



28 January 2022

Tēnā koe

On 3 November 2021, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act). I apologise for the delay in providing a response to you.

You requested the following information:

- *Has consideration been given and decisions made regarding prosecuting all those who obtained a wage subsidy under any of the following circumstances?*
  - a) *They signed a false Declaration about the actions they took before applying.*
  - b) *They failed to notify the Ministry of Social Development within the required 5 working days if anything changed that affected their eligibility or entitlement to the subsidy.*
  - c) *They failed to repay part or all of the 12 week wage subsidy for any weeks when they did not have a reduction in revenue of more than 30% when compared to the same period for the previous year (or a reduction of more than 40% in the case of the extension).*
- *Have decisions been made regarding using the same prosecution criteria for those who wrongly obtained or retained a Welfare Benefit and those who wrongly obtained or retained a wage subsidy? If there is any difference in prosecution criteria, please provide the document pages which state any difference.*
- *How many annual welfare prosecutions were there in the last 12 months for which figures are available and what was the total involved? What were the lowest and highest amounts involved in a prosecution and what is the median or average figure?*
- *How many auditors are working on Benefit Fraud and how many are working on wage subsidy fraud?*

- *Since April 1 2020, how many Benefit prosecutions and how many wage subsidy prosecutions have been recommended and how many have started out?*

In March 2020 the Government implemented an economic package in response to the COVID-19 pandemic. The package consisted of taxpayer funded subsidies for those who were in business and were either self-employed or employed others and met the eligibility criteria. Subsequently, there were extensions to the package in order to continue supporting employers in retaining their staff through the COVID-19 pandemic and associated restrictions. All payments pursuant to the package and subsequent extensions are collectively referred to as the wage subsidy.

For clarity, I will answer your questions in turn.

- *Has consideration been given and decisions made regarding prosecuting all those who obtained a wage subsidy under any of the following circumstances?*
  - a) They signed a false Declaration about the actions they took before applying.*
  - b) They failed to notify the Ministry of Social Development within the required 5 working days if anything changed that affected their eligibility or entitlement to the subsidy.*
  - c) They failed to repay part or all of the 12 week wage subsidy for any weeks when they did not have a reduction in revenue of more than 30% when compared to the same period for the previous year (or a reduction of more than 40% in the case of the extension).*

The Wage Subsidy was initiated quickly, based on a high trust model, in order to ensure employers could pay their employees without delay. Where the wage subsidy was fraudulently obtained and/or retained where it should not have been, there is a high expectation that the Ministry will respond to the loss of those public funds.

The Ministry's first avenue for recovery of wage subsidy funds from those who should not have received and/or retained them is to seek voluntary repayment. Where that is unsuccessful, the Ministry has a number of enforcement actions available to address situations where an application has been found to not be entitled to the wage subsidy payments received – this could include factors relating to the reasons you specify above.

These options could include:

- taking civil proceedings against applicants in cases where they are not entitled to the wage subsidy and have not repaid it;
- commencing bankruptcy proceedings in respect of individuals, or liquidation proceedings in respect of companies;
- the restraint and forfeit of assets acquired or derived under the Criminal Proceeds (Recovery) Act 2009; or,
- taking prosecution action against applicants where the evidential sufficiency and public interest tests for criminal prosecutions as set out in the Solicitor-General's Guidelines (the Guidelines) have been met.

From our integrity programme, we have found that in the majority of cases employers did the right thing. In many cases where entitlements have been wrongly claimed, it is due to uncertainty about the eligibility criteria, rather than deliberate attempts at deception.

- *Have decisions been made regarding using the same prosecution criteria for those who wrongly obtained or retained a Welfare Benefit and those who wrongly obtained or retained a wage subsidy? If there is any difference in prosecution criteria, please provide the document pages which state any difference.*

The Guidelines emphasise several points of a prosecution system operating under the rule of law in a democratic society. The first is that the prosecutor must be free of pressure from sources not properly part of the prosecution decision-making process.

The second deals with the prosecution decision itself. Under New Zealand's common law adversarial system, a prosecutor must be satisfied of two things:

- that the Evidential Test is met, i.e. the evidence that can be put to the court provides a reasonable prospect of conviction; and,
- that the Public Interest test is met, i.e. that only those breaches of the criminal law where the public interest warrants a prosecution will proceed to that step.

The Evidential Test is fundamental. There must never be a prosecution without evidence providing a reasonable prospect of conviction. A lawyer must confirm that the Evidential Test requirements are met before a case can be considered further for prosecution.

If the requirements of the Evidential Test are met, then consideration must be given to whether it is in the public interest to prosecute. "It is not the rule that all offences for which there is sufficient evidence must be prosecuted. Prosecutors must exercise their discretion as to whether a prosecution is required in the public interest."

The decision on whether to prosecute or not is a complex one and must be made on a case-by-case basis. While prosecution decisions should be generally consistent, it is not appropriate to determine that all cases of a particular type or meeting a particular limited set of criteria will be prosecuted.

The Guidelines apply to all prosecutions undertaken by the Ministry whether these relate to wage subsidy or benefit fraud. However, individual circumstances of the case and the offender must be considered.

There are also likely to be differences in offences. Payments other than the wage subsidy, are made under the provisions of specific legislation which describe specific offences related to benefit or other fraud. Benefit fraud offences may be taken under this specific legislation or under the Crimes Act 1961.

Offences related to wage subsidy are not covered under specific legislation and offences would generally be limited to those contained in the Crimes Act 1961.

- *How many annual welfare prosecutions were there in the last 12 months for which figures are available and what was the total involved? What were the lowest and highest amounts involved in a prosecution and what is the median or average figure?*

When it is brought to the Ministry's attention that a client has received an overpayment of their benefit, usually a debt will be established, and we will discuss repayment with a client.

For the financial year 1 July 2020 to 30 July 2021, the Ministry completed 55 prosecutions in relation to welfare benefits with the total amount of overpayment being \$3,803,482. The average amount of overpayment involved in a prosecution was \$69,154.

Please note, a prosecution concerns only one person however the same person can be prosecuted twice in a year. A prosecution is successful if there is at least one sentence or one of the court findings is a 'S106 Discharge without conviction' under the Sentencing Act 2002.

Your request for lowest and highest amounts of overpayment involved in a prosecution is withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons, as these numbers may make an individual identifiable. The need to protect the privacy of these individuals outweighs any public interest in this information.

- *How many auditors are working on Benefit Fraud and how many are working on wage subsidy fraud?*

The Ministry continues to shift resources between benefit integrity and Wage Subsidy integrity work as required. Broadly, the Ministry's Investigator resources are currently allocated as follows:

- Around 65 FTE focused on wage subsidy integrity, including progressing on-going investigations
- Around 45 FTE focused on benefit investigations
- 5 FTE conducting additional assurance work as recommended by the Office of the Auditor-General.

Additional Investigators have been recruited, with further recruitment underway.

- *Since April 1 2020, how many Benefit prosecutions and how many wage subsidy prosecutions have been recommended and how many have started out?*

Since April 2020 to the end of the 2020 financial year (30 June 2021), there have been 33 prosecutions recommended in relation to benefit fraud. For the same period, there were no wage subsidy prosecutions recommended.

As noted above, a prosecution concerns only one person, however, the same person may be prosecuted multiple times in a year. These numbers refer to prosecutions referred to and accepted by the Ministry's solicitors - i.e. recommended prosecutions, not completed prosecutions. Additionally, the number of prosecutions

recommended in the year does not relate directly to the number of prosecutions completed, as prosecutions may not be completed in the same year they are recommended. These numbers do not include internal fraud investigations.

I can advise that, to date, the Ministry has filed separate criminal charges against two people in relation to multiple Wage Subsidy applications. These charges were filed in the Auckland District Court on 29 September 2021. Details of these cases are withheld while these matters are before the court.

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 on the Ministry'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, 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.

Ngā mihi nui



Warren Hudson  
**General Manager**  
**Integrity and Debt**