Chair
Cabinet Social Policy Committee

TACKLING WELFARE FRAUD: PROPOSED APPROACH

Proposal

- 1 This paper:
 - outlines the overall approach I propose in developing measures to clamp down on welfare fraud
 - seeks your agreement to early wins that can be implemented relatively quickly.

Executive summary

- 2 Government made a number of commitments on welfare fraud in the Post Election Action Plan. I propose to address welfare fraud through an anti-fraud package with a range of short-and medium-term operational, policy and legal measures which will deliver on our manifesto commitments.
- 3 The Ministry of Social Development (MSD) has already strengthened and increased the amount of data mining and trend analysis of payment and client information systems to detect possible fraud and target specific initiatives.
- 4 Evidence from the international literature suggests a variety of levers are likely to be effective in encouraging compliance, including 'front end' initiatives that make it easier for people to comply with the rules and do the right thing from the start.
- With my officials I am developing a range of measures to make it more difficult for people to defraud the system, and get better at catching those who do cheat. These measures will provide a graduated system of incentives and instruments to encourage compliance, with suitable punishments for recidivist or serious offenders.
- 6 Changes that will speed up MSD's investigation of fraud cases and publicise the names of people who have been prosecuted for welfare fraud can be implemented in the short term as they do not require legislative change. These changes will be implemented at the earliest opportunity.
- I will be bringing more detailed proposals on a suite of medium-term proposals in August 2012. I anticipate that these proposals will require some legislative changes.

Background

The problem of fraud

The typical range of overpayments due to fraud and error for OECD countries is estimated to be 2-5 per cent of welfare expenditure. An estimation produced by RAND Europe¹, based on numbers from 2001, estimated that New Zealand overpayments from benefit fraud and error account for 2.7 per cent of welfare expenditure.

¹ RAND Europe is part of the US-based RAND Corporation and is an independent not-for-profit research institute whose mission is to help improve policy and decision-making through research and analysis.

9 MSD officials generally use the term "welfare fraud" only when a person has been prosecuted of fraud and found guilty. In 2010/11 there were 658 successful welfare fraud prosecutions involving more than \$22 million. However, if we consider all cases where there is intentional non-compliance identified (all fraud cases investigated and those identified through a data match) the dollar value of fraud for that period increases to over \$74 million.

Target group

- 10 I propose to focus not only on people we prosecute for fraud but on all cases where there is intentional non-compliance.
- I have asked officials to ensure that the work takes into account people who may not have made false statements, but don't take care to ensure that Work and Income know their true situation. Clear signals will be sent that it is not acceptable for people to take money they are not entitled to, and we will see a reduction in opportunities for this to occur.
- People who unintentionally make errors in their applications or who receive money they are not entitled to through an administrative error are not covered by this package. There are existing mechanisms to address these areas.

Levers that are currently available to deal with fraud

- MSD actively works with clients to avoid or minimise overpayments including providing them with information that makes it easier to comply with the rules. However, once a person has committed fraud MSD has limited levers available to deal with it, consisting of:
 - seeking repayment of the overpayment
 - issuing a written warning
 - imposing a monetary penalty of not more than three times the overpayment (section 86(2) of the Social Security Act 1964)
 - seeking a criminal prosecution where the case meets the Crown Law and MSD guidelines for prosecution.
- 14 Most people who are not prosecuted for welfare fraud do not generally experience any penalty except for repaying the overpayment and receiving a written warning. The monetary penalty is rarely used to avoid getting beneficiaries into debt. Relying principally on a monetary penalty that is rarely used provides little deterrence for those people who know that their level of offending does not warrant prosecution. There are other drawbacks to relying on monetary penalties:
 - they can cause significant hardship for children
 - increasing the level of a person's indebtedness can in turn create barriers to successfully entering employment
 - in cases where people are already significantly indebted to MSD (and elsewhere), there is little likelihood of them ever repaying the penalty and the penalty thus loses its impact as a deterrent.
- One approach would be to rely more on current levers rather than devising new ones. For example, MSD could decide to prosecute more people to deter fraud. However, increasing the level of prosecutions is a very resource intensive way of dealing with fraud. It is likely to either require more prosecutors and/or and change in the mix of cases prosecuted (ie towards less complex cases). In addition, in deciding whether to prosecute MSD must ensure that a prosecution meets prosecution guidelines and consider a range of personal factors, such as a person's mental health and the impact of a criminal conviction on employment opportunities.

Our commitments to fix the issue

- In the National Party's policy statement on welfare obligations we said: "Welfare fraud of any kind is unacceptable. It takes money away from people who need it and undermines confidence in the welfare system. We will therefore get tough on benefit fraud and those who are abusing the welfare system." ² We proposed to reduce welfare fraud by:
 - undertaking an urgent review of the Social Security Act 1964 to make it easier to prosecute people who defraud the taxpayer (including reviewing the rules around relationship fraud to make them clearer)
 - funding a new team of fraud specialists and investigators focused on reducing abuse across the welfare system at a cost of \$600,000 per year, funded from savings achieved from reduced fraud and the recovery of assets
 - focusing on welfare fraud and those abusing the system by sharing information in benefit applications with information held by other agencies by making greater use of technology
 - giving power to authorities to actively seek to recover money gained fraudulently and selling fraudster's assets.

What we have implemented already

- 17 MSD have already increased data matching of benefit applications with information held by other agencies. In 2010/11 MSD compared:
 - 456,564 records with the Department of Internal Affairs
 - 9.6 million records with New Zealand Customs Service
 - 1.7 million records with the Department of Corrections
 - 1.9 million records with the Accident Compensation Corporation
 - 88,471 records with Housing New Zealand
 - 246,637 records with Inland Revenue (IR).
- An Order in Council has recently provided for an information sharing arrangement between MSD and IR (a Memorandum of Understanding was signed off in June 2012). This enables IR to proactively send information to MSD which will allow the two agencies to better detect benefit fraud and enable more accurate social assistance payments [CAB Min (10) 38/7 refers].
- 19 We have introduced Future Focus reforms which set clear expectations for work availability and mean that people who have been on the unemployment benefit for 12 months have to reapply for the benefit. This has identified some people who were in work but were still claiming benefit payments they were not entitled to.
- We have also embarked on a series of welfare reforms aimed at delivering a more active welfare system that encourages independence from the welfare system and more personal responsibility. The first phase of the reforms is to be implemented on 30 July 2012.

² Commitments were also made on stopping benefits of people on the run from the police and sanctions for drug users. This is being undertaken as part of Welfare Reform.

Proposed approach

- 21 While the vast majority of beneficiaries do the right thing and declare their circumstances to MSD, a small minority knowingly take what they are not entitled to. It is vital that MSD has the tools it needs to identify and stop this happening as quickly as possible.
- MSD has already strengthened and increased the amount of data mining and trend analysis of payment and client information systems to detect possible fraud. In 2007, MSD established an Intelligence Unit to take a greater intelligence-led approach to respond to the risk of fraud by scanning the environment for threats, using risk profiles to identify areas of vulnerability and analysing the results of fraud investigations for future work.
- The motivations for fraud are complex and people are diverse in their fraudulent behaviour. Therefore improving compliance requires an approach that focuses not only on sanctions, but also on all the other relevant factors that cause a person to commit fraud. This suggests a variety of levers are likely to be effective in encouraging compliance, including 'front end' initiatives that make it easier for people to comply with the rules and do the right thing from the start.
- In paragraph 14 I described the significant drawbacks to relying on monetary penalties. Consequently, my proposed approach focuses on non-financial measures. I propose an approach that will deliver on our manifesto commitments and also goes further in some areas to better safeguard taxpayers' money and protect the integrity of the welfare system. With my officials I am developing a range of measures to make it more difficult for people to defraud the system and get better at catching those who do cheat. These measures will provide a graduated system of incentives and instruments to encourage compliance, with suitable punishments available for recidivist or serious offenders. The measures will form a package of shorter and medium-term measures as set out below (see Table 1).
- 25 Further work will be needed on the implications of any changes for student fraud which is generally prosecuted under the Education Act 1989. I will provide further advice on this in the August paper.

Table 1: Tackling fraud - proposed approach

	Comply with rules	Intentional non compliance	Deliberate theft (prosecuted)
Volume	 Around 1 million people on benefits 	 Best estimate around 40,000 per year 	 Currently around 700 prosecutions per year
Desired outcome	 Work focus Fraud reforms should have minimal impact 	 Encourage compliance Recover money Not to conflict with work focus 	Deter offendingPunish offendersRecover money
Measures	Outside delegation – Minister Bennett's welfare reforms	Currently	
to achieve this		 Monetary penalties Warning letters Data-matching Increased information sharing with IRD 	 Criminal prosecutions Data-matching Increased information sharing with IRD

New short-term		
 Streamlined investigative procedures 	 Seizing assets Streamlined investigative procedures Public disclosure of people convicted of welfare fraud 	
New n	New medium-term	
 Intensive case management for some fraudsters Providing information on fraud debt to credit reporters New team of specialists/investigators (cross agency) Alternate route for some first time offenders 	 Intensive case management for some fraudsters Providing information on fraud debt to credit reporters Stopping fraudsters at the border All prosecutions under the Crimes Act New team of specialists/investigators (cross agency) 	

Measures that can be implemented in the short term

Some measures do not need any legislative changes and can be introduced quickly. I want to start sending a very clear message as soon as possible that welfare cheats steal from the taxpayer and will not get away with that any longer. Therefore I am seeking your agreement to implement the measures below as soon as possible.

Remove the requirement on MSD to alert suspects of an investigation

- Section 11 of the Social Security Act 1964 gives MSD the power to obtain information from beneficiaries and third parties for specific purposes. Section 11B and 11C of the Act require MSD to issue a Code of Conduct (the Code) setting out requirements MSD must follow when using section 11.3 Requirements of the Code include first informing the beneficiary that they are under investigation and the reason for this, and MSD approaching the beneficiary first for information. There is also a set of timeframes before MSD can go direct to third parties. This requirement defies logic as it hinders investigations.
- The process set out in the Code leads to significant delays in investigations. In most cases the beneficiary initially says they will provide the information, but in 95 per cent of cases they do not provide all the information or documents requested or advise MSD that they will not provide them. Where there is a response this often leads to MSD having to go back to the beneficiary for more information as more is discovered. On average it takes 25 days to get the information requested.
- I will amend the Code to speed up fraud investigations. Section 11C(1)(a)(ii) of the Act provides that information or documents do not need to be sought from the beneficiary first, where compliance with this provision would prejudice the 'maintenance of the law'. This provision is currently used where there is a joint investigation with another agency, such as New Zealand Police for serious criminal offending, or where MSD has cause to believe the beneficiary may take an adverse action, such as leave the country or destroy evidence. There is scope to use this provision more widely for fraud investigations.

³ The Code of Conduct sets out the specific information that a section 11 notice must include, and it must also comply with principle 3 of the Privacy Act.

Officials are engaging with the Office of the Privacy Commissioner toward progressing changes to the Code and issuing a revised Code by 1 August 2012 (section 11 of the Act provides that the chief executive of MSD may amend the Code in consultation with the Privacy Commissioner).

Public disclosure of people convicted of welfare fraud

- International evidence suggests that the deterrent effect of a sanction is more related to the impact it has on people, including emotions such as shame and humiliation, than the actual severity of the penalty and that individuals are more likely to commit dishonest acts if they feel that they have a degree of anonymity. Consequently, I propose to publicise on the Work and Income website the names and conviction details of people who have been convicted of fraud (excluding those with name suppression). Disclosure would apply to new cases after the provision has been implemented and the information would appear for at least one year or until any debt is paid off. MSD will ensure that it does not disclose the criminal convictions of people who qualify under the Criminal Convictions (Clean Slate) Act 2004.
- To some extent public disclosure of fraudsters already happens in communities where local newspapers publish court reports, but this practice is not as widespread as it used to be. Publishing on the Work and Income website will ensure that all areas of the country are covered and could be accompanied by other communication such as media releases.
- A potential risk with this measure is that a person's chances of finding employment will be compromised by advertising on a website that they are dishonest. However, criminal convictions are already a matter of public record which can be accessed by an employer as part of a background check on a prospective employee.
- 34 It is also important to avoid signalling that fraud is widespread as this can have the perverse effect of reinforcing fraudulent behaviour. A message that could also be communicated is the true rate of fraud, which will encourage others to act honestly.

Medium-term measures

- Officials are developing a suite of medium term measures and I will be bringing back more detailed proposals on these in August 2012. These proposals will require some legislative changes and will have operational implications for some agencies. I will provide further information on these implications in the August paper.
- In our policy statement we said we would do more to protect the integrity of the benefit system. To achieve this, officials are currently working on 'front end' initiatives to prevent fraud occurring including:
 - exploring the possibility of targeted pre-assessment for some Sole Parent Support clients prior to grant (further evidence is required on what is most cost effective, and any resourcing implications and fit with the investment approach would need to be worked through)
 - an active communication strategy that raises awareness and changes public attitudes and client behaviours.

⁴ SPARK Research. (2004). A Review of the DWP Benefit Fraud Sanctions Scheme. In-house Report 149. London: DWP (Department of Work and Pensions). Yaniv, G. (1987). Welfare fraud and welfare stigma. Journal of Economic Psychology, 18(4), 435-451.

The general criteria for the 'clean slate' scheme include: no convictions within the last 7 years; never had a custodial sentence; never been detained in a hospital due to his/her mental condition instead of being sentenced; never convicted of a "specified offence" (e.g. sexual offending against children); paid in full any fine, reparation or costs ordered by the Court in a criminal case; never been indefinitely disqualified from driving.

- 37 Officials are also developing measures to improve deterrence and encourage compliance with repayment of fraud debt, to be added to the existing monetary penalty. These are:
 - disclosing outstanding fraudulent benefit debt for which there is no arrangement to repay to credit reporters. A debtor may be declined credit or to set up a loan or an account because of the information provided
 - preventing fraudsters with outstanding fraudulent benefit debts for which there is no arrangement to repay from going overseas. This could include arresting some benefit debtors at the border
 - examining a tougher approach that is less reliant on issuing written warnings where
 people fail to report a change in circumstances eg not declaring income (we will be
 applying increased information sharing powers to ensure that they are caught out). This
 could mean that the client is treated more stringently, for example in their interactions
 with Work and Income they may be required to provide increased verification of their
 circumstances.
- 38 MSD will also further explore a graduated system of case management for a specific target group that would increase in intensity for clients with a higher risk of committing fraud and consider whether this would include income management and redirection of the fraudster's benefit. Use of income management and redirection for fraudsters will need to be carefully considered as there could be significant operational implications and costs depending on the scale of the initiative. If agreed it would need to be integrated with the new service delivery model to support the Welfare Reforms and have a phased implementation.
- In our policy statement we also undertook to review the legislation to make it easier to prosecute people who defraud the taxpayer. To do this I will be seeking your agreement to remove welfare fraud offences from the Social Security Act 1964 and rely on offences in the Crimes Act 1961 (currently welfare fraud prosecutions are under either the Social Security Act 1964 or the Crimes Act). This will increase the maximum sentences available for offences formerly prosecuted under the Social Security Act, although judges would still rely on the facts of the case and sentencing guidelines in determining the type⁶ and length of sentence. It would also improve the consistency of prosecutions and reduce duplication of very similar offences.
- Using only the Crimes Act will signal to the public that welfare fraud is a dishonesty offence like any other fraud. It will also likely signal to the judiciary that welfare fraud is to be treated no differently than other types of fraud in terms of sentence lengths. This proposal will have some resource implications for Crown Law Office, Ministry of Justice (Courts) and Corrections and these are being modelled for inclusion in the August paper.
- I am also looking at the possibility of offering a small number of first time offenders a way to avoid prosecution where it is clear that giving the person a criminal conviction would not be in the public interest. People offered this provision would have to repay the overpayment in full and admit their dishonesty in front of a judge. This would provide a response for first time offenders whose fraud is not too serious that goes further than simply recovering the overpayment and giving them a written warning.

⁶ Most people convicted of welfare fraud are sentenced to community work. Of the 658 successful welfare fraud prosecutions in 2010/11, 471 people received community work and 46 were imprisoned (the remainder received a variety of sentences including home detention, community detention and fines).

- 42 Officials are progressing work on a range of other initiatives which will contribute to the overall fraud package and will be reported on in the August paper:⁷
 - expanded information sharing between IR and MSD to identify when people on benefit are getting income they have not told Work and Income they are receiving⁸
 - setting up a new team of fraud specialists
 - working with New Zealand Police to seize the assets of fraudsters.
- Officials are also looking at the possibility of aligning some other anti-fraud legislation across the social sector with any new provisions in the Social Security Act. For example, there may be a possibility to provide similar powers that MSD has to obtain information from third parties to Housing New Zealand to address housing fraud related to income-related rents. Depending on decisions made in the August paper, an omnibus bill may be required.
- As a result of the Welfare Reform changes and other IT systems improvements in MSD there is already a large amount of change happening. Officials will be looking at how any fraud changes with IT and service delivery implications can be phased, and scheduled with Welfare Reform and other changes. I will provide further advice on implementation, including phasing, in the August paper.

Next steps

- I will circulate a draft Cabinet paper in July and will report to you again in August 2012 with detailed proposals for the Fraud Package.
- This paper seeks approval to include a Social Assistance (Fraud Measures) Amendment Bill in this year's legislation programme which will give effect to those proposals that are approved and will require legislation with a priority of Category 4 (to be referred to a select committee in the year). If approved, I will then introduce this Bill into the House in early November to legislate approved policy proposals which require legislation.
- I expect the legislation to be passed by May 2013 with phased implementation from this date. Some initiatives will need to be integrated with the wider Welfare Reform implementation from 1 July 2013.

Consultation

The Treasury, New Zealand Customs Service, the Ministry of Pacific Island Affairs, New Zealand Police, Inland Revenue, Ministry of Justice, State Services Commission, Ministry of Education, Department of Building and Housing, Department of Internal Affairs, Accident Compensation Corporation, Te Puni Kokiri, Corrections and the Ministry of Health have been consulted. The Department of Prime Minister and Cabinet has been informed.

Financial implications

Some of the proposals have financial implications and the costs and benefits will need to be assessed. Details costs of the proposals will be included in the August paper.

⁷ MSD is also working with the Ministry of Justice as part of their work to strengthen New Zealand's resistance to organised crime. This work programme includes work on identity crime and is due to be reported to Cabinet in August 2012. Provision has been made for an omnibus bill to progress any changes in 2013.

⁸ The number of cases referred for prosecution may increase as a result of the potential medium-term measures as well as greater information sharing with IR and therefore MSD will need to consider which cases to prosecute within its current resources.

- As noted in paragraph 40, using the Crimes Act for all welfare fraud prosecutions will have resource implications for Crown Law Office, Ministry of Justice (Courts) and Corrections. These are being modelled for inclusion in the August paper.
- In addition, other proposals have operational implications for MSD and other agencies that will need to be carefully worked through. Further advice will be provided in the August paper. These implications may also affect timeframes for implementing the initiatives. In particular a border stop initiative raises a range of feasibility issues, and may need to be implemented on a longer timeframe.
- 1 I am working with the Minister of Finance on a number of 'invest to save' proposals for tackling fraud through increased detection, investigation and prosecutions and collecting more of the money owed to MSD. Savings would contribute to funding the fraud initiatives and Welfare Reform changes. The proposals will be reported to Ministers in due course.

Human rights implications

53 Human rights implications will be assessed in the August paper.

Legislative implications

54 In August 2012 I will be bringing to Cabinet detailed proposals that are likely to require changes to legislation.

Regulatory impact and compliance cost statement

55 A regulatory impact statement will be included in the August Cabinet paper.

Gender implications

Some of the proposals in this paper are likely to impact more on women than men. In 2011, 67 per cent (41 cases out of 61) of those with overpayments of more than \$100,000 involved women in undeclared relationships.

Disability perspective

57 Any implications for disabled people will be included in the August paper.

Publicity

Once the fraud package is agreed to, I propose to front a public communications campaign to help change public attitudes to welfare fraud. The campaign will be phased to coincide with the roll-out of each component of the package.

Recommendations

- 59 It is recommended that the Committee:
 - note that Government made the following commitments on welfare fraud in the Post Election Action Plan:
 - 1.1 an urgent review of the Social Security Act 1964 to make it easier to prosecute people who defraud the taxpayer (including reviewing the rules around relationship fraud to make them clearer)

- 1.2 focusing on welfare fraud and those abusing the system by sharing information in benefit applications with information held by other agencies by making greater use of technology
- 1.3 giving power to authorities to actively seek to recover money gained fraudulently and selling fraudsters' assets
- 1.4 funding a new team of fraud specialists and investigators focused on reducing abuse across the welfare system
- 2 **note** that the *Code of Conduct for Obtaining Information* under section 11 of the Social Security Act 1964 can lead to significant delays in investigations and officials are engaging with the Office of the Privacy Commissioner with a view to progressing changes to the Code
- 3 agree to two anti-fraud measures that can be implemented in the short-term:
 - 3.1 public disclosure of people convicted of welfare fraud
 - 3.2 changes to the Code of Conduct setting out the requirements MSD must follow when using Section 11 of the Social Security Act 1964 to speed up the process for fraud investigations
- 4 **note** that the Associate Minister for Social Development is developing a package of medium term measures for reducing welfare fraud which includes:
 - 4.1 front end initiatives that prevent fraud occurring in the first place:
 - 4.1.1 exploring the possibility of targeted pre-assessment for some Sole Parent Support applicants prior to grant
 - 4.1.2 an active communication strategy that raises awareness and changes public attitudes and client behaviours
 - 4.2 measures to increase deterrence and improve compliance with repayment of debt:
 - 4.2.1 providing benefit fraud debt records to credit rating agencies
 - 4.2.2 preventing fraudsters from leaving the country until they enter into arrangements to repay welfare debt
 - 4.2.3 exploring case management for a specific target group including income management for some fraudsters
 - 4.2.4 examining a tougher approach that is less reliant on issuing written warnings where people fail to report a change in circumstances
 - 4.3 measures to improve prosecutions of people who defraud the welfare system:
 - 4.3.1 taking welfare fraud offences out of the Social Security Act 1964 and relying on offences in the Crimes Act 1961
 - 4.3.2 offering a way of avoiding a criminal conviction where it is not in the public interest to convict first time offenders
 - 4.4 expanding information sharing between IR and MSD
 - 4.5 establishing a new specialist team of fraud specialists and investigators

- 4.6 working with the New Zealand Police to recover money gained fraudulently by seizing fraudsters' assets
- note that some of the proposals in recommendation 4 have operational implications for MSD and other agencies that will need to be worked through prior to the August 2012 paper
- 6 agree in principle to the approach for reducing fraud outlined in recommendation 4
- 7 **note** that the Associate Minister for Social Development will bring back detailed proposals on the medium-term measures in recommendation 4 in August 2012 including:
 - 7.1 outlining operational implications and costs associated with targeted preassessment for some Sole Parent Support applicants and more intensive case management of some fraudsters
 - 7.2 further advice on how any fraud changes with IT and service delivery implications can be phased with Welfare Reform and other changes
- approve the inclusion of a Social Assistance (Fraud Measures) Amendment Bill on the 2012 legislation programme with a priority of Category 4 (to be referred to a select committee in the year)
- 9 **note** that following consideration by Cabinet of proposals in the August 2012 paper the Social Assistance (Fraud Measures) Amendment Bill will be introduced in early November 2012 if required.

Hon Chester Borrows
Associate Minister for Social Development

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