



4 November 2024

Tēnā koe

Official Information Act request

Thank you for your emails of 28 August 2024, requesting information relating to benefit sanctions, and their impact on Māori. As noted in our recent response to you of 30 October, for administrative purposes, your request was split into two responses, which cover your requests for data and for policy related documents separately. This letter is responding to the aspects of your request relating to policy.

I have considered your request under the Official Information Act 1982 (the Act). Please find my decision on your request set out below. For the sake of clarity, I will respond to your request in parts.

- 1. The criteria used to determine the application of benefit sanctions, and whether any cultural competency training is provided to staff making these decisions, especially in relation to Māori.*
- 2. Any internal guidelines or training material provided to Ministry staff regarding the application of the traffic light system, with a particular focus on Māori.*

The Ministry of Social Development (the Ministry) must be satisfied someone has no good and sufficient reason for failing to meet an obligation before initiating an obligations failure. Operationally, the Ministry will review a file and attempt to contact the person to check for a good and sufficient reason before imposing a failure. Everyone has a 5 working day notice period to dispute a failure or re-comply before a sanction is imposed. If a client re-complies with their first or second obligations failure within the notice period, their benefit is not sanctioned but the obligation failure is recorded.

There are no cultural competency training measures for staff within the context of application of benefit sanctions in relation to Māori. You may be interested in the Wall Walk, a workshop for which all staff are encouraged to participate in. Wall Walk represents an opportunity for staff to build knowledge of the history of Māori and the Crown in Aotearoa New Zealand, and to raise awareness of key events in the history of New Zealand's bicultural relations.

The Traffic Light System is designed to make it clear to everyone what their obligations are, making it easier to comply with them. People with an obligation failure will move to orange and have five working days to either re-comply with

the obligation or dispute the obligation failure. This provides a fair and reasonable opportunity to resolve the failure before a sanction is imposed.

Please find the following links to guidelines regarding the traffic light system:

- www.workandincome.govt.nz/on-a-benefit/obligations/traffic-light-system/index.html

Please find the following links to guidelines relating to obligations failures:

- www.workandincome.govt.nz/map/income-support/main-benefits/jobseeker-support/obligations-failures-01.html
- www.workandincome.govt.nz/map/students/jobseeker-support-student-hardship/obligations-failures-01.html
- www.workandincome.govt.nz/map/income-support/main-benefits/sole-parent-support/obligations-failures-01.html
- www.workandincome.govt.nz/map/income-support/main-benefits/emergency-benefit/obligations-failures-partners-01.html
- www.workandincome.govt.nz/map/income-support/main-benefits/supported-living-payment/obligations-failures-01.html

3. *Information about staff accountability and disciplinary processes related to the misapplication of benefit sanctions on Māori beneficiaries, if any instances have been recorded since October 2023.*

The Ministry addresses any complaints about staff on a case-by-case basis, depending on the nature of the issues raised. Outcomes of any individual processes are confidential but can include training, performance management, dismissal, or other disciplinary action.

4. *Any measures currently in place to mitigate the disproportionate impact of benefit sanctions on Māori, if such measures exist.*
5. *Any policies in place to ensure that the traffic light system is applied fairly to Māori beneficiaries, including any equity reviews or audits conducted since October 2023.*
6. *The process used to evaluate whether benefit sanctions are applied fairly to Māori compared to non-Māori, including any cultural or equity assessments since October 2020 and year to date*
7. *Information on how the Ministry applies the traffic light system to Māori beneficiaries*
8. *Copies of any advice or briefings provided to Ministers or Ministry officials since October 2023 concerning the impact of benefit sanctions on Māori beneficiaries.*
9. *Any reviews or discussions regarding the potential discriminatory nature of benefit sanctions on Māori whānau, including any related legal opinions since October 2023.*
10. *Information about policies, guidelines, or frameworks that seek to address the disproportionate impact of benefit sanctions on Māori, including any alternative strategies or proposals considered by the Ministry since October 2023.*

- 11. The number of Māori social workers or advocates engaged by the Ministry to assist Māori beneficiaries facing sanctions since October 2023.*
- 12. The process for monitoring whether the traffic light system is being equitably applied to Māori beneficiaries and whether any disparities have been identified in its application.*
- 13. A list of external groups or stakeholders (including Māori advocacy organisations) consulted in relation to benefit sanction policies affecting Māori since October 2023.*
- 14. Any internal or external reviews, evaluations, or reports conducted since October 2023 relating to the impact of benefit sanctions on Māori whānau.*

Te Pae Tata, the Ministry's Māori Strategy and Action Plan, sets out how it will work to achieve better outcomes for Māori. Te Pae Tata helps Ministry staff to think differently about the way it works and to embed a Māori world view throughout the organisation. This helps Ministry staff to have the capability to do their best for whānau, hapū and iwi.

Te Pae Tata is the collective effort of many. You can read Te Pae Tata in the following link: www.msd.govt.nz/documents/about-msd-and-our-work/about-msd/strategies/te-pae-tata/te-pae-tata-maori-strategy-and-action-plan-single.pdf.

The Ministry has created many documents that refer to the traffic light system and benefit sanctions. However, as you have stipulated that you would like information specifically relating to Māori, the Ministry has interpreted your request narrowly, to only cover those documents that specifically focus on Māori within the contexts that you have set out in your requests above.

Your request for this information is refused under section 18(e) of the Act as this document does not exist or, despite reasonable efforts to locate it, cannot be found.

- 15. Internal communications, policy documents, or meeting minutes discussing the use of benefit sanctions in relation to Māori beneficiaries, especially regarding any identified disparities since October 2023.*

Please find attached the following documents:

- *Te Tiriti Analysis worksheet v1 TLS and NFS*
- *Te Tiriti Analysis worksheet for CWE*

Please note these documents are drafts of internal working documents, and not government policy.

The following documents are refused under section 9(2)(ba)(ii) of the Act as it is subject to an obligation of confidence, and if released, would be prejudicial to public interest:

- *Te Tiriti o Waitangi Impact Analysis – welfare system*
- *Regulatory Impact Statement: Changes to welfare settings to support people into employment and off benefit*

- 16. Details on how the Ministry monitors and measures the impact of benefit sanctions on Māori beneficiaries since October 2023, including any KPIs or targets related to reducing disparities.*

The Ministry does not measure KPIs on sanctions. Monitoring can be found within the Ministry's benefit fact sheets, which are publicly available on our website here: www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/benefit/index.html.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, 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 or 0800 802 602.

Ngā mihi nui

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services

The Treaty of Waitangi / Te Tiriti o Waitangi (the Treaty) is a founding document of Aotearoa.

Analysing the implications of policy and programmes with regard to the Treaty is central to providing quality advice and services.

You should consider the Treaty early in the development process and think about how it relates to the broad range of options available. This process is ongoing throughout the development of your work.

The Cabinet Office Circular: Treaty of Waitangi Guidance CO (19) 5 (the Circular) provides guidance focusing on the Articles of the Treaty with a series of questions. The Articles and some questions are outlined to assist you with your analysis.

Article One - Kāwanatanga

Recognises the right of the Crown to govern.

The exercise of the Crown's right to govern requires compliance with Treaty principles, including the Crown's obligation to protect rangatiratanga in appropriate circumstances. In exercising the right to govern, the Crown must take reasonable steps to make informed decisions on matters that affect Māori interests and act reasonably and in good faith.

Article Two - Rangatiratanga

Māori have the right to make decisions over their resources and taonga which they wish to retain.

This requires the Crown to actively protect Māori rangatiratanga.

Article Three - Ōritetanga

The obligations that the Crown has to all New Zealanders are owed equally to Māori.

Where disparities exist as a population or a group level, active intervention by the Crown to remove disparities and achieve a general equality of outcomes between Māori and non-Māori at a group or population level is required.

Partnership - The Crown and Māori have a positive duty to act in good faith, and reasonably and honourably towards the other. This principle requires a context-specific balance to be struck between the exercise of Kāwanatanga by the Crown and Rangatiratanga by Māori. Flowing from this principle the Crown must take reasonable steps to make informed decisions on matters that affect Māori interests.

Active Protection - The Crown has a positive duty to take reasonable steps to protect Māori property interests, rangatiratanga and taonga.

Redress - Past wrongs give rise to a right to redress. The Crown has duties to right any past wrongs under the right of redress and ensure that it does not create fresh grievances. Generosity of spirit and engagement to achieve reconciliation are important in considering how the Crown will respond

Additional Treaty Principles - The Waitangi Tribunal has articulated additional principles which can be considered within the principles of Partnership, Active Protection and Redress:

- **Principle of Equity** which means the Crown has a duty of equal treatment. 'Equal' does not mean one size fits all. The approach should be calibrated to the needs and interests of Māori. It requires the Crown to focus specific attention on and attend to inequities affecting Māori; and
- **Principle of Options** which is about ensuring Māori have viable choices between 'mainstream' and 'kaupapa Māori options'.



Te Tiriti Analysis Questions	
<p>What is our understanding of the experiences and aspirations of Māori related to this work? What has informed this understanding? How does this impact on assessment of engagement requirements?</p>	<p>While already over-represented in the welfare system, Māori have the highest proportion of are also more likely to face an obligations failure and are more likely for that failure to result in a sanction. This is due in part to the composition of the Māori benefit population in comparison to the non-Māori population (e.g. that Māori are more likely to be on work-tested benefits and tend to skew younger than non-Māori beneficiaries), but the disproportionate impact still persists even after these factors are accounted for. As such, any changes to the process for obligations and sanctions would have a larger impact on the Māori benefit population.</p>
<p>How does this proposal impact all New Zealanders. What is the impact on Māori (if different, how, and why)? What opportunities come from understanding the impact on Māori?</p>	<p>The proposal is one of the Minister's manifesto promises, and intends to act as a clear communications tool to tell clients how they are faring against their work obligations, as well as setting out the consequences for non-compliance. In theory, there is no substantial difference in the impact between what a Māori client and a non-Māori one could expect, as all groups would be subject to the same traffic light system. As Māori are generally more likely to be subject to the obligations failures and sanctions than non-Māori, however, Māori clients may be more likely to experience progression through the traffic light system.</p> <p>Targeting provisions are being proposed for non-financial sanctions, which depending on intersectionality may mean that Māori would be proportionately more likely to be subject to NFS than non-Māori (e.g. if NFS are targeted at young people, then Māori are more likely to be subject to them due to having a younger benefit population).</p> <p>Throughout the traffic light system, policy decisions have sought to ensure that clients are able to retain a degree of rangatiratanga over their situation and are able to have agency over their own situation. This includes through visibility of their own status within the system, being able to quickly re-comply with a financial sanction, having pathways to exit money management early, and through being able to choose their own voluntary work for community work experience.</p>
<p>What is our understanding of the relationships, partnerships with Māori and providers in this space. What levers do we have to continue to nurture or build new relationships/partnerships? Who would we need to work with to explore those further?</p>	<p>Obligations and sanctions may only be imposed by MSD staff, meaning that the traffic light system will almost always be independent of any relationship a client may have with a contracted service provider. The traffic light system is intended to be a clearer explanation for a client's status within the welfare system, and would involve frequent communications with clients – as such, this system may have a large impact on MSD's relationship with clients, including Māori. Comms should be designed in a way to be respectful of a client's mana, which should also extend to physical interactions where possible (acknowledging that this will likely fall outside the scope of the traffic light system and relies more on case management practices).</p>

Are there any options that could be led by Māori?	As the majority of the proposal relates to internal MSD processes, there are not avenues in which the proposals could be led by Māori. However, within some subsets of the traffic light system there may be aspects which could include Māori-led programmes – particularly with regard to non-financial sanctions.
How is this different to previous efforts to address the issue and how does it achieve equitable outcomes for Māori?	Non-financial sanctions are the primary policy change within the traffic light system, and represent the introduction of a new concept globally. The outcome of these policies is currently unclear, but may mitigate some negative aspects associated with financial sanctions. The lack of a financial penalty in some cases may result in people who fail obligations being less likely to fall further into debt due to being sanctioned.
Are there any legal and/or Treaty settlement obligations for the Crown relevant to the proposal?	No specific settlements – but could consider effect on the MSD relationship agreements and/or specific agreements like the Tūhoe Service Management Plan

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Te Tiriti o Waitangi Analysis

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Te Tiriti o Waitangi Analysis

Te Tiriti Analysis Questions	
<p>How does this proposal impact all New Zealanders. What is the impact on Māori (if different, how, and why)? What opportunities come from understanding the impact on Māori?</p>	<p>This proposal will only impact a small group of New Zealanders who are case managed (TBC on targeting), not meeting their obligations and who show interest in/ are eligible for CWE. Also, to note wider impacts on whanau.</p> <p>The lock in effect of CWE could lead to greater dependence on the welfare system, it is important that design mitigate this.</p> <p>Māori are overrepresented in the benefit system and as a result are more likely to be overrepresented in the cohort available for NFS. There is a risk that CWE as a NFS could further entrench high numbers of Māori on welfare, inhibiting their opportunities to realise participation and success in employment which is a key factor to improving Māori economic resilience.</p>
<p>What is our understanding of the experiences and aspirations of Māori related to this work? What has informed this understanding? How does this impact on assessment of engagement requirements?</p>	<p>ALMP review – will pull from this (to do).</p> <p><u>WEAG consultation</u></p> <p><i>We were advised that localised 'by Māori, for Māori' approaches would support whānau who are determining their own futures. We heard from iwi representatives that they have been delivering solutions for decades and have been trusted deliver in ways that the Crown has not been trusted.</i></p> <p><i>We heard consistently from the participants that the Crown should give resources and power to the people that serve and are part of the community they serve. In their view, resourcing whānau, hapū, and iwi to do what they already do best demonstrated commitment to te Tiriti.</i></p> <p><i>Many Tiriti partners expressed a strong desire that any amendment leads to independence from, rather than dependence on, the state. We heard from participants that this pathway of dependency is a crucial part of the story of colonisation and the disconnect of Māori from their whakapapa. Participants told us that this created dependency and tells Māori that the Crown is the best provider of welfare for Māori, when Māori are the best welfare providers for Māori.</i></p> <p>This will be taken into consideration when thinking about engagement.</p> <p><u>We have been limited by scope of the commissioning of this work to consider more devolved models of funding or delivery at this time. However, alternate approaches could be explored following the first 12 months of the interim approach, depending on the agreed scope of the review. We have similarly been limited in our ability to carry out external consultation on the policy.</u></p>
<p>What is our understanding of the relationships, partnerships with Māori and providers in this space. What levers do we have to continue to nurture or build new relationships/partnerships? Who would we need to work with to explore those further?</p>	<p>Limited knowledge of partnerships for this atm.</p> <p><u>We have had limited timeframes to explore any existing partnerships with iwi, hapū or Māori affiliated community organisations where participants might find work experience placements. However, this knowledge may exist regionally. Working with and funding iwi and hapū to create opportunities for community work experience, particularly in low-employment regions, would better support ōritetanga and the principle of options.</u></p> <p>Links with pou tangata skills and employment?</p>

Comments Out of This lends itself to the opportunities comment that I put into the paper

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	<p>Future advice will consider how we could engage with iwi and Māori on the design of the preferred option, as well as the opportunities available to contract iwi and Māori providers through delivery to improve outcomes.</p>
<p>Are there any options that could be led by Māori?</p>	<p>There are options to contract Māori providers, or, to have Māori organisations take on people for CWE (depending on direction from the Minister and her preferred approach).</p> <p>Questions around if iwi or other organisations be compensated for providing community work experience?</p> <p><u>MSD could contract community providers (include iwi, hapū and Māori owned) to deliver community work experience and/or support clients to find and be successful in their placements. This option would better support Māori to maintain/strengthen cultural connections which we know are important for helping Māori to succeed.¹ Purchasing community work experience placements could mean there is more buy in from providers (and contracted outcomes) to ensure participants are better supported to fulfil their requirements and gain useful skills/experience while there.</u></p> <p><u>Self-directed, MSD supported CWE searching does not support tino rangatirangata or oritanga as Māori will be disproportionately impacted and required to carry out an activity, in some cases without appropriate support for the intervention to be effective. There could be opportunity after the one-year review period to make changes to the programme. However, it's unclear what our scope for change will be at that point as it will depend on ministerial appetite.</u></p>
<p>How is this different to previous efforts to address the issue and how does it achieve equitable outcomes for Māori?</p>	<p><u>This is a manifesto policy and the Minister/Government were clear on wanting alternatives to financial sanctions. We have also received clear messaging that we need to source funding through baseline. MSD advised that they best way to fulfil the Government's policy with minimal impact to initiatives that are rated as effective and support equitable outcomes would be to implement a self-directed solution for CWE. This would not require additional funding but would allow us to monitor numbers and use so we can review at a later point.</u></p> <p><u>Mandating community work has been implemented previously but was found to be ineffective.</u></p> <p>The issue, is not clearly defined. Linked to reducing benefit numbers, but also offering an alternative to financial sanctions.</p> <p>MSD employment products cannot, in isolation, directly address wider breaches in Te Tiriti in educational achievement, housing insecurity, or wider prejudices reflected in employers' hiring practices (among various other breaches in Te Tiriti by the Crown impacting employment prospects, and the overrepresentation of Māori in the benefit system). However, MSD's if the design of a programme can support people into work, rather than keeping them on benefit, this could support breaking cycles of poverty and intergenerational mamae.</p> <p>Work experience of this nature is often also focused on preparing individuals for low-skilled employment. Research has shown that the 'stepping stone' perspective toward lower-wage employment, that is that entering into a job that's lower paid acts as an entry point for a person to progress into higher-paid and skilled jobs, is likely overstated. In a New Zealand context, this may point toward a lack of appetite among employers favouring lower-wage, lower-skilled employment to upskill current employees, leading to 'low-skill traps'. Design could consider jobs and industries for the CWE to mitigate this.</p>
<p>Are there any legal and/or Treaty settlement obligations for the Crown relevant to the proposal?</p>	<p><u>How can I find this information?</u></p>

Commented Out of This is a good hook to why the design of a CWE prog (if Min agrees) needs to think about its end user. As already noted the high percentage of which are Māori so we need to take a different approach to what has been tried in past

¹ 2021. OI Collective Ltd. Ngā Mātau Ā-Wheako – Lived experiences of education and employment in Te Waipounamu.

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