



27 JAN 2020

Dear [REDACTED]

On 26 September 2019 you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982, the following information:

1. *I request all reports, briefings, and other documents provided by the Ministry of Social Development related to imposing benefit sanctions on a beneficiary whom criminal proceedings have commenced against OR a beneficiary whom the New Zealand court has issued a warrant for their arrest, since February 2019.*

The Ministry provided Hon Carmel Sepuloni, Minister for Social Development, with documents relating to Recommendation 11 of the Welfare Expert Advisory Group's (WEAG) report *Whakamana Tāngata*. The WEAG report recommended the removal of some obligations and sanctions, including the warrant to arrest sanction. The documents enclosed sit alongside other welfare overhaul work, which will be progressed as part of the medium to long-term work programme. Further work is required to provide a thorough analysis of benefits, issues and options with regards to the warrant to arrest sanction.

In November 2019 the Minister for Social Development reported back to the Cabinet Social Wellbeing Committee with an update on the welfare overhaul priority areas for action, as well as a long-term comprehensive work programme. This included information on work relating to obligations and sanctions more broadly. This Cabinet paper, with related Cabinet minutes, can be found at <http://msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/welfare-overhaul-update-on-progress-and-long-term-plan.html>.

You are provided with the relevant sections of *REP 19/7/634 Welfare Overhaul: Mutual expectations* dated 18 July 2019 to Hon Carmel Sepuloni, Minister for Social Development overleaf. It provides advice on rebalancing mutual expectations in the welfare system, and included the below text related to warrant to arrest sanctions under the heading 'Next Steps'. The further advice mentioned in this text refers to *REP 19/7/692 Aide memoire – Welfare Overhaul work programme + Appendix One – obligations table* which is also enclosed for your reference.

Next Steps

- 66 You are meeting with the Prime Minister, Minister of Finance and Minister for Children on 6 August 2019.
- 67 We will provide you with further advice on the subsequent child policy prior to this meeting, as well as some preliminary advice on the implications of removing other obligations, including those identified in *Whakamana Tāngata* such as pre-benefit activities, sanctions for warrants to arrest, social obligations, pre-employment drug testing, mandatory work ability assessments, and 52 week reapplication.

File ref: REP/19/7/634

Enclosed are the relevant sections of the following three documents:

- *REP 19/7/692 Aide memoire – Welfare Overhaul work programme + Appendix One – obligations table*
- *REP 19/8/761 Welfare Overhaul Paper 2: Medium to long-term policy work programme*
- *REP/19/06/556 Progress on high priority alignment issues: Accommodation Supplement Area Boundaries and Warrant to Arrest*

A large amount of material has been removed as outside scope. Some parts of the above listed documents are redacted as they are outside of the scope of your request.

REP 19/7/692 Welfare Overhaul work programme + Appendix One - obligations table was provided to support the Minister for Social Development for a meeting with the Prime Minister, Minister of Finance and Minister for Children, where the welfare overhaul was discussed. The appendix includes initial analysis of some obligations and sanctions, including warrant to arrest sanctions. Costings were indicative only, and actual costs may differ to those supplied in the table.

Some information in *Appendix One- obligations table* is withheld under section 9(2)(f)(iv) of the Official Information Act as it is 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.

REP 19/8/761 Welfare Overhaul Paper 2: Medium to long-term policy work programme proposed the medium to long-term work programme for the welfare overhaul, including a broad range of potential initiatives. The obligations and sanctions section of this paper indicates the further work that would be required to review obligations and sanctions and suggested reviewing the policy and approach to non-work obligations and sanctions, including warrant to arrest sanctions.

Some information in *REP/19/06/556 Progress on high priority alignment issues: Accommodation Supplement Area Boundaries and Warrant to Arrest* is not provided 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.

Additionally, the contact details of some individuals have been withheld under section 9(2)(k) of the Act in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the Act will end up in the public domain.

The Ministry previously advised you in the Notification of Decision that some information will be withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. The Ministry, upon further consideration, decided that the applicable part of the document was under active consideration and has been withheld under active consideration 9(2)(f)(iv).

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'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.

If you are not satisfied with this response regarding documents prepared by the Ministry related to the warrant to arrest sanction, 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.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Fiona Carter-Giddings', written over a light blue horizontal line.

Fiona Carter-Giddings
General Manager, Welfare System and Income Support Policy

Aide-mémoire



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Meeting

Date: 2 August 2019

Security Level: IN CONFIDENCE

For: Hon Carmel Sepuloni, Minister for Social Development

File Reference: REP/19/7/692

Welfare Overhaul work programme

Meeting details

12.00 - 12.45 pm, 6 August 2019, Prime Minister's Boardroom

Expected attendees

Rt Hon Jacinda Ardern, Prime Minister, Minister for Child Poverty Reduction

Hon Grant Robertson, Minister of Finance

Hon Tracey Martin, Minister for Children

(Officials will be available to support as required)

Purpose of meeting

Outside Scope



We have provided you with a high-level overview of some of the benefit obligations listed in scenario 4 of slide 2, initial analysis of the impact of removing them, and some key issues and questions ([Appendix One](#)). This is to provide you with some background material in case these issues come up in the discussion. It has not been distributed to other Ministers. We expect to provide you with more detailed advice in coming months.

Please note that out of scope information has been redacted. Please also note that pages 2 to 6 have not been provided as they are outside scope.

Appendix One: Further information on obligations and sanctions

- On 18 July 2019, you received a paper on mutual expectations in the welfare system and work-related obligations (REP/19/7/634 refers).
- This table provides a high-level overview of the key obligations not included in the aforementioned paper, initial analysis of the impact of removing them, and some key issues and questions. Work-related obligations have been included for completeness, but detail has not been provided here as you have already received advice on these obligations.
- Further advice on the potential impacts and key issues of removing obligations and sanctions will be provided by the end of August 2019.
- The key areas for further exploration include, but are not limited to:
 - what the nature of any change would look like – for example, whether a sanction would be removed but have its corresponding obligation retained or whether both the obligation and the sanction would be removed, and whether there would need to be a replacement for a removed obligation that would encourage rather than compel a client to do a particular activity
 - what the impacts of the current obligation and sanctions are, and what any changes may be, on Māori (for example, Māori are more likely to be arrested than non-Māori for some offences) – this could be explored through the welfare overhaul engagement process (REP/19/6/565 refers)
 - Te Tiriti o Waitangi (Treaty of Waitangi) implications
 - how work on obligations and sanctions fits in with our working policy framework, including kaupapa Māori values and design principles for the overhaul of the welfare system.
- The obligations and sanctions in this table were based on the examples listed in recommendation 11 of *Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand*. Recommendation 11 included removing section 192 from the Social Security Act 2018 but this has not been included here as the legislation to make this change has already been passed. The scope of the work on obligations and sanctions is not necessarily limited to the obligations and sanctions in this table.

Please note that out of scope information has been redacted.

- Some of the obligations in this table have sanctions that exist outside of the welfare system – for example, all parents in New Zealand are legally required to enrol their children in school by the age of six and will be penalised if they do not do so.
- The Government's vision is for a welfare system that ensures people have an adequate income and standard of living, are treated with respect, can live in dignity and are able to participate meaningfully in their communities. The policy rationales for obligations and sanctions should be tested against this vision, while acknowledging that the alignment of obligations/sanctions to the Government's vision for the welfare system is also dependent on how obligations and sanctions are carried out – for example, whether they are carried out in a way that upholds people's dignity.

Assumptions made for the costings

- While no decisions have been made in this space, we created an example situation for each obligation and sanction for the sole purpose of enabling us to estimate costs. The nature of change costed for each obligation/sanction is as follows:
 - warrants to arrest – no sanction, just sending letters to clients – obligation remains

Out of Scope



- The costings provided here are indicative only and could change significantly when more work is done to clarify the details of any changes.

Warrants to arrest	Description	Purpose	What the obligation and sanction mean for the client	Cost of removal (benefits)	Legislative impacts	Benefits, issues and further advice needed
	<p>A benefit is no longer payable, or is payable at a reduced rate, if a client has an unresolved warrant to arrest and at least 28 days have passed since the warrant was issued and the client or partner has been given 10 working day notice that they have not:</p> <ul style="list-style-type: none"> resolved the warrant to arrest provided evidence they have taken reasonable steps to resolve the warrant but have been unable to do so because of reasons outside of their control disputed they are the person to whom this warrant applies. <p>If a client is officially deemed to be a public risk, their benefit is suspended immediately.</p>	<p>To support other legislative principles or policies (eg from Ministry of Justice and NZ Police) and discourage behaviour deemed to create a negative outcome.</p>	<p>Clients with a warrant to arrest need to present at their nearest district court or as a last resort their local police station.</p> <p>If no action is taken a client's benefit will reduce by 50% (for clients with children) or be suspended.</p> <p>If a client's benefit has been reduced or suspended they will need to provide the Ministry of Social Development (MSD) with evidence that shows the warrant to arrest has been resolved or they have taken reasonable steps to resolve it before their benefit can be increased or resumed.</p> <p>Benefits are restored to full entitlement or resumed from the day the warrant is resolved or reasonable steps were taken to resolve it.</p>	<p>\$1.173 million, affecting 2,949 clients (about 1% of the main benefit population).</p>	<p>Changes to primary legislation required (Social Security Act 2018) - ie a Bill will need to be passed by Parliament (typical timeframe of one year).</p>	<p>Benefits of removal:</p> <ul style="list-style-type: none"> frees up administrative resources for MSD (eg staff time) client can continue to receive assistance from MSD despite having a warrant to arrest (and therefore meet their basic needs). <p>Issues with removal:</p> <ul style="list-style-type: none"> potential misalignment with other government priorities (eg from the Ministry of Justice and NZ Police) public perception risk - if the obligation and sanction were removed completely, MSD would continue paying benefits to those with unresolved warrants to arrest. <p>Further advice is needed on:</p> <ul style="list-style-type: none"> if we were to change the status quo, would this be removing the sanction and keeping the obligation, or removing both? what are the parameters of any changes to the warrants to arrest obligation and sanction? Would we treat those who are officially deemed to be a public risk the same as other clients with a warrant to arrest?

Outside Scope

Outside Scope

Please note costings are indicative only. Please also note that out of scope information has been redacted and the next three pages of Appendix One are not provided as they are out of the scope of this request.

The \$1.173 million figure under the cost of removal (benefits) column does not include implementation costs.



Report

Date: 29 August 2019

Security Level: BUDGET SENSITIVE

To: Hon Carmel Sepuloni, Minister for Social Development

Welfare Overhaul Paper 2: Medium to long-term policy work programme

Outside Scope



- 6 We propose that in the medium term, policy work will focus on:
- ensuring benefit obligations that are designed and implemented to support wellbeing outcomes:
 - reviewing the range of work-related obligations and sanctions to accord with best evidence and ensure they achieve their employment objectives (including age settings for dependent children)
 - review of other non-work-related obligations and sanctions


Outside Scope



Work obligations, sanctions and non-work obligations

- 52 In addition, we recommend reviewing the policy and approach to non-work obligations, such as the current social obligations and warrants to arrest sanctions. This work requires detailed policy work and cross-government engagement to improve current policy and practice in line with the Government's vision.
- 53 Further detailed work and cross-government engagement is necessary for this work, which will have legislative and financial implications, that we can advise on in due course.

Outside Scope



File ref: REP/19/8/761

Please note that out of scope information has been redacted. Points 54 to 57 and Appendix One have not been provided as they are out of the scope of this request



**Progress on high priority alignment issues:
Accommodation Supplement Area Boundaries and
Warrant to Arrest**

Date: 21 June 2019

Report no.: REP/19/06/556

Security level: IN CONFIDENCE

Priority: Medium

Action Sought

Hon Carmel Sepuloni
Minister for Social Development

For your Information

27 June 2019

Contact for telephone discussion

Name	Position	Telephone	1st Contact
Jayne Russell	Group General Manager, Client Experience,	s 9(2)(k)	
Tony Hailwood	Director Alignment,		<input checked="" type="checkbox"/>

Report prepared by: Kristel Ashton, Senior Advisor, Alignment Project Team

Minister's office comments

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to (specify)

Comments

Date received from MSD

26 JUN 2019

Date returned to MSD

- 3 JUL 2019



Report

Date: 17 June 2019

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Social Development

Progress on high priority alignment issues: Accommodation Supplement Area Boundaries and Warrant to Arrest

Purpose of the report

- 1 This report provides you with an update on the Ministry of Social Development (the Ministry) response to the ^{Outside Scope} ~~Outside Scope~~ Warrant to Arrest (WTA) alignment issue.

Recommended actions

It is recommended that you:

- 1 ^{Outside Scope} ~~Outside Scope~~
- 2 **note** the Ministry will make back-payments to present clients affected by the WTA alignment issue from 27 June 2019
- 3 **note** the Ministry will not make payments available to past clients affected by the WTA alignment issue, through our online portal, until we have resolved the tax implications with Inland Revenue


Viv Rickard
Deputy Chief Executive
Service Delivery

20/06/19
Date


Hon Carmel Sepuloni
Minister for Social Development

30/06/19
Date

Background

- 1 A complex welfare system, rapid and frequent changes to settings and operational systems, and continual litigation and re-interpretation of legislation means that from time to time policy and/or practice do not align with legislation (alignment issues).
- 2 Alignment issues can vary significantly in both scope and scale, and in the nature of the correction required. For example, some issues are isolated to a single information technology (IT) process and have a negligible impact on clients. Others involve policy decisions with significant client impacts and require a broad implementation (eg legislation, processes, and IT systems). The Ministry process for managing these issues requires that every issue also include a decision on the need for historical correction.
- 3 Correcting alignment issues is a compliance and risk minimisation activity with no financial return on investment for the Ministry. However, there can be significant benefits for clients through ensuring that:
 - they are receiving their full and correct entitlement to assistance, and
 - any engagement with the Ministry regarding the resolution of an alignment issue is a positive experience.
- 4 This paper focuses on two high priority alignment issues and the Ministry's response to each of the issues.
- 5 The National Beneficiaries Advocacy Consultative Group (the NBACG) for the Alignment work programme, have been involved throughout the planning and implementation phases of these alignment issues and have endorsed and support the Ministry's response.

Outside Scope





Warrants to Arrest alignment issue

Background

- 14 The Social Security Act 1964 was amended on 15 July 2013 to give the Ministry the power to stop benefit payments if a beneficiary had an outstanding warrant to arrest. Section 75B required the Ministry to notify clients that they had 10 working days after a notice was given to dispute or resolve the warrant. After this period had lapsed, the client's benefit could be suspended. Section 75B was revoked and replaced by sections 209-216 of the Social Security Act 2018.
- 15 The Ministry identified that its practice when issuing warrant to arrest notices did not comply with the rules in the Social Security Act 1964. Between 15 July 2013 and 26 June 2016, the Ministry did not give clients four calendar days to receive a notice from the Ministry advising to resolve or dispute their WTA before their benefit is reduced or suspended.

- 16 This notice period was required under section 86J of the Social Security Act 1964¹. Section 86J² of that Act stated that a notice was deemed to have been received on the fourth day after it had been posted. The 10-day notice period required under section 75B of the Act should therefore have begun 4 days after sending the notice. The effect of this error was that the Ministry had been incorrectly suspending or reducing benefits of affected clients.
- 17 This resulted in an estimated 2,522 present and past clients' benefits being suspended or reduced four days early, which meant they did not receive their full entitlement.

Scale and Impact for clients who are affected by this issue

- 18 As at 13 June 2019, there are approximately 1,589 present clients and 933 past clients who were underpaid (at an average of approximately \$103 each). The maximum amount owed to any one client is \$860 and the minimum amount owed is less than \$1.
- 19 The estimated total cost of all under-payments to affected clients is approximately \$260,000.
- 20 The following table outlines the back - payment clusters, of clients who were under paid, according to payment bands.

WTA Alignment Issue			
Amount payable	Present Clients	Past Clients	Total
\$10-\$50	332	178	510
\$50-\$100	618	368	986
\$100-\$500	631	381	1,012
\$500-\$1K	8	6	14
Total	1,589	933	2,522

Responding to the Warrants to Arrest alignment issue

- 21 The Ministry corrected this issue on 1 August 2016, by implementing an information technology fix. This means the Ministry's payment system automatically includes four calendar days prior to the notice.
- 22 From 27 June 2019, the Ministry will be making back-payments to present clients. We will not be seeking an amendment to the Social Security Regulations 2018 exempting these payments from income and cash asset tests.
- 23 We have analysed available information and have identified the majority of these clients do not have cash assets. This information also indicates that none of the clients who do have cash assets will be immediately impacted. The amounts to be paid are much lower than those made with other alignment issues and it is unlikely that any of these clients will be adversely affected within the next 12 months.
- 24 Back-payments for the WTA alignment issue includes taxable benefit and supplementary assistance. The Ministry and Inland Revenue (IR) have identified tax implications that may affect past clients if they are paid the WTA back-payment.
- 25 The Ministry are working with IR to address the issues relating to any adverse tax implications and limit the potential impact on past clients.
- 26 Until the Ministry understands these implications and a resolution is found, the online portal will not be available to past clients affected by this issue.

¹ The rules about notice periods are now in Subpart 12 of the Social Security Regulations 2018.

² Now contained in sections 364, 449 and 445 of the SSA 2018.

- 27 However, if a past client applies for a main benefit and becomes a present client, any WTA back-payment owed will be paid to them as the Ministry will have the correct payment details. These back-payments will not have any impact on their working for family's tax credits as they are entitled to the maximum rates while on a benefit.

Next steps

- 28 The Ministry has a communications plan in place to respond to public or media interest and queries on the alignment work programme and these two specific alignment issues referred to in this paper.

File ref: REP/19/06/556

Author: s 9(2)(a) Senior Advisor, Alignment Project Team

Responsible manager: Tony Hailwood, Director Alignment

Address: The Aurora Centre, 56 The Terrace, PO Box 1556, Wellington

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OFFICIAL INFORMATION ACT