



Memo

To: Hon Carmel Sepuloni
Minister for Social Development and Employment

From: Melissa Gill, DCE Organisational Assurance and Communication

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Security level: IN CONFIDENCE

Legal framework and integrity measures for the Wage Subsidy August 2021

Action: For Information

Legal framework - eligibility and repayment requirements for the Wage Subsidy August 2021

To be eligible for the Wage Subsidy August 2021, employers must:

- operate a business in New Zealand that employs and pays the employees named in the application
- meet the revenue decline test set out in the declaration, including experiencing, or predicting they will experience, at least a 40% decline in revenue as a result of the move to Alert Level 4
- use the subsidy to retain, and contribute towards the salary and wages of, the employees named in the application
- meet all other eligibility criteria and obligations set out in the declaration.

Employers must repay the subsidy if they:

- fail to meet any of the obligations about how they must use the subsidy; or
- were not or stop being eligible for the subsidy or any part of the subsidy, including where they predict that they will meet the revenue decline test but, as a result of actual revenue, they do or did not;
- provide false or misleading information in their application; or
- receive insurance such as business interruption insurance for any costs covered by the subsidy.

Integrity measures for the Wage Subsidy August 2021

There are several integrity measures in place:

- Pre-payment validation for all applications - before approving an application and making payment, MSD checks and verifies information that applicants provide against information that Inland Revenue holds including that the applicant had a valid IRD number and that the number of employees applied for across applications matches Inland Revenue's information for that employer. ^{s6(c)}

- Pre-payment integrity checks for applications:
 - *from employers with 80 or more employees* - including validation of employee data and more detailed discussions to confirm, based on criteria and obligations, that the employer is eligible for the subsidy payment; or
 - *that meet one or more integrity risks* – applications are exceptioned out for further checks where they pose an integrity risk, for example, the applicant is already under investigation for a previous application. These include desk-based reviews of publicly available information, contacting the applicant to discuss any identified discrepancies or complaints, requesting verification to confirm the revenue decline eligibility criteria are met, and contacting other agencies to validate the information provided, as required.
- Coordinated complaints process including the publishing of employer details with more than three employees – to allow affected employees and interested parties to raise concerns. MSD, MBIE and IR manage complaints with respect to non-compliance with the obligations in the wage subsidy declaration, employment law breaches, and tax law obligations, respectively.
- Post-payment integrity checks targeted at applications of risk – assessment of complaints and allegations for further integrity checks or investigation, and targeted integrity checks based on risk analysis conducted with Inland Revenue.¹
- Investigation – gathering evidence to determine eligibility and adherence with obligations, and to identify where fraud has occurred. This includes working with the Police to gain production orders² or complete search warrants for that evidence.
- Enforcement - taking civil proceedings against applicants in cases where they were not entitled to the wage subsidy and have not repaid it, and prosecuting cases where fraud has been proven.

In addition, for Wage Subsidy August 2021 Inland Revenue is providing supplementary training and guidance to their staff dealing with contact from MSD where further verification is required, particularly in relation to self-employed business operators (sole traders), including risks and indicators identified from previous subsidy iterations, and additional validations to ensure there is evidence of self-employed income before endorsement is provided.

How did MSD respond to Deloitte’s recommendations?

On 1 April 2020, MSD commissioned Deloitte to undertake an integrity risk assessment of the wage subsidy scheme shortly after its inception. Deloitte analysed how the initial scheme had been administered and provided 12 recommendations to enhance integrity. The recommendations addressed several key risk areas:

¹ s6(c)

² Production orders are orders made under section 74 of the Search and Surveillance Act 2012 requiring a person or organisation (such as a business) to produce documents to enforcement agencies as evidential material of a specified offence.

- applicants being paid the subsidy without meeting the eligibility criteria
- applicants being overpaid the subsidy
- false applications for employers that have not claimed the subsidy
- manipulation of application data
- the approval of ineligible applications
- access to data.

Deloitte identified three areas that could provide valuable integrity enhancements in the short-term. These related to increasing communications around reminding businesses of their obligations, enhancing risk analysis and further shifting to targeted audits.

Integrity enhancements were made from 10 June 2020 for the Wage Subsidy Extension (WSX) and subsequent Wage Subsidy Resurgence (WSR) to address these three, and a further six, recommendations.

Three recommendations related to automating systems in order to reduce manual processes were not implemented: the reconciliation of large employer file data and payments, system improvements for large employer applications, and automating the transfer of the payment file to Finance. While these would have reduced processing effort, they were too complex to carry out within the timeframe available. Where feasible, MSD has made manual enhancements to mitigate the risks identified by Deloitte. Deloitte acknowledged in their report that they had not fully assessed the feasibility of the Ministry implementing their recommendations.

How did MSD respond to the Auditor-General's recommendations?

MSD accepts the Auditor-General's recommendations and has already begun taking action, with the support of Inland Revenue.

- Rec 1: ensure eligibility criteria are sufficiently clear and complete to allow applicant information to be adequately verified
 - Officials took this into account for the Wage Subsidy August 2021.
- Rec 2: put in place robust post-payment verification procedures, including risk-based audits against source documentation, to counter the risks of using the high-trust approach
 - Under the COVID-19 Wage Subsidy Scheme March 2021, recipients were required to prepare and retain evidence to support their declaration of eligibility, including how the revenue decline was attributable to the move to AL3. MSD is undertaking risk-based integrity checks, including checking against documentary evidence. This is also in place for the COVID-19 Wage Subsidy Scheme August 2021.
- Rec 3: test the reliability of a sample of the post-payment assurance work we carried out against documentary evidence
 - MSD is currently in the process of contacting a sample of 339 early Wage Subsidy recipients (representing 486 applications) who were subject to random post-payment integrity checks to discuss their eligibility and were asked to provide documentary evidence to confirm their entitlement.
- Rec 4a: seeking written confirmation from applicants (which could be targeted towards larger or risk-indicated applicants) of compliance with the eligibility criteria and the obligations of receiving the subsidy
 - A sample of 1,000 early Wage Subsidy recipients, weighted towards larger employers, have been contacted by email to confirm their eligibility and compliance with obligations for the subsidy received.
- Rec 4b: taking prosecutions where possible and necessary to recover funds and/or hold businesses to account for potentially illegal behaviour

- We are committed to prosecutions where that is appropriate. A number of cases are under active consideration for civil proceedings or criminal prosecutions, with decisions being made in coming weeks and months.
- Rec 5: carry out timely evaluation of the development, operation and impact of the subsidy and use the findings to inform policy advice on, preparation for, and practice during future crisis support schemes
 - MSD has sought agreement from the Minister of Finance to draw down \$1 million from the COVID-19 Response and Recovery Fund to support an evaluation of the COVID-19 Wage Subsidy schemes. Officials will report back to Ministers on the evaluation findings in mid to late-2022.

How have MSD’s integrity processes changed with subsequent schemes?

Scheme	Cumulative integrity measures
WS1	<ul style="list-style-type: none"> • Declaration • s6(c) • [REDACTED] • Pre-payment validation of business details using IR data • Pre-payment checks of large businesses (80+ employees) • Publishing of recipient details (with more than three employees) • Dedicated email address for Privacy Act requests (to confirm for people whether their information was used in any applications) • Assessment of complaints and allegations for further integrity checks or investigation • Post-payment integrity checks (both random and based on IR/MSD risk analysis) • Industry focused integrity checks where particular issues were identified e.g. applications from local authorities • More detailed investigations commenced where integrity checks indicated a higher likelihood of misuse of the scheme • Repayments process • Review of decision process.
WSX WSR	<p>All of the above integrity measures, with the addition of:</p> <ul style="list-style-type: none"> • Pre-payment exceptions for integrity checks of applications that meet one or more risk criteria, or who are under investigation, moving the focus to preventing misuse upfront • Post-payment targeted integrity checks (based on IR risk analysis and industries or organisations of interest) • Increased communications with applicants before and after payment • Improved application processes to ensure accurate data collection and support automation (e.g. addition of mandatory application fields) • Stricter settings around payment approvals by users • Utilising IR Compliance Specialists to support integrity work • Enforcement and recovery framework development.

Scheme	Cumulative integrity measures
WSSMAR21 WSSAUG21	<p>All of the above integrity measures, with the addition of:</p> <ul style="list-style-type: none"> • Declaration includes requirement for applicants to prepare and retain evidence to support the declaration, including meeting the revenue drop being attributed to the Alert Level change • Reminder email two weeks after application period to prepare and retain this evidence and provide when requested, especially if the revenue drop was predicted at the time of application • Increased transparency and visibility of the integrity programme, including improved guidance for applicants as recommended by the OAG • Enhanced post-payment targeted integrity checks based on refreshed joint analysis with IR – to be commenced once IR analysis has been received, and checks will include seeking verification as recommended by the OAG. Sampling of previous scheme integrity checks (assurance to address Audit NZ and OAG recommendations) – commenced from July 2021.

Questions and Answers

Q. Has MSD tightened up the eligibility criteria or verification process for the Wage Subsidy to reduce the chances of ineligible people getting the payment?

A. We have progressively made enhancements to the integrity measures for the wage subsidy over subsequent schemes, further detail is in the table above.

A key change was the explicit requirement for the COVID-19 Wage Subsidy March 2021 (also reflected in the Wage Subsidy August 2021) for applicants to prepare and retain evidence that supports their application, including that they have met the revenue decline test. This is requested as part of both pre- and post-payment integrity checks for the schemes. Applicants will be reminded of the requirement to retain and provide this evidence following payment, and additional risk analysis will be conducted between MSD and IR to inform post-payment integrity checks.

Q. If a business receives the Wage Subsidy August 2021 but then makes a profit, are they required to repay the subsidy?

A. There is no wage subsidy rule requiring repayment if a firm makes a profit after receiving the subsidy. Eligibility for the wage subsidy is based on the loss of revenue over a specified period and is not linked to making a profit over the financial year.

In applying for the subsidy a business/employer has to declare that they have had or predict they will have a 40% revenue decline over a specific period, in this case 17 – 30 August 2021 (compared to a 14 day period in the 6 weeks prior to alert level escalation on 17 August or the same 14 day period in 2019 or 2020 for employers with highly seasonal revenue). Employers are to repay the subsidy if they stop being eligible for the subsidy because of their “actual revenue” which is the revenue the employer received during the period they received the subsidy. It does not mean revenue received outside of that period, that might result in the employer making an annual profit.

Ministers received advice in July 2021 which recommended no further work on repayment rules. Linking the scheme to profit makes it complicated to design and administer and therefore MSD may not be the best organisation to administer such a

scheme. It also may create perverse incentives whereby businesses decide not to apply for the scheme.

It is also important to note that profit is not necessarily a good measure as to whether a business needed the wage subsidy in the first place. For example, the business may have only been able to make a profit due to receiving the wage subsidy during the lockdown period.

Q. What happens what happens if a company applies for the Wage Subsidy August 2021, but we are currently investigating them in relation to a previous wage subsidy?

A. All records for previous wage subsidy applicants under current investigation are locked. This means if one of the applicants re-applies for the Wage Subsidy August 2021 their application will not be approved, but instead forwarded to MSD's fraud team to manage.

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