned from Deloitte which is considering the intent of the wage subsidy scheme policy and the operational processes, checks and controls to mitigate risk.<sup>4</sup>
- 21 The publishing of business names that have received the subsidy and the amount paid ensures transparency about who has been granted assistance, and supports employees or other interested parties to raise concerns.

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<sup>1</sup> The general offences in the Crimes Act 1961 concerning "use of a document" (s 228) and "obtaining by deception" (s 240) are generally sufficient to prosecute any kind of fraud, and these prosecutions can be taken by MSD.

<sup>2</sup> As at 11pm 21 April 2020.

<sup>3</sup> CAB-20-MIN-0105, CAB-20-MIN-0108.

<sup>4</sup> Audit NZ is currently scoping what work is required to be completed to obtain assurance for the purpose of the annual audit. This is expected to be done in the coming weeks with the majority of testing to begin when the scheme closes in June. The Office of the Auditor General is also currently considering what additional work to perform in relation to COVID-19 as part of its annual work programme planning.

- 22 MSD has worked with MBIE and IR to develop a complaints process with respect to employment law breaches, compliance with the obligations in the wage subsidy and tax law obligations. This recognises that each agency has a specific role to play and will hold information that is relevant to the fulfilment of each agency's functions (refer to Appendix 2).
- 23 MSD is using these processes to inform which applications need to be referred for further enforcement and investigation.
- 24 Audit programme reporting as at 22 April 2020 is set out in Appendix 3.

## **Developing an enforcement and investigation strategy**

- 25 The scale of the money being paid out in subsidies presents a challenge as MSD moves to consider what cases to take enforcement action on and begin investigations. A strategy is being developed to help guide this.
- 26 Any criminal prosecutions relating to the payment of the subsidies will be led by MSD in collaboration with other agencies.
- 27 Insights from audits completed to date indicate that the vast majority of applicants have applied correctly, but in a small number of cases MSD have requested applicants refund subsidy payments where the audit has determined they don't qualify. A number of applicants have voluntarily refunded subsidy payments where they have applied in error or their situation changed from when they applied.

## **Next steps**

- 28 MSD will develop a strategy to guide our enforcement and investigation work. We will update you as this progresses.
- 29 We will provide your office with quarterly reporting on audit and complaints work, with ad hoc reporting available upon request to support queries.

## **Appendix**

- 30 Appendix 1 – Key elements of the schemes.
- 31 Appendix 2 – Audit and assurance processes.
- 32 Appendix 3 – Audit programme reporting as at 22 April 2020.

File ref: REP/20/4/427

Authors: Stuart McGilvray, Principal Lawyer / s9(2)(a) CE Advisor

Responsible manager: s9(2)(a) Director OCE

## Appendix 1 – Key elements of the schemes

17 – 27 March 2020	<p>Wage subsidy:</p> <ul style="list-style-type: none"> <li>• For entities that experience a 30% revenue drop due to COVID-19</li> <li>• Employers required to use “best endeavours” to retain the employees named in their application on at least 80 percent of their regular income for the period of the subsidy</li> <li>• Removal of the \$150,000 cap (from 23 March) - eligible employers could apply in relation to all staff.</li> </ul> <p>Leave Subsidy:</p> <ul style="list-style-type: none"> <li>• For employers who have employees sick with COVID or who have to self-isolate in line with health guidelines</li> <li>• Same payment rates as for wage subsidy, but only 14 day lump sum for each employee</li> <li>• Employer able to receive wage subsidy and leave payment in relation to same employee.</li> </ul>
27 March 2020 onwards	<p>Modified wage subsidy scheme:</p> <ul style="list-style-type: none"> <li>• Wage subsidy scheme and leave payment schemes collapsed into a single modified scheme</li> <li>• Key requirement still to have 30% revenue drop and no cap on amount payable</li> <li>• Obligations clarified; <ul style="list-style-type: none"> <li>○ retain all staff for duration of payment</li> <li>○ use best endeavours to pay 80%</li> <li>○ pay at least the subsidy rate, but</li> <li>○ if person usually gets less than subsidy rate, employer must continue to pay that amount for duration of subsidy.</li> </ul> </li> </ul>
6 April 2020 onwards	<p>Essential workers leave payment scheme:</p> <ul style="list-style-type: none"> <li>• Applies to essential businesses that have a 30% revenue loss or whose ability to support staff negatively impacted by COVID-19</li> <li>• Employers and employees must agree employee cannot work because: <ul style="list-style-type: none"> <li>○ they have contracted COVID-19 or are required to self-isolate</li> <li>○ they are at most risk of severe illness from COVID-19</li> <li>○ they have a person or persons in their household who are at most risk of severe illness from COVID-19 and they need to stay away from work to reduce the risk of transmitting the virus to that person or persons.</li> </ul> </li> <li>• Employers can apply in relation to any staff that meet criteria and receive the same rates of pay as for the wage subsidy – wage subsidy obligations apply</li> <li>• Payments are made in four-week lump sum</li> <li>• A person cannot get the essential workers scheme if already on wage subsidy/prior leave scheme.</li> </ul>

## Appendix 2 – Audit and assurance processes

<p>Pre-payment checks - general</p>	<p>Information is matched with IR to confirm:</p> <ul style="list-style-type: none"> <li>• employer IR number</li> <li>• a proportion of employee IR number/s</li> <li>• business name (IR may not hold this information for all sole traders)</li> <li>• number of employees.</li> </ul> <p>For duplicate applications, where we identify the employer has submitted two applications with the exact same employees:</p> <ul style="list-style-type: none"> <li>• one application is approved</li> <li>• duplicate application(s) are closed.</li> </ul> <p>For multiple applications, where we identify the employer has submitted multiple applications with different employees across these applications:</p> <ul style="list-style-type: none"> <li>• unique employees are determined</li> <li>• duplicate employees are removed</li> <li>• the multiple applications are granted.</li> </ul>
<p>Pre-payment checks – large employers</p>	<p>Employee data is confirmed with the employer and reconciled with IR data.</p> <p>An active discussion is held with employer to confirm their understanding of the application obligations, including:</p> <ul style="list-style-type: none"> <li>• passing the subsidy on to employees</li> <li>• their 30% drop in revenue</li> <li>• their best endeavours to pay 80% of wages/salary.</li> </ul>
<p>Post-payment auditing</p>	<p>Random audits, which involve:</p> <ul style="list-style-type: none"> <li>• a desk-based review to confirm business is a legitimate entity</li> <li>• a discussion to confirm the subsidy was paid appropriately and reinforce employer obligations.</li> </ul> <p>s6(c)</p> <p>MSD is in the process of sharing information with Inland Revenue which will inform further targeted auditing relating to factors such as:</p> <p>s6(c)</p>
<p>Complaints</p>	<p>MSD, MBIE and IR are all receiving complaints relating to the wage subsidy.</p> <p>Where the matter relates to the application for and approval of the subsidies, MSD will follow up.</p>

	<p>Where an employee believes their employer has not acted appropriately in terms of passing the subsidy on and has not been able to resolve the matter with their employer, they are advised to contact MBIE.</p> <p>If after looking into the matter MBIE believe there is further investigation required into how the employer has applied for and/or then used the subsidy they will pass this to MSD for further investigation.</p> <p>MSD will consider whether to recover any subsidy that was paid or commence criminal proceedings.</p>
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OFFICIAL INFORMATION ACT

## Appendix 3

### Audit Programme for COVID-19 Wage Subsidy Payments as at 22 April 2020 \*



<b>Pre Payment Audits</b> <small>Pre payment audits of employers (50+ staff). Note these audits did not commence until the end of March</small>	<b>Total audits of employers with 1000+ employees</b> <b>42</b>	<b>Total audits of employers with 50 - 999 employees</b> <b>1,469</b>	<b>Total value of subsidies 50+ employees</b> <b>\$2.6b</b>	<small>* Pre Payment Audits data is upto and including the 17th of April 2020</small>	
<b>Post Payment Audits Completed</b> <small>A range of selected main programmes, including both</small>	<b>Total audits</b> <b>2,592</b>	<b>Total resolved NFA</b> <b>2,348</b>	<b>Total resolved refund requested</b> <b>58</b>	<b>Total referred for further investigation</b> <b>186</b>	
<b>Allegations Received</b> <small>Allegations received relating to wage subsidy</small>	<b>Total received</b> <b>329</b>	<b>Total referred to MBIE</b> <b>8</b>	<b>Total resolved NFA</b> <b>84</b>	<b>Total resolved refund requested NFA</b> <b>12</b>	<b>Total referred for further investigation</b> <b>4</b>
<b>Refunds</b> <small>Refunds where subsidy applications have been submitted incorrectly</small> <small>*Value of refunds received is always 2 working days behind in allowing for reconciliation period</small>	<b>Employer initiated refunds</b> <b>1,444</b>	<b>Refund requested</b> <b>1,223</b>	<b>Value of refunds requested</b> <b>\$18.1m</b>	<b>Refunds received</b> <b>746</b>	<b>Value of refunds received*</b> <b>\$7.8m</b>
	<b>Audit / Review initiated refunds</b> <b>70</b>	<b>Refund requested</b> <b>70</b>	<b>Value of refunds requested</b> <b>\$1.28m</b>	<b>Refunds received</b> <b>30</b>	<b>Value of refunds received*</b> <b>\$819k</b>

Please note: Information is upto midday on the 22st of April 2020 except where noted



# Report

**Date:** 29 May 2020

**Security Level:** IN CONFIDENCE

**To:** Hon Grant Robertson, Minister of Finance  
Hon Phil Twyford, Minister for Economic Development  
Hon Carmel Sepuloni, Minister for Social Development  
Hon Iain Lees-Galloway, Minister for Workplace Relations and Safety

## Wage subsidy extension: report back on scheme integrity

### Purpose of the report

- 1 Officials were invited to report back to the Minister of Finance, the Minister for Economic Development, Minister for Social Development and Minister for Workplace Relations and Safety (joint Ministers) with an update on the integrity of the Wage Subsidy Extension [CAB-19-MIN-0219.01 refers].
- 2 This update includes some changes to the administration of previous Wage Subsidy aimed at enhancing scheme integrity through audit and assurance practices.

### Recommended actions

It is recommended that you:

- 1 **note** that the original Wage Subsidy was established at pace using a high-trust model, and the Wage Subsidy Extension will continue to operate under a high-trust model
- 2 **note** Ministry of Social Development (MSD) is administering the Wage Subsidy and Wage Subsidy Extension with support from Inland Revenue (IR) and the Ministry of Business, Innovation and Employment (MBIE)
- 3 **note** audit and assurance processes were put in place to support the integrity of the Wage Subsidy while operating under a high-trust model, including pre-payment verification of business details, post-payment audits and investigations, and communications to ensure businesses are aware of their obligations
- 4 **note** we have been improving our processes related to integrity since the original Wage Subsidy was implemented, including by commissioning Deloitte to conduct an external review of our audit and assurance processes
- 5 **note** Deloitte has provided us a draft report with findings from their review, based on the original Wage Subsidy, including recommendations for enhancing integrity processes

- 6 **note** we are implementing 9 out of the 14 recommendations in the draft Deloitte report, including all three recommendations indicated as priority areas for action
- 7 **note** the key enhancements we are making by 10 June, when the Wage Subsidy extension begins, include:
- 7.1 Increased communications with applicants before and after payment
  - 7.2 Improved application processes to ensure we are collecting accurate data
  - 7.3 stricter settings around approval by users processing applications
  - 7.4 a more targeted audit programme based on risk analysis undertaken together with IR
- 8 **note** any changes to improve integrity have been made in light of the limited resources available, including support from IR and MBIE, as well as the need to ensure that payments can still be processed efficiently and in a timely manner
- 9 **note** our planning already includes working with IR on bringing additional staff to support the audit work and investigations
- 10 **note** that MSD is not able to make further integrity enhancements, over and above what is outlined in this paper, within the timeframes available to deliver the Wage Subsidy Scheme Extension
- 11 **note** joint Ministers were also invited to report back to Cabinet with any proposed changes to the administration of the Wage Subsidy Extension related to scheme integrity [CAB-19-MIN-0219.01 refers].



George Van Ooyen  
Group General Manager  
Client Service Support

29/5/20  
Date

\_\_\_\_\_  
Hon Grant Robertson  
Minister of Finance

\_\_\_\_\_  
Date

\_\_\_\_\_  
Hon Phil Twyford  
Minister for Economic Development

\_\_\_\_\_  
Date



Hon Carmel Sepuloni  
Minister for Social Development

2/6/2020  
Date

\_\_\_\_\_  
Hon Iain Lees-Galloway  
Minister for Workplace Relations and Safety

\_\_\_\_\_  
Date

## Background

### *The Wage Subsidy Scheme was established using a high-trust model*

- 3 The Wage Subsidy was established at pace as agreed to by Cabinet using a high-trust model, with payments made to applicants as quickly as possible to ensure support for those suffering the immediate economic impacts of COVID-19 [CAB-20-MIN-0108 refers].
- 4 The Ministry of Social Development (MSD) has been administering the Wage Subsidy that the Government created as part of its response to COVID-19.
- 5 Administration of the scheme has been supported by IR through information sharing, and MBIE through coordinated management of complaints relating to employers' use of subsidy payments.

### *Audit and assurance processes were put in place to support the integrity of the Wage Subsidy under the high-trust model*

- 6 MSD established a number of pre-payment checks, including validation with IR, to help ensure we are only making payments to genuine businesses and employees, and to prevent duplicate or multiple applications.
- 7 In addition, from 30 March all employers claiming for 80 employees or more were subject to a desk-based review and contact by MSD prior to payment. Applications for these employers amount to around \$2.9b or around 27 percent of the total amount of wage subsidy paid so far.
- 8 MSD also commenced a programme of random and targeted post-grant audits, led primarily by an MSD team of around 100 Fraud Intervention Services staff supported by in-house lawyers and with advice from the Crown Law Office. This programme is being informed by analytics undertaken by both MSD and IR, together with specific allegations received by MSD and MBIE.
- 9 Figures up until 25 May show the following audit results:
  - Pre-payment audits of employers with 80+ employees – 1,665
  - Post-payment random audits – 3,518
  - Post-payment targeted audits – 1,190
- 10 Figures up until 25 May show the following refund information:
  - Refunds initiated by employers – 7,833
    - This is largely a good faith repayment for any number of reasons, such as: where employers predicted a 30 percent drop but it didn't happen; eligibility was clarified; they may have had the drop but actually they don't need all of the money; or the business closed.
  - Refunds initiated following audits, allegations and investigations – 376
    - From the audits undertaken, around 6 percent have resulted in full or partial repayment and less than 1 percent have been referred for investigation. Many of the refunds will have resulted from clarification of entitlement and the applicant refunding in good faith.
  - Total refunds received so far \$86.3m
    - Around 96% employer initiated and the remainder from audits.

### *Ministers directed officials to report back on any administrative changes related to the integrity of the Wage Subsidy Extension*

- 11 The Cabinet paper for the Wage Subsidy Extension noted that work was being done to improve scheme integrity, and officials were directed to report back joint Ministers on further administrative changes related to the Wage Subsidy Extension scheme integrity [CAB-19-MIN-0219.01 refers].

- 12 Joint Ministers were also invited to report back to Cabinet with any proposed changes to the administration of the Wage Subsidy Extension [CAB-19-MIN-0219.01 refers].

### **Changes are being made to enhance the integrity of the Wage Subsidy Extension**

- 13 We have looked to enhance both pre-payment and post-payment processes for the Wage Subsidy Extension. Enhanced post-payment audit processes will still be taking place for the original Wage Subsidy once applications have ended.

#### *We commissioned Deloitte to conduct an external review of the audit and assurance processes in place*

- 14 As part of our work to improve the audit and assurance processes related to the Wage Subsidy, MSD commissioned an external review from Deloitte. We have received a draft copy of the report and have provided Deloitte some comments on the draft.
- 15 The review analysed the administration of the scheme from an audit and assurance perspective and provided some recommendations to enhance the integrity of the Wage Subsidy.
- 16 The draft report acknowledges that the Wage Subsidy was established at pace with some controls, and outlines some key risks which are included in Appendix 2.
- 17 The draft report contains 14 recommendations for improvements to administration of the Wage Subsidy. Deloitte also notes that it has not tested the feasibility of the implementation of any recommended changes. A summary of the recommendations is also included in Appendix 2.

#### *We are implementing changes to enhance integrity of the Wage Subsidy Extension as well as respond to the draft recommendations from Deloitte*

- 18 We are implementing enhancements now, ahead of Deloitte's report being finalised, to ensure they are ready when the Wage Subsidy Extension begins.
- 19 In total we are planning to implement changes related to 9 out of the 14 draft recommendations in the Deloitte report, noting that some of the recommendations may change in Deloitte's final report.
- 20 The draft Deloitte report recommended three priority areas for enhancements. These recommendations related to increased communications around reminding businesses of their obligations and enhancements to up front controls, and risk analysis and targeted auditing. Our enhancements have addressed these three priority recommendations, as well as a number of others.
- 21 The benefits to integrity we aim to achieve from the enhancements include:
- better ensuring businesses are passing on the subsidy to their employees
  - enhancing applicants understanding of the eligibility criteria and that they meet the criteria when they apply
  - strengthening internal processes to ensure applications are processed accurately with a reduced risk of internal fraud and error
  - stronger requirements for businesses to repay the subsidy where they are no longer eligible or have applied in error
  - strengthening our audit procedures to target applicants and cohorts that pose a higher risk, revealed through our analysis with IR.
- 22 These benefits achieved also address the key risks contained in the Deloitte report (at Appendix 2).
- 23 The table below summarises the existing processes (which will continue to operate), and the right-hand side shows the key enhancements that we are making to improve overall integrity of the Wage Subsidy Extension, which will be in place when it begins. These are broken down into pre-payment and post-payment processes.

### **Existing pre-payment processes**

#### **Pre-payment checks:**

- Information matching with IR to check that the IR number matches the business name or IR customer name, and the number of employees declared matches the number of employees in the IR file for that employer.
- Detection and removal of duplicate applications.
- Multiple applications – where the employer has submitted multiple applications with different employees the system will detect and remove duplicate employees.
- Email and mobile communication for further validation and to lift the matching rate for employer applications.

#### **Large employer checks:**

- Where an employer has 80+ employees (and after reconciliation of employee data with IR), MSD is having a conversation with the employer prior to any grant, to make sure employers are aware of the eligibility criteria and their obligations

#### **Employer declaration:**

- To qualify for the schemes, applicants signed declarations where they agreed to repay the subsidy, or any part of the subsidy paid to them if they -
  - fail to meet any of the obligations about how they must use the subsidy
  - were not, or stop being, eligible for the subsidy or any part of the subsidy
  - provide false or misleading information in the application
  - receive insurance such as business interruption insurance for any costs covered by the subsidy.

#### **Communication of information:**

- Regulatory compliance is also being pursued through the relevant agencies' communication channels. This involves the proactive provision of information to support employers' compliance via agency websites, direct communication (for example MSD's processing team is proactively engaging with employers), and other forms of business support.

### **Enhanced pre-payment processes**


#### **Increased communications:**

- Emails being sent to existing wage subsidy recipients reminding them of their obligations to pass on the subsidy, and explaining the criteria if they want to apply for the wage subsidy extension.
- Improving information online specifically related to sole traders/self-employed.
- Expand and clarify information online for all applicants, including more scenarios for when employers may need to repay the subsidy.

#### **Enhancing the employer application process:**

- Additional mandatory clarification questions to ensure the applicant accepts the eligibility criteria eg. confirming a 50% drop in revenue.
- Data gathering which strengthens the validating and approval of applications -
  - additional fields to capture extra applicant data eg. employee date of birth
  - strengthen current fields to ensure data is entered by the applicant in the correct format.

#### **Enhancing sole-trader/self-employed applications:**

- Additional checks to ensure the applicant accepts the eligibility criteria:
  - mandatory clarification questions eg. confirming a 50% drop in revenue
  - advising if they are receiving other forms of MSD assistance to ensure correct income is declared and charging of the subsidy against assistance if necessary.
- Strengthening automation to ensure that the correct data is being captured and matched with IR data.
- 9(2)(k) 

#### **Improve application approval processes:**

- Grouping applications from the same employers together to ensure consistency and prevent duplication.
- When multiple applications from the same employer are being lodged, enhancements to evaluate the differences to support automation.
- Review access rights for those processing applications so users only have access to system functions they need.

<b><u>Existing post-payment processes</u></b>	<b><u>Enhanced post-payment processes</u></b>
<p>Publishing the names of recipients<sup>1</sup>:</p> <ul style="list-style-type: none"> <li>• Applicants consent to their business names (as registered with IR) being published online together with the size of the wage subsidy grant, when they make their application.</li> </ul> <p>Audit processes:</p> <ul style="list-style-type: none"> <li>• MSD has an audit process, led primarily by an MSD team of around 100 Fraud Intervention Services staff, to identify cases that may require investigation. IR has made available around 20 compliance staff who are providing information support to MSD staff where an audit or investigation is underway. Random audits are being undertaken, as well as targeted audits based on data mining.</li> </ul> <p>Complaints and allegations:</p> <ul style="list-style-type: none"> <li>• MSD, MBIE and IR have developed a complaints process with respect to employment law breaches, compliance with the obligations in the wage subsidy and tax law obligations. This recognises that each agency has a specific role to play and will hold information that is relevant to the fulfilment of each agency's functions. <ul style="list-style-type: none"> <li>◦ Since 6 April complaints where the employer has not passed on the subsidy will be directed to MBIE Employment Services in the first instance.</li> <li>◦ Communications associated with the publishing of employer names will reinforce this.</li> <li>◦ These complaints are triaged to determine the extent to which MSD/IR need to be involved in addressing the complaint/allegation or investigating further.</li> </ul> </li> </ul>	<p>Increased communications:</p> <ul style="list-style-type: none"> <li>• Emails reminding businesses of their obligations and possibility of audit/investigation.</li> <li>• Making prominent on the website the obligations, the declaration and adhering to employment law.</li> <li>• Making clearer how to repay the subsidy.</li> </ul> <p>Risk profiling, data analytics and targeted auditing:</p> <ul style="list-style-type: none"> <li>• We have been working with IR on focusing our analytics in relation to auditing. Deloitte are also lending their expertise to this process.</li> <li>• We have also learned from our previous audit experience under the original Wage Subsidy, and are moving from randomised audits, to more targeted audits based on risk areas.</li> <li>• Increasing our focus on proactive investigation and detection as well as responding reactively to allegations.</li> <li>• Enhancing the visibility of changes made to applications by staff to support investigations.</li> <li>• We have brought on around 20 IR investigators to support audit work (with a view to increase this and IR have indicated this could be up to 50) working alongside MSD investigators.</li> <li>• The audit and assurance work is likely to continue for 6 to 12 months depending on the length of investigations.</li> </ul>

- 24 These enhancements are included in more detail in Appendix 1, alongside which recommendations of the Deloitte report that they respond to.

<sup>1</sup> Note we are currently only publishing the names of employers and sole traders with 3 or more employees. Sole traders that do not have employees, and employers with 1-2 employees have not yet been published for privacy reasons and a report has been sent to joint Ministers for consideration on this issue [REP/20/5/482 refers].

## **Changes have been based on the value gained while still being able to administer the scheme effectively**

- 25 It is important to note that changes have been made in light of the time constraints and resources available, and balanced against the need to be able to make payments quickly. Limited resources are also managed across all the COVID-19 response schemes that the MSD, IR and MBIE support.
- 26 We also needed to ensure that any changes would not hinder our ability to effectively administer the scheme. If processes to enhance integrity became too extensive, it could increase application and payment processing times. This could have a snowball effect, where delayed processing would mean more applicants contacting us to follow up on their applications. Responding to these queries in turn would create more workload, further slowing down processing times.
- 27 Any extra pressure to catch up on processing due to such a delay could also create additional unintended integrity risks when trying to speed up processing.
- 28 The changes we are making are those that will provide enhanced integrity to the scheme, as supported by the recommendations in the draft Deloitte report, and those that we could feasibly implement in the time available. We considered all of the draft recommendations from Deloitte during planning to enhance our integrity processes.
- 29 We have not implemented recommendations where they are too complex to carry out within the time frame and/or we have deemed them to be a lower priority compared to other enhancements.
- 30 We have also not implemented recommendations related to systematic changes, such as considering whether MSD is best placed to administer the scheme or introducing a third party intermediary to make payments, as we are focused on improving processes under the current settings as agreed to by Cabinet.
- 31 More detail is also included in Appendix 1 on the recommendations our enhancements do not cover.
- 32 It should be noted we also considered making continuous changes once the extension had gone live, but this method comes with its own risks. Having multiple iterations of changes would be difficult to administer and cause issues with some processes such as auditing – this has been found where we previously had two different iterations of the declaration that applicants sign affecting auditing processes. The impact of managing continuous changes post implementation could also have the impact of weakening integrity.

## **The Wage Subsidy Extension will still be based on a high-trust model**

- 33 While we are making enhancements to the integrity of the Wage Subsidy Extension, the scheme will still be based on a high-trust model and administered at pace.
- 34 We are expecting to get around 250,000 applications, including around 160,000 of these in the first three weeks of Wage Subsidy Extension.
- 35 A survey was done recently of employers receiving the original wage subsidy. Out of around 380,000 invited, 95,000 businesses responded with 41 percent intending to use or investigate the extension, and 66 percent reporting a revenue fall of 50 percent or more.
- 36 While there has been time to consider the audit and assurance processes before the Wage Subsidy Extension goes live, it is not possible to move to a model that has extensive pre-payment checks and still ensure that we deliver payments in a timely manner to businesses that need it. Changing models is not feasible as outlined by the risks and limitations above.

## **Next steps**

- 37 Joint Ministers were invited to report back to Cabinet with any proposed changes to the administration of the Wage Subsidy Extension [CAB-19-MIN-0219.01 refers].

## Appendix 1: Table of enhancements that respond to the draft Deloitte recommendations

Deloitte recommendation	Our enhancements to existing processes
<p>Rec 1 (priority): Follow up communication with Scheme recipients</p> <p>Rec 2 (priority): Communications strategy for audit and investigation work</p> <p>Rec 13: Provide extensive guidance to applicants</p>	<ul style="list-style-type: none"> <li>• Comms to employers and sole traders, focused around two email campaigns: <ul style="list-style-type: none"> <li>◦ In the week of 27 May 2020 the first email reminds recipients of the original Wage Subsidy of their obligations and the criteria for receiving it, including ensuring the payments are passed on to employees named in their applications. 217,764 emails are being sent to sole traders making it clear they must include correct information in their applications and directs them to read more information on the Work and Income website. 175,426 emails are being sent to all other employers who received the Wage Subsidy, letting them know the Wage Subsidy Extension may be available if they meet eligibility criteria and obligations.</li> <li>◦ A second email campaign will be sent to coincide with the end of the pay period for which they received the original Wage Subsidy. This will go to employers and self-employed people who have received the original subsidy, excluding those who have repaid it. It will list the employees that they were paid the Wage Subsidy for (initials and part of their IRD numbers). It will have clear messaging encouraging employers to think carefully about their situations before they apply for an extension. It will remind them they may be audited, there is a higher threshold to qualify for an extension and MSD will continue to publish the details of employers that have received the Wage Subsidy.</li> </ul> </li> <li>• Work and Income website text has continued to be updated and refined to make information about the Wage Subsidy application process and eligibility clear. This has included clearly defining who can get the Wage Subsidy and the information employers need to produce when they apply.</li> <li>• We have split and ordered information to give prominence to encouraging applicants to make sure the information provided is correct, spelt out obligations to pass on the payment to employees and adhering to employment law. We've also given prominence to how to repay the Wage Subsidy if recipients now think they do not meet the criteria.</li> <li>• Additional information has been added to the Work and Income website addressing when someone would need to repay the Wage Subsidy. It includes some commonly asked questions and scenarios including a business no longer meeting the 30% decline in revenue, returning to work before the 12 week payment period ends, if an employee has resigned and if the employer has received insurance.</li> </ul>

<p>Rec 3 (priority): Post-payment risk profiling, data analytics, and targeted auditing</p>	<ul style="list-style-type: none"> <li>Finalise a cross agency risk register: <ul style="list-style-type: none"> <li>MBIE, IR and MSD identified and documented risks early on. A cross agency risk register has been created and has been evolving as our understanding of the risks has evolved.</li> </ul> </li> <li>Review of integrity focused analytics is underway with IR, with support from Deloitte.</li> <li>Complete an assessment of overall WS fraud and error: <ul style="list-style-type: none"> <li>Our random sampling for audits indicates a high overall level of compliance. Our ongoing analysis of the scheme is now increasingly focused on identified risk areas. As we further investigate cases our understanding of the level of fraud and error will increase, although it would be difficult to quantify the overall level of fraud and error, given the sheer volume of applications and the breadth of variation in applicants situations.</li> </ul> </li> <li>Reassess Government's risk appetite following MSD/IR analysis, occurring through cross-agency input, and following any response from Ministers to this report.</li> <li>Reassess our up-front controls / post payment integrity approach following MSD/IR analysis: <ul style="list-style-type: none"> <li>As further information comes out of the analysis we are completing with IR we will review our controls and auditing approaches. At the start of the WS scheme a higher percentage of our auditing was based on a random sample. Our ongoing analysis of the scheme is now increasingly focused on identified risk areas, and our auditing is being adjusted accordingly. We are also ramping up our investigation activity, with 131 cases now identified for investigation. We expect the numbers of investigations to increase as more deliberate fraudulent behaviour is uncovered through focused analysis.</li> </ul> </li> </ul>
<p>Rec 5: Application enhancement</p>	<ul style="list-style-type: none"> <li>Sole trader mandatory fields – they must fill in first and last name, and date of birth.</li> <li>Sole traders must indicate whether they are receiving other assistance from MSD.</li> <li>Employer mandatory fields – they must fill in employee date of birth.</li> <li>All applicants must answer a question that states they are applying because they have experienced a 50% decline in revenue due to COVID-19.</li> </ul>
<p>Rec 6: Evaluation process improvements</p>	<ul style="list-style-type: none"> <li>For audits for those with less than 80 employees use an 9(2)(k) <ul style="list-style-type: none"> <li>9(2)(k)</li> </ul> </li> <li>9(2)(k)</li> </ul>

<p>Rec 7:</p> <p>Access rights and system improvements</p>	<ul style="list-style-type: none"> <li>• Group applications together: <ul style="list-style-type: none"> <li>◦ If an applicant submits more than one application, these will all be allocated to a single user. If more than one task exists at one time, they will all be allocated and follow up tasks will not be allocated to the same user after the fact.</li> </ul> </li> <li>• Improve audit logging: <ul style="list-style-type: none"> <li>◦ Where a user changes the bank account, IR details and employee details, there must be a record of the change. The following information needs to be captured: <ul style="list-style-type: none"> <li>▪ What the field was changed from</li> <li>▪ Who made the change.</li> <li>▪ The date and time the change was made.</li> </ul> </li> </ul> </li> <li>• Forced fields – ensuring that clients enter data in the correct format</li> <li>• 2<sup>nd</sup> review and approval of some applications (a high proportion are now automated)</li> <li>• Reviewing system access rights: <ul style="list-style-type: none"> <li>◦ We have significantly refined system user access with users having their functionalities specified, rather than access to everything in the system. Only IT can update much of the functions in the system.</li> </ul> </li> <li>• If an employee has previously been paid for, the user is able to manually choose "Do not pay" to avoid human error. We will have the ability to remove employees from the applications (with auditing and employees that have been removed displayed).</li> <li>• A user must add a comment when they approve an application.</li> <li>• If the employment type incorrectly entered by applicant (eg. part time instead of full time), an automated top up will occur.</li> </ul>
<p>Rec 10:</p> <p>Develop an audit programme</p>	<ul style="list-style-type: none"> <li>• An audit and assurance programme was developed early on as a combination of <ul style="list-style-type: none"> <li>◦ pre-payment checks,</li> <li>◦ post payment checks</li> <li>◦ cross agency management of complaints / allegations</li> <li>◦ publishing names</li> <li>◦ Investigation approach</li> </ul> </li> <li>• We will be continuing this broad approach for the WS extension, but at the same time seeking to enhance pre-payment controls and more directly target post payment audits and investigation activity based on enhanced risk analysis. We will continue to continually</li> </ul>

	review the detail our assurance approach as analysis, audits and investigations grow our understanding of risk associated with the Schemes.
Rec 11: Review audit and investigation capability	<ul style="list-style-type: none"> <li>We have around 20 IR investigators (IR have indicated this could be up to 50) working alongside MSD investigators working longer term to enhance our audit and investigative capacity. IR and MSD investigators bring complementary strengths, skills and knowledge to this work.</li> <li>We have also brought in staff from our Integrity Intervention area to support audit work, particularly in the area of Wage Subsidy / benefit receipt overlap.</li> </ul>
<b><u>Deloitte recommendations that our enhancements do not cover</u></b>	
Rec 4: Reconciliation of large employer file data and payments  Rec 8: System improvement for large employer applications	<ul style="list-style-type: none"> <li>These recommendations are around large employer handling, and our view is that the process is fairly robust as is. Enhancing this with an IT solution was to help reduce the steps required in the manual handling of this work. We have deemed this a lower priority relative to other enhancements.</li> </ul>
Rec 9: Automate transfer of payment file to Finance	<ul style="list-style-type: none"> <li>Automating the transfer of the payment file is a lengthy piece of work and could not be delivered in the timeframe required. It was also deemed lower priority when we look at other options and the biggest gains for our investment in time.</li> </ul>
Rec 12: Consider MSD's ability to lead employer eligibility-focused schemes  Rec 14: Review of the payment process	<ul style="list-style-type: none"> <li>These two recommendations both related to system-wide changes and fundamentally how the Wage Subsidy schemes are administered. We did not consider these recommendations relevant to our plan to make enhancements to the current Wage Subsidy settings as they stand.</li> <li>Considering whether MSD was the best agency to deliver the schemes and also considering whether a third party intermediary could make the payments was not in scope. Cabinet noted we would be making administrative changes to enhance integrity, rather than making fundamental changes to how the schemes operate.</li> <li>In response to these draft recommendations, we have suggested to Deloitte that they are more general comments rather than recommendations for improving the current scheme.</li> </ul>

## **Appendix 2 – Key risks and recommendations from the Deloitte report**

### *Key fraud and error risks*

- 38 The key fraud and error risks include risks both from external parties, and internal agents (eg. MSD or IR staff members). The risks also relate to both pre-payment, and post-grant processes.
- 39 The key fraud and error risks are:
- applicants being paid the subsidy without meeting the eligibility criteria
  - applicants being overpaid the subsidy
  - employers not passing on the subsidy to employees
  - third parties leveraging access to information to submit false applications on behalf of a non-claiming entity
  - MSD or IR employees misappropriating funds/exploiting their position of authority for personal gain or colluding with a third party
  - mistakenly paying subsidy to incorrect bank account.

### *Summary of the recommendations*

- 40 The recommendations in the report relate to both pre-payment checks, and post-payment auditing.
- 41 The report notes that Deloitte has not fully explored the viability of implementing any short-term improvements.
- 42 Note that Deloitte's report is still in draft, and we have provided comments on the draft report. We expect there may be some changes to the recommendations in the report, for example recommendation 12 which we consider more of a general comment rather than a recommendation for the existing wage subsidy schemes in place.
- 43 Recommendations 1, 2 and 3 were flagged as priority areas in the report.
- 44 Recommendation 1: Follow-up communication with Scheme recipients
- Use a targeted communications strategy when reminding recipients of their obligations to maximise the potential of early voluntary repayments.
- 45 Recommendation 2: Communications strategy to support prevention and detection
- Communicate to all stakeholders (including the general public) the audit and investigation work being undertaken as well as the reporting options available to stakeholders.
- 46 Recommendation 3: Post-payment risk profiling, data analytics and targeted auditing
- Develop a register of Fraud and Error risks.
  - Complete a review of the integrity and analytic work tested against the risks.
- 47 Recommendation 4: Reconciliation of large employer file data and payments
- Conduct a reconciliation between the application files received from large employers and those sent to the IT team for upload, following the manual processing of them.
- 48 Recommendation 5: Application enhancement
- Require additional details including more bank account details, and more employee details.
- 49 Recommendation 6: Evaluation process Improvements
- 9(2)(k)

50 Recommendation 7: Access rights and system improvements

- Group applications together to be assessed by one staff member.
- Improve audit logging functionality for actions taken by processors.
- Forced processing fields to document approval process.
- Second review of applications and training for assessors.
- Limit access for processing staff including changing bank details, employee numbers or status, and re-opening and approving declined applications.
- Review access rights to shared IR data.

51 Recommendation 8: System improvement for large employer applications

- Either improve the system to avoid the use of separate files for large employers or;
- Pre-populate the files and restrict editing to reduce errors.

52 Recommendation 9: Automate transfer of payment file to Finance

- Consider options to automate the transfer of the payment files into the Finance system and reduce the risk of human error / the file being amended.

53 Recommendation 10: Develop an audit programme

- Have an audit programme that is:
  - consistent with a risk and evidence based approach
  - where Treasury and the Minister of Finance have a role in expectation setting
  - is focused on quickly returning funds outside of entitlement
  - includes employer verification for approximately 3 months
- Consider extending proactive detection alongside reactively investigating allegations received.

54 Recommendation 11: Review audit and investigation capability

- Continue to assess the audit capability to an appropriate level as needed, especially considering resources dedicated to other COVID-19 schemes.

55 Recommendation 12: Consider MSD's ability to lead employer eligibility-focused schemes

- Consider MSD's role and ability to deliver large employer surge payment schemes, compared to other agencies.
- Also consider the expertise of personnel MSD has available supplemented by IR specialists.

56 Recommendation 13: Provide extensive guidance to potential applicants

- Provide clearer information up-front to reduce the risk of error, including practical examples for applicants.

57 Recommendation 14: Review of the payment process

- Consider using an external intermediary to distribute payments, or consider paying employees directly.

File ref: REP/20/5/574



MINISTRY OF  
SOCIAL DEVELOPMENT  
*Te Manatū Whakahiato Ora*

**MSD Wage Subsidy Recovery and Response Panel: Terms of Reference**

Out of Scope


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### Principles and objectives

5. In making determinations about wage subsidy recovery responses, the Panel will have regard to the following principles and objectives:

- (a) **Recovery in the public interest:** Recovery promotes MSD's responsibilities for efficient and economical delivery of the wage subsidy scheme and to responsibly manage assets of the Crown. It helps ensure that taxpayer money is going where it is intended to go, to support the economy. It maintains public confidence in the wage subsidy scheme.

### Responsibilities

10. The Panel has authority to make decisions and recommendations on behalf of MSD in relation to the wage subsidy response action to be taken.
11. The Panel will make decisions about wage subsidy responses having regard to the following:
  - (a) 
  - (b) Where prosecution is being considered or decided upon, the need to apply the Solicitor-General's Guidelines for Prosecution<sup>7</sup> (**Solicitor-General's Guidelines**); and
  - (c) MSD guidance about applying the public interest test in the Solicitor-General's Guidelines (Appendix B).

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## Appendix B: Guidance on the public interest test

### Overall framework

All decisions to prosecute must be made in accordance with the Solicitor-General's Guidelines.<sup>17</sup> The Panel must consider and apply the Solicitor-General's Guidelines in full.

Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration of each individual case. It is not, however, the rule that all criminal offending must be prosecuted.

The Solicitor-General's Guidelines provide that prosecutors must be satisfied that two tests have been met before deciding to prosecute: the evidential test and the public interest test.

The evidential test requires that prosecutors be satisfied that the evidence that can be put before the court provides a reasonable prospect of conviction. All recommendation memoranda will be reviewed by Legal for evidential sufficiency before being referred to the Panel.

The focus of this appendix is the second test, the 'public interest' test. The public interest test recognises that even though there may be sufficient evidence to support a prosecution, a prosecution should occur only where it is also in the public interest.

This appendix provides further guidance about the considerations that may be relevant to the Panel's assessment of the public interest in prosecuting individual cases of wage subsidy offending.

This guidance is necessarily general and not prescriptive. It is not a substitute for the Solicitor-General's Guidelines, which must be considered in full and applied in each case. Each case will turn on its own facts and the Panel will need to carefully consider each case together with the Solicitor-General's Guidelines in order to determine whether the public test for prosecution has been met.

### Factors relevant to the public interest test

There is an extensive but non-exhaustive list of factors in the Solicitor-General's Guidelines that the Panel should consider in full when deciding if a prosecution is in the public interest. Those factors most relevant to MSD prosecutions are discussed below (but this list is **not exhaustive**).

- What is the **magnitude of the fraud**? That is, what is the total value? Was it a one-off event or did it involve multiple instances of dishonesty? Prosecution of cases of one-off fraud of low value<sup>18</sup> may well be in the public interest,<sup>19</sup> but in some cases where the level of criminality is low, the decision to prosecute may turn on whether or not one or more additional aggravating features are present.
- What was the **nature of the fraud**? Consider the type and extent of dishonesty exhibited by the person. Public interest will be higher in cases where a person has taken active steps to deceive, such as using false details in the application (for the applicant or for employees covered by the application), incorporating sham companies, forging documents or deceiving MSD in correspondence outside the application itself (through letters, emails or phone calls).

<sup>17</sup> Available at <https://www.crownlaw.govt.nz/publications/prosecution-guidelines/>

<sup>18</sup> Relevantly, in wage subsidy cases the lowest amount fraudulently obtained and/or retained is likely to be approximately \$7,029.60, and therefore the 'lowest value' amounts will almost never be insignificant or minimal.

<sup>19</sup> Noting the public interest in deterring future wage subsidy fraud and prompting voluntary repayment of past wage subsidy frauds.

- Was there an element of **sophistication, premeditation or planning**? All submissions of fraudulent wage subsidy applications will require a certain degree of premeditation but some will be greater than others. Are there any indications that this was planned? Were there steps taken by the offender to cover their tracks?
- Did the offending involve **multiple persons**? Offending by a group would suggest a higher degree of co-ordination or planning. Alternatively, it may be an aggravating feature if the person has induced or coerced someone else to participate in the offending.
- Is there anything in the **background of the offender** which might increase public interest in prosecution? Has the person offended against the MSD before or do they have previous convictions for dishonesty? Was this offending committed while on bail or while serving a sentence?
- Equally, is there anything in the offender's background which might decrease public interest in prosecution? For example, where the person is very young, very old, or is suffering from serious mental or physical illness?
- Is there anything about this case (or the offender's behaviour) which specifically requires **denunciation**, either for the purposes of deterring others or to maintain the public's confidence in the administration of the wage subsidy scheme?
- Is there any element of an **abuse of trust**? For example, an accountant using details of businesses and employees they have access to through their job would be a breach of their clients' trust. An employer using their employees details without consent and without passing on the wage subsidy would be a breach of their employees' trust.
- Is there anything about **how MSD has acted** which might lessen the offender's culpability? For example, an unreasonably lengthy investigation or administrative failings.
- Would a prosecution have **wider consequences** that might make prosecution disproportionately harsh? For example, will a prosecution have an impact on other people or their jobs or livelihoods?
- **Cost** is also a relevant factor when making an overall assessment of the public interest. In each case the Panel will weigh the relevant public interest factors that are applicable. The Panel will then determine whether or not the public interest requires prosecution. One factor that may be relevant to such an assessment is whether the lost public funds can more effectively be pursued by civil action.

### Recovery of funds

The Solicitor-General's Guidelines provide that *"relevant considerations will include an agency's...enforcement priorities"*.

A principal goal of MSD's wage subsidy enforcement response is the recovery of funds. Where funds have already been recovered, particularly where the offender has repaid the funds voluntarily and without prompting by MSD, there may be less public interest in prosecution. However, in cases of clear criminal conduct, the fact that recovery has already occurred, in and of itself, will not be determinative.