




13 MAY 2019



Tēnā koe 

On 6 March 2019, you emailed the Ministry requesting, under the Official Information Act 1982, information regarding benefit fraud prosecutions.

In particular, you have requested:

1. *The total numbers of prosecutions conducted by the Ministry of Social Development for benefit fraud since June 2016*
2. *The total numbers of prosecutions conducted by the Ministry of Social Development for benefit fraud since June 2016, broken down by age*
3. *The total numbers of prosecutions conducted by the Ministry of Social Development for benefit fraud since June 2016 that have resulted in a conviction*
4. *The total numbers of prosecutions conducted by the Ministry of Social Development for benefit fraud since June 2016 that have resulted in a conviction, broken down by age*
5. *The total numbers of prosecutions conducted by the Ministry of Social Development for benefit fraud since June 2016 that have resulted in a conviction, broken down by gender*
6. *The total numbers of prosecutions conducted by the Ministry of Social Development for benefit fraud since June 2016 that have resulted in a conviction, broken down by ethnicity*
7. *The total numbers of prosecutions conducted by the Ministry of Social Development for benefit fraud since June 2016 that related to the relationship status of the defendant, broken down by age, gender, and ethnicity.*

On 20 March 2019, you also requested:

*any research or documents that the Ministry has regarding the purpose and effectiveness of fraud investigations as a deterrent to future fraud*

*any updates, reports, and correspondence provided to a senior official regarding the effectiveness of Fraud Investigations as a deterrent to future fraud*

The Ministry takes its responsibilities very seriously in the administration of public expenditure to provide income assistance and services to more than one million New Zealanders each year.

Overpayments may be established as a result of a benefit fraud investigation and data matching. The Ministry works hard to protect the integrity of the welfare system to ensure it remains fair for all New Zealanders, which can include prosecution where clear evidence of fraud exists. The Ministry has a dedicated team of specialist fraud investigators throughout the country, and an Intelligence team that identifies emerging fraud risks and trends. The Ministry works with other government agencies to identify and reduce incidents of fraud and also investigate cases which arise through allegations from members of the public.

The Ministry uses the Solicitor-General's Prosecution Guidelines as the main reference point when making a decision about prosecution. As a government agency, any criminal prosecution action brought by the Ministry must be in accordance with the 'Test for Prosecution' set out in the Guidelines.

There are two factors to the 'Test for Prosecution'; a case must meet the requirements of the 'Evidential Test' where the evidence gathered must be sufficient to provide a realistic prospect of gaining a conviction; and if the case meets the 'Evidential Test' requirements, the Ministry applies the 'Public Interest Test' to determine if it is in the public interest to prosecute.

While it will always be appropriate to prosecute some people due to the nature of their offending, the Ministry is conscious that prosecution can negatively impact clients and families who are already in a vulnerable and difficult situation. It is important that the Ministry makes considered and sound decisions on which cases should be prosecuted.

The decision to prosecute is often a complex one. The Ministry must balance considerations of a client's alleged dishonest actions against their personal circumstances and the effect a prosecution might have on their ability to attain independence and maintain health and wellbeing.

The Fraud Prosecution Review Panel was established in May 2018 and makes the final decision on whether cases are to be prosecuted. The Panel approach to making prosecution decisions strengthens the process by making sure that responsibility for that decision is broadly shared. In addition, cases considered for prosecution by the Panel are assessed blindly, without gender or ethnicity being declared to the Panel. By having wide representation from around the Ministry, including Māori representation, the Panel approach helps to provide a broader view of "public interest".

In the financial year 2016/17, the Ministry completed 453 prosecutions, resulting in 436 convictions. In the 2017/18 financial year, the Ministry completed 291 prosecutions resulting in 277 convictions.

Please find enclosed data tables that address your request. The data is broken down by total prosecutions and successful prosecutions, by age, gender, and ethnicity. You have requested the most recent available quarter. The most recent available data is for the 2017/18 financial year as the data is reported annually.

The enclosed data is the number of people, not prosecutions as a prosecution may include multiple people. You have also asked about those prosecutions that arose due to relationship fraud. To provide you with this data, the Ministry has reported on

those people prosecuted where the investigation included an element of marriage type relationship fraud. The charge(s) that they were prosecuted for do not relate directly to the type of benefit being received. For example, charges may relate to someone providing a false statement, omitting to advise the Ministry of their true personal circumstances and using a false document; where the charges may relate to whatever benefits the person may have been receiving over a period of time.

The ethnicity classification used to construct these tables does not align with the current Statistics New Zealand classification of ethnicity. Ethnicity details recorded in the Ministry's systems have been gathered under a variety of classification schemes as clients came into contact with the Ministry over time. Additionally, ethnicity is not a compulsory field and is not always specified. The Ministry recognises the disproportionate representation of Māori clients among those investigated and prosecuted for fraud:

- Māori represent a higher proportion of Work and Income clients than their proportion of the total population, approximately 35 per cent of all main beneficiaries are Māori, and approximately 47 per cent of recipients of Sole Parent Support are Māori.
- Māori are also more likely to spend a longer time in receipt of a benefit. The Ministry's 2017 Benefit System Performance Report, available here: [www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/evaluation/2017-benefit-system-performance-report-june-2018.pdf](http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/evaluation/2017-benefit-system-performance-report-june-2018.pdf) reported the finding that Māori clients aged 20 to 29 years who are work ready and in receipt of Jobseeker Support were predicted to spend an average of 14.2 future years on benefits, compared to 9.8 years for New Zealand Europeans (page 51).

Clients who have committed fraud, and have been in receipt of a benefit for a longer duration, are more likely to have committed this fraud over a longer period. The length of offending is a significant factor in determining which cases the Ministry investigates and prosecutes as it is correlated with both an increased number of times that the client may have lied to the Ministry and to a larger cumulative overpayment.

In recognition of the over representation of Māori and Pacific Peoples across the benefit system, the Ministry is working on Māori and Pacific strategies and action plans that will include training for staff to help them better understand the needs of Māori and Pacific clients, which aligns to our intent to improve the equity of outcomes, particularly for Māori.

You have also requested any research or documents that the Ministry has regarding the purpose and effectiveness of fraud investigations as a deterrent to future fraud. The Ministry investigates allegations of benefit fraud in order to protect the integrity of the benefit system. The Ministry aims to prevent benefit fraud from occurring, with fraud investigations being an element of this work.

As you will see from the data provided, few cases investigated result in prosecution, where many more will result in an overpayment being established. Many of the overpayments established that do not result in a prosecution will be as a result of people failing to advise the Ministry of a change in circumstances. These investigations provide an opportunity for the Ministry to educate people about their obligations and thereby prevent/deter clients from failing to declare in the future.

You have specifically asked the purpose and effectiveness of fraud investigations as a deterrent to future fraud. The Ministry has not evaluated the effectiveness of the effectiveness of fraud investigations as a deterrent in recent years. The Ministry considers that the belief that a person will be detected committing benefit fraud is a bigger deterrent than the penalties imposed. Although I am unable to provide any information of the nature you requested under section 18(e) of the Act, I have enclosed a document *The Effectiveness of Prosecution as a Deterrent*, dated 13 March 2019, which might be of interest to you. It references case law and international literature from the justice sector. One name has been withheld from the document under section 9(2)(a) in order to protect the privacy of the individual.

Anecdotally, many of those people who have had an overpayment established as a result of a fraud investigation do not go on to have another investigation. This is evident as, one consideration in deciding to prosecute a benefit fraud is whether a person has had a history of having overpayments established as a result of a fraud investigation.

You might also be interested in a report by the Office of the Auditor-General into the benefit fraud system. Although it is from 2008 its discussion is still relevant today. [www.oag.govt.nz/2008/benefit-fraud/docs/benefit-fraud.pdf](http://www.oag.govt.nz/2008/benefit-fraud/docs/benefit-fraud.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 shortly. 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 fraud prosecutions, 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



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

**Table 1:**

**The total number of prosecutions broken down by Age band for the period July 2016 to June 2018**

Age	Successful Prosecutions Completed		Total Prosecutions Completed	
	2016/17	2017/18	2016/17	2017/18
<= 17	1	0	1	0
18-19	0	1	0	1
20-24	27	11	27	11
25-29	69	38	69	38
30-34	70	50	73	52
35-39	79	43	81	44
40-44	65	38	66	40
45-49	47	34	51	37
50-54	37	24	40	26
55-59	26	18	27	20
60-64	12	12	12	13
65+	3	8	6	9
<b>Total</b>	<b>436</b>	<b>277</b>	<b>453</b>	<b>291</b>

**Table 2:**

**The total number of prosecutions broken down by Gender band for the period July 2016 to June 2018**

Gender	Successful Prosecutions Completed		Total Prosecutions Completed	
	2016/17	2017/18	2016/17	2017/18
Female	289	183	296	191
Male	146	94	156	100
Unknown	1	0	1	0
<b>Total</b>	<b>436</b>	<b>277</b>	<b>453</b>	<b>291</b>

**Table 3:**

**The total number of prosecutions broken down by Ethnic Group band for the period July 2016 to June 2018**

Ethnic Group	Successful Prosecutions Completed		Total Prosecutions Completed	
	2016/17	2017/18	2016/17	2017/18
Māori	184	143	193	151
Pacific Peoples	66	28	67	29
NZ European	145	90	148	94
Other/Unknown	41	16	45	17
<b>Total</b>	<b>436</b>	<b>277</b>	<b>453</b>	<b>291</b>

**Table 4:**

**The total number of prosecutions where a line of investigation was relationship status broken down by Age Group band for the period July 2016 to June 2018**

Age	Successful Prosecutions Completed		Total Prosecutions Completed	
	2016/17	2017/18	2016/17	2017/18
<= 17	1	0	1	0
18-19	0	1	0	1
20-24	23	10	23	10
25-29	43	26	43	26
30-34	39	37	42	39
35-39	50	29	51	30
40-44	34	21	34	23
45-49	24	17	26	19
50-54	7	11	8	12
55-59	11	7	11	9
60-64	4	7	4	7
65+	2	4	3	4
<b>Total</b>	<b>238</b>	<b>170</b>	<b>246</b>	<b>180</b>

**Table 5:**

**The total number of prosecutions where a line of investigation was relationship status broken down by Gender for the period July 2016 to June 2018**

Gender	Successful Prosecutions Completed		Total Prosecutions Completed	
	2016/17	2017/18	2016/17	2017/18
<b>Female</b>	165	123	168	128
<b>Male</b>	72	47	77	52
<b>Unknown</b>	1	0	1	0
<b>Total</b>	<b>238</b>	<b>170</b>	<b>246</b>	<b>180</b>

**Table 6:**

**The total number of prosecutions where a line of investigation was relationship status broken down by Ethnic Group for the period July 2016 to June 2018**

Ethnic Group	Successful Prosecutions Completed		Total Prosecutions Completed	
	2016/17	2017/18	2016/17	2017/18
<b>Māori</b>	98	82	104	89
<b>Pacific Peoples</b>	40	19	40	20
<b>NZ European</b>	77	59	78	61
<b>Other/Unknown</b>	23	10	24	10
<b>Total</b>	<b>238</b>	<b>170</b>	<b>246</b>	<b>180</b>



# Memo

**To:** MSD Prosecution Policy Steering Group

**From:** section 9(2)(a)

**Date:** 13 March 2019

**Security level:** IN CONFIDENCE

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## The Effectiveness of Prosecution as a Deterrent

**Action:** For Information

### Purpose

- 1 To summarise research regarding the effectiveness of prosecution, more specifically in cases of fraud, as a deterrent. #
- 2 This information will help inform the Ministry of Social Development (MSD) in the creation of the MSD Prosecution Policy. #

### Summary of research

- 3 The effectiveness of deterrence more generally is best described as per Gendall and MacKenzie JJ in *Hogan v Ministry of Social Development*:<sup>1</sup>
  - 3.1 "Although there has been some debate as to whether imprisonment or stern penalties in fact deter others to committing crimes, this will always remain an area where the production of evidence is notoriously difficult, if not impossible."<sup>2</sup>
- 4 Although there is some difficulty obtaining evidence supporting the effectiveness of deterrence, the need for general and individual deterrence is regarded as a necessary element of sentencing.<sup>3</sup>
- 5 There is some research regarding deterring fraud that argues prosecution can be advantageous as a deterrent due to the publicity of the proceedings and the severe consequences for the individual.<sup>4</sup> Criminal prosecution that leads to incarceration does not

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<sup>1</sup> *Hogan and others v Ministry of Social Development* HC Napier (2005) 23 CRNZ 500.

<sup>2</sup> *Idem*, at [30].

<sup>3</sup> *Ibid*.

<sup>4</sup> Mark Button, Chris Lewis, David Shepherd, Graham Brooks, and Alison Wakefield, *Fraud and Punishment: Enhancing Deterrence Through More Effective Sanctions, Main Report*, (July 2012) Centre for Counter Fraud Studies, University of Portsmouth, at 34.



always, however, result in a reduction in crime or greater deterrent effects.<sup>5</sup> Research in this area can be difficult to consolidate due to the difference in findings.

## New Zealand case law

- 6 New Zealand case law highlights the difficulty in obtaining evidence in this area.<sup>6</sup> Despite this, the need for deterrence is regarded as a necessary element in sentencing.<sup>7</sup> This is particularly so where there are elements such as “widespread offending in the type of the particular fraud”<sup>8</sup> and offending that is persistent and long-lasting.<sup>9</sup>

## International government materials

- 7 Although it is noted that an increase in the cost of committing fraud for an individual may cause a decrease in fraud, this depends on what the individual perceives the more prevalent cost is.<sup>10</sup> For example, seizing assets may be more of a deterrent than prosecution.<sup>11</sup>
- 8 Prosecution may be effective as a deterrent if it is then highlighted to others to give credibility to the punishment.<sup>12</sup> However, it may be beneficial to limit publication to avoid reinforcing negative social norms and creating an impression that the issue is widespread.<sup>13</sup>
- 9 It should be noted that the Australian prosecution policy for the Commonwealth Director of Public Prosecutions uses a similar two-step test to the current guidelines MSD follows. One of the factors considered is the need for “general and personal deterrence”. The “greater publicity, and accordingly the greater deterrent effect” is also considered.<sup>14</sup>
- 10 A critique of the estimated reduction of benefit fraud in the United Kingdom from 2001 - 2005 shows there has been difficulty producing solid evidence of a deterrent effect from welfare fraud prosecutions.<sup>15</sup> In general, quantifying the extent to which criminal prosecutions are effective in deterring fraud can be problematic.<sup>16</sup>

## Academic literature

- 11 In order for deterrence to be effective in cases of general fraud, “sanctions must be inevitable and unavoidable, administered speedily, (and) severe.”<sup>17</sup>

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<sup>5</sup> Russell G Smith, *Best practice in fraud prevention*, Trends & Issues in Crime and Criminal Justice no. 100. (1998), Canberra: Australian Institute of Criminology, at 6.

<sup>6</sup> *Hogan and others v Ministry of Social Development* HC Napier (2005) 23 CRNZ 500 at [30].

<sup>7</sup> *Ibid.*

<sup>8</sup> *Idem*, at [40].

<sup>9</sup> *Faiers v Police* (1989) 5 CRNZ 186 at [7].

<sup>10</sup> Cabinet Office Behavioural Insights Team (UK), 2012, *Applying Behavioural Insights to Reduce Fraud, Error, and Debt*, at 19.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Commonwealth Director of Public Prosecutions (CDPP) *Prosecution policy of the Commonwealth*. Canberra: Australian Government.

<sup>15</sup> Tim Prenzler, *Detecting and preventing welfare fraud*, Trends and Issues in Crime and Criminal Justice no. 418 (June 2010), Canberra: Australian Institute of Criminology, at 2.

<sup>16</sup> Russell G Smith, *Best practice in fraud prevention*, Trends & Issues in Crime and Criminal Justice no. 100. (1998), Canberra: Australian Institute of Criminology, at 5.

<sup>17</sup> Mark Button, Chris Lewis, David Shepherd, Graham Brooks, and Alison Wakefield, *Fraud and Punishment: Enhancing Deterrence Through More Effective Sanctions, Main Report*, (July 2012) Centre for Counter Fraud Studies, University of Portsmouth, at 14.

- 12 Criminal prosecution for fraud in general can be advantageous due to the publicity of the proceedings and the severe consequences for the individual such as difficulty in finding work, difficulty in obtaining travel visas, etc.<sup>18</sup> #

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<sup>18</sup> *Idem*, at 34.