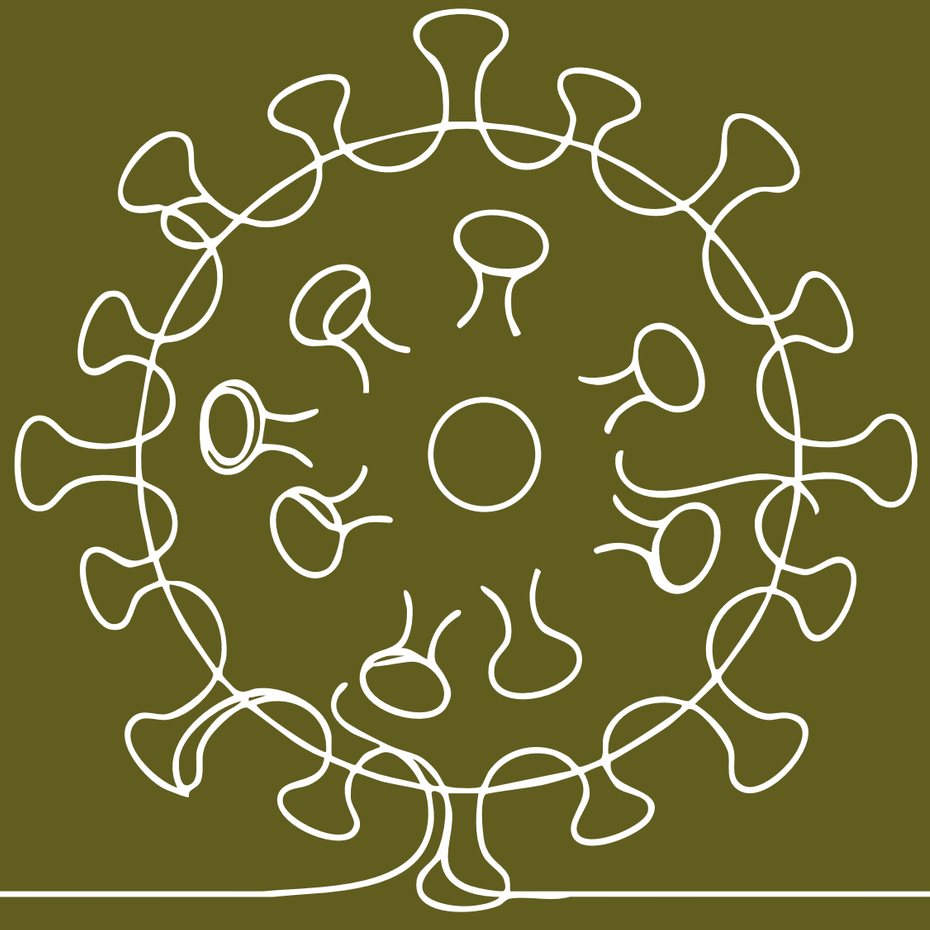

The Wage Subsidy Scandal

By Patrick Hoy
A retired performance auditor in the Office of the Auditor-General
With contributions by Grant Nelson, a retired businessman and philanthropist

THE WAGE SUBSIDY SCANDAL

Up to $10,000,000,000 of wage subsidy money was overpaid or was wrongly obtained or retained by businesses but Treasury and MSD officials and the Auditor-General failed to do anything about it. These Public Servants became business servants and squandered many billions of taxpayer dollars

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Introduction

The COVID-19 virus pandemic arrived in New Zealand in late February 2020. The pandemic was a time of extraordinary uncertainty and fear. There was no vaccine to protect against this disease, and there were predictions that tens of thousands of people would become severely ill or die; the public health system would not be able to cope; and the economy would be badly affected. It was against this backdrop that the wage subsidy scheme was introduced in mid-March 2020. The purpose of the scheme was to provide financial support to businesses so they could pay their staff and avoid widespread layoffs. The scheme was administered by the Ministry of Social Development. (MSD).

The wage subsidy scheme was a high trust scheme, relying on the honesty of applicants, and provided rapid payments to businesses affected by COVID-19 restrictions. To ensure the subsidy was paid as fast as possible, there was very little checking of each application for the subsidy. Businesses would be paid within 3 or 4 days after applying for the subsidy and could then continue to pay their workers at a time when it was expected that they would not be able to work. Lump sum payments were made to businesses to help prevent job losses and business closures. Employers undertook to pass on the subsidy to their staff.

The total cost of the scheme was $18.8 billion and a substantial proportion of that money was paid to businesses that did not need it or in many cases were not entitled to claim or retain it. Many businesses were paid the subsidy and went on to record huge profits.

In the months after the arrival of COVID-19, net business profits increased by more than 133% when compared to the same months before COVID-19. Exactly which businesses made the largest profits after receiving the wage subsidy will never be known to the public as the great majority of businesses in New Zealand are privately owned, and do not have to disclose their earnings. Many businesses did not have the required drop in revenue but did very well from the taxpayer funded wage subsidy.

A question that must be asked is ‘who is to blame for the transfer of tens of billions of taxpayer dollars to wealthy business owners? The evidence points to Treasury being largely to blame. Treasury encouraged MSD to not do anything about the billions of dollars that they knew had been overpaid or wrongly obtained or retained.

This book focuses on the original wage subsidy scheme, the wage subsidy extension and the resurgence scheme, which had a total cost of almost $14 billion. Later schemes were smaller, apart from the last wage subsidy scheme that cost $4.7 billion. Payments in 2021 were staggered, at two week intervals, to ensure that the subsidy only covered those times when businesses were closed.

The wage subsidy was the largest of 36 measures designed to help businesses get through covid-19, with only 2 of these measures being loans. This is a big contrast to the way beneficiaries were treated, with a small amount of extra help being in the form of loans.

The Treasury and MSD officials ignored the numerous news media articles about wage subsidy abuse and criticism by 6 accounting and business Professors. They also ignored a range of Government and business statistics and data that showed that most businesses were much better off

in 2020 than in 2019. Reserve Bank figures showed that businesses had $22,700,000,000 or about one quarter more in the bank in October 2020 than a year earlier.

The Auditor-General issued a critical report on the wage subsidy over a year after the first payments were made. Recommendations in the report had been changed to suit the MSD but then the MSD basically ignored the recommendations. The Auditor-General failed to do anything about this despite the many billions of dollars of taxpayer money at stake.

The Auditor-General wrote to Inland Revenue in August 2022 and said that it was unacceptable that they did not know how many people living overseas would receive the $350 cost of living payment for those on low incomes. He said that they should find this out and take steps to recover the first payment of $116. The cabinet had agreed that it would not be worthwhile trying to get any repayments but he disregarded this. The letter to Inland Revenue was sent within a few weeks of the first payment being made and this was at the same time as he was ignoring the billions of dollars of wage subsidy money that should have been repaid. What happened with the cost of living payment is a huge contrast to the way he dealt with the wage subsidy.

Another report by the Auditor-General was about how MSD staff had been happy to pay property investors up to $3000 per week for sleepouts and garages to be used for emergency housing. A Stuff editorial writer described the report as a stinging humiliation of the MSD for its woeful performance.

A well-known economist and financial journalist, Bernard Hickey, has written that ‘New Zealand’s economic response to Covid was among the worst in the world in terms of widening wealth inequality and the wasteful use of taxpayer funds. He said that asset owners had increased their wealth by $1,000,000,000,000 over two years while those on low incomes went backwards and ended up borrowing $400 million from the MSD. He estimated that $20,000 million was given away in handouts to businesses.

Bryce Edwards, who was a political analyst at Victoria University, also wrote articles about the wasteful pandemic spending on wage subsidies paid to businesses. He said that questions of corruption have arisen.

It appears that the uncontrolled lobbying of officials and Ministers together with large political party donations and the other activities of business interests have resulted in their financial interests being put ahead of the best interest of the average person and future generations.

The top priority for political parties is to get a lot of money for social media and election campaigns so that they can obtain or retain power. This money has to come from those who are well off so political parties have refrained from saying anything publicly about abuse of the wage subsidy.

If a Public Servant arranged for large sums of their employer’s money to be transferred to themselves or relatives or friends, this would be regarded as unlawful. Treasury and MSD officials did something similar by arranging a wage subsidy that Deloitte described as having ‘loose rules’. It was open to abuse by everyone and then MSD deliberately failed to carry out proper post payment checks of businesses who claimed the wage subsidy under a high trust model. The MSD continually refused to send an email to recipients requesting them to confirm that they were entitled to retain the wage subsidy they had received.

Treasury and MSD officials had partners, children relatives and friends who could have received payments and no-one would ever know because payments to individuals have been kept secret. The excessive funds given away drove up asset prices so that the value of their home and any other residential properties they owned increased by up to 43%. The New Zealand sharemarket increased in value between 1 February (pre covid-19) and 31 December 2020 by 14% so the value of their

savings increased. They probably also would have relatives and friends who owned businesses who received substantial payments. Vastly more money has been lost than if a few public servants were involved in a fraud.

The failure of public servants to act in the public interest and the lack of accountability and transparency has highlighted the need for the Public Service to have greatly improved objectives and standards so that it can act independently and provide free and frank advice.

In view of many thousands of millions of taxpayer dollars being channelled to wealthy vested interest by Treasury and MSD officials and the failure of the Auditor-General to do anything about it, an independent commission of Inquiry is required to investigate and make recommendations on how to avoid this happening again.

WIDESPREAD ABUSE IGNORED BY TREASURY AND MSD

Statistics show that wage subsidies were paid for more workers in some industries than the number officially recorded.

Tourism and hospitality businesses were far more badly affected than other businesses but many were able to make up their lost revenue after the lockdown and some repaid the wage subsidy. Inner city cafes and restaurants were badly impacted by people continuing to work from home. These were the businesses that mainly complained about how they were suffering.

Xero tourism clients had a 7% drop in revenue for the year ending 30 September 2020.

The hospitality industry was hit hardest by the pandemic because they could not catch up on lost revenue later. A Restaurant Association report said that in the year to 30 September 2022 revenue was up 15%. This was despite lockdowns mainly affecting Auckland for 9 weeks up to 31 December 2021 when wage subsidies were paid.

According to MSD , some children under 5 and some adults over 85 claimed and were paid the wage subsidy. School children who delivered circulars for a few dollars a week were paid thousands of dollars.

An employment agency, Adecco Personnel Ltd, with a staff of under 100 was paid $12.2 million for the temporary workers it had on its books. It later received $1.6 million for the August 2021 wage subsidy Another employment agency, AWF Ltd was paid $25 million and this included the 8 week

extension wage subsidy when there was no lockdown and a heavy demand for temporary workers. They also claimed for the August 2021 wage subsidy. Another employment agency repaid the wage subsidy they received. The main objective of the wage subsidy was to retain an attachment to employees but this did not apply to temporary workers.

Some businesses that were essential services or were able to work from home could be found on the MSD online wage subsidy employer search if their name included, for example, farm orchard fish poultry meat dairy freight transport courier. Also architect, engineer and others able to work from home.

When one of these names is entered in the MSD employer search, 5 employer names come up with a message that there are more but access is not available. The MSD was asked to check on these businesses but it did not bothered to do so.

A farming leader sent a letter to Treasury and the MSD in which he said that there was a division in the rural community between those who took the wage subsidy and those who thought that doing this was fraud. In some areas lists of those who took the wage subsidy had been circulating. He outlined why no farmers were affected so should not have claimed and retained the wage subsidy.

The MSD basically ignored wage subsidy ABUSE complaints. Over 18,000 complaints were sent to MSD, IRD and MBIE. MSD does not advise the outcome of complaints so it is easy for them to ignore them.

Retailers were closed during the main lockdown but their sales increased by 5% for the year ending 31 December 2020 according to Paymark statistics published on 12 January 2021.

An Auckland woman, Anne Norman, was worth over $500 million and would have had ample cash reserves. She received $45 million for Farmers', Whitcoulls, Pascoes and other retail chains. The original wage subsidy was paid for 5 to 7 weeks when these retail stores were operating normally and were experiencing a post lockdown boom. Wage subsidies were claimed for all staff during two Auckland shutdowns when retail staff were working normally throughout the rest of the country. No other retail chains did this. The MSD ignored publicity about the $45 million given away and other similar cases.

Australian based retailers do not have to publish their New Zealand accounts so no pressure has come on them to make repayments. Bunnings received $27,200,000 but they would have benefited from the boom in home improvement sales after the lockdown. Harvey Norman received $12,700,000 and their Australian shareholders were told that profits had increased almost 20% and

New Zealand sales revenue had increased 28% and profits in July and August were up 185%. The New Zealand Companies Office records show that profits for the year ending 30 June 2020 were $53 million and at 30 June 2021 $86.5 million.

Michael Hill Jeweller announced that their first half 2020 profit would be almost double that for the same period in 2019. They received the initial wage subsidy for 12 weeks based on a 30% drop in revenue and then claimed the extension wage subsidy for 8 weeks based on a drop in revenue of 40%. Retailers experienced a big surge in revenue after the 5 week lockdown so other jewellery chains and most other retailers did not apply for the extension wage subsidy.

Rainbow Print were Christchurch printers who were paid the original, extension and Auckland resurgence wage subsidies. Apart from 5 weeks they were working normally but a complaint to the MSD about them was ignored.

The Wellington Club, The Northern Club, the Kauri Cliffs golf course and the Millbrook resort and golf course in Queenstown kept the wage subsidy. The luxury lodges, wineries and golf courses owned by US hedge fund billionaire Julian Robertson claimed more than $1.2m in subsidies and didn't return them, despite making hefty profits by the end of the year.

In every industry there were businesses that did not apply for the wage subsidy or who have repaid it because they said that this was the ethical thing to do. A total of $831 million has been repaid. Rich lister, Nick Mowbray, and the owners of some other large businesses called on those who did not need part or all of the wage subsidy to repay it.

Professional firms

While many Christchurch professional firms did not claim the wage subsidy or have repaid it, an investigation by an independent researcher has revealed that about one third to half have retained what they claimed. The original wage subsidy was paid to those who predicted a drop in revenue of 30% and confirmed that they had used their cash reserves and tried to get bank and other assistance. Professional firms were paid the wage subsidy for 12 weeks but their employees were able to work from home during the 5 week Level 4 and 2 week Level 3 lockdowns. After that they would have been back in the office busy dealing with any postponed work and a surge in new work during the remaining 5 or 7 weeks of the wage subsidy. Some firms also said that they had had a 40% drop in revenue and they claimed a wage subsidy extension for a further 8 weeks. Some Christchurch firms even claimed for the Auckland lockdowns in August 2020 and 2021.

It is very easy to fiddle a drop in revenue by delaying sending out orders or by delaying the processing of invoices. The MSD should have requested copies of GST returns for April, May, June and July 2019 and 2020 and required recipients to certify that these showed the required decline in revenue.

The Ministry has not asked any business to provide anything to verify what they claimed but has instead just hoped that recipients would act honestly.

A check of the wage subsidy employer search on the Ministry of Social Development website showed that 34 of Christchurch firms of consulting engineers did not claim or retain the original wage subsidy.

A total of 13 have retained the wage subsidy and a further 3 have also retained the extension wage subsidy with 2 of them also claiming for the Auckland lockdown in August 2020.

During the lockdown consulting engineers could not have carried out checks of delayed work not being done by building contractors but they would have had design and other work they could do at home for 5 or 7 weeks. The wage subsidy was designed to help struggling businesses retain employees during shutdowns when there was a risk of them being dismissed due to lack of work but this was not an issue here.

Two small Christchurch firms of consulting engineers claimed both the wage subsidy and the extension wage subsidy. The only large Christchurch firm to claim both was Kirk Roberts Consulting Engineers Ltd. They received $774,537 and $478,808 making a total of $1,253,345. They stand out because they are only 1 of 3 firms out of 50 to retain the extension wage subsidy. Two thirds of other consulting engineers doing much the same work as them did not claim or repaid the original wage subsidy and would not have claimed the extension wage subsidy at a time when consulting engineers were very busy. The MSD failed to properly investigate a complaint about Kirk Roberts.

Tonkin and Taylor Ltd, consulting engineers repaid $5,253,496 Also Holmes Group, Beca Consolidated Group and other large consulting engineering firms repaid.

All major law firms did not claim or repaid the wage subsidy and research shows that almost half of other law firms did not claim it or repaid it. They all had extra work or delayed work but none would have had a genuine decline in revenue of 30% or 40%.

The Christchurch law firm that stands out from the rest is Corcoran French. This is because they claimed $362,620 for the wage subsidy and $236,110 for the wage subsidy extension. Their website is headed up Commercial Lawyers Christchurch and the areas of expertise they list relate to

businesses. During the lockdown and afterwards they would have been very busy advising businesses on contracts, employment, leases, negotiations and other issues which arose. This would have more than offset any postponed property transactions and court work. There was catching up and extra work to do after the lockdown but Corcoran French then claimed the extension wage subsidy for 54 employees. This exceeded the extension wage subsidy claimed for a total of 35 employees by a few other firms out of 61 Christchurch law firms.

The Corcoran French website states 'We believe that people matter and we highly value integrity and professionalism.' It is difficult to understand how they could have had a genuine 30% and 40% drop in revenue to justify the payments they received.

Real Estate agents

In a stuff article on 14 January 2021 Realestate.co.nz said that 'There were 109,128 properties listed for sale nationally in 2020 which was a decrease of 2.6 per cent on the 112,007 properties listed in 2019.

The average national asking price rose by 10.7 per cent for the year.' These figures indicate that overall agents had higher commission income due to higher property prices in 2020 than in 2019. Clearly, they did not suffer a 30% and later 40% drop in revenue over 12, 20 or 22 weeks.

A BusinessDesk article about repayments published on 5 January 2021 said that :

'The rampant real estate sector also has refused to pay back any of its subsidised payments. The top three realtors alone, Harcourts, Bayleys and Barfoot & Thompson claimed a combined $8 million in wage support for the 50-day lockdown during March and April.

Several, including Harcourts and Bayleys, went on to claim the subsidy extension despite the market bounce, which has seen the most frenetic pace of house buying on record in NZ.

And given the number of people employed in the sector – the Real Estate Authority lists more than 15,000 staff across 892 listed firms – that could come close to $100 million in subsidies. None of that is finding its way back yet, according to MSD stats.'

Most individual real estate agents earn commissions and do not receive regular wages or salaries. From time to time they could go for a month or more without any income and then have a good run.

Harcourts and Bayleys have franchise operators around the country who would have made a claim under a different name. For example, Whalan and Partners Ltd operate in Christchurch under the Bayleys name. It is difficult to know how much the total paid out was to those operating under the Harcourts and the Bayleys name.

Barfoot and Thompson were paid for everyone working for them but the company did not claim the extension or Auckland resurgence wage subsidy so this indicates that Harcourts, Bayleys and other real estate agents should not have applied for and be keeping these subsidies. After the 5 week lockdown, delayed transactions were completed and there was a big increase in property sales and prices. Harcourts and Bayleys would not have had a 40% reduction in revenue and should not have claimed the extension wage subsidy. One Bayleys company claimed the Auckland resurgence wage subsidy but other agents did not so this indicates that they were not affected by a short lockdown.

A report by Emeritus Professor, Jilnaught Wong, of Auckland University contains details about how some businesses were able to arrange to reduce their revenue for a month and abuse the wage subsidy.

OIA documents regarding several businesses show that no proper investigations, involving verifying documents and evidence of compliance with important Declaration clauses, were done by the MSD.

The MSD should have monitored the evidence presented to the Employment Relations Authority that showed wage subsidy abuse in over 100 cases but they did not do this and have not taken action against these employers.

An Arthurs Pass business claimed for the Auckland lockdown.

:134 family trusts claimed nearly $5m in wage subsidies, prompting a call for an investigation. It is unlikely that a family trust set up to dodge tax and get Government benefits that would not otherwise be available, would genuinely have employees.

Rugby clubs and football clubs and other sports organisations that had no genuine loss of revenue claimed the subsidy.

Team New Zealand defended the Americas Cup and was not a trading business so had no genuine drop in revenue. However, they claimed over $1,500,000 for the first three subsidies. The MSD failed to take any action.

New Zealand King Salmon Ltd received $3.7 million while operating normally.

There are 78 Councils in New Zealand but only 4 claimed the wage subsidy. Northland Regional Council received about $1.5m, Tauranga City Council received $3.7m and Waikato District Council received $143,000These councils had still retained the wage subsidy as at December 2022.

The Porirua City Council was advised by MSD that rates revenue had to be spread over 52 weeks and was told to repay in September 2020. If this principle had been applied to all businesses ,most businesses would have had to repay what they received.

There were over 150 articles and news items about overpayments and abuse of the wage subsidy and these resulted in a steady flow of voluntary repayments. Despite knowing that most recipients were overpaid and that there was widespread abuse of the wage subsidy scheme, Government Ministers failed to comment on the situation. An email was not sent to the estimated 700,000 recipients who could have made part or full repayments totalling over $5,000 million.

In 2023 the IRD wrote to 414 businesses who had received Covid support payments and asked them to provide evidence that they had complied with the terms and conditions they had signed up to. It was found that 99.5% had not fully complied so the IRD requested repayments. This is another example of the widespread abuse of Government support payments.

A Stuff report on 14 February 2024 about a Finance and Expenditure Committee meeting said that the IRD had got repayments of $351 million from 79,000 recipients of Covid support who were not entitled to keep the money. The amounts involved were each relatively small when compared to the average wage subsidy payment so if MSD had taken similar action, close to $10,000,000,000 could have been repaid.

BILLIONS in OVERPAYMENTS DISREGARDED

Wage subsidy payments were made in advance for many weeks when businesses were operating normally so these were overpayments.

The MSD did nothing about wage subsidy overpayments of about $5,000,000,000 but at the same time wrote to beneficiaries and said that if they had been overpaid for as little as one week, they would have to repay the $20 involved.

On 16 March 2020 cabinet said:

23.` agree that the purpose of the scheme is to help affected employees and businesses to adjust to the impact of COVID-19, not to support businesses for the duration of that impact .'

The original and extension wage subsidies were paid for far longer than the expected and actual duration of lockdowns but consultants writing reports for MSD and the Auditor-General were told to ignore this.

Audit NZ, the Canadian Auditor-General and journalists have called all advance payments that turned out to be wrong, overpayments. We have also adopted this term as it is the simplest way to describe what happened.

In each Audit N Z report the following is stated showing that the wage subsidy was only payable for the weeks when businesses were locked down:

'In response to the Covid-19 pandemic, the Government initiated the Wage Subsidy Scheme (the Scheme) to help businesses and affected workers while non-essential work was on hold during the national lock-down.'

In the Final 2022 Audit N Z report the following is stated about the need to recover overpayments but nothing has happened in the years since then.

'The Ministry needs to determine what additional steps are necessary to reach an acceptable level of understanding about how much may have been overpaid, and what it should then do regarding recoveries.'

In 2020 the MSD paid out almost $14,000 million of wage subsidies very quickly and there was not time to do more than check a small number of the over 750,000 applications. The wage subsidy was paid for 12,20 or 22 weeks but the vast majority of businesses were only closed for 5 or 7 weeks. A Government survey found that about 50% of staff worked from home during the lockdowns. The MSD has not written to all recipients to recover any overpayments, even though it knows from official data

that most businesses had a big upsurge in revenue and profitability after the lockdown and this, in most cases, offset any lockdown losses.

If an unemployed person received MSD income support for 12 weeks but started a job after 5 weeks, the MSD would write to them and request repayment of the amount overpaid. That principle has not been followed for the wage subsidy.

While most businesses were closed for 5 or 7 weeks during the Level 4 and 3 lockdowns, they were paid the wage subsidy for 12 weeks. Many other businesses did not close because they were essential services but most still claimed the wage subsidy.

It is clear from a lot of documented quotes that Ministers were advised that the main wage subsidy objective was during a Level 3 and 4 shutdown to support struggling businesses to retain an attachment to employees. The jobs of most employees were never at risk so if this requirement had been included in the Declaration, a lot of money would not have been paid out. If when employees were working hard to catch up after the shutdown, Ministers had been consulted as they had required, they would have wanted overpayments to be repaid and the amount involved would have been huge.

The following is a MSD Quote

‘ Development of MSD’s integrity response commenced in parallel with administration of the scheme. While MSD has well-established systems for preventing, detecting, investigating and prosecuting benefit fraud, they still had to be adapted for a different legislative framework and rebuilt to work for the wage subsidy schemes.’

This could have been done in a few weeks but it appears that it only happened almost a year after the first payment was made and after pressure from the Auditor-General in early 2021.

The MSD said the following in an OIA response:

‘The Ministry is legislatively required to take all reasonable steps to recover debt due to the Crown under the Social Security Act 2018, which is generally benefits and housing related financial assistance. There are no similar provisions for the wage subsidy schemes as they were not established under the Social Security Act.’

Legislation was passed to clarify that GST was not payable on the wage subsidy so officials should have also ensured that other important matters were included.

The MSD responded to the following OIA questions:

3. If the MSD makes 12 weeks of payments for a person receiving a Benefit but it is then found that they had only been unable to do any work for an employer for 5 weeks and for the remaining 7 weeks were working full time for an employer, would the MSD write to the recipient of the payments and require them to repay 7 weeks of what was received?

‘Benefits are generally income tested, which means if clients are earning income, the amount of benefits will be reduced (depending on the given abatement rate). Clients are obliged to inform the Ministry of a change in their circumstances, which includes a change in their weekly income. Clients may incur debt if there is an overpayment of benefit entitlement.’

4. If the MSD makes 12 weeks of payments for a person receiving a wage subsidy but it is then found that they had only been unable to do any work for an employer for 5 weeks and for the remaining 7 weeks were working full time for an employer, would the MSD write to the recipient of the payments and require them to repay 7 weeks of what was received?

‘As advised in the answer to question 1(c), the ability of an employee to work does not affect the employer’s eligibility for the wage subsidy. The wage subsidy was intended to keep employees connected to their employers through uncertain periods of economic shutdown. Payments were made in lump sums to provide certainty to both employers and employees and were not based on the number of weeks that an employee was unable to work.’

It is clear that if an employee continues to do their normal work, there is no risk of them not remaining connected to their employer and they are not affected by uncertain periods of economic shutdown. Therefore, they should not have been entitled to the wage subsidy.

If the MSD pays an organisation to carry out 12 weeks work for it but later it is found that the organisation only did 5 weeks work, would the MSD write to the organisation and require 7 weeks of what was received to be repaid?

‘The Ministry enters into a variety of contracts for services. For some contracts, payments are made in advance for services. These contracts may contain a reconciliation clause which requires the contracted provider to refund any overpayments made by the Ministry. The exact circumstances will depend on the specific contract and services paid for.’

According to NZ Transport Agency surveys, 9 percent of respondents worked primarily from home in 2019. During Covid restrictions, half the country worked from home. After restrictions lifted, the proportion dropped to 25 percent, then to 15 percent by mid-November 2020. It does appear that half the employees for whom the wage subsidy was paid worked continuously for their employer and their jobs were not at risk and they were probably not asked to give their written consent to the wage subsidy being claimed on their behalf.

The assistance for the February 2021 Auckland resurgence was a support payment for businesses and was administered by Inland Revenue so this indicates that the wage subsidy as administered by the MSD was not satisfactory. In December 2020 the Government decided that if there was another wage subsidy it would be paid out fortnightly so this indicates that paying for 12 and 8 weeks in advance was a mistake.

The following quotes show that the MSD took a soft approach following complaints and checks. This compares with the hard approach they take with beneficiaries. In June 2020 they would have been in no position to determine that the vast majority of employees were doing the right thing or had simply misunderstood or made a mistake.

'The Ministry is engaging directly with employers to talk about their situation and confirm they understand the rules and obligations for receiving the payment'

'In the vast majority of cases, employers are doing the right thing. In many cases where entitlements have been wrongly claimed, it is due to uncertainty about eligibility criteria, rather than deliberate attempts at deception. There will be exceptions to that and there are a number of cases that the Ministry is looking into further.

Where employers have claimed money they are not entitled to, the Ministry has a number of avenues open to it, including requesting repayment. In the most serious cases, where there is evidence of deliberate fraud, criminal prosecutions will be considered.

Further to this, the Ministry does not name employer applicants who have returned money following an audit, because repayment does not mean the employer had intentionally tried to mislead the Ministry. A conversation may have clarified entitlement and confirmed that they did not qualify, or they qualified for a lesser amount. The initial application could well have been made in good faith.

As part of the declaration they must sign when applying, all employers undertake to inform us of any material changes in circumstances. A number of businesses that have incorrectly claimed the Wage Subsidy have contacted us about repaying any outstanding amounts. Others have refunded money because their situation has changed.

The Ministry has had many wage subsidy applicants make approaches requesting to refund all or part of the subsidy they received.'

Returning to near normal or above normal work after 5 or 7 weeks was a material change in circumstances that should have been notified , as required by the signed Declaration, and a part repayment should have been made.

The following OIA response to Question 1 shows that recipients were expected to repay the wage subsidy for any weeks when their revenue was not reduced by 30% or 40% and they could face prosecution if they did not do this.

‘Employers could apply for the Covid-19 Wage Subsidy if they thought they would have a certain drop in revenue as a result of the pandemic in comparison to a similar previous period. If they did not experience this drop in revenue, then they were informed that they would need to repay the money. The annual profit a business might have made subsequent to receipt of the wage subsidy is not relevant to their eligibility to receive the wage subsidy at the time of their application.

The Ministry is currently investigating a number of cases of potential fraud. Various considerations are currently being made, but none have yet been referred for prosecution. These cases may involve any or all of the scenarios outlined in (a) to (c) of your question.

The question was:

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 in the previous year (or a reduction of more than 40% in the case of the extension)

MSD statistics show that part repayments were 75% of total repayments so this indicates that honest recipients decided that they could not keep the wage subsidy for the weeks when they were operating normally.

An OIA response said that no advice had been given to the Minister of Social Development about the data showing that businesses had done far better in 2020 than in 2019 and no advice had been given about the need for repayments.

On the Treasury website there is a Cabinet paper dated 11 December 2020 which contains the following quotes. These quotes are an acknowledgement that overpayments were made for periods when there were no restrictions and made to those who did not need support.

‘23 Having considered officials advice and listened to feedback from business, we now propose the government announces a package of measures that develops and improves the existing model by:

23.1 Making a clearer link between the period and level of support and the period and severity of restrictions

23.2 Improving the clarity and integrity of the measures to ensure that support goes to firms and individuals in need.’

Paragraph 82 of the Cabinet paper states ‘ we also propose linking through automatic rules the duration of support to the duration of lockdown. Under current settings the WSS is provided in two week lump sum payments.’

The answers to the following questions show that no Government advice was sought or given regarding the MSD requesting repayments.

1. Please provide documents relating to any advice or direction received by or sought by the MSD from any Minister or Government Department or other organisation relating to any of the following:

    a. Whether the quick payment of Wage Subsidies on what was described by some as a high trust model, should be taken to mean that no action was to be later taken to ensure that normal standards were followed regarding the prudent and correct payment of taxpayer money to every recipient.

    a. Whether the MSD should write to every recipient of a Wage Subsidy to clarify an update the wage subsidy rules, as agreed, and request them to provide evidence that they did not sign a false Declaration and have not wrongly obtained or retained all or part of the Wage Subsidy.

    a. Whether recipients of the wage subsidy for 12,20 or 22 weeks should be advised that they can only retain payments for those weeks when they were closed and their workers were at home and unable to do any work for the business.

    a. Whether the rules and standards relating to investigations, audits and prosecutions should be different or more relaxed for the Wage Subsidy when compared to Benefits.

    a. Whether complaints should be largely ignored and only a small proportion investigated.

a. Whether no or very few prosecutions should occur

RESPONSE

Questions 4a), c), d), e), f) are refused under section 18(e) of the Act.

Our response to question 4b) outlines a report in scope of your request, however, this document is withheld in full under section 9(2)(f)(iv) of the Act as it is currently under active consideration.'

The reason given for refusing most of the requests is '18(e)

that the document alleged to contain the information requested does not exist or, despite reasonable efforts to locate it, cannot be found:'

This shows that no advice was sought or received on these important issues so the MSD is responsible for the failures which have occurred. The exception is (b) which was probably prompted as a result of questioning by the Auditor-General but no action was later taken.

The following is an MSD 2022 Quote

'38. Cases go through MSD's integrity response in accordance with its Enforcement and Recovery Decision-making Framework. MSD started developing this framework in July 2020 and it was finalised in December 2020. Around the same time in December, the Hon Minister Sepuloni agreed with MSD's recommendation that it continue with its integrity response.

39. It is important to note that MSD built its wage subsidy integrity response at the same time as administering the scheme and distributing payments.

As a result, changes have and continue to be implemented over time and MSD's wage subsidy process and guideline documentation differs from documents in more established areas of MSD's work. For those areas, processes are developed, work-shopped and then implemented. For MSD's wage subsidy integrity response,

process and guideline documentation was developed quickly and in part reflected work that was already being done. '

The MSD had a lot of experience investigating and prosecuting up to 453 beneficiaries each year so could have used this model but decided to adopt a different approach for businesses.

Contractors who worked alone or with up to two employees had their payments kept secret for privacy reasons so they probably got away with a lot for each wage subsidy. In March 2022 a single tradesman or contractor isolating and working from home was paid $2200 per week for 6 weeks. Some recipients said that this was far more than they would normally earn and there was no provision for returning overpayments.

The heading and text from the MSD 2020/21 Annual Report shows that both overpayments and fraud are an important part of the work done by beneficiary investigation staff.

Output expense: Investigation of overpayments and fraudulent payments and collection of overpayments.

This appropriation is intended to achieve a welfare system that operates with fairness and integrity by ensuring that the right people receive the right entitlements and assistance, and identifies and resolves overpayments.

The MSD wrote to anyone receiving N Z Superannuation who was stuck in Australia for more than six months and asked them to repay what they received. However, they showed no interest in getting back from businesses the wage subsidy they overpaid for 5 or 7 weeks. This amounted to about $1000 million per week. The extension wage subsidy was also overpaid for up to 8 weeks but the number of weeks was different for each business.

The following is a quote from a MSD email sent to those receiving New Zealand Superannuation on 7 April 2022:

Winter Energy Payment

‘Couples and people with dependent children will get $31.82 a week. Single people will get $20.46 a week.

If you’re heading away from New Zealand over the winter months you can keep getting your Winter Energy Payment for up to 28 days.It’s really important you let MSD know if you’ll be away for more than 28 days, otherwise they might pay you too much and have to ask for the money back.’

The April 2023 newsletter for seniors made the following change to the paragraph above:

It's important you let MSD know if you'll be away for more than 28 days, otherwise your payments will be wrong and you may have to pay some money back.

The MSD did not think that it was important to ask for repayments by business owners who were overpaid the wage subsidy by sums that were 1,000 or 10,000 or 100,000 per week greater than the winter energy payment. They ignored several recommendations to write to businesses but did not hesitate to tell beneficiaries that overpayments had to be repaid.

The Independent Ireland 1 July 2021 \

THOUSANDS of business owners will start getting bills from Revenue next week for money they owe for overpaid wage subsidies they received last year.

The following quote from one Ireland news media article on 13 September 2022 indicates what can happen if employers are written to about making repayments:

'Earlier this year, Revenue invited 42,500 employers who received Covid-19 wage subsidy payments to perform a final self-review of their EWSS eligibility for all periods of the scheme. A total of €336.2 million in Covid-19 wage subsidy supports has been repaid by employers to Revenue. In a written Dáil reply, Minister for Finance Paschal Donohoe confirmed the sum was repaid following 'contact made regarding repayment issues'.

The MSD said that the wage subsidy was designed to cushion the impact on households and firms most affected by COVID-19. However, the majority of businesses got the wage subsidy and when the shutdown for those businesses who had to shutdown lasted only two or three weeks longer than the usual Christmas holiday shutdown and was followed by a boom in business, nothing was done about overpayments involving 5 to 7 weeks. Some employers did cut wages by 20% so some households did suffer.

Only a tiny percentage of repayments were a result of action taken by the MSD but they several times claimed all the credit.

MSD ignores data showing $10,000,000,000 should be repaid

The MSD paid businesses $19.6 billion in wage subsidies but later mostly voluntary repayments reduced this to 18.8 billion. The stated main objective was to provide support to struggling businesses to retain an attachment to employees during Level 3 and 4 shutdowns. The Original Wage Subsidy was paid for 12 weeks but the shutdown was only 5 to 7 weeks. The Extension Wage Subsidy was

paid for 8 weeks when almost all businesses were operating normally and very few had a drop in revenue of 40%. Businesses were paid for 12 or 20 weeks but were not asked to make a repayment for the overpaid weeks. The original wage subsidy cost just under $1,000 million per week so it is estimated that the overpayment cost taxpayers over $5,000,000,000. This figure includes overpayment of the 8 week Extension Wage Subsidy.

GST data shows that business revenue increased in the weeks when businesses were not locked down and were operating normally. These increases were calculated using data from the same weeks a year earlier.

The MSD stated in a report that they allowed businesses to determine their own eligibility for wage subsidies and did not require any documentary evidence to verify claims.

An OIA response from the MSD said that they had not sought or been given any directions by Ministers as to what to do regarding overpayments and fraud .

The MSD ignored criticisms by 6 accounting and business academics, Government and business data and over 150 news media reports. They instead met with selected stakeholders who had benefited from the wage subsidy and told Ministers about their views and said that stakeholders had to be consulted about any changes.

The MSD failed to request applicants to provide verifying evidence and they ignored several recommendations to write to recipients regarding their obligations. They have only properly investigated a relatively tiny number of individuals so have only been able to initiate about 45 prosecutions.

Over 18,000 complaints were made about abuse but only a small number were

partly investigated by phoning employers. For over a year the MSD told Ministers and the public that they were carrying out audits but the Auditor-General said that this was misleading.

The MSD said that approximately $18.8 billion was paid out in wage subsidies and that ‘By the end of October 2021, predominantly targeted auditing found repayments required in 15% of cases and in 35% of cases for resolved investigations. The error rate for resolved investigations shows how badly flawed they were. The targeted investigations that had a 15% repayment rate were also flawed but 15% of $18.8 billion means that $2.8 billion should have been repaid. The 35% figure means that $6.6 million should have been repaid. Recipients were only asked by phone whether they had complied with two of their six main obligations so the repayment figures should be a lot higher.

If investigations had been carried out properly and both fraud and compliance with at least 6 declaration clauses taken into account, the total abuse repayments required would probably be well over $5,000,000,000

A survey of 1,000 recipients was carried out by MSD. No verifying documents were requested so replying was easy. However, after two reminders 29%had not replied to confirm that they had met the eligibility criteria and complied with post payment obligations. The total involved was about $5,500,000,000

A Stuff article on 7 October 2022 stated:

MSD spokesperson George Van Ooyen said 15,243 pre-payment and post-payment checks on wage subsidy applications resulted in 6269 allegations of wage subsidy misuse.

Van Ooyen said ‘17 cases had ended up before the courts and the total amount of public money involved had now reached $926,274.

The MSD found 41% of applicants who were checked had misused the wage subsidy. If this percentage is applied to the $18.8 billion of wage subsidies, the total of abuse is $7.7 billion.

A survey by Inland Revenue of the data they held showed that 18.5% of recipients had not had the required revenue decline. This amounts to about $3,400,000,000 but recipients probably also did not comply with some other obligations so the figure should be much higher.

Inland Revenue checked recipients of the Small Business Cashflow Scheme and

found that 99.5% had not complied with all of their obligations so this gives an indication of the level of non-compliance with high trust giveaway schemes.

The voluntary repayment of $780 million indicates that over 10 times this figure would have been repaid if the MSD had asked recipients to make repayments.

When a conservative abuse figure of $5 billion is added to the MSD overpayments of over $5 billion, the total that the MSD has failed to do anything about is about $10 billion.

MSD officials ignored a range of Government and business statistics and data that showed that most businesses were much better off in 2020 than in 2019. This included Inland Revenue figures showing that businesses were 14% more profitable for the first 9 months in 2020 than for the same period in 2019, even without taking into account the wage subsidy they received. Reserve Bank figures showed that businesses had $22,700 billion more in the bank in October 2020 than in October 2019. This was a 24% increase and economists said that it was mainly due to the wage subsidy.

The MSD has never written to recipients to remind them of their obligations and to request overpayments and wrongly retained money be repaid.

This was despite reports by Deloitte and by the Auditor-General in 2020 and 2021 which recommended that the MSD write to recipients. If they had done this to ensure that only those who were genuinely eligible retained the wage subsidy, thousands of millions of dollars would have been repaid.

The MSD has failed to properly comply with Auditor-General recommendations so the review and evaluation actions they took were of little value. They chose to ignore all the data they had that showed that billions of dollars should be repaid.

Despite a 171% increase in money paid out, no extra investigation staff were employed. The MSD would have known that a few prosecutions would result in an avalanche of repayments but they did not want any extra work and to then have to pay the money they received into the government consolidated fund. The MSD said in a report that they intended to finish checks on the wage subsidy by the end of December 2020 and told the Auditor-General that they wanted to get back to their core business as soon as possible. As a result of the investigation by the Auditor-General, they were forced to say that they would continue checks for 12 to 18 months and would start prosecuting some of those who wrongly obtained the wage subsidy.

Official and business data for 2020 shows that most businesses were much better off in 2020 than in 2019.

GST figures obtained from the IRD show that the net GST paid by new Zealand businesses for the 9 months to 30 September 2020 increased by 14% compared to the same period in 2019. The net GST is arrived at by deducting GST refunds made by the IRD from the GST payments received by the IRD. Businesses deduct the GST on expenses from the GST on income to determine whether to make a payment or claim a refund so this is a good indicator of business profitability. The 14% increase shows that, despite a short lockdown, businesses were substantially better off in the first 9 months of 2020. The net GST was up $2.176 billion and was paid on increased business profitability of $14.506 billion. In addition to this, legislation exempted the wage subsidy from GST so it was an added bonus of $14 billion. The figures include many small businesses who are only required to file a GST Return for the 6 months to 30 September and to 31 March.

One reason for the big 14% jump in profitability of businesses was that during the lockdown businesses had their rent and other variable costs cut by 50% to 100%. They also had increased revenue because people could not travel overseas so after the lockdown they ended up spending up to $10,000 million in New Zealand.

In the first 9 months of 2020 some businesses made losses and received GST refunds but the total losses were down by 2% in 2020 when compared to the same 9 months in 2019.

The net GST receipts assessed by the IRD for April and May 2020 declined by -21% when compared to the same two months in 2019. However, there was a big increase of 28% for June and July when

compared to 2019 so this more than offset the decline in the previous two months for most businesses.

There has been an estimated $5,000 million to $10,000 million transfer of wealth through the wage subsidy to those who are already well off. This has increased inequality and flowed on to higher house prices and rents and to greater child poverty.

Treasury and MSD officials were well aware that most businesses did not comply with the Wage Subsidy Declaration rules and did not need some or all of the wage subsidy so they should have written to the recipients and requested them to repay the wage subsidy unless they could provide evidence to show that they were entitled to retain all or part of it. This would have provided additional funds to deal with urgent social, environmental and climate change issues and could have helped reduce the billions of dollars of debt which taxpayers are going to have to repay.

The wage subsidy was paid out in a big rush at a time of great uncertainty and was based on a high trust model. Most businesses ended up being far less affected than had been anticipated. In 2019 most businesses were profitable after taking into account GST rated amounts and paying wages and salaries. As it turned out most businesses were far more profitable in 2020 and could have again paid wages and salaries without needing to retain the wage subsidy.

Many businesses who were not able to work during the 5 or 7 week lockdown were able to make up their lost revenue due to a surge in demand in the subsequent weeks. They should only have retained the wage subsidy for those weeks when workers were at home and unable to do any work.

ANZ chartered accountants said liquidations in July and August 2020 were down on the same months in 2019 and 2018.

Government figures showed that administered liquidations were at the lowest level in the 20 years for which figures had been recorded. There are normally 390 to 420 each year but in the year to 30 June 2021 this had dropped to 69. Bankruptcies are normally 2500 to 3000 but in the year to 30 June 2021 there were 784.

A large proportion of businesses that were already failing were propped up.

These figures indicate that the wage subsidy and other government assistance received by most businesses was far more than they needed to keep operating normally.

A 27 November 2020 report prepared for the Minister of Finance and other Ministers gives no indication that the official information provided about GST was taken into account. Nor was any other similar information.

On 1 February 2020 the New Zealand sharemarket index stood at 11,491 but dropped to a low of 8498 on 23 March. Despite the Level 4 lockdown from 27 March the index had increased to 9926 on 1 April . It steadily increased to 11,350 on 1 July and by 31 December 2020 it was 13,091. In the 11 months from 1 February to 31 December 2020 there was a 14% increase.

An OIA request to Statistics New Zealand revealed that net household wealth increased in the year to 31 March in 2019 by $58 billion, in 2020 by $141 billion and in 2021 by $402 billion. The 2021 figure included an increase in financial assets of $245 billion and this did not include residential properties. Probably half of households had no increase in financial asset wealth, one quarter had a small increase due to Kiwisaver and the remaining 25% got almost all the increase with the top 5% getting the majority.

A useful way to check on how New Zealand businesses profited during and immediately after the COVID-19 years can be found in the data collected by NZ Statistics Department. (NZ Stats.)

NZ Stats produces an annual enterprise survey on the state of New Zealand businesses. It describes this survey as follows:

‘The annual enterprise survey (AES) is New Zealand’s most comprehensive source of financial statistics covering around 500,000 businesses. It provides annual information on the financial performance and financial position for industry groups operating in New Zealand’.

The data is analysed by NZ Stats and produces the ‘Key Facts’ document, which compares the results for the current financial year with the previous year.

Provisional results for all AES industries for the 2020/21 financial year, compared with 2019/20:

- Total income increased $25.3 billion (3.5 percent) to $757.5 billion
- Total expenditure increased $96 million (0.01 percent) to $654.4 billion
- Businesses earned $103.3 billion in surplus before income tax – up $24.5 billion (31.1 percent)
- Total assets increased $128.8 billion (5.4 percent) to $2.5 trillion
- Businesses made a 4 percent return on assets – up by 1 percentage point.

Businesses did very well with earnings increasing by 33.1%.

There was a similar story in the following year:

Provisional results for all AES industries are for the 2021/2022 financial year, compared with the 2020/2021 financial year:

- Total income increased by $89.9 billion (11.9 percent) to $847.3 billion.
- Total expenditure increased by $80.2 billion (12.2 percent) to $735.0 billion.
- Businesses earned $124.2 billion in surplus before income tax – up $21.4 billion (20.8 percent).
- The increase in surplus before income tax in 2022 was primarily driven by operating surplus before tax (excludes non-operating income and expenses).
- Total assets increased by $235.7 billion (9.4%) to $2.8 trillion.
- Businesses made a 5% return on assets – up by 1 percentage point.

The Rich Get Richer while others suffer

In the last few months of 2020, there were a lot of reports about a high demand for all types of luxuries including luxury homes and expensive holiday homes and there were waiting lists for luxury cars, boats and camper vans. This demand must have been a result of large amounts of taxpayer money being given away to already wealthy people.

The wage subsidy organised by Treasury created a huge transfer of wealth to those who were already well off and it resulted in high inflation, high house prices, higher rents and a cost of living crisis. Those on low incomes ended up worse off.

Bernard Hickey, the very experienced financial journalist, wrote about how the wage subsidy scheme helped the rich to get richer. In an article in Spinoff of 6 December 2021 he pulled no punches and argued that:

‘ Asset owners’ wealth is on track to rise by $872 billion or 50% to $2.63 trillion within two years of the outbreak. Working families and beneficiaries who pay rent are now mostly worse off or barely treading water. ‘

The article contained a number of observations about the wage subsidy scheme and said that: ‘Just to be clear: wage subsidies were not paid to workers. They were paid to business owners to offset the wages of the employees they would otherwise have made redundant, although the willingness to fire staff and use their own existing buffers was never tested.’

There is little doubt that without the wage subsidy, thousands of workers would have been laid off in the early stages of the pandemic. No one knew how long COVID-19 would last and there was an expectation that the pandemic would badly affect the economy. Applicants had to declare that they had used their cash reserves but this was never checked by MSD.

Bernard Hickey points out that: ‘ None of the wage subsidies, resurgence payments or the new transitional support payments were ever means tested or given as loans. An assumption was made in March 2020 that there was not enough time to check and business owners needed a shot of confidence to keep employing people. Somehow that assumption was not challenged or revisited in August 2020 or August 2021 when fresh resurgence payments were made, even though the experience after March 2020 was of quick economic and spending recoveries and a strong labour market.’

In other words, despite the experience of the original 5 week lockdown and the post lockdown boom and no big increase in unemployment, the Treasury continued to recommend pumping billions of dollars into the hands of businesses. The results of this huge transfer of public money to the private sector were summarised by Bernard Hickey as follows:

- The government will have given at least $20 billion in cash to businesses and asset owners in a period when those asset owners have increased their cash savings accounts by $45 billion to $319 billion.
- wealthier recipients of those cash grants have largely refused to repay the money.

In June 2022, Bernard Hickey continued his analysis and reporting on the wealth transfer to the rich with a summary of Stats NZ data:

‘The accounts show the Government paid a total of $19.95b in subsidies to businesses over that period, made up of wage subsidies, resurgence payments and other support packages, while businesses recorded profits totalling $27.16b, up by $15.492b in the previous 21 month period That begs the question, why weren’t businesses told or even asked nicely, to pay back the wage subsidy they received.

Bernard Hickey analysed the economic data before the arrival of Covid-19 and in the months after the lockdowns had ended. Some of the data from his analysis is contained in the table below:

Table 11; Business profits

$million	Total for 21 months Pre-COVID	Total for 21 months After COVID	Growth
Business Net profit	11669	27161	15,492
Business cash	71,360	97,863	26,303
Social payments	3,185	3,233	48

Some interesting comparisons can be made from this data.

Net business profits increased by more than 133% in the 21 month period after COVID, when compared to the 21 months before the arrival of COVID in early 2020. Business cash reserves increased by over 37%. Businesses did very well as a result of the wage subsidy money that was injected into the economy.

Over the same period, the Government increased cash grants for the poorest by 1.5%.

Bernard Hickey summed up the problem with the wage subsidy scheme stating:

‘The Government’s emergency cash support for businesses was given without any means testing and there has been no comprehensive review of whether they still need it, or whether it should have been clawed back’.

The scheme was designed to operate on a high-trust model. Businesses were only required to comply with loose criteria and were then entitled to receive the subsidy. Payments were made very quickly, with only a limited validation of applications. Regardless of how profitable a business was, if management believed there would be a temporary drop in revenue to a specified level, they could get a pay-out. Businesses were never written to and asked to confirm that their estimates of the revenue reduction had happened.

No wonder businesses had their profits inflated by billions of dollars of taxpayer funded handouts. And no wonder the rich became richer.

TREASURY'S BIG GIVEAWAY TO BUSINESSES

On 2 March 2020 Business New Zealand executives had a meeting with Treasury and other officials and with the Prime Minister and the Minister of Finance . Business New Zealand proposed the wage subsidy scheme it wanted and two weeks later, after discussions with Treasury officials, Cabinet approved the wage subsidy that Business New Zealand wanted.

It was primarily Treasury that advised the Government on all matters relating to the financing and design of the wage subsidy scheme. Of course any Government can choose to ignore Treasury advice, but Treasury is the Government's most important and trusted advisor on all economic matters. Over time there were some aspects of Treasury advice about the wage subsidy scheme that the Government did not agree with, but the Government accepted most of the important features of the advice provided by Treasury.

Cabinet papers show how Treasury officials recommended several times near the end of March 2020 to have the 30% loss of revenue requirement removed so anyone claiming to be a business could be paid regardless of whether or not they had any decline in revenue. Treasury also recommended that a 12 week lump sum payment be made . They said that these were their two key recommendations. If there first recommendation had been adopted, this could have cost an extra $10 billion.

The wage subsidy scheme was introduced on 17 March 2020. The scheme was intended to help smaller companies that would be severely impacted by the economic effects of a slowdown in the economy triggered by the closing of the borders (the lockdown was yet to come) and would not be able to afford to retain their staff. To limit the financial size of the scheme, a cap was placed on the amount of the subsidy that could be paid, with a maximum pay-out of $150,000 per firm, which covered businesses with 21 or less staff. But facing a lockdown of the country, and under pressure from the National Party and big business, the scheme was expanded to allow the subsidy to be paid to large and profitable companies. That is when the cap blew off and is why taxpayers ended up subsidising large and profitable companies, who had no need of a taxpayer hand-out. The scheme was never intended to support companies in order that their owners would not have to draw on cash reserves to keep their businesses afloat.

This intention was clear from the fact that applicants had to declare that they had used their cash reserves and had tried to borrow money (Such as bank loans)

It was Treasury that advised the Government to remove the cap on the scheme. When providing such advice, Treasury should also have advised the Government that large companies usually have sufficient cash reserves or the means to obtain loan funding. Accountants employed by large companies should have been required to certify their financial position was at risk before being paid the wage subsidy but no such recommendation was made by Treasury.

One example of opening up the scheme to large firms was that a listed company such as Fletcher Building , with a staff of almost 10,000, was paid $67 million in wage subsidies at a time when it its accounts showed it held $1.6 billion in cash reserves. It only took MSD one day to approve this huge pay out of the wage subsidy to Fletcher Building.

Some large firms such as The Warehouse, Mainfreight, and Coca Cola paid back tens of millions of dollars, explaining that business conditions had been so good that the right thing to do was to repay

the subsidy. However most businesses that had little or no decline in revenue kept the wage subsidy.

Treasury advice to pay out the subsidy for 12 weeks in advance was the root cause of a further waste of public money. When the lockdown was announced by the Prime Minister on 23 March 2020, the lock down was expected to last four weeks from the 26th of March. The lockdown was lifted on the 27th of April. New Zealand went to Alert Level 3 restrictions and moved down to Alert Level 2 on 14 May 2020. At level 2, shops and other businesses were open. The only restriction to daily life was that crowds of more than 100 people were banned. Borders were still closed which impacted on the hospitality and tourism industries, (which make up 8% of all businesses) but otherwise the country was back at work. Level 2 ended on 9 June. The wage subsidy cost, on average $130 million each day, which meant that about $5 billion was paid to businesses when their staff were back at work for 5 6 or 7 weeks. The Treasury advice to Government did not include any provision for recovering overpayments of wage subsidy money when the country was back at work. It should have but Treasury were keen to give businesses as much money as possible.

Borders were still closed, impacting on the tourism and hospitality industries but specific arrangements could have been made for those industries. Paying the subsidy to businesses when everyone was back at work was financially irresponsible.

When the original wage subsidy scheme ended, it was replaced with a second scheme called the ‘extension wage subsidy scheme’ which was paid 8 weeks in advance from 10 June 2020.

New Zealand was now at Level 1, and apart from the closed borders, life was back to normal. The extension scheme, which cost a further $2.5 billion, was recommended by Treasury.

But if everyone was back at work and there was a post lockdown boom in sales, why was a further subsidy needed and why pay it 8 weeks in advance? Treasury told the Government that this was essential for businesses as it would; ‘Give firms and their workers, some breathing space while they come to terms with the new business environment and plan for the future.’ This was very generous of Treasury and allowed businesses to rake in more profits from wage subsidy money. To get the extension wage subsidy, all applicants had to do was to estimate that their revenue might decline by 40% or more. Rather than pay the wage subsidy to just the tourism and hospitality sectors, which were suffering as the borders were still shut, Treasury recommended that all businesses should have access to taxpayer funds. When it came to paying out taxpayer money, Treasury continued to be an extremely good friend of business. The Treasury’s advice to the Government did not protect the interests of taxpayers.

In April 2021, the IMF was so concerned with the huge costs that the pandemic had imposed on countries that it suggested a one off, ‘excess wealth tax’ on the most profitable businesses that had prospered during or after the Covid-19 crisis. What was being suggested was a corporate tax that would be applied to excess profits above a specified average rate of profit. Such a tax could target all companies that had been profitable during the Covid-19 crisis.

In New Zealand, the Minister of Finance was also concerned about how large and profitable businesses were paid the wage subsidy. There was concern that the burden of coping with the pandemic had not been shared equally. The Minister asked Treasury to look at how some of the excess profits could be clawed back. Treasury examined the issue and informed the Minister that:

`Despite the risk of decreasing public support, we recommend against additional

changes to the repayment rules of the scheme as the potential benefit (reducing public

concern regarding the fairness of profitable firms receiving subsidy) is outweighed by

the potential costs and complexity.'

Treasury had little interest in what the public might think about the fairness of paying the wage subsidy to profitable companies that were flush with cash and quickly put an end to any talk of trying to get back the excess business profits made with the help of taxpayers.

If employees are working full or part time they are earning income for an employer and their work is charged out at a far higher rate than they are paid. Examples were given by Treasury of different employees, including Sam who is a civil engineer who earns $30 per hour and works from home. His work would be charged out at about $250 per hour and his employer would save on office cleaning, heating and part rent and other costs. It is bizarre that professionals who worked full time from home were paid a wage subsidy. Research shows that one third of Christchurch consulting engineers retained the wage subsidy. Some even obtained the wage subsidy extension for a further 8 weeks and the Auckland resurgence wage subsidy.

The Treasury is the Government's lead advisor on economic and financial policy. Treasury has a number of responsibilities including preparing budget documents, assessing new expenditure proposals and monitoring government agencies performance. To be effective, Treasury must provide credible and rigorous financial advice to the Government and ensure that every dollar spent by the Government provides the greatest possible benefit to the public.

In this role as the Government's chief advisor on economic and financial policy matters, Treasury led the development of the core policy settings and drafted the Cabinet papers on the wage subsidy scheme. There was consultation with other departments and businesses, but Treasury had the overall responsibility for drafting and submitting papers to Cabinet.

In order to effectively perform the task of providing economic and financial advice, it might be thought that Treasury would have substantial numbers of highly skilled staff, trained in economic analysis. The need for large numbers of such staff would have been essential during a crisis situation such as the COVID-19 emergency when the staff at Treasury would be under tremendous pressure to quickly produce advice that examined the financial consequences of different policy options.

When a journalist, Hamish Rutherford, asked the Minister of Finance about the wage subsidy, he was told that businesses were only paid for 10 weeks. As 10 weeks has never been mentioned in relation to the wage subsidy, this might indicate a lack of knowledge by the Minister and show that Ministers have little idea of what they agree to at Cabinet meetings. The Minister of Finance and other Cabinet Ministers have little or no understanding of fiscal and monetary policies so they usually go along with Treasury advice.

A Joint report to Ministers dated 17 April 2020 said:

'18 note that internal and independent audit, assurance and review processes have been developed by the Ministry of Social Development (MSD) in consultation with Treasury to complement the 'high-trust' approach for implementing the Schemes.'

This confirms the involvement of Treasury in preparing a high trust Declaration with loose rules and then having lax audit and review processes. Treasury officials would have been regarded as the experts so probably had control over decisions made by MSD officials.

In December 2021 the Auditor-General wrote to the Finance and Expenditure Committee and said that ' The Treasury and MSD have worked with Ministers to agree policy decisions clarifying some eligibility issues.'

This quote shows the involvement at all times of the Treasury with the MSD. The report went on to list how Ministers were only consulted about some relatively minor matters but no mention was made of the need for repayments.

The core business for Treasury is to provide the Government with credible economic analysis including analysis such as the trade-offs of implementing one policy option compared to another policy. However, by 2020 Treasury had lost experienced staff with a strong background in economic analysis. It was recruiting fewer graduate staff with advanced qualifications in economics or finance. An inquiry into a budget leak found a culture within Treasury in which critical decisions were made for reasons of expediency, with staff feeling they had to deliver whatever was asked of them irrespective of any risk. There was a belief within Treasury that it was no longer focussed on its core functions.

In the light of this background, how prepared was the Treasury to advise the Government during the COVID-19 crisis? This is the issue that is addressed next.

The flawed Treasury advice.

Treasury led the development of the wage subsidy scheme and prepared the necessary Cabinet papers. In March 2020, Treasury established a COVID Economic Response Directorate, which was responsible for policy advice on the response to COVID. During the remaining 10 months of 2020, Treasury said it undertook;

- 46 engagements with exporters and export related organisations.
- 20 engagements with regional chambers of commerce and employers' associations.
- 12 engagements with sector organisations covering tourism, transport, retail and hospitality, construction, manufacturing and heavy industry.
- Over a dozen engagements with iwi, NGO's trade unions, and business advisory organisations.

This is a lot of consultation, heavily, in fact extremely heavily, weighted towards business interests. There appears to have been no consultation with experts on health, child poverty, housing and other social issues that were being impacted by Treasury policies. No stakeholders were at the meeting representing the interests of those on low incomes and the future generations who would have to pay the $18 billion debt.

Treasury apparently did not see any need to engage with university accounting academics or fraud experts who could have provided useful advice on the financial risks associated with a high trust wage subsidy scheme. In the light of the findings of the Auditor-General in a report issued a decade

earlier, that fraud was part of everyday business life in New Zealand, the need to obtain such expertise should have been a priority.

It does appear that officials set out to cover up the billions of dollars of mistakes they made. Instead of meeting with those who could make a lot of money from the scheme, they should have met with independent accounting, tax and legal experts. These experts could have pointed out the major flaws in the wage subsidy scheme and recommended changes to close the main loopholes. Others present could have been representatives with accounting and business experience from charities who did not claim or retain the wage subsidy.

A November 2020 report on future options said:

'We have considered some potential options for additional repayment rules, should Ministers wish to consider these. All options would need further exploration with stakeholders and would be subject to further advice.'

However, we do recommend some clarifications of the existing obligations including:

a. Working with stakeholders to develop a framework for the existing recovery approach (including civil proceedings or prosecutions, for example where false information has been provided)'

These quotes indicate that officials were focused on helping businesses rather than looking after the best interests of the community and future generations.

ADVICE TO MINISTER OF FINANCE 21 MARCH 2020 REGARDING REMOVING CAP OF $150,000

Five days after cabinet had approved a cap of $150,000, Treasury advised the Minister of Finance to use his delegated authority to remove the cap. The Treasury advice said:

' Description: This paper proposes options for Cabinet to:

Remove the cap of the existing Covid-19 wage subsidy scheme to increase the coverage of the scheme to more employees in larger firms.

Treasury supports the expansion of the cap, but notes the risk of waste/fraud arising from the high trust operating model. This will need to be managed through the implementation process, which will need to include careful communications on expectations of who applies, future penalties for not meeting requirements at the start, monitoring and adapting, and significant ramp up of anti-fraud and auditing activity. `

Fiscal Implications

Approving the removal of the cap will result in a $4.2 billion cost in 2019/20.

Recommendation

`Agree to increase the existing $150,000 cap of support per firm to either $350,000 or $700,000 or to remove the cap.'

Treasury estimated in this paper that the wage subsidy without a cap would cost $9.3 billion. The need for monitoring and adapting was not followed by the MSD, even though the Declaration signed by applicants allowed for this. There was not a significant ramp up of anti-fraud and auditing activity.

Treasury put forward options of a higher cap of $350,000 and $700,000 or no cap but the Minister of Finance, under pressure from the National Party and with Treasury advice, decided to remove the cap despite the predicted high cost and substantial waste and fraud.

Treasury recommended removal of the cap as:

'A move to level 3 or higher will have significant effects for firms of all sizes across the economy, and we have heard feedback that these firms are already struggling under the current situation. '

New Zealand was at level 2, but Treasury had heard from the business community that firms of all sizes were struggling and the Treasury solution was to remove the cap on the amount that each firm could receive. In other words, Treasury advice was to simply pour as much money into the business sector as possible. There was a lack of analysis around the risks of lifting the cap on spending and paying individual large companies tens of millions of dollars.

Treasury had estimated that 50% of all businesses would not apply for the wage subsidy. Such as assumption was a key part of the estimate as to how much the wage subsidy scheme would cost, but Treasury did not explain in this paper the reason why it assumed that 50% of businesses would not need the wage subsidy.

Professor Robert MacCulloch, Professor of Business at Auckland University, argued that a possible reason behind the removal of the cap was lobbying by the business sector. He wrote that; National lobbied hard, together with Business NZ and the NZ Initiative, where future Finance Minister Willis was a Director, to make it of unlimited size, so the largest firms in NZ would be fully covered.

Treasury defined big business as those firms employing more than 50 fulltime employees. Large companies generally have easier access to business loans or cash reserves compared to small firms and may not have needed tax payer support.

In its advice to the Government on removing the cap limiting spending on the wage subsidy scheme, Treasury did not discuss the extent to which large companies have access to financial resources not available to small companies. Removing the cap completely meant that billions of dollars of taxpayer funds would be directed to large firms. Table 4 shows that if the cap was removed from firms with more than 50 employees, $3.4 billion would be paid to large businesses.

Professors Jilnaught Wong and Robert MacCulloch of Auckland University Business School said that the wage subsidy was wide open to abuse and should have been better designed.

Massey University Head of School of Economics and Finance Professor Martin Berka said businesses, not governments, should take on risk in bad times. He said that the wage subsidy should have been better designed.

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In the first three weeks of March 2020, Treasury officials should have obtained independent advice from accounting, tax and legal experts who did not have conflicts of interest. This would have prevented many billions of dollars being paid out or not repaid.

Professor Robert MacCulloch noted that before the cap was removed, the NZX share register was down 25 to 30 percent and that removal of the cap on the wage subsidy; 'just happened to usher in a most remarkable rally'. Professor MacCulloch observed that; 'the value of that policy to business was not lost on the market'. it was 'free' money.

No wonder the share market was excited.

No wonder business, especially big business, loved the wage subsidy scheme.

Although the wage subsidy scheme was based on the Christchurch earthquake wage subsidy scheme, there was an important difference. The Christchurch earthquake subsidy was not available to nationwide firms and multinationals. When asked, in 2011, about why such companies were not eligible for the subsidy the then Prime Minister John Key said; 'We believe they've got the financial wherewithal to look after their own staff'.

The situation with the COVID wage subsidy was different with the whole country was closed down for 5 weeks. But Treasury should have at least considered whether large companies had the 'financial wherewithal' to look after their own staff.

There was another major flaw in the Treasury advice to the government. Treasury had recommended that the subsidy should be paid in advance, for a period of 12 weeks. This was despite the fact that when the move to level 4 was announced, it was expected to last 4 weeks and not 12 weeks.

Why did Treasury want businesses to be paid 12 weeks in advance? The argument put forward by Treasury was that if the economic shut down was too modest or if activity was started too soon, New Zealand would likely experience further waves of Covid-19 cases. According to Treasury, repeated shutdowns would increase the overall harm to the economy.

These were uncertain times. But it does not excuse poor policy advice by Treasury. It would have been a simple matter to require employers to reapply after 4 weeks or pay back a proportion of the

wage subsidy if the economy reopened before the end of the 12 week period, but such an option was not included in the Treasury advice. After 4.5 weeks of lockdown New Zealand went down to Alert Level 3 on 27 April and went to Alert Level 2 on 14 May 2020 and remained at this level until 9 June. At Level 2, the borders were still closed, but shops and businesses were open. Apart from those businesses in the tourism and hospitality sectors, New Zealand businesses were thriving. The days spent at Alert Level 2 and the days after this came at a cost of $4.5 billion in wage subsidy payments. This was borrowed money, which should not have been spent on wage subsidy payments

The data presented in table 5 below shows that when at Level 3, 75% of the workforce was back at work;

Table 5 Number of people able to work

	Alert level 4	Alert level 3
Going to work	510,000	1,364,000
Working from home	769,000	732,000
Unable to work	1,499000	683,000
Total	2,779,000	2,779,000

(Data prepared by MBIE, September 2021)

It might be argued that the data in Table 5 is being wise after the event, and no one could have predicted that at Alert Level 3, so many people were able to work. However for the original wage subsidy scheme in March 2020, estimates could have been made about the number of people who might be able to work from home during the various alert levels.

On 12 March 2020, the Commerce Commission published a report which said there were now 880,000 homes and businesses connected to the high speed fibre network and 188,000 connected to the fixed high speed wireless network. RNZ featured this report in a news item of 19 March 2020 and said the Commerce Commission report meant that 50% of New Zealanders had the ability to work from home.

Although it was unreasonable for anyone to anticipate how many people would be able to work during Level 3, Treasury should have realised that if New Zealand went to Level 2, almost everyone would be back at work. Treasury should have advised the Government on options to recover part of the wage subsidy advance payments in the event of the country moving down to Level 3 or 2 before the end of the 12 weeks covered by the wage subsidy payments. The failure to do so cost the taxpayer $1.5 billion for level 3 and $4.5 billion for level 2 in unnecessary wage subsidy payments. However, businesses were required to advise the MSD of any change in their circumstances and this would have included returning to normal or above normal trading. As a result, some businesses made part repayments.

The taxpayer was funding businesses to pay their staff and businesses were putting the profits they were making from a booming post lockdown economy directly into their bank accounts, and then into the hands of shareholders.

Trying to get rid of the best endeavours rule.

A further constraint that Treasury wanted removed was the requirement for employers to use their best endeavours to pay employees at least 80% of their usual wage. They wanted this provision, in their words, ‘softened’ so that employers only had to pay 80% of their income ‘if this was possible’ .As discussed in an earlier section, the term ‘best endeavours’ is not defined in the employer declaration form, but is a term commonly used in legal contracts.

In New Zealand common law, ‘best endeavours’ has been held to mean that a party must take all reasonable steps within their power to achieve the desired outcome, even if it involves some financial cost. It is a more onerous obligation than ‘reasonable endeavours’. The Treasury recommendation, that employers should only pay at least 80% of a workers wage ‘if this is possible’, would have meant that few firms would have felt obliged to pay employees 80% of their usual wage.

Why did Treasury want to soften a requirement that was important to workers? Treasury said that: ‘there is some evidence that this rule is a barrier to accessing the subsidy, and that confusion about its interpretation is creating for firms trying to make hugely important consequential business decisions’.

Treasury was asked, by means of an OIA request, for the evidence that the best endeavours requirement was a barrier to accessing the subsidy. In a reply dated 18 March 2025, Treasury refused this request as; providing the requested information would require substantial collation or research. Treasury also said that it drew information for its advice to Cabinet from a range of sources, in rapidly evolving circumstances and that much of this evidence was verbal.

One the hand it was too hard for Treasury to go back and find the evidence to support its claim that the best endeavours requirement was a barrier to business, but without looking, Treasury suspected that the evidence could have been verbal. This means it could have been one telephone conversation that was never documented.

The Treasury advice was overruled and the best endeavours requirement was retained as a requirement for accepting the subsidy. But is this yet another example of Treasury favouring business interests over the interests of the taxpayer and the working population.

The lonely Kaikoura service station owner

In May 2020, officials turned their attention on what should happen after the original wage subsidy scheme ended on 9 June 2020 and when the country would be at Level 1. With the borders still closed, the tourism and hospitality sectors continued to be severely impacted.

In a paper to Cabinet of 11 May 2020, the Minister of Finance said there were many businesses considering whether to continue operating with significantly reduced revenue. If there was to be another wage subsidy scheme it might be asked why not specifically target those sectors for a further wage subsidy? It appears this was too difficult. The Cabinet paper, which was drafted by Treasury, said:

‘Targeting the scheme on a sector basis is very challenging. The boundaries of where a sector starts or finishes is very hard to define. Is a service station owner in Kaikoura in the tourism business?’

Here Treasury conjures up the image of a lonely service station owner in Kaikoura standing in an empty forecourt waiting to service vehicles being driven by tourists. Except there were no tourists. If a further wage subsidy scheme was to be targeted at the tourism sector, should it also be paid to the service station owner in Kaikoura as tourism is a large part of the economy of Kaikoura? The service station owner in Kaikoura is presented as a metaphor to make it easier to understand the problem of defining the boundaries of the tourism sector.

Treasury found it impossible to determine whether or not a service station in Kaikoura was in the tourism business or in some other business, and how it was impossible to target a wage subsidy to specific industry sector. The Treasury solution was to recommend a different type of targeting and to pay a subsidy to all business that had experienced a 50% decline in revenue.

But rather than relying on vivid imagery, such as that of the lonely service station owner on the windswept Kaikoura coast, there are facts that could have assisted Treasury to understand how to target only those sectors in need of the wage subsidy. The Workforce Development Council had data that identified the number of businesses in specific industry sectors. In the case of the tourism industry, the Council had identified 23,453 business in tourism, employing 146,349 people, or about 4% of all businesses and 6% of the New Zealand workforce. Treasury may not have been able to ‘untangle’ the boundaries between different sectors, but the Workforce Development Council was able to do this.

Returning to the Treasury example of the service station owner in Kaikoura, there are some other facts that Treasury should have taken into account. Tourism is important to the economy of the Kaikoura district and in 2020, made up around 25% of the GDP for the district. But there are other industries in the district; agriculture and fishing comprised 19% of the local economy and the construction industry 11%. In other words, there are businesses apart from tourism that are important to the Kaikoura economy, and with the economy springing back to life after the lockdown the service station owner in Kaikoura would have been busy selling fuel.

The data on fuel sales shows why the service station would have been busy after 9 June. By mid-June 2020, MBIE data on petrol sales nationwide showed that sales were 88% of the pre- lockdown figures. (February/March 2020) MBIE cautioned that there are seasonal variations in fuel sales data. In fact, looking at fuel sales data for 2019, fuel sales peaked in the January/February months and reduced in June/July 2019. People drive less in winter. While fuel sales had reduced in June 2020 when compared to the period prior to the lockdown, this simply reflected the seasonal trend in fuel sales.

Treasury posed the question as to whether a service station owner in Kaikoura was in the tourism business or in some other business. The answer to this question is that the service station owner was in the business of selling fuel. Not just to tourists, but to the other industries in and around Kaikoura such as farming, forestry, fishing industries. And by May 2020, everyone was back driving and a further wage subsidy, paid 8 weeks in advance, was not needed for many industries.

Instead of spending time developing misleading metaphors, it would have been more sensible for Treasury to concentrate on defining the tourism and hospitality sectors. But evoking an image of a lonely service station owner in Kaikoura is far more exciting than the application of hard core economic analysis.

The Cabinet paper of 11 May 2020 argued that unless immediate support was provided to business, there could be a rapid increase in unemployment. Paying the subsidy 8 weeks in advance was needed, in order to: ‘Give firms and their workers, some breathing space while they come to terms with the new business environment and plan for the future.’ An extension to the wage subsidy scheme was recommended, targeted to businesses that suffered a 50% or more decline in revenue for a 30 day period in the 40 days prior to application (but no earlier than 10 May 2020), when compared to the same period in the previous year. This scheme was known as the extension wage subsidy and would be paid 8 weeks in advance to cover the period from 10 June to 1 September 2020. The scheme was estimated by Treasury to cost as much as $3.2 billion.

The new scheme was announced by the Government on 14 May 2020. The Minister of Finance publicly explained the reasons for the extended scheme as follows:

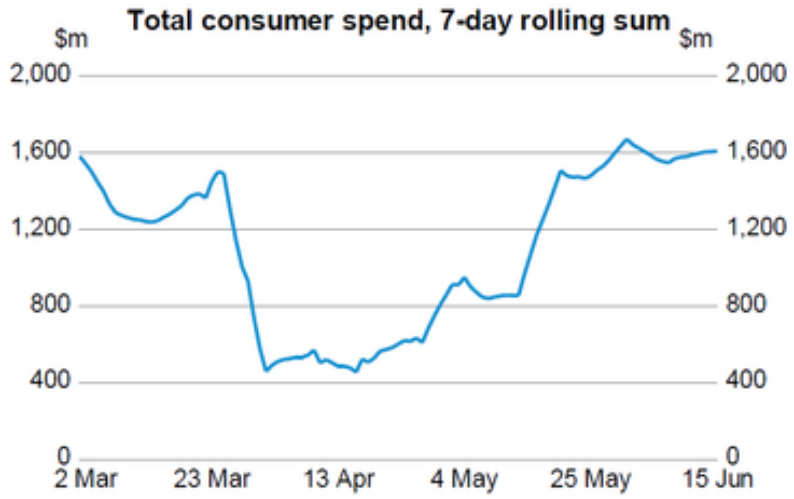
‘Many New Zealanders will be back at work now but we know that there will be some businesses that are still struggling, particularly in the tourism, hospitality and retail sector. That is why we are extending the Wage Subsidy Scheme.’

The Minister also explained that the extension scheme will be; ‘more tightly targeted with only businesses that have experienced or are forecasting a 50% drop in revenue during the 30 days prior to their application will be able to apply.’

A 50% drop in revenue in the month before applying would mean that most businesses in the tourism and hospitality sectors would easily satisfy this test. In which case, why not focus the subsidy on the businesses in those sectors and which had suffered a 50% drop in revenue?

No analysis or cost benefit studies were provided to justify why the scheme had to be paid 8 weeks in advance and would be available to all businesses. There was no estimate of the number of people who would still be unable to work. For example, as the borders remained closed, many people in the tourism industry would not be able to work. But Treasury had made no estimate of whether a more cost effective approach would be to target assistance to only those sectors. To get the data on the most affected industries, such as tourism, all Treasury had to do was to pick up the phone and ask for the industry sector data collected by the Workforce Development Council.

It is not clear why the Minister said the retail sector required assistance as that sector boomed once the level 4 restrictions were removed and people were able to resume shopping. The retail spending statistics, as shown in the chart below, shows that by 15 June 2020, retail spending had returned to pre-pandemic levels:



Source: Treasury website, data by Paymark and Verifone data via Data Ventures

NZ Statistics data showed that for the quarter from June 2020 to September 2020, the total value of retail sales rose 7.4% ($1.8 billion) when compared with the September 2019 quarter. The total volume of retail sales rose by 8.3%.

However the business community was not happy despite the fact that businesses that qualified for the subsidy would receive a generous advance payment of 8 weeks, at a time when New Zealand was back at work and the economy was thriving. Business interests lobbied Ministers and Treasury arguing that the requirement to have a 50% reduction in revenue was 'too strict'. Treasury had been informed by Business NZ and Retail NZ, in multiple representations that many businesses could not meet the 50% revenue reduction test and would not be able to carry on trading if they could not access the lump sum payment for the wage subsidy.

On the afternoon of Monday 1 June 2020, a Treasury staff member emailed another Treasury staff member advising that The Minister would like some advice regarding the extension applying for businesses whose turnover was reduced by at least 40% in the month proceeding their application as compared to last year'.

A paper had to go to Cabinet the next day, so there was little time to investigate the costs and benefits of changing the revenue reduction requirement. In reply to this email, another Treasury staff member said that: 'Officials haven't fully assessed the proposed change,' and outlined the trade-offs that included:

- Better restructuring decisions, preserving more viable jobs.

- Bridging support through preserving more viable jobs.

The point being made here was that New Zealand was at Alert Level 2 and Treasury understood there might be a move to Alert Level 1 in the near future. The wage subsidy extension, if the revenue target was fixed at 40% and not 50%, could provide bridging support for firms who might be viable at Alert Level 1, but constrained under Alert level

2. No evidence was provided to support these assumptions.

Nevertheless, the Treasury official noted that while there may be benefits, the costs included ‘Additional support will go to firms that do not require the subsidy to maintain their workforce’. In other words, an unspecified amount of money would be handed to businesses that did not need taxpayer support.

The Minister of Finance went back to Cabinet seeking a change to this requirement. Cabinet agreed, and the revenue test of 50% was abolished and the revenue test reduced to 40%.

Yet again, business interests had won the day.

The Minister of Finance announced the change to the extension wage subsidy scheme on 5 June 2020 and said that:

‘A change in criteria for the extension wage subsidy scheme means an extra 40,000 businesses will be eligible. After feedback from businesses, the Government has taken the decision to change the required revenue drop threshold from 50% to 40%. Up to 230,000 businesses are now forecast to be eligible for the new 8-week scheme from 10 June, covering up to 910,000 workers.’

The Minister commented on the cost of this change:

‘The changes to the extension wage subsidy scheme mean it is now forecast to provide between $2.6 billion and $3.9 billion of support to businesses to help them with their wage bills, up from a top estimate of $3.2 billion under the old threshold. This will be funded through the COVID Response and Recovery Fund.’

It is hard to see why billions of dollars was paid to businesses at a time when most people were back at work. Businesses were earning money on top of receiving lump sum wage subsidy payments. This was the cost to the taxpayer of Treasury favouring business interests. For the extension wage subsidy scheme all that needed to be done was to provide a wage subsidy for those businesses in the tourism and hospitality sectors that had suffered a 50% or more drop in revenue. It was wasting taxpayer money to open up the scheme to everyone and to cut the revenue reduction requirement to 40% as well.

Governments often warn the public that there is never enough money to fully fund health care, welfare programmes and education. The message is always that scarcity is unavoidable, resources are limited and nothing is free.

Because resources are scarce, legislation, such as the Public Finance Act, sets out principles for the management of New Zealand’s public finances and helps ensure the careful management of taxpayer money. These principles include reducing public debt to prudent levels, achieving and maintaining satisfactory levels of net worth and managing the Government’s fiscal risks prudently. The Act does not tell a government how to tax or spend, but does require that operating expenses should be paid out of tax revenues and that debt should be maintained at prudent levels.

In 2021, an Official Information Act request asked for documents provided to the Government on whether the billions of dollars of wage subsidy money, paid out under a ‘high trust’ model and paid weeks in advance, complied with usual rules for the prudent expenditure of public money.

This request was refused on the grounds that no such documents exist.

Everyone knows that COVID-19 was an emergency situation. But the Treasury has responsibilities, under the Public Finance Act, to advise the Government on the prudent management of public expenditure. Despite this, there are no documents which advised the Government on whether or not it was prudent to pay vast sums of money on a ‘high trust’ basis. A very surprising situation.

Public anger over huge company profits.

On 9 September 2020, the NZ Herald published an article headed;

‘Covid 19 coronavirus: Some of NZ’s biggest businesses are making huge profits – thanks to the wage subsidy’.

The article went onto explain how many businesses were recording huge profits, in spite of the COVID-19 lockdowns and said;

We are currently in the period during which many companies listed on the NZX share market tell their shareholders how much money they’ve made or lost. Despite some obvious exceptions, like the heavily exposed Air NZ and the already-troubled Fletcher Building, many have handled the crisis surprisingly well. This includes many that took the wage subsidy, which has had a flow on impact on their profits which is somewhat confronting For example, gambling giant SkyCity reported a 60 per cent drop in normalised profits, but still made $66.3m. This was considerably boosted by $31.1m contributed by various government wage subsidy schemes. The same story is true of retirement village operator Summerset, which took a wage subsidy of $8.7m, before announcing an interim profit to June 30 of $45m, down just 5 per cent on the previous year. Foley Wines, run by Trump mega-donor Bill Foley, nearly doubled its profit to $6.9m, despite claiming a wage subsidy of more than $600,000.

In the middle of a pandemic, scarce resources were being given to highly profitable companies that did not need a taxpayer bailout. This was of concern to the Minister of Finance who asked for a report on the options for requiring firms that had improved their revenue or profits after the subsidy period to repay the subsidy.

Treasury went into its default mode of ‘defend business at all costs.’

In a paper to the Minister of Finance, dated 3 December 2020, Treasury said ‘We do not recommend any additional rules are added in relation to profit or revenue growth, given the complexity and uncertainty this would bring to the scheme and the risk of creating unintended hardship for certain firms and their employees.’

Here is Treasury at its best; raising dark clouds of uncertainty without explaining which firms it is referring to when it claims that there would be ‘unintended’ hardship for certain firms. It would have been helpful if Treasury had evaluated the unintended hardships that would be caused if profitable firms had to pay back the wage subsidy.

Treasury might also have explained the positive effects of requiring profitable firms to return the wage subsidy; such as a reduction in the debt burden faced by New Zealanders.

Treasury went on to explain that because a firm was profitable, this did not mean that the wage subsidy was not needed. For example, profitability could have been the result of shifting to a more resilient business model. Or an employer may have struggled to pay wages during elevated alert levels but recovered after the restrictions were lifted.

However Treasury did acknowledge that public support for the wage subsidy scheme may reduce if companies declare significant profits after receiving the wage subsidy. The public said Treasury, may

believe that the burden of the cost and inconvenience of the public health restrictions had not been fairly shared and an additional repayment mechanism could mitigate that risk.

Treasury said there was limited data on the number of companies that had received the wage subsidy and went on to record profits but not all companies are required to make this information public;

‘Recent media reports have focussed on a small proportion of recipient firms, including firms with sizable reserves and firms which operated during restrictions.’

Here Treasury overlooks the obvious point that firms with sizable financial reserves should not have been able to apply for, and been granted, the wage subsidy in the first place. Such well placed companies had the means to pay staff from their own resources. But Treasury preferred to highlight the fact that only a small number of companies are involved, even though it had already argued that it did not know how many companies received the wage subsidy and went on to record profits. But facts did not matter here. The key thing was to kill off any idea of getting profitable firms to pay back the wage subsidy.

If the Minister wanted Treasury to further investigate a repayment scheme, Treasury very generously said that it could discuss this with ‘targeted’ stakeholders- presumably business interests. No prizes for guessing what their reaction would be for any requirement that profitable businesses should return the wage subsidy. But this course of action was not recommended. The Treasury recommendation was that;

‘Despite the risk of decreasing public support, we recommend against additional

changes to the repayment rules of the scheme as the potential benefit (reducing public

concern regarding the fairness of profitable firms receiving subsidy) is outweighed by

the potential costs and complexity.’

Treasury also argued that if firms had to meet a new repayment requirement that was contingent on their profitability, then the subsidy would become a form of a loan. This was bad as;

‘This type of scheme is distinctly different from a grant and would need to be carefully designed to achieve its intended purpose.’

This is very bad. According to Treasury, when it comes to bailing out profitable businesses, taxpayer money should be given in the form of grants and not loans.

But there is provision for a government to authorise ‘forgivable loans’. This option was not considered by Treasury. Forgivable loans by government are loans which the government agrees to waive repayment of the loan if prescribed conditions for the loan are complied with.

In September 2020, RNZ interviewed Emeritus Professor Jilnaught Wong, Professor of Accounting at Auckland University. Professor Wong argued that forgivable loans should have been an option;

‘The government needed to be more careful with money before it was handed out - and suggested forgivable loans might be a better option, if government assistance was needed at all.’

Professor Wong’s comments were in relation to big business. The news media became interested in forgivable loans and Newshub interviewed him in November 2020. Professor Wong said that forgivable loans would operate on the basis that;

‘Ok we will give you a loan, and we will write it off if you continue to make a loss for that year. But if you do make a profit and you end up paying dividends, we’d like that money back thank you,’

Most people would find the idea of forgivable loans a very sensible solution to the problem of recovering taxpayer money from companies that received the wage subsidy and went on to record profits and pay dividends. But not to Treasury. They were on the side of business. In a further interview with Stuff, in December 2020, Professor Wong reminded people of who was paying for the wage subsidy;

The thing about the wage subsidy is: where do you think this money is coming from? It’s coming from the other taxpayers, so really there is a wealth transfer that has gone from people like you and me to these corporates, who are then giving it to their shareholders.

Professor Wong went on to say that

‘There is a clear wealth transfer that is going on and at the time when the government needs the funds for the needy and to support child poverty, these companies are just taking this money without any conscience. It just makes you wild. They don’t need it. The hungry kids who go to school without breakfast and no shoes on their feet, they need it, not these fat corporates.’

So should the millions of dollars of wage subsidy money paid to businesses that did not need a taxpayer bailout be repaid? Not according to Treasury. It’s just too hard to obtain such repayments. And what about the public outrage with profitable companies receiving the wage subsidy? Forget about it says Treasury. They don’t matter.

A return to prudent financial management.

On 14 December 2020, Cabinet approved a joint report from the Minister of Finance and Minister of Social Development on the circumstances under which wage subsidy payments would be made, should there be any more COVID-19 lockdowns lasting more than seven days. There was to be no more 12 week or 8 week lump sum payments that exceeded the days that the country was locked down. In future, wage subsidy payments would match the days spent in lockdown. If the lock down was expected to last two weeks, the wage subsidy would be paid two weeks in advance. If the lockdown went beyond two weeks, an employer could apply for a further two week payment, ensuring there would be a closer link between the length of the lockdown and eligibility for support.

Ensuring a close match of the wage subsidy payments with the actual days spent in lockdown was the fiscally responsible approach to take. This approach should have been adopted for the first lockdown in March 2020.

Finally, it might be thought that, after the experience of Covid-19 and the breakneck pace that Treasury had to work in order to provide detailed and authoritative economic advice, Treasury would put to one side its determination to recruit staff that did not have advanced qualifications in economics. This was not the case. An opinion piece in the NZ Herald of August 2022 referred to a Treasury job advertisement in 2022 for a senior analyst:

‘The Treasury advertised for a senior analyst to lead its economic strategy team, at ‘the forefront of economic thought and policy’ with ‘far-reaching impacts’. But it then added, almost cheerfully, that ‘an economics background is not essential’. Instead, applicants were told to bring ‘good EQ’, ‘relationship skills’ and ‘comfort with ambiguity’. You didn’t need to know economics; you just needed to be a people person.’

Evidently Treasury, in 2022, still believed that advanced qualifications in economics or finance were not seen as a requirement to lead an economic strategy team.

LOOSE DECLARATION RULES

The declaration form signed by applicants for the wage subsidy was drawn up by MSD in conjunction with Treasury and Crown Law. No advice was sought from accounting experts, commercial lawyers and business consultants.

The Declaration failed to deal with the Ministers main objective that the wage subsidy was to be paid to struggling businesses during a shutdown to help them retain employees. If these requirements had been included, billions of dollars would not have been paid out or would have been voluntarily repaid.

A MSD staff document ' GUIDANCE FOR POST PAYMENT INTEGRITY CHECKS' said :

New Zealand Government introduced the wage subsidy scheme to support businesses affected by the global impact of COVID-19 to retain employees.

The failure to include in the Declaration the Ministers important requirement that the subsidy was only payable during Level 3 and 4 in order to support retaining an attachment to employees, helped most businesses receive the wage subsidy.

The Declarations signed by applicants for each wage subsidy did not state that the applicant required support to pay and retain named staff. This stated objective was included in 11 places in Cabinet and other documents and some said that Ministers stated that this was an important requirement. Ministers agreed in two documents to require applicants to declare that they had been adversely affected by COVID-19 and required support to pay and retain named staff. There were also other quotes in documents which referred to attachment, connection and shutdown etc

The jobs of most employees were never at risk so if this requirement had been included in the Declaration, the amount paid out would have been substantially lower and repayments would have been substantially higher.

The Auditor-General said in his May 2021 report that ‘ Stakeholders we spoke with felt that communications about the purpose of the Scheme could have been clearer and more focused on the main objective of keeping people employed. ‘

The Declaration signed by applicants required them to predict a one month decline in revenue in order to be eligible to apply for the subsidy. However eligibility based on a prediction is meaningless and a separate matter to entitlement. No mention is made in the Declaration of how many weeks the applicant will be entitled to obtain or retain the wage subsidy for. If a beneficiary wrote on a form that they predicted that they would have no income for one year, that would not entitle them to a Benefit for one year.

MSD said ‘ These wage subsidies were intended to support employers affected by COVID- 19 to retain employees ‘

The Auditor-General’s May 2021 report said that ‘ We recommend that, when public organisations are developing and implementing crisis-support initiatives that approve payments based on ‘high-trust’, they:

1. ensure that criteria are sufficiently clear and complete to allow applicant information to be adequately verified; and

2. put in place robust post-payment verification measures, including risk-based audits against source documentation, to mitigate the risks of using a high-trust approach.

The requirement for applicants to have taken active steps to mitigate the impact of Covid-19 on their business was not clearly defined. Some examples were provided – for example, engaging with their bank or drawing on cash reserves. However, these examples were limited, and employers were not required to make a statement about any active steps they had taken to mitigate the impact of Covid-19 on their business This requirement is important. It tests whether an applicant needs taxpayer funded assistance. There is a risk that some applicants who did not meet this requirement received payment. 3.19 However, this cannot be determined with any certainty because:

• the definition of the requirement is unclear;

• applicants did not have to provide corroborative evidence at the time of application; and

• we could not identify records that described any actions taken to conclusively verify whether this requirement was met.

In our view, if the Ministry of Social Development had required applicants to make a statement about what steps they had taken, they might have been more likely to comply with this requirement. As a result, there would have been information that could have been verified in any assurance work carried out after payment was made.

The Declaration states ‘before making your application for the subsidy, you have taken active steps to mitigate the impact of COVID-19 on your business activities (including but not limited to engaging with your bank, drawing on your cash reserves as appropriate, making an insurance claim)’ It is quite clear that these actions should have been taken and were not examples of what could be done.

The Auditor-General went on to say that ‘ the reviews did not involve substantive review of documentary evidence, such as financial accounts. Most organisations prepare some form of financial statements. These, or similar supporting information, could have been asked for when an application for the subsidy payment was made (we understand that this was done by the Australian Government for its JobKeeper wage subsidy) or as part of the post-payment review activity.

Not requesting this type of information before or after payment means that there has been no objective validation of an applicant’s compliance with the revenue reduction requirement. ‘

When the wage subsidy was announced it was clear that there could be creative ways to justify getting the subsidy while revenue actually remained about the same or increased over a period of months. For example, if one third of invoices were deliberately not processed and sent out during one month due to the excuse of dealing with Covid-19 issues, this would mean a one third drop in revenue for one month but there would be a one third increase the next month. In May 2020 this information was sent to the MSD but they did not take it into account when designing the Declaration for the wage subsidy extension and subsequent wage subsidies.

Businesses signed a Declaration stating that they had suffered or were expecting a 30% or 40% drop in revenue and had no cash reserves and could not get assistance from their bank. They also had to give each employee details of the wage subsidy being requested for that employee and get their consent in writing. Recipients were required to notify the Ministry of Social Development within 5 working days if anything changed that affected their eligibility or entitlement to the subsidy and they were required to repay the subsidy if they were not entitled to retain it. It does appear that most businesses did not fully comply with the Declaration they signed. For a start, it could have been difficult to contact their bank about getting assistance and it might have been difficult to get all employees to give their written consent, particularly if they were going to be working during a lockdown.

The MSD requires those receiving a Benefit to notify any change in circumstances and it sets out a long list of potential changes. However, it did not specify potential changes for the wage subsidy.

A MSD survey found that 20% of businesses surveyed in September and October 2020 stated that they had no financial reserves, 29% had reserves to continue operating for only a few weeks, and 44% had reserves for a number of months.

This indicates that most businesses do keep reserves but they quickly applied for the wage subsidy before they had used up their reserves.

The MSD has repeatedly stated that ‘the vast majority of applicants for wage subsidies did the right thing and were paid correctly. ’but it is not clear what the right thing is. They have refrained from saying that recipients complied with the Declaration they signed and it seems obvious that most did not do this.

A clause in the Declaration allowed the MSD to amend the Declaration at any time and at its discretion so it could have retrospectively clarified the rules and added any new rules to ensure that required repayments were made.

An OIA request asked Why has the Declaration not been clarified or changed, as was agreed to by those who received the wage subsidy extension, in order to avoid widespread fraud?

The MSD said in response’ In the context of a high trust model, businesses were required to sign a declaration that they had met the scheme’s eligibility criteria. The declaration is extensive and includes an agreement that details in the application may be verified with other agencies, obligations in terms of use of the subsidy, and consequences of non-compliance. The declaration has been amended over time to ensure consistency with the policy intent of the wage subsidy and that businesses were committed to all necessary requirements.’

Despite what MSD said the Declaration did not comply with the wage subsidy objectives and policy advice and it was not amended to ensure that it was consistent with the policy intent.

The MSD had already said that ‘ The intent of the wage subsidy scheme was to support the public health response to Covid-19 and support businesses and employees through periods of economic shut-down and uncertainty.’

There was a Q and A on the MSD website that asked:

‘ As an employer or self-employed person, what active steps do I have to take to mitigate the impact of Covid-19?

You must take active steps to mitigate the financial impact of Covid-19 on your business before you apply for a Covid-19 Wage Subsidy.

This could include:

• activating your business continuity plan

• drawing on your cash reserves (as appropriate)

• making an insurance claim

• proactively engaging with your bank

• seeking advice from the Chamber of Commerce, a relevant industry association or the Regional Business Partner programme.’

The MSD ignored news media articles about abuse of the wage subsidy and how easy it was to create a drop in revenue. The Declaration signed by applicants allowed the MSD to make changes to the rules but they failed to acknowledge and correct the mistakes they made. None of the OIA documents have mentioned that the vast majority of businesses received the wage subsidy for many weeks when they were operating with normal or above normal revenue. Those who made a lot of money from the wage subsidy are not complaining so the easy option is to cover up what happened and avoid any extra work.

In July 2021 staff were given the following instructions as an introduction to Wage Subsidy Schemes. The New Zealand Government introduced the wage subsidy scheme to support businesses affected by the global impact of COVID-19 to retain employees. The Wage Subsidy Scheme is designed to:

- support affected businesses to retain employees when Covid-19 restrictions impact revenue; and
-

DRAFT

- help preserve employment connections between employers and employees and provide income for employees when they are unable to work.

This is another confirmation that the main purpose of the wage subsidy was for employees to retain an attachment or connection to employers. Those working from home or in essential services or whose jobs were not at risk should not have been included in the payouts

The wage subsidies this book is mainly concerned about are the original wage subsidy and the extension wage subsidy. Subsequent wage subsidies made some small changes to the Declaration that were an improvement and are evidence of the problems with the first two wage subsidies.

FAST PAYOUTS

Soon after the Prime Minister announced on Monday 23 March 2020 that New Zealand would go into lockdown for four weeks at midnight, 25 March 2020, panic buying started. People stocked up canned food, flour, soap, toilet paper. Supermarket shelves were left bare.

When the day of the shutdown arrived on 26 March, New Zealanders were greeted with a whole new world. All was quiet. Public venues were closed. Schools were closed. The streets were empty. Most travel was prohibited. People lived behind closed doors.

Not everyone had prepared for the shutdown. The Minister of Finance was poorly prepared. He has recounted how he was at work in the Beehive, but had not gone to the supermarket in time to stock up his office fridge. The Parliamentary café was closed, his fridge was bare. He was hungry. But he was in luck. He went next door to Kelvin Davis' office and found a loaf of bread that he borrowed. Starvation was avoided.

Over at MSD, finding a loaf of bread was the least of the problems faced by staff.

MSD was swamped with applications for the wage subsidy. All businesses were encouraged to apply. There would be limited checking of applications; money was to be paid out as fast as possible. The Government said that:

This scheme is a high trust system in order to ensure that money reaches workers and businesses as soon as possible. We urge employers to use the money provided by the scheme for the purpose it was intended, to support the wages of their employees.

One of the big consulting companies, PWC, advised on its website that;

`Our view is that the wage subsidy is not intended to be a 'last resort', as such it is not necessary that the business must have exhausted all other means before a claim can be made. `

Businesses were being urged by the Government to apply as soon as possible and that there would be limited checking of applications. On top of this, businesses were being advised not to worry about looking to see if they had the resources to pay staff when they were not working just go and apply for the wage subsidy.

Employers who had employees working from home or working in essential industries were able to claim the wage subsidy, provided the criteria for paying the subsidy was complied with.

No wonder hundreds of thousands of businesses applied.

No wonder MSD was swamped with applications.

There was no minimum age limit for receiving the wage subsidy. Stuff reported that children doing paper rounds or delivering circulars were able to obtain the part time subsidy rate of $350 per week or $4,200 as a lump sum payment over the 12 week period of the subsidy. This was far more than they would normally earn. But these were minor problems.

MSD scrambled to pay out money as fast as possible. On one day, $1.8 billion was paid out by MSD for the wage subsidy. MSD reported that on another day, they received 70,000 applications. Some employers reported that they submitted a wage subsidy claim in the morning and were paid in the afternoon.

How could so many applications be paid so quickly? MSD had 800 staff processing wage subsidy applications. Anyone in MSD who had access to a laptop was allocated wage subsidy claims to process and a total of 1809 MSD staff had access to the system that allowed them to process applications.

What was involved in processing applications?

Employers had to complete an online application form. They had to provide their business Inland Revenue number, business bank account number, details of staff requiring the subsidy (employee names, date of birth, Inland Revenue number) and contact details, including an email address and cell phone number.

For every wage subsidy application, MSD staff were required to phone Inland Revenue to check some basic information held by Inland Revenue, that is; was the application from a genuine business; did the applicant have a valid Inland Revenue number; did the number of employees that the applicant was claiming the subsidy for match Inland Revenue records. The amount of the subsidy being paid depended not only on the number of employee's being claimed for but also on whether they were full time or part time. If these details matched, the MSD staff member entered the payment details into the MSD payments computer and the claim was 'auto approved' by the system and paid.

There was no checking of approvals by other MSD staff. This was at a time when New Zealand was in lockdown and most MSD staff were working from home. If there were discrepancies when applicant details were compared with Inland Revenue records, what action did MSD staff take? No one knows as MSD retained few records of the tens of thousands of phone conversations with Inland Revenue. As a matter of fact, the MSD training manual for staff processing applications did not require staff to maintain a record of these phone conversations. Curiously, there is a different standard for Work and Income staff who process applications for benefit entitlements. In these situations, staff are required to keep a record of all phone conversations as part of an audit trail providing evidence for a decision to either grant or refuse a benefit. Apparently it was not important to maintain a similar audit trail for the billions of dollars paid out in wage subsidy funds.

Because of the overload of the MSD online application system, an unknown number of applications were approved over the phone. This meant MSD did not have a declaration form that had been submitted by the applicant, a crucial document for the high trust system.

But the motivating force for staff was to pay claims as fast as possible. MSD staff were not required to check if there had been a 30% drop in revenue or if applicants had sufficient cash reserves or had

approached their bank to see if other financial assistance was available. This was the beauty of the high trust system; if the applicant said something was true, then MSD had to assume it was true.

Did MSD staff phone Inland Revenue and check every application?

According to the May 2021 Auditor-General report on the wage subsidy scheme, there were 441,374 approvals for the original wage subsidy scheme. 48,718 applications were rejected. All the approved applications and rejected applications were said to have been checked with Inland Revenue, meaning that a total of 490,092 phone calls should have been made to Inland Revenue.

The Inland Revenue Annual report, for the year ended 30 June 2020, said Inland Revenue staff dealt with 380,000 phone calls from MSD staff to verify the business details of wage subsidy applicants.

Here is the difficulty. Inland Revenue says it dealt with 380,000 phone calls; the MSD data suggests there were over 490,000 phone calls that needed to be made to verify details with Inland Revenue. This means that there were 110,000 phone calls that needed to be made but which were not made.

Was it the case that MSD staff were under such time pressure that applications were simply approved, or declined, without checking with Inland Revenue? MSD staff relied on the declaration made by applicants as proof that they complied with the conditions for paying the subsidy. Staff may have just approved applications, relying on the fact that the applicant had signed a declaration testifying that all details in the application were correct. But who knows. Because MSD records had so few details of the phone calls to Inland Revenue, no one will ever know if each application was checked with Inland Revenue.

The very fast payment of money to big business.

All applicants for the wage subsidy had to provide details such as their tax number, number of employees, checked with Inland Revenue before payment was made.

A more lengthy telephone discussion was held with companies that had more than 80 employees. These discussions were described by MSD as pre-payment audits. These checks were seen as necessary by MSD because of the risks associated with paying millions of dollars to individual businesses. This was a sensible precaution, intended to prove that an application from a business with more than 80 employees was a genuine business and understood the criteria that had to be complied with before the subsidy was paid. The pre-payment audits were carried out by the MSD's Fraud Intervention Services, a group of specialist fraud investigators. The pre-payment audits of applications from large businesses started on 30 March 2020.

In December 2020, MSD advised the Minister of Social Development that during 2020, MSD paid out $13.8 billion for the three wage subsidy schemes that operated in 2020. Of this amount, $5.8 billion was audited through prepayment audits and most of these pre-payment audits were of large employers. This advice would have re-assured the Minister that applications from large employers were being carefully audited and that taxpayer money was not being handed out to large, wealthy businesses that had sufficient cash to survive the pandemic without a taxpayer funded handout. But should the Minister have been re-assured by these pre-payment audits? Probably not.

The prepayment audits involved an investigator first checking details with Inland Revenue, and then carrying out a desk based review to confirm the business was registered and operating in New Zealand. The investigator would then phone the business and work through a check list of suggested questions. Set out below is a summarised version of those parts of the four page pre-payment audit check covering the topics to be discussed when phoning a business.

Table One contains a brief description of employer obligations for accepting the subsidy.

Table One: Telephone audit guide

Call employer

Qualifications and obligations ● NZ employees/legally working ● 30% decline/mitigations ● Spoken to employees ● Employees knows application has been made. ● You must pass the payment onto the employee ● Employee will be returning to the job	

To provide further assistance with the phone call, the audit form provides more detailed ‘prompts’ for the questions to be asked when phoning a business. These prompts are set out in Table Two below.

Table Two: Telephone Prompts

Prompts and scripting to support your telephone conversation

Scripting (refer desk file for more info)	NOTES: Record your notes in here
Cover employer obligations	
This part of the audit allows you to check everything with the employer. It includes: ● Their eligibility ● That they are a real business ● A reconciliation of their employees numbers ● That they are meeting their obligations	
More detailed questions will include but not be limited to: ● Are all your employees legally employed in New Zealand? ● Have you experienced a 30% decline in business? ● Is the loss attributed to COVID-19? ● How many /have you spoken to every employees you are applying for? ● Have they all agreed that you could apply for the subsidy for them? ● What are you doing to retain your employees named in your employees named in your application?	

The pre-payment audit system put in place by MSD required the fraud investigator to work through these questions and record the results and the decision made on eligibility for the subsidy.

What is missing from these conversation prompts are questions about whether the business had tried to limit the impact of COVID-19 on their business by engaging with their bank, drawing on cash reserves or making an insurance claim. For some reason, MSD did not see such questions as appropriate for a pre-payment audit. But in terms of safeguarding taxpayer money, and to comply with the criteria for the scheme, assurance should have been sought that the subsidy was not being paid to a well-off business.

In any event, the MSD expectation was that investigators would use the audit form and ask the questions listed. Key areas for the investigators to cover were:

- Had there been an actual or expected decline 30% in revenue over the period of any month being applied for, when compared to the same month in 2019?

- Was this loss attributable to the COVID-19 outbreak?

- Have all employees agreed that the business can apply for the wage subsidy on their behalf?

Were these questions asked by the investigators? Not all were, and neither were applications from large businesses necessarily reviewed by the Fraud Intervention Services staff.

The August 2021 Finance and Expenditure Committee report stated that : 'During the first two third wage subsidy periods:

a. MSD received approximately 943,100 applications under the wage subsidy scheme;
b. MSD made payments totalling approximately $13.385b in relation to approximately 735,270 applications;

MSD closed approximately 75,480 applications; and

(c)MSD declined approximately 132,250 applications.

It is not clear what MSD means by 75,480 closed applications but they may have got no response after contacting the applicants and about 20,000 recipients repaid. The total of closed and declined applications is 22% of the total received and this was after making a couple of quick pre payment checks under a high trust model. This indicates that if proper post payment checks had been made a huge amount of fraud would have been uncovered

Fletcher Building Ltd.

The application by Fletcher Building Holdings (Fletchers) is a good example of the 'pay the money as fast as possible' approach.

The application was reviewed by MSD's Fraud Intervention Services on 6 April 2020, and the pre-payment audit followed the required format for these audits. The notes made by the MSD investigator refer to the fact that Fletcher's is one of the largest companies in New Zealand, founded in 1909. The application was for 9,361 staff and 124 part time staff employed at the 69 companies that were part of Fletcher Building Holdings. A check was made with Inland Revenue to confirm the number of staff employed at each of these 69 companies.

Fletchers were telephoned on the morning of 6 April to discuss their application.

The record of this conversation was as follows:

Detailed conversation, one of largest listed companies in NZ. Extensive media coverage of Fletcher's pay agreement with employees in relation to Covid-19. 90% of workforce are currently not working. 10% of staff are working on essential services (Placemakers providing essential materials to some builders and minimal road services).

Employer confirmed that employees had been informed about the subsidy and replied. They used various methods as some employees are considered 'unwired' (without access to email). A number of truck drivers came into this category and they were contacted by text. Letters were sent or personally delivered to some employees that they were unable to contact. They did receive a number of declines and these employees were not included in the application. Resignation and redundancy policy understood. All employees are employed in a subsidiary with a unique IRD but on advice from MSD, they have applied under the Fletcher Holdings umbrella instead of 69 separate applications.

All 69 entities were cross-referenced with all returns made to IRD to confirm total number of employees. This was then matched with employer records of numbers of employees associated with each entity. Employer confirmed that everything provided is true and correct. Subsequent application received for 209 employees, 16/04/2020. Within IRD range. Employees who did not initially give consent to be included subsidy application and casual employees.

The focus of the conversation was on how Fletchers had obtained consent from their thousands of employees to have their names included in the wage subsidy application.

The investigator checked that the number of staff being claimed for matched Inland Revenue records. Presumably there would also have been some testing that the employee names submitted by the employer matched the names in the records held by Inland Revenue. If there was such testing, there is no mention of this in the pre-payment audit.

The investigator noted that most of the companies were closed for trading, the assumption being that revenue had fallen by 30% or more, over a one month period. A reasonable assumption, but the investigator should have asked for details about the actual revenue figures and should also have asked which month the 30% fall in revenue was being compared with.

Fletchers was not asked about whether a company of its size had the cash resources to draw on.

MSD staff will interrogate beneficiaries about their finances, but made no attempt to question Fletcher's, a large, wealthy company, about their financial situation. Once MSD received verbal confirmation that Fletcher's had contacted all staff to advise of its intention to apply for the wage subsidy, the subsidy was approved on the afternoon of 6 April and $67 million paid to Fletcher's on 7 April.

The average time for the processing and payment of wage subsidy applications for the original scheme was 4.24 days. But the wage subsidy application for Fletchers, one of New Zealand's largest companies, had its wage application for $67 million processed and paid in just over a day.

Did this mean big business was given preferential treatment? Undoubtedly.

Fletchers, which had almost 10,000 staff, also asked MSD about the situation where staff resign or leave during the 12 week period of the wage subsidy. They wanted to know if they had to advise MSD of any staff resignations.

MSD was very helpful and said;

If you have employees in this situation during the subsidy period, you are not required to repay the subsidy – you should use this to assist with making final payments to resigning staff and if there is additional money left over you could use this for supporting other employees/business.

Before providing such advice, it would have been helpful if the MSD official had read the employer declaration, which was prepared by MSD. The declaration states that the subsidy can only be used for named employees: 'You will only use the subsidy for the purposes of meeting your named employees ordinary wages and salary and your obligations in relation to this subsidy'. There is a further requirement in the declaration that: 'You will notify the Ministry of Social Development within 5 working days if anything changes that may affect your eligibility or entitlement to the subsidy, including if any of the employees named in your application end their employment relationship with you'.

Employers are required to advise MSD if a named employee left at the time the wage subsidy as being paid. So when a named employee resigned/left/been fired, MSD must be advised. The subsidy money, which was paid in advance, could only be used in respect of a named employee, and the amount of subsidy money left after an employee resigned would need to be returned to MSD. Fletchers were gifted an unknown amount of taxpayer money for staff who had resigned and about 1000

Staff worked throughout the subsidy period..

MSD PHONE CALLS FALSELY CALLED AUDITS

Cabinet approved the wage subsidy scheme on the basis that money would be paid out as fast as possible, with limited checking of the validity of applications. There are considerable risks of fraud and error when large amounts of public money are paid out very quickly in emergency situations. This risk was recognised and the Government was assured by officials that there would be a significant 'ramp up' of anti-fraud activities and auditing of the scheme to detect any fraudulent claims. The Government and officials were right to recognise that paying out huge amounts of public money, combined with the limited checking of applicants for the subsidy carried a high risk of paying fraudulent applications.

The Auditor-General, in a detailed report on fraud issued in 2011, drew attention to the fact that there was widespread fraud in New Zealand and explained that:

Fraud is a fact of business life in New Zealand. According to the 2009 PwC Global Economic Crime Survey (21% of the respondents in New Zealand were public sector organisations), 42% of New Zealand respondents had suffered from an incident of economic crime in the 12-month period preceding the survey (August 2008 to August 2009) with an average cost of almost $492,000. Of the public sector respondents in New Zealand, 50% reported that they had suffered fraud in that same period.

The fact that fraud is a reality for everyday business life in New Zealand should have been factored into the design of controls over the payment of the wage subsidy.

The May 2021 Auditor-General report on the wage subsidy scheme drew attention to international experience that high trust approaches in emergency situations are inherently at high risk of fraud.

In the case of the New Zealand wage subsidy scheme, the risks of fraud and error were compounded as, for the original scheme, MSD had to rely on making phone calls to Inland Revenue to check that applicants were genuine businesses. That required MSD staff to make hundreds of thousands of phone calls to Inland Revenue and, together with the overriding need to make payments as fast as possible, compounded the risks of error. There was no record retained on MSD files of the outcome of these phone calls. There was no checking of the decisions made by the hundreds of MSD staff members approving applications. The same person who processed the application made the decision as to whether or not the application was to be approved or declined. This process would also have increased the risk of error.

Given these circumstances, and especially the speed at which money was paid out, there needed to be a well-designed and effectively implemented post-payment audit programme. Such an audit programme would need to be capable of providing assurance that those applying for, and receiving the wage subsidy, complied with the criteria set by Government for accepting the subsidy.

Regrettably, such an audit programme was not implemented. Because there has been no effective auditing of the wage subsidy programme, there can only be limited assurance that the $18.8 billon wage subsidy funding was paid only to those individuals and businesses that were compliant with the conditions for accepting the subsidy.

The wage subsidy auditing requirements.

The wage subsidy was a voluntary scheme and applicants for the subsidy had to complete a declaration testifying that they would adhere to the conditions specified in the declaration. These conditions included;

- You will provide the Ministry of Social Development with information about you, your business and (with their consent) the employees named in your application to the extent required by the Ministry of Social Development or its auditors to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.
- You consent to other agencies (including non-government agencies) providing information about you or your business to the Ministry of Social Development or its auditors, to the extent necessary in order for the Ministry of Social Development to make decisions about your application, and to audit and review any subsidy that is granted (to you or another applicant) and how any subsidy granted is paid to employees.

The declaration described the penalties for providing false information to MSD;

You acknowledge that you may be subject to civil proceedings for the recovery of any amount you receive that you are not entitled to and/or to prosecution for offences under the Crimes Act 1961 if you:

- have provided false or misleading information; or
- fail to meet any of the obligations about how you must use the subsidy; or;
- receive any subsidy or part of a subsidy that you were not entitled to receive.

The declaration gave MSD auditors the authority to access financial records of the applicant to support claims made in the application. Legal advice was provided by MSD lawyers and Crown Law in the preparation on the declaration forms for the COVID-19 wage declarations.

What sorts of business records would auditors need to check? In a published article of July 2020, two tax experts listed the sorts of documents that would be necessary to demonstrate that a business satisfied all parts of the scheme's eligibility criteria, including documentation that would show;

- The necessary revenue drop;
- The steps taken to mitigate the impact of Covid-19 on the business;
- What cash reserves the business had at the time of making the claim;
- What discussions were held with bankers, insurers or business advisors;
- What payments were made to employees
- On what basis did any employees cease employment (whether voluntarily or involuntarily) during the wage subsidy period.

Although intended as advice to business, this very useful advice could provide MSD auditors with a clear picture of the documents they would need to examine to demonstrate whether or not a business complied with the eligibility criteria for the subsidy. The advice provided a very good basis for planning audits of the scheme. Regrettably, this advice was ignored by the MSD staff.

Meet the auditors

The task of auditing the wage subsidy scheme was given to the National Fraud Investigation Unit of MSD, a team of benefit fraud investigators. The wording of the MSD declaration meant that only MSD could audit the wage subsidy scheme. A Memorandum of Understanding agreed between MSD and Inland Revenue allowed some sharing of information.

Given the crucial importance of properly auditing the wage subsidy scheme, it is worth reviewing the past performance of the benefit fraud investigators and to assess whether this was the appropriate choice of auditors and whether there were other options for auditing the scheme.

Before the arrival of Covid-19 in New Zealand, there were about 150 fraud investigators based in MSD offices around New Zealand and who investigated benefit fraud. The fraud investigators worked in conjunction with the MSD Intelligence Unit which identified emerging risk and potential instances of benefit fraud. The core requirements for fraud investigators included a good knowledge of the Social Security Act 1964 and other related legislation and a good knowledge of the benefit system. Other requirements included the skills necessary to conduct benefit fraud investigations and effective phone based interviewing and questioning skills. The fraud investigators are engaged in sensitive and specialised work and it would be a difficult job to carry out effectively. Their investigations must comply with the Social Security Act1964, the Privacy Act 1993 and the MSD Code of Conduct.

Fraud investigations are very different from audits. An MSD benefit fraud investigation is into a specific person where wrongdoing is suspected. By contrast, an audit examines financial records to check for accuracy and compliance.

The term ‘benefit fraud’ generally refers to someone knowingly collecting a Work and Income benefit that they are not entitled to.

Beneficiaries’ personal circumstances often change, and this may result in overpayment of a benefit unless Work and Income are advised of these changes. Many fraud investigations are about the possible overpayment of a benefit as a result of these changes.

Fraud investigators undertake a large number of investigations, as shown in the Table 6:

Table 6; Number of investigations into benefit fraud

	2015	2016	2017	2018	2019
Number of investigations	5342	5326	5268	4755	5385
Successful prosecutions completed	927	598	436	277	121

(Source; MSD, September 2019. Data from 2020, 2021 has not been included as most investigators were taken off benefit fraud investigations and worked on wage subsidy audits)

Serious problems with the conduct of MSD fraud investigations

The MSD benefit fraud investigators have carried out thousands of fraud investigations. However over the years, there have been serious problems with the conduct of these investigations. A community group complained to the Privacy Commissioner about the Ministry’s information gathering practices when conducting fraud investigations.

The Commissioner investigated this complaint and in his report, published in 2019, the Commissioner said that:

‘I have found that the Ministry’s exercise of their information gathering powers is inconsistent with its legal requirements, including the Privacy Act 1993. This failure has resulted in infringements on individual privacy.’

In other words, the Commissioner found that MSD fraud investigators had systematically misused their investigatory powers while pursuing benefit fraud, unjustifiably intruding on the privacy of many beneficiaries. For example the Commissioner said that:

‘In one instance, a beneficiary described to us how MSD obtained, from a telecommunications company, an intimate picture shared by that individual with a sexual partner. The photograph was then produced at an interview by MSD investigators seeking an explanation for it.’

The report refers to the poor record keeping in fraud investigations and the improper methods of gathering evidence. Since 1994, there have been repeated calls on MSD by the Privacy Commissioner to improve its practices on how information is collected. Some examples were detailed in the Commissioner’s report of past improper MSD practices.

In one case, the College of Midwives complained that midwives had been approached by MSD fraud investigators and told they had to report to MSD if they had seen men’s clothes in a beneficiary’s house they had visited. The midwives were told that failure to report would be a breach of the law.

The Commissioner’s report contained links to media reports of other investigations involving MSD and which the Privacy Commissioner wanted to draw attention to. In October 2017, RNZ reported on a Coroner’s investigation into the death of a beneficiary. The beneficiary committed suicide less than a day after receiving a letter from MSD saying her benefit had been overpaid by $22,000 and that she would be prosecuted.

At the Inquest, the MSD fraud investigator said he was told to prosecute her, despite telling his manager that she was at risk of suicide and should only be given a warning. The investigator also said that each month;

- Investigators were required to ‘get’ at least one prosecution.
- Had to recover $30,000 of debt.
- Had to clear four cases.

If these performance targets were not met, it was alleged that investigators were placed under performance management.

The Coroner found that MSD management were not aware of the suicide risk and that prosecution did not automatically follow a successful fraud investigations.

However the Coroner did refer to an MSD annual report which said MSD had a policy of zero tolerance of fraud and ‘Where we find evidence of fraud we will prosecute’. The Coroner said that the messaging in the annual report was consistent with the belief of staff that management wanted prosecutions.

MSD later found that the debt owed by the deceased beneficiary was $5000 and not $22,000.

MSD then commissioned an independent assessment into its fraud investigation practices, a report that was published in October 2019. This report identified a lack of ongoing training for experienced investigators, weak oversight, as well as a failure to regularly review and update policies and procedures.

It might be thought that after the Privacy Commissioner’s very critical report, and with MSD agreeing to implement recommendations in the report, there would be no further problems with MSD fraud investigation staff. Not so.

In September 2024, RNZ reported on the practice of MSD staff secretly using fake profiles on social media sites to spy on beneficiaries. This practice had been going on for at least a decade. The RNZ investigations revealed an earlier report into the use of fake profiles. This was a report completed for MSD by the consulting firm EY in 2021. EY had been contracted to report on the controls over the information gathering activities of the MSD Intelligence Unit. EY found that the use of pseudo or false social media profiles was a matter of particular concern and said that;

‘Current practice dictates this profile has no picture, no pages linked, and requires a fake name and email address to be set up. While the information gathered by these means is open source, the use of pseudo profiles can be viewed as deceptive and underhanded. It can also be seen as a breach of the terms and conditions of various social media platforms.’

One of the major concerns identified by EY was that information was being gathered on individuals not directly subject to any investigation. The files also contained photographs, names, comments.

RNZ reported that MSD knew by 2017 that it was breaking social media platforms’ own rules but judged the risk was worth it to get hold of personal information. The use of fake social media profiles was suspended in 2021 and finally abolished in 2024.

So the responsibility for auditing the wage subsidy programme was given to a team of benefit fraud investigators who had a history of breaching the privacy of individuals and acting in deceptive and underhand ways to obtain information about beneficiaries. It should have been of concern that benefit fraud investigators had no experience or expertise in auditing businesses. Such audits, to be effective, would involve examining company documents and financial records.

Could MSD have used staff other than the fraud investigation team to audit the wage subsidy scheme? Did MSD have qualified accountants and staff with experience in reviewing financial records?

The answer to both questions is ‘Yes’.

MSD is one of the largest public service departments. Prior to the arrival of Covid-19 in early 2020, MSD had a budget in 2019 of $26.4 billion and 6900 staff. Managing such a large budget required accountants, financial analysts, business analysts, and assurance specialists. In 2019 there were 105 such staff employed at MSD. MSD had staff with qualifications, skills and experience in examining financial documents and business records. However in none of the hundreds of publically available documents that have been examined in the course of writing this book, was there any mention of using those staff with financial expertise to audit the wage subsidy programme.

However, choice of the fraud investigation team was determined by the choice of the method of auditing that was decided on.

MSD decided that it would ‘audit’ the wage subsidy programme by telephoning applicants for the wage subsidy scheme to check that they complied with the criteria for granting the subsidy. At first, these phone calls were random calls, but were later targeted at those recipients whom MSD had some reason to suspect might not comply with the subsidy conditions. The MSD fraud investigators had experience with phoning beneficiaries to discuss their eligibility for the benefits they were receiving.

On the face of it, the fraud investigation team might appear to be the logical choice for auditing the wage subsidy scheme. Adopting the ‘auditing by telephone’ method enabled MSD to carry out a large number of ‘audits’. However the fraud investigation team did not have the training to undertake audits of the financial records that businesses had to maintain.

Of course far more ‘audits’ could be carried out by the telephone method of auditing than by the traditional audit method of examining business documents, although as explained on the Audit NZ website, financial auditors do not examine every transaction and use; statistical sampling methods to look at a small representative percentage of an organisation’s transactions to test the overall accuracy. The same approach could have been used to audit the wage subsidy payments to confirm that the criteria for accepting the subsidy had been complied with.

The point is that had MSD decided to undertake audits that examined financial documents, which is how audits are normally carried out, MSD did have a large pool of qualified and experienced staff who could have carried out a large number of audits.

Government expectations

To counter risks from fast payment of the wage subsidy, the Government expected to see a significant number of ‘post payment’ audits of the scheme. An audit requires the examination of evidence such as documents, financial statements, and tax returns. In the case of the wage subsidy scheme, an audit should have examined these records to verify compliance with the conditions for accepting the subsidy.

A Government statement was released on 24 April 2020, headed; ‘Wage subsidy audits to protect business integrity’. This was a joint statement by the Minister of Finance and the Minister of Social Development and said that auditing the scheme was very important as:

‘We owe it to those workers and employers to make sure their good work isn’t undermined by anyone abusing the scheme. We also have a duty to all New Zealanders to ensure taxpayer money is going where it is intended to support the economy.’

Assurance and audit processes put in place by MSD to support this work are overseen by a team of 104 fraud experts and investigators. The audit process will identify cases that may require investigation.

‘But New Zealand taxpayers and those who have accessed the scheme properly expect to see a fair process. If a business provides false or misleading information and knowingly commits a crime, they will be held to account. That’s a given.’

The Ministers were very clear that large numbers of investigators were ‘auditing’ the scheme. The press release mentioned that as at 24 April 2020, 4,687 audits had been completed. Ministers would have gained assurance from these numbers that the scheme was being thoroughly audited.

But this confidence was misplaced, and promises of those committing crimes under the scheme being held to account, were greatly exaggerated.

Auditing, but not as we know it.

In under a month, from the inception of the wage subsidy scheme, the MSD team of fraud investigators had carried out 4,687 ‘audits’ (as they were described at the time) of the wage subsidy scheme. This is a remarkable number of audits. After all, it takes MSD a year to carry out between 4000-5000 benefit fraud investigations.

But the MSD investigators were not auditing. They were making phone calls. MSD has described how the ‘audits’ of the wage subsidy scheme were undertaken;

‘The audit process considers all aspects of an applicant’s entitlement. These are desk based audits which can involve reviewing open source information, contacting the applicant to discuss their eligibility and contacting other agencies to confirm information’.

So the MSD audit process consisted of fraud investigators making phone calls.

They rang people, had a chat, and asked them to confirm verbally that they complied with the conditions for accepting the wage subsidy. They did not check financial documents, a process that is fundamental to auditing.

The desk file for the fraud investigators making the telephone post payment audits first required a ‘desk based’ review that enabled the fraud investigator to decide if the subsidy was paid to a real business that was operating in New Zealand. The desk file suggested that such searches could include publicly available information such as Google, social media and information from the Companies Office. Once the investigator was satisfied that the wage subsidy was paid to a genuine business, a phone call was made to the business. The desk file contains suggested questions to ask when phoning a business. The suggested questions included;

- Tell me about your business.
- Describe your business
- Have you experienced a 30% decline in revenue?
- Is the loss attributed to COVID-19?
- What actions have they taken to mitigate any decline in revenue?
- How do you operate?
- How do you advertise for business?
- How do your clients contact you?
- Who is your client base?
- How do you go about building your business?

The investigator had already established, from the desk review, that the business was a genuine one, so it is hard to see the point of most of these questions. The focus should have been on matters such as:

- The 30% decline in revenue;
- Was there documentation to prove the decline and if so, provide the documentation.
- The amount of available cash reserves and the actions taken to minimise the impact of Covid-19 on the operation of the business.

However the MSD list of questions do provide the basis of having a really good chat. If as a result of these chats, there was some suspicion that the requirements for payment of the wage subsidy may not have been complied with, further investigations may be undertaken.

How many investigations were undertaken following these chats over the telephone?

An MSD letter, dated 17 December 2020 in response to an OIA request provides the answer. As at 20 November 2020, MSD said it had undertaken 10,540 ‘audits’ that resulted in 398 ‘resolved’ cases.

What is a resolved investigation? This is defined in an MSD letter dated 16 February 2024, also in response to an OIA request. A resolved investigation means;

‘The investigation has been finalised but that there could still be some kind of enforcement activity to follow, such as the issuing of a repayment request, civil recovery or enforcement action’.

MSD said that resolved investigations could be reopened if new information became available.

MSD fudges the action to be taken after an investigation resolved. There might be some action after an investigation is closed. Or there might not be. In any event, making 10,540 phone audits of which 4% were ‘resolved’ and which may or may not lead to more action, seems a small return for so much effort.

Not ‘audits’, but ‘reviews’.

This innovative approach to auditing has also been commented on by the Auditor-General in the report on the MSD auditing of the wage subsidy scheme;

‘We use the terms ‘reviews’ and ‘review work’ to describe the post-payment work. We do not consider that the post-payment work carried out provides the level of assurance we expect of in an audit.This is because the work that was carried out did not routinely involve substantiation of information against a secondary source, such as requesting and reviewing documents to verify information provided verbally.In our view, it is possible that the post-payment work is less than what Cabinet would have expected when it noted the possibility of the Ministry of Social Development doing post-payment audit work. Similarly, the Ministry’s use of the term ‘audit’ to describe its review work could be misleading. As we were completing this report, the Ministry confirmed that it has changed its terminology and now refers to the work as integrity checks or reviews.’

The Auditor-General then described the MSD audit process as follows;

‘Review work started with a desktop review. This included checking some of the Ministry of Social Development’s systems and public sources for information about the applicant. Publicly available information might, for example, enable the Ministry to verify that a business was legitimate and operating before Covid-19. After the desktop review, there were phone conversations with the applicant. Where necessary, staff also spoke to employees and other government agencies. The staff having these discussions had experience in compliance interviews.

They were provided with conversation guides to help them obtain the relevant information.The reviews did not involve substantive review of documentary evidence, such as financial accounts. Most organisations prepare some form of financial statements. These, or similar supporting information, could have been asked for when an application for the subsidy payment was made (we understand that this was done by the Australian Government for its JobKeeper wage subsidy) or as part of the post-payment review activity.’

It is clear from this description by the Auditor-General that the work being carried out by the MSD fraud investigators was not auditing. The Auditor-General described these as reviews. In a paper to the Parliamentary Select Committee on Finance and Expenditure later in 2021, MSD said that calling its reviews of wage subsidy applicants was misleading as they were not audits and had decided to call them integrity checks or reviews. MSD stopped using the term ‘audits’ around April 2021, but by then MSD had completed thousands of phone audits. It was now well established in the public mind that MSD was auditing the scheme and most people would have assumed that documents were being examined as part of the audit process.

The Auditor-General said that MSD could have asked for documentation, such as financial statements, when applications were made, which was a requirement for the equivalent Australian wage subsidy programme. Although the Auditor-General seemed unimpressed by the auditing by telephone method, their only criticism was that it should not be called auditing. Once there was a name change to ‘reviews’, quite surprisingly, the Auditor-General was happy.

The Auditor-General has not reported on whether or not the records of the telephone ‘audits’ did at least cover key areas, such as revenue reduction, cash on hand, discussions with a bank, all factors likely to indicate compliance with the subsidy criteria. Provided MSD relabelled these audits as reviews, then the Auditor-General was happy. As will be discussed later in this chapter, the Auditor-General recommended that MSD needed to test the effectiveness of the telephone ‘audits.’

Changes to the Declaration

In early 2021, MSD concluded that there was after all a need to review documentation. A change was made to the declaration form for the March 2021 wage subsidy declaration requiring applicants to retain evidence showing how a decline in revenue was attributed to a move to Alert Level 3. The MSD manual for post payment integrity reviews was amended to provide that MSD auditors could now ask to see documents. MSD had been reluctant to demand that wage subsidy applicants provide documents because of a concern that demanding documents might breach the right of protection from self-incrimination. Compelling someone to provide information that might incriminate them is an offence punishable by a fine or imprisonment.

MSD was mistaken in its belief that asking for documents such as profit and loss statements, bank statements, was not a breach of the right of protection against self incrimination. MSD was within its rights to demand that 'pre-existing' documents, such as bank and other financial records that were existence before the request from MSD, had to be provided.

The revised manual for post payment reviews provided that MSD auditors could ask for documents to be provided, but they were not allowed to demand them. The auditors could only ask for documentation that the applicant agreed to provide, such as bank statements, profit and loss accounts. This is in contrast to MSD audits of beneficiaries who are told what documents they must produce. There were suggested questions for auditors to ask about the 'active steps' criteria, but no suggestions were provided describing the sorts of documents that might be sought to prove there had been compliance with this criteria.

After a phone conversation with the businesses being audited, a standard letter was sent setting out the documents that it was agreed would be provided. The letter concluded with a statement that if it was considered that providing the information sought would likely incriminate a person or company, then; 'You are not required to answer this request for that information. We recommend seeking legal advice'. MSD could not shake this belief that asking for 'pre-existing' documents might be illegal. It was not.

When the review process was completed, and if it was found that some or all of the subsidy should be repaid, the desk file instruction was that:

There may be several reasons for the repayment, so select as many as appropriate but ensure that you also select one of the following;

a. Fails to meet obligations on how to use the subsidy.
b. Was not entitled to or stopped being eligible for the subsidy(or part of)
c. Provided false or misleading information
d. Received insurance cost covered by the subsidy.

Oddly enough, whatever reasons may have been chosen to seek repayment, a failure to comply with the revenue reduction requirement was not listed as one of the reasons that must be selected in any request to repay subsidy money. Neither is there any mention of the need to repay the subsidy if a business had sufficient cash reserves. It might be concluded that in the view of MSD, repaying subsidy money when revenue had not declined by the amount specified in the subsidy criteria, or if the business had sufficient cash reserves, were not seen as a priority for demanding repayment.

No evidence of widespread fraud?

An MSD internal report of 8 June 2023 reviewed the operation of the wage subsidy programme. One of the conclusions in the report was that there was no evidence of widespread misuse of the subsidy scheme. MSD estimated that the level of fraud and error in the wage subsidy scheme to be 10.6% of the total cost of the scheme. This compared favourably to estimates of 5% to 10% for the UK equivalent wage subsidy schemes. Because the New Zealand rate of fraud and error was similar to that of the United Kingdom, the implication in the report is that auditing by telephone was effective.

The MSD miscalculation of the amount of fraud and error.

MSD estimated the amount of fraud and error by examining three aspects of the subsidy programme;

- The value of declined applications.
- The charges that were filed in Court.
- The amount of repaid subsidy payments.

$18.8 billion was the cost of the wage subsidy programme. MSD have added to this the value of declined applications to give a total value of application attempts of $20.1 billion. Taking into account the value of declined applications, plus the value of the charges before the Courts and the amount of repayments, MSD have estimated that their auditing work has saved $2.1 billion or 10.6% of $20.1 billion.

There are several issues however about the way in which MSD has calculated the money saved by its ‘auditing’.

1. The value of declined applications.

MSD has calculated that it declined applications worth $1.3 billion and that this was an indication that it closely checked all applications and rejected those that appeared either fraudulent or did not comply with the criteria for granting the wage subsidy. This seems an impressive amount of money saved by MSD.

But did it really save this much money?

A report by Motu Research looked at the rejected applications and found;

We have not undertaken an exhaustive analysis of why around one in five applications was declined.

The data that we had access to did not contain details about reasons for decline. However, a high proportion of declines appear to be for technical reasons, which we infer from the fact that many firms that were declined were subsequently approved when they re-applied. For instance, applications in the Resurgence wave were declined if they were submitted before the end of the period covered by Extension wave payments. Re-applications when eligible were generally approved.

The Motu report found that the MSD files did not contain any details about why an application was declined. Motu speculated that large numbers of declines were for technical reasons and that many firms were approved when they reapplied.

The Auditor-General also looked at the declined applications and found that;

Although the Ministry of Social Development provided us with information about declined applications, it was not adequate for us to carry out the analysis we wanted. However, the information did show that many of the declined applications were from sole traders.

The Auditor-General report went on to say that;

Many applications from sole traders were declined in early June 2020 and during August 2020. This was because Inland Revenue's information did not show them as a current self-employed business. Inland Revenue told us that it has made changes to its systems for future stages of the Scheme. Those changes will require more manual verification of sole traders' information and sole traders to prove their self-employment status when applying for subsidy payment. The Ministry of Social Development did not have the resources to investigate all these applications to find out why their details did not match Inland Revenue's information. Instead, the Ministry declined the applications and asked the applicants to update their details with Inland Revenue and reapply. We were told that most applicants did not reapply.

The Auditor-General could not determine why applications were declined, but had no trouble agreeing with MSD that the declined applications would have all been for valid reasons. It is likely that many applications were declined for valid reasons. But no one knows because the record keeping by MSD was so poor.

But the Auditor-General later provided a different reason for the large number of declined applications. In its letter to the Finance and Expenditure Select Committee of 21 December 2021, the Auditor-General told the Committee that;

'MSD told us that there are a range of factors that may contribute to declined applications in the recent iterations of the Scheme. It appears that the length of time given to applicants to correct information with Inland Revenue is one of those factors. In the first iteration of the Scheme, this could be around 12 weeks. In the August 2021 iterations of the Scheme, it was reduced to three weeks, given the much shorter term of each iteration of the Scheme.'

The Auditor-General now appeared to be saying that for the original subsidy scheme, it would take about 12 weeks for applicants to correct information with Inland Revenue. They would appear in the records as declined and as it would take weeks for applicants to correct information, they would continue to be classed as declined. It is not clear if, given the length of time to correct information, that the numbers of declined applicants were ever adjusted once applicant details had been confirmed by Inland Revenue.

The truth is; no one knows why so many applications were declined.

One of the problems was the lack of information about the self-employed. This was described in a report by MartinJenkins as follows;

Although advice to Cabinet identified trade-offs between needing to move at pace and needing to properly verify applications, in our view the advice did not give these trade-offs sufficient attention. In particular, the risk arising from holding only limited information on the self-employed for verification purposes was not sufficiently explored and may not have been well understood across all parties.

In other words, there was poor information on the self-employed and because of the speed at which applications had to be processed, huge numbers of applicants were simply rejected.

They may or may not have been eligible, no one really knows. However MSD cannot claim that the high number of rejected applications as proof of their effective management of the scheme and in particular fraud prevention.

1. The value of the fraud charges before the Courts.

The MSD report of 8 June 2023 said that the total value of charges before the Courts was $0.03 billion ($30 million). This was a lot of money, and seen as further proof of the effectiveness of the 'auditing' by telephone method. The difficulty is that two pages earlier in the MSD report, the value of the cases before the Courts is stated as $3.3 million. Somehow $3.3 million become $30 million. In fact, a review of the cases of convictions for wage subsidy fraud show that as at 31 May 2023, the total amount of fraud involved was a little more than $700,000. This represents a large sum of proven fraud, but does not equate to $3.3 million or $30 million. There can be a big difference between the amount of fraud offenders are actually convicted of when compared to the amount of fraud for those cases that have still to be tried.

1. The amount of subsidy repayments.

The amount of wage subsidy money refunded by businesses was $0.8 billion. ($831 million). MSD attributed the amount refunded by business to its integrity programme:

'The sum of our integrity programme stages to date is applications declined ($1.3b) plus repayments received ($0.8b) plus charges filed in Court ($0.03b). Based on this, our integrity programme has identified $2.13b in non-compliance to date, which is around 10.6% of the total value of application attempts.'

The fact that MSD could claim it had identified, as a result of its integrity work, that $831 million of wage subsidy money was paid in error and repayment was demanded, would have been news to some large companies that voluntarily repaid the wage subsidy.

The Warehouse Ltd repaid $51.9 million of the wage subsidy funds that it had received. The CEO of the Warehouse said that; Sales performance to date has been well above expectation, and our financial position has remained strong. We are now in the position where the wage subsidy can be repaid in full'.

The transport firm Mainfreight paid back $ 8 million of wage subsidy payments because it said that trading conditions had been better than expected.

These companies were not asked by MSD to repay subsidy money, but repaid the wage subsidy because they found that trading was not as bad as expected.

The MSD website explains the situation as follows;

Eligibility was based on a real or predicted decline in revenue at the time of their application. Profits that employers may have gone on to make after receiving the wage subsidy do not affect their eligibility. The Ministry has no powers to recoup wage subsidy payments that applicants were eligible to receive. However many employers have chosen to make repayments in this situation, which we welcome.

It is therefore not correct, as claimed by MSD that its 'auditing' led to businesses repaying over $800 million. Businesses repaid hundreds of millions of dollars because trading conditions were much better than expected and they did not meet the eligibility criteria.

How much money was refunded because of efforts by MSD?

In response to an OIA request of 30 June 2020, MSD provided the following information on repayments;

Table 7: Wage subsidy refunds, June 2020.

Refunds received	Amount
Employer initiated refunds	$222. 8 million
Refunds. (from allegation/audit/investigations)	$6.6 million
Total	$229 million

Based on 30 June 2020 data, which covered more than half of all wage subsidy funding, about 3% of the value of the refunded money was as a result of MSD 'auditing' work. The vast bulk of the refunded wage subsidy money was voluntarily repaid. In March 2021, MSD provided further data on refunds. An OIA request sought information on the number of businesses that had voluntarily repaid the wage subsidy. MSD said that 20,973 repayments had been made. Of this number, 18,755 repayments were voluntarily initiated by the employers and 2218, or about 10%, were initiated by MSD as a result of their 'auditing'.

In terms of the value of the refunded money, or in terms of the number of payments that were made on a voluntary basis, MSD cannot claim that $831 million of the money recovered was as a result of their 'audit' process.

MSD believed its 'auditing' by speaking to people had saved $2.13 billion. It is easy to show that this figure is nonsense. But based on this figure, and the fact that the New Zealand rate of fraud and

error was comparable to that of the UK, MSD was able to conclude that there had been a very high level of compliance and there was no widespread misuse of the wage subsidy scheme.

Was there widespread fraud?

Motu Research was contracted by MSD to report on the extent to which the wage subsidy scheme reached the intended people and businesses and were there any unintended outcomes such as unfair treatment of employees and potential misuse of funds. In order to conduct its research into the wage subsidy scheme, Motu made use of the extensive data sets on business operations maintained by Statistics NZ and anonymised tax data that is made available for research purposes.

There is a finding in the Motu report that is relevant to the question of whether or not there was widespread fraud of the wage subsidy scheme. Just to be clear, Motu was not engaged by MSD to determine if there was any fraud of the scheme but was to report if there was any potential misuse of wage subsidy funds.

One of the findings in the report was;

‘7.4.1 WSS-only firms: In the March 2020 wave, we observed 99,200 subsidised sole trader firms and 13,200 subsidised employing firms that could not be linked to other administrative business data sources. The majority of these firms were associated with individuals who had declared business income in personal tax returns. Although we cannot rule out fraudulent claims as an explanation for some of these WSS-only firms; we expect some of these firms were legitimately entitled to subsidy support or were small businesses outside the scope of the administrative data. In addition, imperfect administrative linking may contribute to some of WSS-only observed firms.’

Motu is careful to say there may be good reasons why this huge number of sole traders and employing firms do not appear in any of the business databases. But Motu does not rule out the possibility of fraudulent claims. It was outside the scope of the outcome evaluation for Motu to investigate this any further and Motu recommended that this was a matter that needed to be investigated.

So the situation is this. The only record of the existence of tens of thousands of sole traders and 13,200 employing firms is that they were paid the wage subsidy. Apart from that, no trace can be found of them. They seem to have disappeared from the face of the planet, taking hundreds of millions of dollars of taxpayer money with them.

It might be imagined that MSD would have been very interested in following up the Motu finding on the disappearance of thousands of people and companies that were paid the wage subsidy. But they appear not to have been interested.

In October 2024 a question was asked in Parliament about whether MSD had followed up the recommendation in the Motu report about investigating the apparent disappearance of thousands of companies that had been paid the wage subsidy. In reply, the Minister in charge of MSD, the Hon L Upston replied;

‘I am advised by the Ministry of Social Development (the Ministry) that Motu based its conclusions regarding the Wage Subsidy on anonymised administrative data provided by Stats New Zealand for research purposes only. The Ministry’s Wage Subsidy Integrity Programme has been the subject of several independent assessments, the most recent of which was completed by Deloitte in 2023. Based on this work, the Ministry concluded that the risk criteria and analysis undertaken by Inland Revenue was the most appropriate way to identify applications requiring further review.’

No investigation had been undertaken into the missing companies. The Minister is part of a Government that is intent on a programme of cost cutting and reducing public expenditure. It is surprising that the Minister (who was in Opposition during the period in question) is completely uninterested in the possible disappearance of hundreds of millions of dollars of taxpayer funds.

The Data and Statistics Act 2022 allows the Government Statistician to authorise access to identifiable data in certain circumstances and only to approved agencies. The tax data held by the Statistics Department used in the Motu research originated from Inland Revenue. If MSD really wanted to investigate the Motu findings about the missing companies, the Data and Statistics Act provides a procedure to be followed.

In the answer to the Question in Parliament of October 2024, the Minister referred to a 2023 report by Deloitte and the risk analysis undertaken by Inland Revenue. The Deloitte report recommended that MSD should;

'Consider the effectiveness of the Inland Revenue Risk Analysis Criteria in identifying Fraud and Error, including that MSD;

- Use the results of the Inland Revenue Risk Analysis of all schemes to validate the effectiveness of the risk factors and weightings.
- This could include identifying additional shared attributes among recipients whose integrity checks resulted in repayments.

All very well, but Deloitte goes on to explain that MSD may have trouble in completing such work;

The report recognises that MSD may be limited in completing this exercise due to the data available to it and the format in which integrity information is stored in the Ministry's relevant systems, but this will help determine the appropriateness of using the same methodology and risk scorings for future schemes. This includes the responsible agency for any future schemes having a validated risk framework to use as a baseline for developing its risk criteria, and that the framework is responsive to new risks relevant to the future schemes.

It is not always easy to penetrate the language used by consultants. But Deloitte seems to say that there is so little useful applicant data on MSD files, which, in combination with the way in which data has been stored on MSD systems, means that MSD should learn from this experience and concentrate on developing a risk framework that is better suited for any future wage subsidy schemes.

Deloitte seemed to think that MSD should be 'identifying additional shared attributes among recipients whose integrity checks resulted in repayments'.

This is desperation territory. Anxious to find something that MSD should be doing, Deloitte turned to recommending that MSD further review those wage subsidy recipients identified in MSD 'audits' as having to repay all or part of the subsidy and look for 'shared attributes'. However as only about 3% of repayment money was as a result of MSD 'auditing', it is difficult to see the value of looking for 'shared attributes' given the small value of the repayments. The only attribute that can be identified is that MSD 'auditing' was ineffective in identifying money that needed to be repaid.

When commenting on the Deloitte recommendation, MSD agreed that there was so little applicant information on their files that 'we are unable to effectively identify and analyse shared attributes of higher risk or fraudulent applications' and said that Inland Revenue holds the best information.

As both the Minister and MSD agreed that the risk analysis work undertaken by Inland Revenue was the most effective way to identify applications requiring further review, it might be expected that MSD would refer large numbers of wage subsidy files to Inland Revenue.

Inland Revenue review of wage subsidy files

Inland Revenue had no legal authority under the wage subsidy scheme to investigate potential fraud. However in the latter half of 2020, Inland Revenue undertook risk reviews of 928 wage subsidy files selected by MSD senior management. Inland Revenue applied the MSD audit process to audit these files. When the review was completed, the results of the review and the MSD files and the audit sheets completed for each audit were returned to MSD. Over a period of several months in 2020, Inland Revenue had 25 staff working on the review on the files, so this was a major piece of work for Inland Revenue. The results are presented in Table 8;

Table 8; Review of files

Match-no further action	No or low risk- no further action	High risk-follow-up required	No contact—follow- up required
415	341	127	45

Inland Revenue has provided further information on the composition of the 928 files referred by MSD;

- There were no files referred for large employers, that is, those employers employing 80 or more staff. This can only mean that MSD was satisfied that large employers did not present a risk of fraud. Presumably the files referred to Inland Revenue were those cases which MSD had suspicions about.
- 427 files were for sole traders, which MSD must have identified as a risk. However, in the group of 127 files identified by Inland Revenue as being high risk, follow-up required, there were only 4 files, or 3%, were from sole traders.

- Of the 45 applicants that Inland Revenue could not trace, 27, or 60%

were sole traders. This group of missing applicants had been paid the subsidy only a matter of a few weeks before the Inland Revenue review. If they could not be found it must have been because these were fraudulent applicants.

Inland Revenue graded 127 files as high risk and could not trace 45 applicants, a total of 172 cases or 18.5% of the files reviewed by Inland Revenue. Although not stated by Inland Revenue, it is clear that these 172 cases probably represented fraud and that 18.5 % may represent, in the case of businesses with less than 80 staff, the level of fraud of the subsidy scheme.

As Inland Revenue have access to GST records and business filings, have qualified staff to examine these records and undertook a detailed analysis of 928 wage subsidy files referred to it by MSD, it

might be thought that MSD would have referred more files for Inland Revenue to review. But this did not happen.

In reply to an OIA request that asked about the number of wage subsidy files referred to Inland Revenue since their review carried out in 2020, Inland Revenue advised that as at March 2025, no more files had been referred by MSD.

It is surprising that Inland Revenue, which had carried out an analysis of almost 1000 wage subsidy files and which appeared to show a very high incidence of fraud, was never again asked to undertake any more file reviews.

The Minister in her reply said that MSD had concluded that; the risk criteria and analysis undertaken by Inland Revenue was the most appropriate way to identify applications requiring further review.

The risk analysis and criteria referred to by the Minister were used to target post payment audits for the August 2021 wage subsidy scheme, which is discussed next.

The August 2021 wage subsidy.

The wage subsidy scheme of August 2021 was, after the original scheme of March 2020, the largest of the five wage subsidy schemes. The August 2021 scheme cost $4.7 billion and paid a wage subsidy to 1,258,166 recipients. The subsidy was paid two weeks in advance and applicants had to apply for each two weekly advance payment. There were 8 such payments.

Just to recap, New Zealand moved to Alert Level 4 on 18 August 2021, following detection of the Delta version of COVID - 19. On 1 September, all of New Zealand south of Auckland moved to Level 3 and then down to Level 2 on 8 September. Auckland stayed at Level 4 and level 3 lockdowns until 3 December 2021.

Paragraph 40 of the internal MSD report of 8 June 2023 said that Integrity and Debt;

Considers that the risk criteria and analysis undertaken with IR is the most appropriate way to identify those applications requiring further review. Client Services Integrity (CIS) is currently working through post-payment integrity checks for the August 2021 scheme based on this analysis.

The risk criteria that was applied to the August 2021 wage subsidy scheme was as follows;

Table 9: Risk Criteria.

Risk name	Explanation
‘Bank Account’	An indication of whether an employer or sole trader has met any of the ‘bank account’ risks including where the same bank account is being used by multiple employees or a bank account is associated with an unrelated entity.
‘Old and Young Sole Traders’	An indication of persons 16 years and younger, and those over 80 years applying/receiving the wage subsidy.
‘New Registrations’	Indicates an applicant has registered for either GST, PAYE, or as a new entity/new self-employed customer within proximity to the wage subsidy application.
‘Ceased GST pre-Application’	Indicates an applicant has ceased their GST registration prior to their application for wage subsidy, which could suggest they didn’t meet eligibility for the wage subsidy (as they were no longer in business etc.) or it could simply indicate their turnover has dropped below the required level to register for GST.
‘Liquidated/Bankrupt’	An indication of applicants that are potentially liquidated or bankrupted. This information is extracted from IR data regarding liquidations and bankruptcies and has not been linked with the Companies Office or any other third-party datasets.
‘Dormant Entities’	An indication of whether an entity has been flagged where it is unlikely to be in an ‘active’ trading situation. Three factors are looked at when determining whether there may be a risk of an entity being dormant: income tax registration, indicators on the IR account and return filing, and recent activity.
‘Government Assistance’	Indicates that an employee/sole trader is receiving

	some form of government assistance (MSD benefit/ACC etc.).
‘Fulltime Mismatch’	This risk was simple to analyse for the first few rounds of wage subsidy, as it looked at the employer information IR held and made and assessed whether the employee was FT or otherwise. For the latest rounds, due to the change in payment frequency, it may be less useful.
‘Overseas’	An indication of whether a customer is overseas. This could include indicators such as an overseas address or where a customer has advised IR they have emigrated. IR does not have Customs data, accordingly this is based on other indicators held.
‘Individual Across Multiple Applications’	Indicates that there are multiple customers sitting across multiple wage subsidy applications. This could indicate ‘fraud’ or fabrication of employees or where a sole trader may be claiming the wage subsidy whilst across other employer applications.

Some of the risks identified in the above table had recognised by MSD in the early stages of administering the wage subsidy scheme.

For example the risk of paying the subsidy to persons 16 years and younger, and those over 80 years applying/receiving the wage subsidy, is recognised in the June 2020 MSD manual for conducting integrity audits. There is a section in the audit manual entitled ‘Applicant is 5 years or under’ and helpful guidance is provided on how to approach a 5 year old child about their wage subsidy application.

Many people may wonder how an application for a child of 5 years or under should ever have been approved for payment by MSD. But such payments reflect the ‘pay the money out as fast as possible’ approach taken for the original wage subsidy scheme.

The manual says that ‘Caution is advised as to who you intend to talk to regarding the application as they are under 5 years old’.

This is very sensible advice as it would be difficult to talk to a 5 year old about the complexities of the wage subsidy scheme.

The manual does recognise that someone else probably filled out the wage subsidy application on behalf of the 5 year old and it is that person who should be interviewed over the phone. Suggested questions for this person included;

- Tell me about the work that the child does.
- How do they perform their duties?
- Days of the week worked?
- Nature of the work?
- How much are they paid each week?

MSD had recognised the risk of fraud from paying the wage subsidy to those aged 5 years or under, but the risk was only recognised after $10.9 billion had been paid out under the original wage subsidy scheme.

There are text books on how to talk to 5 year olds and one question to ask is; Tell me what secret power you have. Some children would be able to describe their secret power as; I was able to apply for and obtain a wage subsidy. Now that is a secret power worth having!

The post payment audits of the August 2021 wage subsidy scheme using new criteria for targeting audits resulted in the assessment of 266 high risk wage applications. Given that there were 1.1 million applications, targeting audits using the new criteria resulted in the assessment of only a small number of applications. A significant improvement to the post-payment reviews was that MSD could now ask applicants to provide supporting documents.

The results of these post payment audits are shown in the table below;

Full refund	62
Partial refund	59
No further action	64
Referred for investigation	81
Total cases assessed	266

Only a small number of audits were carried out, but the more targeted approach showed most of the applications (75%) that were reviewed were in breach of the subsidy conditions and demonstrates

effective risk targeting by Inland Revenue.

MSD audits its own ‘auditing’.

In its May 2021 report on the wage subsidy scheme, the Auditor-General said that the most significant way to manage the integrity of the scheme was the post payment work being carried out by MSD.

However the Auditor-General concluded that the post payment auditing work carried by MSD was not auditing as no documentation was reviewed and therefore did not provide the level of assurance expected of an audit. In order to confirm the validity of this method of post payment ‘auditing’, which involved speaking to people over the telephone, and given the huge amount of money involved, the Auditor-General believed that relevant documentation needed to be checked. Essentially, the Auditor-General wanted to see if wage subsidy recipients had written proof to collaborate what they had told staff over the phone.

The Auditor-General recommended that;

In relation to the Wage Subsidy Scheme, we recommend that the Ministry of Social Development test the reliability of a sample of the post-payment assurance work it carried out against documentary evidence held by applicants.

The recommendation was very clear. MSD needed to check eligibility criteria against the relevant documentary evidence. This did not require talking to people. Thousands of telephone ‘audits’ had been completed and MSD claimed that the result of all this auditing showed that there was very little fraud involved. The recommendation by the Auditor-General was intended to show whether or not the ‘auditing’ (or review work) carried out by MSD could be relied on. It was a very important recommendation.

What did MSD do?

First, MSD had to decide how many of its post payment audits would be checked, and decided that a sample size of 339 post payment ‘audits’ was needed and would include only ‘random’ audits. The post payment reviews that were to be audited were all from the original scheme. According to MSD, a sample of 339 of its telephone ‘audits’ would be;

‘a representative sample of those recipients subject to a random post –payment integrity check as part of MSD’s integrity programme’.

To assist with this review, Inland Revenue seconded 9 staff to MSD. As advised by MSD in an OIA response of 30 June 2022, the seconded staff had limited access to Inland Revenue systems or processes while seconded to MSD. As explained in their letter of 30 June 2022, MSD said that;

It is also important to note that information that may be requested from IRD by the Ministry, for the purposes of Wage Subsidy Integrity, is limited to the information detailed in the memorandum of Understanding agreed between the agencies. This can include information related to GST and income filings.

The situation was that while Inland Revenue staff were seconded to MSD they were largely restricted to analysing those documents which applicants decided they would send to MSD.

The MSD desk file for checking these 339 post payment telephone 'audits' describes how the fraud investigators were to carry out this work. The first step was to check MSD paperwork for details of the original telephone audit.

The next step, unbelievably, was to telephone the business. The objective was supposed to be to obtain relevant documents, which could be best achieved by writing a standard letter that listed the documents required.

But when dealing with businesses that had been paid the wage subsidy, MSD always preferred the telephone.

The desk file has a guide for the telephone conversation. Firstly, MSD staff were advised that if at any stage during the conversation they suspected fraud could be involved, they must stop the conversation and issue a warning. If there is no suspicion of fraud, the conversation could continue. There is a list of suggested questions including;

- Tell me about your business.
- Describe your business.
- How do you operate?
- How do you advertise your business?
- How do your clients contact you?
- Who is your client base?
- How do you go about building your business?

These are the same questions that were asked during the original telephone 'audit'. It is wasting everyone's time to ask these questions again. The list of suggested questions included;

At the time of applying why did they believe they qualified for the subsidy? What was their thinking at the time?

In asking a question such as this, MSD now wanted to get into someone's head and explore the thought processes underlying an application for the wage subsidy, an event that took place months ago. The whole point of the Auditor-General recommendation was for MSD to examine relevant financial documents. MSD did not need to collect information about thought processes. It is not possible to audit thought processes.

The desk file then moves on to cover questions about proof of the revenue decline. The list of questions to be asked included;

- Have you experienced a 30% decline in revenue?
- What evidence could you show us that your business has met the revenue decline test?

- Who calculated the revenue decline information? Tell us how you worked this out? Explain what the revenue calculation included.
- Request revenue calculation by email.

A list of documents was provided which MSD staff could request, but they could decide which questions they would ask. This was not a mandatory list; MSD staff could decide which documents they believed the person they were interviewing over the phone could provide. The list of possible documents included; copies of IR returns; bank statements; proof that their employees are lawfully working in New Zealand; evidence of business operating in New Zealand; PAYE returns; profit and loss account; emails.

The desk file instructions for obtaining documentation said that these were;

Some examples of information that may be sought as verification from the applicant (this is not an exhaustive or complete list but some examples) Requests for verification should be on case-by-case basis and relevant to your integrity check decision making.

There was a further instruction; 'You ask for documentation that you know they will be able to produce now'.

This was a very softly-softly approach. MSD did not send a standard letter to applicants specifying the documents that must be provided. After a discussion about matters of little relevance to whether or not the applicant complied with conditions for payment of the subsidy, the business then got to choose which documents would be provided.

The MSD auditing approach was generous to recipients of the wage subsidy.

But to be of any validity, calculations of the revenue reduction would need to be backed up with actual documents. Such documents would include sales data, invoices, bank statements and GST returns.

MSD, in a letter dated 5 May 2022 that was in response to an OIA request, listed the types of documents that were obtained for the review. MSD said that the documents provided included; - Verification that they are a real business.

- Information evidencing the required revenue reduction, for example, financial or bank statements.
- A reconciliation of their employee numbers (if they are an employer) to confirm they employed all the employees named in the application.
- Payroll information showing they continued to retain and pay their employees for the duration of the subsidy.

Records were sought to validate the revenue decline. However as explained later in this chapter, specific audit tests should also have been conducted to check that revenue decline had not been 'manufactured' in order to meet the revenue decline test and hence qualify for the subsidy.

There is another concern. The desk file for the auditors undertaking this review contained no suggestions about the documents that should be collected to prove an applicant had insufficient cash reserves and needed the wage subsidy. Some possible questions were suggested, which may or may not have been asked, but there was no requirement for the auditors to ask for any documents that would validate the lack of cash reserves. This means no documents would have been collected. Which also means there is no documentary proof to validate a requirement that applicants had insufficient cash reserves and required the subsidy.

In other words, a small survey that was intended to validate the effectiveness of the MSD phone audits failed to collect any documentary evidence that applicants had insufficient cash resources and needed taxpayer money.

An earlier OIA request to MSD in 2021 had also asked if the cash reserves of applicants had been checked. The question asked was:

‘ How many employers have paid back the subsidy because they have failed to take active steps’ to mitigate the financial impact of COVID-19, such active steps include drawing on cash reserves, as appropriate, or proactively engaging with a bank (these are examples cited on the Work and Income website).’

In reply, MSD said in a letter, dated 26 March 2021, that they did not have access to this level of detail. Such details were in notes in individual case files and MSD would have had to manually review thousands of files. MSD had no wish to undertake such work. In other words, MSD had no idea if its auditors had examined this criteria, and was not keen to find out.

In its report of May 2021, the Auditor-General reviewed some MSD files to check on whether applicants complied with the active steps’ criterion. However the Auditor-General could also not find any records to verify compliance with this requirement. In other words, a requirement for payment of the wage subsidy had been ignored by applicants and ignored by MSD. Of course it could be that most businesses had little in the way of cash reserves and if this was the case, then there is no issue. But only by auditing businesses records would it be possible to determine how many businesses were cash strapped and needed the subsidy.

There were over two million approved wage subsidy applications. There is no documentary proof that any of these applications complied with an important criteria that the subsidy would only be paid to applicants who had insufficient cash reserves. The Government was keen to ensure that the wage subsidy was not paid to cash rich companies that had the means to look after their own staff. Documentary evidence needs to be examined to confirm whether or not wage subsidy money was paid to cash rich companies.

MSD contradicts the Auditor-General recommendation.

The Auditor-General had recommended that the MSD post payment assurance work needed to be tested against documents, such as financial accounts and financial statements, held by applicants.

However it seems MSD was never that interested in collecting such documents. Reference has been made to the MSD internal report of 8 June 2023 which summarised the outcome of the ‘auditing’ work carried out by MSD. Section 25 of this report sets out MSD conclusions on their assurance exercises, and this section contains some statements on the value of collecting financial records from applicants.

Paragraph 25.3 of this report said that;

25.3 The random integrity checks undertaken were largely effective despite not requiring documents.

This point is elaborated on in the next paragraph;

25.4 Gathering documentary evidence in and of itself may not significantly increase the level of non-compliance detected.

MSD believes that its random audits were largely effective, but that is not what it told the Auditor-General, as reported in paragraph 4.67 of the Auditor-General report of May 2021;

‘We understand that the Ministry of Social Development does not plan to do any more random reviews. We were told that this is because, to date, that work has identified relatively few issues of concern. Instead, the Ministry has moved towards more targeted integrity checks for high-risk applications.’

So there was a time when MSD believed that its random audits were not effective, but now believed they were effective. Some evidence to support the claim in the MSD internal report of 8 June 2023 that random audits were effective, despite not requiring documentation, would have been helpful. But perhaps that is expecting too much.

MSD has more to say about documentation in paragraph 24.5 of its report of 8 June 2023:

‘We expect any assurance exercise requiring documentary evidence will find a small level of non-compliance, in line with the high-trust settings for the scheme, and data limitations mean we are not able to easily identify recipients whose eligibility changed or who had not met their obligations for the period covered.

The reference to ‘data limitations’ is a polite way of describing the poor record keeping by MSD.

But this is being picky.

The really significant issue in paragraphs 24.3 to 24.5 of the MSD Internal Report of 8 June 2023 is that MSD believes there is little point in collecting documents from wage subsidy applicants. This is in complete contradiction to the Auditor-General recommendation.

MSD apparently holds the extraordinary view that checking what applicants stated in their declaration against their financial records is of little value. No wonder they had such a laid back approach when it came to asking applicants to supply documents. They had no real interest in collecting and examining financial records. They choose a very small sample of post payment audits to review and let those undergoing the review to decide what documents they would sent to MSD.

What MSD should have been auditing.

Applicants for the wage subsidy scheme had to declare, amongst other requirements, that their business had experience and actual or predicted a minimum 30% fall in revenue. The 30% decline applied to the original scheme. Later schemes required a 40% fall.

Emeritus accounting Professor Mr Jilnaught Wong of Auckland University said that a macro indicator analysis showed that during the First Wage Subsidy period between 17 March 2020 and 9 June 2020, none of the months from January 2020 experienced the 30% decline in actual revenues; during the Wage Subsidy Extension and Wage Resurgence periods between June 2020 and September, none of the months experienced the 40% decline in actual revenues. The observations apply to domestic revenues, export revenues, and total revenues. In conclusion, the revenue numbers for the New

Zealand economy indicate that revenues did not decline by the 30% and 40% benchmarks, respectively, to be eligible for the wage subsidy. While this assessment is based on total revenues in the economy, some companies (claimants/recipients) would have experienced the 30% and 40% declines in revenues to qualify for the wage subsidy, whereas others would not have. Hence, the need to investigate and audit recipient companies' financial statements to substantiate their receipt of the wage subsidy based on objective and verifiable evidence.

The research carried out by Professor Wong shows that during the months in 2020 when wage subsidy schemes were in place, total revenues did not decline to the bench marks set for eligibility for wage subsidy payments. The data is for total business revenue and would include revenue from wage subsidised firms and unsubsidised firms.

Is it possible to estimate the amount of wage subsidy money paid to businesses that did not have a 30% of more decline in revenue?

The largest of the wage subsidy schemes was the original subsidy scheme, from 17 March 2020 to 9 June 2020 and which had a total cost of $10.9 billion. To qualify for this subsidy, applicants had to have experienced, or expected to experience, a revenue drop over a one month period compared to a previous month before the advent of COVID-19.

Applicants were paid 12 weeks in advance.

The report by Motu Research on the wage subsidy scheme estimated that, for the period April and May 2020, and when compared to a period before the arrival of Covid-19, 36% of the wage subsidised firms did not have a 30% or more decrease in revenue. Many of these firms could still have been eligible for the subsidy as they only had to estimate a revenue drop for one month, even if revenue increased over the remaining months.

But against a background which shows that total business revenue did not fall by 30%, and the analysis of the revenue for wage subsidised firms indicating that 36% of these firms did not have a 30% drop in revenue, then there could have been an overpayment of the subsidy. In total $3.9 billion or more could have been overpaid. This is an estimated figure, but by any measure, this represents a very large overpayment of the wage subsidy and which deserves to be examined in detail.

Another issue was a concern that businesses might deliberately try and reduce revenue in order to qualify for the subsidy. The Hon Paul Goldsmith was concerned that there might be attempts to deliberately reduce revenue and on 18 June 2020 asked the following question in Parliament to the Minister of Finance;

'Hon Paul Goldsmith: Has he heard of some businesses delaying invoices so that they met his wage subsidy extension threshold, and, if so, what steps has he taken to ensure the integrity of that nearly $4 billion programme?

Hon Grant Robertson: The audit process that's under way for the first phase of the wage subsidy scheme will be continued in the extension phase. The vast bulk of New Zealand businesses have done the right thing—made sure the wage subsidy has been passed on to their employees. Where that hasn't happened, we have said that we will follow it up and chase those people down.'

The reply by the Hon Grant Robertson which did not really answer the question, illustrates a continued misunderstanding by the Government that MSD auditing would uncover any businesses that were 'rorting' the system by using methods such as delaying invoices. The MSD method of auditing by telephone would never uncover such tactics.

Auditing Revenue Decline.

The only way to find out if subsidised businesses did not meet the revenue decline test, or had been, as suggested by the Hon Paul Goldsmith, deliberately delaying invoices to meet the revenue decline test, would be to carry out financial audits of these businesses. In his affidavit, Professor Wong outlined how the audit tests could be carried out.

Revenue could be deliberately reduced by holding back deliveries even though the goods are available and ready for despatch without logistical issues. Academics often refer to this as ‘real’ earnings management where the non-recognition of revenues affects the cash flows of the entity. (Patricia Dechow and Douglas Skinner, ‘Earnings Management: Reconciling the Views of Accounting Academics, Practitioners, and Regulators’, Accounting Horizons, June 2000, pp. 235-250.) Audits could be conducted to see if there were intentional delays in shipping out readily available goods by assessing the lag between order receipt and good delivery in the wage subsidy months and comparing it to the lag in the non-COVID (benchmark) months. Also, identifying whether there was a surge in revenues in months outside the wage subsidy claim period(s). For professional services industries such as accounting and law, audit techniques could be used to determine whether the regular pattern for billing clients (for example, an annual fee billed monthly) was consistently applied during the wage subsidy months For specialised industries with long term contracts (for example, building construction and software development), audits could again be used to determine whether the basis for determining the percentage of completion was consistently applied in the wage subsidy months.

The above are some illustrations of tests that could be conducted, and other tests could be devised for specific or specialised industries. The purpose of the tests would be to see whether the wage subsidy claimants behaved opportunistically and disingenuously in ‘manufacturing’ the revenue decline to meet the threshold required for the wage subsidy.

That is it say, comprehensive audit tests, as described by Professor Wong, would be required to establish if subsidised businesses had met the revenue decline requirements and had not been engaged in ‘manufacturing’ a revenue decline. Such audits cannot be carried out over the telephone.

Auditing the ‘active steps’ requirement.

Another requirement was that businesses needed to have taken active steps to mitigate the impact of Covid-19 on their business. One of the recommended steps was to draw on cash reserves. If a business had insufficient cash, then it could apply for the subsidy. The Auditor-General, in its May 2021 report said of this requirement that; ‘This requirement is important. It tests whether an applicant needs taxpayer-funded assistance. There is a risk that some applicants who did not meet this requirement received payment.’

Treasury has also commented on the requirement to assess the level of cash reserves available to a business and has said that:

‘Employers will need to declare that they have taken measures in advance of receiving the wage subsidy, to manage the implications of Covid-19 on their business, including drawing on internal cash reserves as appropriate engagement with their banks’.

Officials were clearly of the view that businesses had to first draw on their own reserves and if they lacked these reserves, only then should they apply for the wage subsidy. The requirement that companies should first draw on their own resources was originally specified by the Government as it did not want taxpayer money funding those businesses that had sufficient resources to take care of their own staff.

The ‘active steps’ criterion is straightforward, and is explained in an internal MSD memo to staff as follows:

‘This is aimed at ensuring a company is not applying for the wage subsidy without considering their ability to meet the need from their own resources or through other sources, and has actively explored options to reduce the impact of Covid-19 on the business. Businesses should be able to identify

suitable steps and justify the decisions they've made with regard to using resources before applying for financial assistance through MSD'.

This seems a clear explanation of the purpose of the 'active steps' criterion and how it could be complied with. However as explained earlier in this chapter, there is no evidence that MSD ever obtained relevant documents from applicants to prove there was compliance with this criteria.

In his affidavit, Professor Wong described the indicators for the cash reserves held by businesses:

'MACRO INDICATORS ON CASH RESERVES

Another condition of the wage subsidy is that a recipient would have had to mitigate the impact of COVID-19 on their business activities, including engaging

with their bank and drawing on cash reserves and making an insurance claim.

The paragraphs that follow examine relevant data which suggest that this

condition may not have been met. Paying dividends to shareholders is prima facie evidence that a recipient company has reserves and cash resources, evidence that cash reserves were available for a company to draw from for their business activities. The dividend payment does not reflect a cash strapped position and would be at odds with the eligibility for the wage subsidy.

Corporate finance theory indicates that dividend increases signal increases in

future earnings and cash flows, while dividend decreases signal lower future

earnings and cash flows. (Tim Koller, Marc Goedhart and David Wessels (McKinsey & Coamp; Company), Valuation: Measuring and Managing the Value of Companies. New Jersey: John Wiley & Sons, Inc., 2005. See pages 512-514.)

Maintaining dividends would suggest, at least, non-decreasing future cash flows. Hence, firms that continue to pay dividends presumably have ongoing maintainable cash flows'.

Professor Wong has drawn attention to the fact that companies that pay dividends are not in a cash strapped position. A good illustration of this point is when Fletchers received $67 million in wage subsidy money and several months later paid out dividends. (At that time Fletchers also had $1.6 billion in cash reserves).

But what was the overall situation as regards the cash reserves of businesses? Professor Wong examined the trends in bank lending to businesses as a way of assessing their cash position.

Research by Professor Wong shows the situation as follows:

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The Reserve Bank of New Zealand reports statistics for banks' lending to

businesses.

The changes in banks' lending to businesses between each month

in the first half of 2020 versus the same month in 2019 follow:

January 2020 versus January 2019 6.72% increase

February 2020 versus February 2019 6.34% increase

March 2020 versus March 2019	6.69% increase
April 2020 versus April 2019	6.44% increase
May 2020 versus May 2019	5.43% increase
June 2020 versus June 2019	2.85% increase

Offsetting banks' lending to businesses are the latter's deposits held in the former, and the latter must be netted against the former to get an accurate picture of a month's borrowing and deposits activities to see if a business's net debt position increased or decreased.

The RBNZ statistics indicate that businesses' borrowing positions for each month in the first half of 2020 were:

January 2020	$2,009 million increase in net borrowing
February 2020	$1,232 million increase in net borrowing
March 2020	$4,170 million decrease in net borrowing
April 2020	$6,416 million decrease in net borrowing
May 2020	$6,552 million decrease in net borrowing
June 2020	$9,348 million decrease in net borrowing

While net borrowings increased in January and February 2020, the situation turned in March 2020 and continued through to June 2020 in that net borrowings decreased in each of months from March 2020 to June 2020. The macro picture shows that businesses increased their cash flows from March 2020 to the extent that they were able to reduce their borrowings. Prima facie, this is evidence that New Zealand companies were not in a cash strapped position to justify receiving the wage subsidy.

Again, it is important to point out that this is a macro assessment, acknowledging that there would have been companies that were not able to reduce their net debt whereas others were able to, given their stronger cash position. The test is whether the latter should have received the wage subsidy. Hence, the need to investigate and audit recipient companies' financial statements to substantiate their receipt of the wage subsidy based on objective and verifiable evidence.

The decrease in net borrowings by businesses suggests that many businesses had strong balance sheets. This is significant. Before applying for the wage subsidy, there was a requirement in the

declaration form that applicants had to first to draw on any available cash reserves or consult their bank about obtaining a business loan.

The ‘active steps’ criteria never changed for all the later versions of the wage subsidy scheme. But it was a criteria that was largely ignored by applicants and by MSD.

How much money was paid to those who were in breach of the declaration and is it possible to estimate how much money was paid to applicants who had sufficient cash reserves?

A finding from a survey of 2,280 businesses in late 2020 found that 43% of businesses had sufficient cash reserves to continue operating for several months. This suggests that a significant proportion of applicants had sufficient cash reserves to last any or all of the lock downs. However this survey did not distinguish between those businesses that received the wage subsidy and those that did not. The survey notes that as at October 2020, 75% of those who responded to the survey had received the original wage subsidy, which had a total cost of $10.9 billion. It is possible that as much as $2.7 billion may have been paid to businesses that had sufficient cash reserves to last through the lockdowns.

If a business had sufficient cash reserves to make dividend payments then it did not need taxpayer funds to support the business. In these circumstances wage subsidy payments would, in effect, end up in the pockets of shareholders. What was required was in-depth auditing of the financial records held by businesses.

Was it possible to carry out effective audits of the ‘active steps’ criteria? It is possible and Professor Wong has suggestions as to how such audits can be conducted, which has outlined as follows:

ENGAGING WITH BANKS

Testing whether the wage subsidy claimants engaged with banks could take

these two paths. First, did the claimant have unused debt facilities and were they

within their covenant restrictions to continue to draw down from the facilities? If

so, why did they claim the wage subsidy, thereby contravening this criteria for

the Government’s support.

Second, if there were no unused debt facilities, did the claimant seek, apply, and

secure additional funding from their bankers and/or other lenders? Unless this

avenue has been exhausted, claiming the wage subsidy would have

contravened the criteria that required ‘engaging with banks’.

CASH RESERVES

Analysing movements in a claimant's cash flows is a relatively easy task. Business entities themselves do this on a regular basis as part of their prudent and ongoing cash management. Hence, an audit could be conducted by analysing a claimant's cash flows during the wage subsidy period to identify (i) cash flows from operating activities (buying and selling goods and meeting operating expenses and taxes), (ii) cash flows from investing activities (investing in capital assets), and (iii) financing activities (repaying debt and paying dividends).

Questions could then be raised as to whether cash used for, say, investments could have been used to support the company's wages rather than investing in long-term capital assets when short-term needs are the most demanding. In a similar vein, could debt repayments have been withheld with the approval of the debt holder and could dividends have been withheld?

While debt repayments are generally prescribed in loan agreements, dividends, on the other hand, are discretionary and ought not be paid when there is a pressing demand for nondiscretionary wages and salaries. Corporate finance theory indicates, and prudency dictates, that dividends should be paid when there are free cash flows. Clearly, if the wage subsidy is required to meet wages and salaries to employees, then prima facie, the company is not in a free cash flow position to make dividend payments, thereby indicating a breach of the wage subsidy requirement'.

The 'active steps' criteria can be audited and Professor Wong has described how such audits should be conducted.

Based on research findings by credible research companies, it is possible to estimate from these findings that as much as $5.8 billion of the original wage subsidy scheme of $10.9 could have been wrongly obtained and retained. While this is an estimate, it is not a figure that has been plucked out of the air. If this rate of wrongdoing is applied across the whole scheme, as much as $9.9 billion could have been involved.

More about MSD auditing

Reference has already been made to an internal MSD report, dated 8 June 2023, which summarised the work by MSD on auditing the wage subsidy programme. In this report there is reference to the fact that the MSD reviews of their own auditing relied on self-assessment by recipients. The report said;

‘Because self- assessment exercises rely on recipients to understand the eligibility criteria as they apply to them, we cannot verify the accuracy of responses without also reviewing documentary evidence, and a high level of compliance can be expected to be self-reported.’

Telephone audits, because they did not require the production of documents, were a self-assessment process. Applicants answered questions over the phone based on their own recollection and assessment of their compliance with the wage subsidy criteria. In this report, of June 2023, MSD is reporting that telephone audits were largely a waste of time. MSD admits that when people are asked if they complied with the criteria for the wage subsidy, then; a high level of compliance can be expected to be self-reported. Documentary evidence needed to be reviewed.

Should MSD have been given the role of carrying out audits which, to be effective, required the careful examination of financial records?

Officials have answered this question. In a report by MartinJenkins published in March 2023, MartinJenkins describes the workshops, and interviews held with officials involved in developing the wage subsidy scheme.

Their report contained observations made at a workshop involving government officials where officials were of the view that, in hindsight, the wage subsidy scheme would have been better delivered by Inland Revenue.

Reasons included;

- Using IR’s systems would been more aligned with the wider set of business supports and so would have reduced confusion and increased consistency, integrity, and assurance across schemes (with MSD focusing on support for individuals).
- IR would have had better access to the information needed to verify applications, as it already held much of it, and this could have improved the experience for applicants.
- IR should do it. The applicants are their customers. They have the information.

The point made by officials was that as Inland Revenue had access to all the key information, they were in a better position than MSD to undertake activities such as auditing the scheme. Although officials said such a view was with the benefit of hindsight, it should been clear from the start that as Inland Revenue held all business records, had staff experienced in examining and assessing financial records and Inland Revenue should have been given a legislative mandate to audit the wage subsidy scheme.

Phone calls falsely called audits

The Auditor-General’s May 2021 report said the following about phone calls:

Audits of applications, carried out after payments were made, consisted mainly of verbal confirmation of information from employers and, in some cases, employees. These reviews focused on checking compliance with eligibility criteria and confirming that applicants understood associated obligations.

Although the Ministry of Social Development has publicly described these reviews as audits, in my view they are not audits. In most cases, they did not involve substantiating the facts using independent, or at least documented, information

I am not persuaded that the reviews provide enough confidence that all applications that merit further investigation have been identified. As at 5 March 2021, 1017 cases had been referred for investigation.

I have recommended that the Ministry of Social Development test a sample of these reviews against documentary evidence held by applicants.

4.5 Most of the post-payment reviews involved phone conversations with people who received the subsidy payment. How accurately those conversations reflect the recipient's actual situation – for example, as recorded in their business accounts – is unknown. In our view, the reliability of those reviews should be tested against additional evidence.

4.6 Some post-payment review and investigation work has identified instances of abuse of the Scheme. At the time of our audit, the Ministry of Social Development anticipated a number of prosecutions, but none had yet entered the court system.

4.63. We use the terms 'reviews' and 'review work' to describe the post-payment work. We do not consider that the post-payment work carried out provides the level of assurance we expect of an audit.

4.64 This is because the work that was carried out did not routinely involve substantiation of information against a secondary source, such as requesting and reviewing documents to verify information provided verbally.

4.65. In our view, it is possible that the post-payment work is less than what Cabinet would have expected when it noted the possibility of the Ministry of Social Development doing post-payment audit work. Similarly, the Ministry's use of the term 'audit' to describe its review work could be misleading. As we were completing this report, the Ministry confirmed that it has changed its terminology and now refers to the work as integrity checks or reviews.

4.70. The reviews did not involve substantive review of documentary evidence, such as financial accounts. Most organisations prepare some form of financial statements. These, or similar supporting information, could have been asked for when an application for the subsidy payment was made (we understand that this was done by the Australian Government for its JobKeeper wage subsidy) or as part of the post-payment review activity.

4.71. Not requesting this type of information before or after payment means that there has been no objective validation of an applicant's compliance with the revenue reduction requirement. In our view, an audit should, as a minimum, include verifying the main eligibility criteria against relevant documentary evidence. This should have been done for a sample of applications. Given the

significant amount of public money paid and the fact that audit work could be carried out after payment, this is an appropriate step to take.

4.82. Post-payment reviews have led to 1017 cases being referred for investigation as at 5 March 2021. At the time of our audit, the Ministry of Social Development expected that its investigation work was likely to continue for another 12 to 18 months.

4.85. We understand that public organisations' ongoing integrity and prosecution work continues to divert resources from other work. However, in our view, it is important for abuse of the Scheme to be identified and appropriate action taken, including prosecution if necessary.

2.49. In the Ministry of Social Development's case, resources will continue to be diverted from investigating benefit fraud for many months. We understand that the public organisations involved in administering the Scheme want to get back to their core services as quickly as possible. However, we are concerned that this will disincentivise continued efforts on post-payment integrity work. This work is important to provide assurance to Parliament and the public that reasonable steps are being taken to ensure that the significant public money associated with the Scheme has been spent appropriately. The Ministry has confirmed that it intends to use resources from Inland Revenue to assist with its integrity work on applications for subsidy payments, and Inland Revenue has agreed in principle to this.

3.12. There has been considerable media coverage of, and public interest in, some private organisations that received a subsidy payment. This is particularly so for those that, despite experiencing or projecting a reduction in revenue, have nevertheless paid a dividend to shareholders or otherwise shown financial robustness.

3.13. This does not necessarily prevent private organisations from being eligible for the subsidy. We do not audit private organisations, and we have not assessed the eligibility of any private organisation that received a subsidy payment.

An MSD OIA response in March 2021 said:

"Wage Subsidy audits are not considered to be full technical or financial audits. Rather, the Ministry's audit programmes involve desk-based reviews of open source public information and contacting the applicants to discuss their applications.''

It is clear that the so called audits were really only checks and conversations by unqualified staff. Two requests to find out how many staff were working on wage subsidy fraud and how many on Benefit

fraud were not answered.

The checks were only as good as what it was decided to check. There were no checks to determine whether a drop in revenue was genuine or whether other important obligations had been complied with or whether a business was operating normally during any weeks for which the wage subsidy was paid.

The MSD said “As per the above declarations, we can advise that there was no requirement that employees abstain from work during the period their employer was in receipt of the Wage Subsidy. Furthermore, we can advise that as part of the Ministry’s audit programme, auditors were required to ask employers to confirm that their employees had given them permission to apply for the Wage Subsidy on their behalf.”

‘

NOTE: Treasury advice in March 2020 was based on businesses being shut and having to remain connected to employees. The specified loss of revenue had to be ‘attributable to the Covid-19 outbreak’ so the vast majority of businesses would only be adversely affected during a lockdown if their staff were at home and unable to do any work for the business.

The following is stated in the Declaration signed by applicants:

‘before making your application for the subsidy, you have taken active steps to mitigate the impact of COVID-19 on your business activities’ Some steps are listed including using cash reserves, getting assistance from your bank etc.

There is a long list of obligations under the heading ‘Your obligations to use the subsidy to retain and pay your employees’ These conditions in the Declaration make it very clear that to get and retain the wage subsidy a business must be adversely affected by Covid-19 and has no other way of retaining its employees. The big surge in business revenue after the lockdown for most businesses is the opposite of this and subsidy payments would never normally be made under these circumstances.

Recipients should have been asked whether employees had given their consent in writing to a list of conditions, as required. If employees had done this, they would not have been happy about having to work very hard to catch up in the weeks for which their employer had received a wage subsidy.

‘ However, it is worth noting that a business’s failure to meet their obligations under the Wage Subsidy scheme does not always mean that they sought to intentionally mislead the Ministry. From the audits conducted so far, the Ministry has found that in the vast majority of cases, employers are doing 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.'

Note that Since the outset, the MSD policy seems to have been to explain away and excuse fraud but in some bad cases to ask for a repayment and to not recommend prosecution. The Declaration did say that civil proceedings could be taken instead of prosecution.

"The Ministry has not instructed auditors that the 'changes' which affect eligibility include the return to normal or above normal work and revenue after 5 or 7 weeks of the 12 week period for which the Wage Subsidy paid, as this was not a requirement to receive the Wage Subsidy.''

The wage subsidy was paid for 12 weeks in advance and was not connected to eligibility for the subsidy. An honest recipient would have regarded the return to normal or above normal work and revenue after 5 or 7 weeks of the 12 week period for which the Wage Subsidy was paid as a major change and would have notified the MSD and would have repaid part or all of the wage subsidy. The specified loss of revenue had to be 'attributable to the Covid-19 outbreak' so the vast majority of businesses would only be adversely affected during a lockdown. The lockdown turned out to be shorter than expected. .

It was not necessary to state that any overpayment must be repaid because the clause about changes covered this.

"We can further advise that auditors were not instructed that 'changes' which affect eligibility include a rise in revenue above 70% (for the original Wage Subsidy) and 60% (for the Wage Subsidy Extension) during a 12-or 8-week period, respectively. As indicated earlier, reductions in revenue for the purposes of assessing Wage Subsidy and Wage Subsidy Extension eligibility were assessed over the period of a month. "

Note that requiring revenue to be down over 4 weeks but paying in advance for 12 or 8 weeks was a deliberate action designed to giveaway billions of dollars to businesses.

It is clear from the documents provided by MSD that audit staff concentrated on relatively minor matters and during a conversation only asked a few general questions about compliance with major requirements and did not ask the employer to verify anything.

A MSD Report on audit processes dated 15 July 2020 contained the following statements:

'Prepayment checks

10.5 where an employer has 80+ employees, employee ‘data is reconciled with Inland Revenue and a conversation is required with the employer prior to payment to make sure employers are aware of the eligibility criteria and their obligations.

Post payment audits

12. Insights from audits completed to date indicate that-the- vast majority of applicants have applied correctly. In a small number of cases MSD have requested applicants refund subsidy payments where the audit has determined they do not qualify.

21. MSD has developed an investigation approach for the scheme, which differs from that used to investigate benefit fraud.

26. ‘Criminal prosecution will be considered in the most serious cases. Any prosecutions relating to the payment of the subsidies will be led by MSD or other agencies. ‘

An audit normally involves making random checks within an organisation to ensure that accounting and other procedures have been correctly followed . Having a desk check and a conversation with 0.001% of recipients is not an audit. At the date when the report was written only a few post payment checks had been done. The claim that the vast majority had applied correctly was only wishful thinking.

The investigation approach for the scheme which differs from that used to investigate benefit fraud involves ignoring overpayments and reported abuse and not checking on the main compliance clauses .

A MSD OIA response on 9 March 2021 said:

‘Unlike Wage Subsidy recipients, beneficiaries are not randomly selected by the Ministry for integrity checks. However, benefit recipients are obliged to advise the Ministry of any change in circumstances that might affect their entitlement to a benefit. Also, a case manager may review a benefit at any time to ensure the client still qualifies and is receiving the correct rate of payment. When, for example, it is

bought to the Ministry's attention that a client has received an overpayment of his or her benefit, usually a debt will be established, and we will discuss repayment with a client.'

Wage subsidy recipients were also required to notify any change in circumstances. The original wage subsidy was overpaid but for the MSD it was not a case of establishing a debt and requesting repayment as usually happens with a Benefit.

The MSD advised that it had carried out over 10,500 wage subsidy audits but these were not thorough or accounting audits in the conventional sense of the word because they were just desk checks of information on hand. These checks included pre-payment checks and dealing with over 7,500 complaints.

The MSD distinguishes between wage subsidy audits, investigations and allegations. It does seem that audit checks or allegations can lead to investigations.

THE MSD KNOWS THAT OVERPAYMENTS WERE MADE AND THERE WAS WIDESPREAD ABUSE OF THE WAGE SUBSIDY BUT IT HAS CHOSEN TO DO ALMOST NOTHING ABOUT THIS.

MSD OIA reply 17 December

AUDITS

The following quotes show that what is called an audit is really only a check. If a recipient claims that they did not understand or know what was required, they are not investigated. Less than 10% of audit checks result in an investigation.

' The audit process considers all aspects of an applicant's entitlement. These are desk-based checks which can involve reviewing open source information, contacting the applicant to discuss their eligibility and contacting other agencies to confirm information.

Responses to checks are on a case-by-case basis, depending on:

• Does the applicant understand their obligations?

• Does the applicant meet the qualification criteria?

• Does the applicant know they must pass the wage subsidy on to employees?

• Has there been a payment in excess of entitlement?

- **If so, an assessment would be completed, and the employer would be advised of the amount of any refund required.**
- **What is the nature of how any overpayment may have occurred?**

• Is there evidence of fraud, i.e. providing false information or deliberately withholding information?

If so, the matter would be referred for investigation. 5.

The following quote and later data shows that most of the claimed audits were really only quick pre payment checks.

'There have been 10,540 audits completed as at 20 November 2020; this includes prepayment audits, as well as random and targeted audits'

'Our wage subsidy audit programme has indicated that the vast majority of applicants for wage subsidies did the right thing and were paid correctly.'

The Ministry informed applicants that they would be required to repay subsidy if they were not or stopped being eligible. Most refunds have been made voluntarily.

This may be because they have found that, they did not in fact qualify for the subsidy or, in some cases they decided that they did not require the subsidy despite qualifying for it. There is a range of reasons why a business may make a refund. For example, this may have been where an employer did not fully understand the criteria for payment, they did not suffer the expected loss of revenue or where employees for whom subsidy was paid, subsequently left their employment '

The following quote is from a submission to the Finance and Expenditure Committee of Parliament and claims that the post payment checks were pragmatic and reasonable. The checks were called audits for most of the time prior to the submission being made in mid-2021 and not just initially as claimed.

'We accept the point being made by the Auditor-General that MSD's reviews of wage subsidy applications are not audits, and that calling them audits could be misleading.

We have already changed our approach. Although initially MSD used the term 'audit', we only carried out reviews, and now use the terms 'integrity check' or 'review'. The work we carried out was a pragmatic and reasonable way to provide assurance on the scheme.'

In the third quarter of 2021 MSD and IRD staff checked a sample of 339 claimants using employee data. They found that 8% did not have the required revenue drop for a month and 6% did not retain some of the employees they claimed for. They did not look at whether businesses had had a drop in revenue for the 12 weeks they received payments for.

The post-payment checks completed (random and targeted) are shown by MSD as the same figure from 25/03/22 to the 30/12/2022. Clearly, this work was not done from March 2022 or earlier but sample reviews show that far more work should have been done.

‘Decisions about prosecutions are made only after a thorough investigation process.

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.

As of Friday 18 March, the Ministry has referred 1,218 cases for investigation of which 518 have been resolved and 700 are underway.‘

If a recipient claims uncertainty, they can avoid an investigation and possible prosecution.

COMPLAINTS LARGELY IGNORED

MSD, MBIE and IRD received 18,295 wage subsidy complaints as at 30 December 2022. MBIE and IRD sent to MSD any complaints they decided that MSD should take repayment action on. Presumably, the vast majority of complaints were based on genuine concerns or inside information but only 32 or 0.0017 % of the 18,295 complaints ended up with a prosecution.

There were no written instructions given to staff regarding what complaints to investigate and what investigations should be referred for prosecution.’

‘As at 11 December 2020, from across audits, investigations and allegations, $44.6m had been requested and $21.3m has been received. A total of $536.4m of wage subsidy had been refunded.’

As at 26 January 2021, 992 cases have been referred for investigation. Of these, 405 cases were initiated following an allegation of Wage Subsidy misuse.

The remaining cases referred for investigation were identified through targeted risk analysis or joint analysis with other agencies. Although the Ministry has carried out some random audits, none of these audits resulted in an investigation but some did result in requests for repayment.

As at 11 December 2020, 398 investigations had been resolved and a further 354 were underway. 148 investigations resulted in a request for repayment, totalling $2.9m. To date, $89,352 has been received.

As a result of the whole process, at 11 December $44.6m in repayments had been requested and $21.3m had been received. A total of $536 million had been repaid so $515 million of this was voluntary. These repayments are just the tip of the iceberg and indicate that over $5,000 million could have been repaid if the Government had written to recipients.

‘ As at 5 February 2021, the Ministry has completed 3,751 random Wage Subsidy ‘audits’ (i.e. since the Wage Subsidy schemes were established on 27 March 2020.

As at 5 February 2021, 4,717 complaints concerning recipients of the Wage Subsidy have been received by the Ministry (i.e. since the Wage Subsidy schemes were established on 27 March 2020). Of these, 3,273 were referred for further integrity checks. As at 5 February 2021, 6010 public allegations of benefit or social housing fraud have been received by the Ministry since 1 April 2020.’

About 30% of wage subsidy complaints were not dealt with and almost all the remainder were given a quick check. It was not a case of establishing a debt and requesting repayment as usually happens with a Benefit.

Those taking time to make a complaint would have had good reasons for doing so but they were not advised of the outcome.

Refusal to write to recipients requesting repayments

The Auditor-General’s May 2021 report said that:

‘In my view, the use of a high-trust approach at the outset needs to be balanced with adequate verification after the payment has been made to properly protect the use of public money.

I have also recommended that the Ministry of Social Development seek written confirmation from applicants of their compliance with the eligibility criteria and the obligations of receiving the subsidy. This could be targeted at larger or higher-risk applications.’

As part of our 2019/20 annual audit of the Ministry of Social Development, our Appointed Auditor recommended that the Ministry write to recipients of subsidy payments to seek re-confirmation that they complied with the requirements and obligations.

The Deloitte April 2020 report recommended that the MSD write to recipients to remind them of their wage subsidy obligations. However, less than half were written to and they were only reminded to pass on the wage subsidy and were given details of the extension wage subsidy.

In a July 2020 report to the Minister of Finance

The MSD said that ‘ Deloitte identified three areas that could provide valuable integrity enhancements in the short term, relating to increased communications around reminding businesses of their

obligations, and enhanced analysis and targeted auditing.

The MSD did not follow this advice and write to all recipients to clarify the rules or to make any necessary changes or to request repayments.

Deloitte reported as at 24 April 2020 so they did not know that there was going to be a 5 or 7 week overpayment. They were not asked to comment on the Declaration and eligibility criteria, including the 30% revenue drop. They said that the wage subsidy was a 'stimulus package' so they had the wrong idea about it from the start.

` The Wage Subsidy Scheme (WSS or the Scheme) is a ~$13 billion dollar stimulus package recently introduced by the New Zealand Government in response to the COVID-19 national 'lockdown' measures.'

1. Recommendations 1, 2 and 3 were flagged as priority areas in the report.
2. Recommendation 1: Follow-up communication with Scheme recipients
   - Use a targeted communications strategy when reminding recipients of their obligations to maximise the potential of early voluntary repayments.
3. Recommendation 2: Communications strategy to support prevention and detection
   - Communicate to all stakeholders (including the general public) the audit and investigation work being undertaken as well as the reporting options available to stakeholders.

(The MSD did not follow the Deloitte recommendations)

1. ' Note the key enhancements we are making by 10 June, when the Wage Subsidy extension begins, include:
   1. Increased communications with applicants before and after payment

The Quarterly report to the Minister at 30 June 2020 said the Deloitte recommendation regarding communication with recipients had been followed but this was not correct.

Once the MSD was aware that most businesses did not comply with the rules and did not need some or all of the wage subsidy, it should have written to over 740,000 recipients and requested them to repay the wage subsidy unless they could provide some or all of the following evidence to show that they were entitled to retain all or part of it:

(a) Evidence that they complied with the main requirements of the Declaration they signed including that they had no cash reserves to draw on and could not get assistance from their bank.

(b) Evidence from their GST returns over six months to show that they had a drop in revenue of 30% (or 40% for each of the weeks they received a wage subsidy payment.

(NOTE: GST Returns had been filed so the figures could not be fiddled by businesses.

(c)Evidence in the form of a schedule listing each person for whom the wage subsidy was received and the number of weeks and the dates involved. Each person to insert and sign details of the number of days they carried out work for the recipient of the wage subsidy between the specified dates.

It is accepted that it was not possible to audit all businesses but writing to them and asking them to complete a form detailing how they had complied with their obligations would have been a quick and cost effective way to check compliance. Even if all or most of the forms were never checked, this would have been a good way to prompt the repayment of billions of dollars.

The following quote is from a MSD submission to the Finance and Expenditure Committee of Parliament in mid 2021 and implies that there was communication with all businesses when this did not happen.

'The assurance processes put in place to support the integrity of the Wage Subsidy included pre-payment verification of business details, post-payment reviews and investigations, and communications to ensure businesses are aware of their obligations.'

In the Final 2022 Audit N Z report the following is stated about the need to recover overpayments but nothing has happened in the years since then.

'The Ministry needs to determine what additional steps are necessary to reach an acceptable level of understanding about how much may have been overpaid, and what it should do to recover overpayments.' This never happened.

The MSD was opposed to writing to recipients because it said that pressure would be put on call centre staff to answer questions. In the minds of officials this was a good enough excuse to allow them to avoid requesting repayments. They had no concern about the billions of dollars being thrown away and the impact on the community and future generations.

A news report on 24 November 2022 said: 'Dutch government demanding repayment of 1.4 billion euros in coronavirus wage support

Tens of thousands of employers who received wage support from the Dutch government between June and the end of September 2020 due to the coronavirus crisis must repay some or all of the money.

In order to qualify for the original wage subsidy, one of the conditions was that applicants had to certify that they expected their revenue to decline by more than 30%. This was an estimate only as at the start of the pandemic, no one knew what would happen to business revenue. But MSD never checked with businesses that were paid the subsidy to confirm if their estimated fall in revenue had eventuated.

For the original subsidy scheme, the payment of the subsidy was for 12 weeks in advance. If an applicant was paid the subsidy and the expected drop did not occur, then the subsidy had to be repaid. This was explained in a December 2020 OIA response from the MSD's General Manager of Client Service Support Service Delivery:

'Employers could apply for the COVID-19 wage Subsidy if they thought they would have a certain drop in revenue as a result of the pandemic in comparison to a similar previous period. If they did not experience this in revenue then they were informed that they needed to repay the money.'

However, MSD did not undertake any systematic checks with recipients to confirm if the predicted fall in revenue had eventuated. They should have written to all recipients and asked them to confirm in writing if there had been the expected revenue reduction, staff had given their consent and the MSD had been advised of a change of circumstances when lockdowns ended. This would have been a useful and inexpensive way to get back any overpaid or wrongly retained subsidy money.

In mid 2020 Audit N Z recommended that the MSD write to all recipients but the MSD got them to remove this recommendation from their report. This shows how keen the MSD was to avoid writing to all recipients. In 2020 The Gama Foundation tried in various ways to get the MSD to write to all recipients but was not successful.

'In December 2021, in comments made about the draft letter to the Finance and Expenditure Committee, the Auditor-General described MSD's proposal to send reminder emails to the sample of 1,000 recipients who had not replied as 'pathetic', and queried why MSD was not writing to everyone 'given the high success rate and such a low cost'. In a later draft of the letter, the Auditor-General appears to have expressed surprise that MSD had not done more to validate payments given the scale and significance of the scheme'.

The complete Recommendation 4 of the Auditor-General report on the wage subsidy scheme reads as follows:

In relation to the Wage Subsidy Scheme, we recommend that the Ministry of Social Development prioritise remaining enforcement work, including:

- seeking written confirmation from applicants (which could be targeted towards larger or risk-indicated applicants) of compliance with the eligibility criteria and the obligations of receiving the subsidy; and
- pursuing prosecutions to recover funds and/or to hold businesses to account for potentially unlawful behaviour

The recommendation was that MSD needed to focus its remaining enforcement work in two areas:

- Obtaining confirmation from recipients of the scheme that they complied with the eligibility criteria.
- Pursuing prosecutions

The letter to be sent to recipients was seen by the Auditor-General as part of MSD's enforcement work and required written confirmation from recipients that they complied with the criteria for receiving

the subsidy In order to be considered as part of enforcement work, such a letter would need to;

- Set out the actual criteria for accepting the subsidy.
- Require recipients to sign a letter agreeing that they complied with each criteria.

A written and signed response would create a formal record that recipients had complied with the conditions for accepting the subsidy. In these circumstances, if subsidy payments were later audited and found to be in breach of the criteria for the scheme, MSD would be in a position to take action against a recipient for knowingly breaching subsidy conditions.

Whether the Auditor-General actually intended the letter to be part of the MSD enforcement work is irrelevant. That is how the recommendation reads.

However the wording of the recommendation allowed MSD to decide which recipients would be contacted and how many recipients should be written to. A case could be made that this is an acceptable practice as auditors are not problem solvers and should not make detailed recommendations that amount to directing how an organisation should be managed. The Audit NZ website describes this situation as follows when it says that auditors will not:

'Tell an organisation how to fix their systems, or do the work for the organisation. They will point out gaps or when something doesn't follow the correct policy, and they will make suggestions about areas that would benefit from improvement'.

This approach to recommendations explains the very general nature of the recommendation about writing to recipients. The Auditor-General did not wish to direct MSD about who to write to. This is all very well, but in fact the Auditor-General does issue performance audit reports that direct management on how to do its work.

For example in May 2021, the Auditor-General published a report on; Preparations for the nationwide roll-out of the Covid-19 vaccine.

The recommendations in this report were detailed, specific and directive.

In some reports, the Auditor-General deemed it necessary to tell management, in some detail, what it had to do but in the case of the wage subsidy scheme, a scheme that cost billions of dollars, the Auditor-General considered that its recommendations should be of a general nature only.

Some people might think that when the Auditor-General claims that audit recommendations cannot be directive, then the Auditor-General should first read the recommendations in its own reports. This would be a very good practice to adopt.

The MSD survey of 1000 recipients.

An internal MSD memorandum dated 22 July 2021 MSD discussed the action to be taken on the recommendation of Auditor-General to write to applicants. The memo said that;

'To respond to the recommendations to seek written confirmation of compliance from applicants, it has been determined to focus this work on larger employers as suggested by Audit NZ and the Auditor-General. Nearly 70% of WS1 expenditure ($7.1 billion) went to recipients with more than 6 employees'.

There is no mention in the memorandum of 21 July 2021 that writing to recipients was to be part of any MSD enforcement work, requiring a signed response from recipients. Instead, MSD decided to issue an email survey, requiring a simple yes or no response. MSD also redefined what was meant by a larger business, and such businesses were now defined as any business with more than 6

employees. There would not be a focus on ‘risk indicated’ recipients. Businesses with less than 6 employees, and sole traders, were excluded from the survey.

MSD decided to send their survey to a sample of 1000 businesses. The Auditor-General recommendation did not envisage that MSD would write to a sample of businesses. But never mind. The advantage of a non-directive recommendation is that it can be interpreted in many ways.

The sample selected comprised the following larger sized businesses;

Business size	Number of businesses
6-29 staff	200
30-79 staff	300
Over 80 staff	500
Total	1000

Half of the sample comprised businesses with more than 80 staff. These were the businesses that MSD had already ‘audited’, as part of the MSD pre-payment auditing process and which had all been telephoned to ensure these were genuine businesses and that management understood the terms under which the subsidy was paid.

How the survey was conducted.

The survey involved sending emails to the 1,000 selected recipients. The survey form asked;

Has your business met both the eligibility criteria and obligations for the 2020 COVID-19 Wage Subsidy that you received?(required) If you predicted your business would be eligible and would meet the obligations at the time your business applied, but later realised the business was not eligible and/or did not meet obligations, answer No. This may result in your business needing to make a full or partial refund of the Subsidy. Check the eligibility criteria and obligations in the declaration.

A Yes/No response was required.

Recipients who opened the survey but did not click the survey link received a reminder email. Recipients who did not open the email were sent two reminders. In the case of those recipients who

did not respond, MSD would undertake a desk-based review of the recipient and try and speak directly to the employer.

However such a survey could not be regarded as part of any enforcement regime as no written and signed response was required.

The results of this survey and the Auditor-General assessment and reporting on this survey are discussed in a later Chapter.

INVESTIGATIONS INADEQUATE

The MSD said:‘ Although not explicitly stated in the pre-payment check guidelines, if the MSD staff members has reason to suspect that the application has been made fraudulently, general practice is for that application to be referred for investigation.’

This was a major omission that could have been deliberate.

‘ As at 4 February 2022, 1,148 cases have been referred for investigation. 513 have been referred for voluntary repayment or closed without further action (described as ‘resolved’ in MSD’s reporting to its Minister). 635 investigations are underway.’

Only 1148 recipients were investigated with no definite action taken on about half and the remainder still being investigated with probably the same outcome. It is not known how many recipients were asked to make a voluntary repayment and why such a feeble request would be classified as resolving the case.

‘ Since it was tasked with administering the wage subsidy schemes MSD has developed processes for reviewing the legitimacy of wage subsidy scheme applications and investigating and prosecuting wage subsidy fraud. Throughout this time, MSD has continuously reflected on and enhanced its processes and will continue to do so including with the assistance of an audit partner.’

The MSD ignored all the research Data and information provided to them and news media items and the criticisms of 6 academics. This showed that the original and extension wage subsidies had been overpaid and wrongly obtained or retained but they did not want to admit what they had done or create any extra work for themselves so they ignored the data and instead did some phone call checks. The reviews and evaluations recommended by the Auditor-General were designed to get

another poor result so the MSD would not be embarrassed about its earlier checks and would not have to do extra work.

The small number of investigations carried out by MSD were very inadequate because they only considered two of the six most important Declaration criteria. The following are some examples of businesses that were investigated.

Fletcher Building Ltd

Did Fletchers need a taxpayer bailout?

The Fletcher Building Annual Report reported a loss of $196 million for the financial year ended 30 June 2020 but they had been having profit problems for several years. The annual report said that during the March 2020 lockdown, Fletchers shut more than 400 construction sites and during this time had almost no revenue from their operations. Despite these setbacks, the CEO of Fletchers was able to state in the 30 June 2020 annual report that, ‘Our Balance Sheet remains strong’ Fletchers reported cash liquidity of $1.6 billion. The CEO also noted that: In addition, we negotiated more favourable terms on our lending agreements allowing us to rely on more favourable debt covenants.

When compared to the 2019 financial year, Fletchers, for the year ended June 2020, had an overall 12% decline in revenue. Some divisions of Fletchers had a much greater fall in revenue. The Residential Development division had a 27% fall in revenue when compared to the previous year. The Construction division had a fall in revenue of 23% when compared to the previous year. These are results for a financial year and overall, Fletchers had a 12% reduction in revenue.

Fletchers did very well after the lockdown had ended. Stuff reported, (12/11/2020), that;

Fletcher will hold its 2020 annual meeting on November 25 but, ahead of that meeting, the slimmed-down company told the NZX and ASX that revenues were up $80m on the same time last year.

Fletchers was in a strong financial position. Revenues had increased and as stated in its annual report for the year ended June 2021, it was now in a position to undertake a share buyback:

‘ The Board continuously assesses Fletcher Building’s balance sheet position and investment opportunities in order to drive shareholder returns. In June 2021, the Company commenced an on-market share buyback of up to $300 million to deliver value to our shareholders. At 30 June 2021, we had acquired 3.1 million shares valued at $24 million.’

Fletchers was able to spend $300 million buying back shares. As Fletchers was in such a strong financial position, did it consider repaying the wage subsidy? Other companies that recorded strong profits after the COVID emergency decided to repay the subsidy.

A Fletcher spokeswoman said:

‘ Fletcher Building was ‘grateful’ for the wage subsidy but ‘the reality is the subsidy only covered a portion of the significant losses our business incurred.’

This was not a view shared by everyone. A Mr Jarrod Abbott of First Union is reported to have said (Newsroom 12/11/2020) that;

‘ The Fletcher Building group had set a ‘predatory example’ by applying for the wage subsidy when its constituent companies might not have been eligible. Fletcher had a moral responsibility as one of New Zealand’s largest companies to use the wage subsidy in an exemplary way,’ he said. ‘And they have done immeasurable damage to New Zealand as a whole by improperly claiming the subsidy, using Covid-19 as an excuse to make redundancies anyway, and then refusing to pay the subsidy back.’

These were strong words. The then Minister of Finance, Mr Grant Robertson, was asked to comment on whether companies that emerged from the lockdown in a strong financial position should repay the subsidy. The Minister said that:

‘ Of course, people can look themselves in the mirror and decide, if they are performing better than expected, whether they should pay it back.’

Hundreds of millions of dollars of taxpayer money had been used to support large profitable and cash rich companies that, to quote again the former Prime Minister John Key, probably had the financial wherewithal to survive the crisis. But all Minister Robertson could say was that such companies should look themselves in the mirror to decide if they should pay back the subsidy. X xx

A more fiscally responsible approach would have been for the Minister to look at himself in the mirror and ask if a taxpayer bail out to large, cash rich companies, was the best use of taxpayer money.

MSD should have been required to look more closely at large companies such as Fletchers, a company with significant cash reserves. Although Fletchers suffered a financial loss for the year ended 30 June 2020, the strength of the company was such that the CEO was able to say that their balance sheet remained strong.

The Gama Foundation wrote to MSD asking if Fletchers had met the eligibility criteria for accepting the subsidy, and in particular whether:

- Fletchers had complied with the requirement in the declaration they had signed certifying they had insufficient cash reserves to draw on and were not able to obtain assistance from their bank.
- Evidence that they had a drop in revenue of more than 30% over a one month period.

The MSD’s Group General Manager, Client Services Support replied to this OIA request on 18 January 2021 and said that:

“I am able to advise that, based on the information that the Ministry holds, Fletcher Building did meet the eligibility criteria for receiving the Wage Subsidy. Therefore no repayments will be sought from them at this time. Among other factors, meeting the criteria means that Fletcher Building experienced

a minimum of thirty percent decline in actual or predicted revenue over the period relevant to their application and that revenue loss was attributable to the COVID-19 outbreak.”

There are several difficulties with this reply.

Firstly, the declaration signed by Fletchers stated that:

Your business has experienced a minimum 30% decline in actual or predicted revenue over the period of a month when compared to the same month last year,

Fletchers was never asked about which comparable month was being compared to make a prediction about the fall in revenue and was not asked if they were able to draw on their cash reserves. The fact that the company was able to undertake a share buyback several months after accepting the wage subsidy indicates this was a company that was loaded with cash.

When MSD was asked, in an Official Information Request, (OIA) if Fletchers qualified for the subsidy, MSD was able to say that based on the information held by MSD, Fletchers did meet the eligibility criteria. However the information on MSD files did not include any details about the extent of cash reserves.

Of course MSD could simply have written to Fletchers, and to all recipients of the wage subsidy, and asked for written confirmation that they did not have the cash reserves to draw on; that they had suffered a revenue decline sufficient to qualify for the wage subsidy. If there was not compliance with these criteria, then could they please return the taxpayer money.

The Farmers Trading Company

Farmers Trading Company (Farmers) is a privately held company that was established in 1909. It has its headquarters in Auckland and operates 59 retail stores in rural and city locations around New Zealand generating about $700 million per annum in revenue.

Application for the original wage subsidy.

The Gama Foundation made an application to MSD in February 2021 for all relevant papers relating to the wage subsidy claim by Farmers’ Trading. MSD provided over 194 pages of documents, but these were mainly duplicates of the same wage subsidy application. MSD said it had withheld some documents relating to audits of Farmers as these could ‘shed light on the Ministry’s investigative techniques and thereby lead to improper gain or advantage’.

The wage subsidy application from Farmers arrived at MSD just after 10 am on Friday 3 April 2020. The application was for 2965 staff, including 716 part time staff.

As Farmers’ employed more than 80 staff, the application should have been reviewed by the Fraud Intervention Services staff, under the direction of the Programme Manager, Fraud Services. However there is no pre-payment assessment report and there is no indication that this application was considered by the Fraud Intervention Team, unless of course any pre-payment audit by Fraud Interventions Services was withheld because it could shed light on the MSD investigative techniques.

In any event the staff member who was allocated the claim by Farmers noted that the staff numbers provided by Farmers' did not match the Inland Revenue records for staff employed by Farmers. The number of staff listed on the application was noted on the file as 'well below' the number on Inland Revenue records.

However:

- There is no indication on the papers provided by MSD that the discrepancy in staff numbers was resolved before the application was approved.
- There was no indication that Farmer's had sought the approval of the staff named in the application. Dozens of pages of staff names were provided to MSD (these were names were of course blanked out for the OIA response), but there is no proof in the papers provided by MSD that staff approved of their names being forward to MSD. A condition of the wage subsidy scheme was that staff had to indicate approval to be named in the application. This was an important condition and is published on the MSD webpage:

' Your employer must tell you if they apply for a wage subsidy for you, and they must ask for your consent to give us some of your details in the application. This is part of the declaration they agree to when they apply.'

- No questions were asked about the revenue decline.

- No questions were asked about the level of cash resources and whether a large, wealthy company such as Farmers needed taxpayer assistance.

- There was no checking to match employee names with the names of staff held by Inland Revenue.

Nevertheless, a wage subsidy for $18,818,600 was approved for Farmers' on Monday 6 April 2020.

Less than two working days to approve a payment of almost $19 million, despite uncertainty about the correct number of staff employed by Farmers', or confirmation that all employees named in the application had consented to their name being forwarded to MSD.

Another example of 'just pay out the money'. And don't ask too many questions.

On 14 April 2020, Farmers submitted a further application. Details are not clear, but presumably this amended application was because not all staff had been included in the original application.

An MSD audit of the Farmers application was carried out in late May 2020. There are no details of this investigation in the file papers released by MSD.

However the records do include a note that Farmers advised on 28 May that all their stores were able to operate under Level 2 restrictions. A file note on 4 June 2020, records that the Head of Farmers' HR department rang MSD to say the company was currently undergoing restructuring and some staff

had resigned, there had been redundancies and some new staff had been hired. MSD advised Farmers' to provide a spreadsheet setting out all the staff changes.

There were more discussions with Farmers' on the actual number of staff that qualified for the wage subsidy staff numbers and on 21 July MSD sought a partial refund of wage subsidy funds of $47,319.

The total pay out to Farmers for the original wage subsidy scheme, taking into account the extra staff not recorded for the first applications was $23,949,977 covering 3705 staff.

When the original wage subsidy scheme finished on 9 June 2020, businesses could apply for a further subsidy, the extension wage subsidy scheme that operated from 10 June to 1 September 2020. Farmers did not apply for a wage subsidy under the extension scheme. An MSD file note, dated 26 June 2020, records details of a phone conversation between an MSD staff member and someone from Farmers' and mentions that Farmers will not be applying under the extension scheme as 'trading had been better than expected'.

Application under the resurgence wage subsidy scheme

On 17 August 2020, the Government announced that there would be a 'resurgence wage subsidy scheme', to cover a two week period from 21 August 2020 to 3 September 2020. The scheme provided a two week lump sum payment for businesses who were not receiving the wage subsidy extension payments. Applicants had to have had a 40% drop in revenue that was attributable to the impact of Covid-19, over a 14 day period between 12 August and 10 September 2020 compared to a similar period in 2019. The lump sum payment was for each employee included in the application, to help pay and retain employees for a 2-week period.

The August 2020 lockdown came about because four new cases of Covid-19 were detected in Auckland. On 12 August 2020, the greater Auckland region was moved to Level 3 and the rest of the country to level 2. On September 4, Auckland was moved to Level '2.5', a modified version of level 2 with further limitations on public gatherings and mandated mask wearing on public transport. Shops could reopen, but customers had to try and keep at least 2 metres from each other.

The rest of the country, apart from Auckland, moved down to level 1 on 21 September. Auckland went to Level 2 on 23 September and to level 1 on 7 October.

When the resurgence wage subsidy scheme was closed, there had been 85,069 approved applications. The cost of the scheme was $318 million.

While only the Auckland region was subject to a level 3 lockdown, the wage subsidy resurgence scheme was available to all businesses in New Zealand. In a paper to Cabinet seeking approval to the resurgence scheme, Treasury said that:

While the major impact of the increased restrictions will be felt in Auckland there will be a ripple effect on businesses in the rest of New Zealand who rely on customers in Auckland, for example tourism operators.

Hence the reason for allowing businesses outside of the Auckland region to apply for the subsidy. Treasury also wanted fewer checks on large businesses applying for the subsidy and stated that:

' Scheme integrity. The Ministry of Social Development will continue to use a high trust model, utilising the existing measures for scheme integrity as with the current extension of the Wage Subsidy Scheme. The only exception is that, currently, MSD checks applications from firms applying for over 80 employees. With the proposed payment period being two-weeks, MSD will no longer be checking these employers.'

Yet again, Treasury came out on the side of big business. MSD would not be conducting a pre-assessment audit of businesses with more than 80 employees.

Farmers has stores around New Zealand. Stores in the Auckland region would be closed under Level 3, but open elsewhere. So when Farmers applied for the resurgence wage subsidy, it might be expected that the application would be limited to only its stores within the Auckland region.

Farmers applied on 1 September 2020 for the wage subsidy resurgence scheme for 3776 staff. The application included staff from all their stores in New Zealand and was paid on 4 September. The total payment was $4,079,222.

Had Farmers' suffered, or expected to suffer, a 40% decline in revenue? All the applicants had to certify was that: My business has been impacted and I have/expect a 40% decline in revenue. MSD did not ask if all the Farmers stores outside the Auckland region were open, and where was the proof of a 40% decline in revenue?

An MSD file note also records, on 2 September, that; Total employee count exceeds IRD total. Employee count exceeds previous approval. Farmers had gained an additional 71 staff members since the April application. The main objective of the wage subsidy was to help struggling businesses retain an attachment to staff but Farmers actually increased their staff numbers.

The issues relating to staff numbers were resolved, although exactly how they were resolved is not explained in the notes on the MSD files. Or at least not in those papers that MSD chose to release under OIA. The issues that should have been addressed when the application was assessed included;

- Farmers operates stores around New Zealand. The Level 3 lockdown in August 2020 was only applied to the Auckland region. But the wage subsidy application from Farmers was for staff from all New Zealand stores. This was never questioned by MSD. It should have been.
- MSD never questioned how Farmers calculated its 40% revenue reduction if stores outside the Auckland region were open.
- MSD never sought confirmation if Farmers had, as required in the declaration form; taken active steps to mitigate the impact of COVID-19 on your business activities (including but not limited to engaging with your bank, drawing on your cash reserves as appropriate, making an insurance claim. As trading conditions had been better than expected, it would have been appropriate for MSD to seek confirmation that it had taken such active steps before seeking a tax payer funded bailout.

These questions were never asked as, thanks to a recommendation by Treasury, pre-assessment audits of businesses with more than 80 employees were not required for the August 2020 scheme. This meant there was no scrutiny the application from Farmers.

AWF

AWF is a large recruitment agency with 20 offices throughout New Zealand and specialises in recruiting for a range of industries, including construction, transport, forestry industries.

AWF provides temporary staff to work for companies. The fee to employers includes a base rate, an operating margin and pay rate for employees. Even though a temporary worker is placed in a company and shows up every day to their workplace, the temporary worker is still employed by the personnel company. The company that contracts with the recruitment company may have temporary staff ‘on their books’ in the sense that they have paperwork recording the number of hours of work, contact details, and will have day to day management oversight of the temporary worker, but they are not responsible for paying them. That is the responsibility of the recruitment company providing the temporary staff.

An OIA request was made to MSD for copies of the applications made by AWF, and these were provided on 20 April 2021.

The application of a wage subsidy payment from AWF was received by MSD at 1.30pm on 3 April 2020. The application was for 2388 staff employed by AWF. There was no indication in the papers provided by MSD that the approval of staff had been sought for their names being forwarded staff to MSD. Because the application was for more than 80 staff, the application should have been considered by the MSD group of fraud specialists and a pre-assessment audit carried out. This did not happen.

The MSD staff member simply noted that the application was ‘meeting all obligations’. A list of staff names had been sent to MSD. Checks with Inland Revenue revealed an issue over the number of staff being claimed for. The number of staff in the application was different from Inland Revenue records.

However MSD decided to accept the staff numbers in the application. The next day, at 10am, the application was approved. It took less than a day approve over $15 million, despite no questions being asked about predicted revenue loss, cash reserves held by AWF, and questions over the correct number of staff or whether staff had been consulted. The final amount paid to AWF was $14,776,045. AWF also claimed $8, 45,377 for the wage subsidy extension scheme. The payments were originally for more than these amounts. However, MSD investigations later found that a number the AWF employees were not eligible for the subsidy and AWF repaid over $1.5 million.

The papers provided by MSD following an OIA request did not include details of this application for the wage subsidy extension subsidy. There is a file reference to a phone call from AWF on 26 June 2020 asking what had happened to their application. AWF said they had applied on 18 June had had heard nothing more. The MSD staff member noted that their application could not be found. However it must have been found as AWF were paid over $8 million. Because this application was not provided by MSD, it is not possible to assess why AWF was paid more than $8 million when New Zealand was at level 1 and everyone was back at work.

In February 2021, the Gama Foundation wrote to MSD querying the decision to pay the wage subsidy to AWF. MSD replied saying there were no issues with the payment to AWF.

MSD should have read the 2020 annual report for AWF, published on 8 June 2020.

We were grateful to take up the Government Wage Subsidy, which enabled us to support many of our temporary workforce who were unable to work through the Alert Level 4 lockdown. This has kept our contingent workforce intact and able to be deployed through Alert Levels 3 and 2. Even in the height of Level 4 lockdown, we had up to 1,000 people out working in essential services

The wage subsidy was paid for 2388 staff employed by AWF, and even during the level 4 lockdown, almost half of these staff were able to work, earning revenue for the company. So during the wage subsidy extension scheme, when the country was at Level 1, what proportion of their staff were back at work? The real issue here is having approved a multi-million dollar pay-out, when the country was at Level 1, MSD made no to effort to validate the basis of this approval.

Did AWL suffer a 40% reduction for the wage extension scheme? No one knows because MSD never bothered to check if the estimated drop in revenue had occurred.

The Scrutiny of applications improved

MSD improved its scrutiny of applications from large businesses. This improved scrutiny is evident from reviewing applications for the August 2021 wage subsidy scheme. Three large businesses are considered: SkyCity, Adecco and Farmers.

SkyCity

SkyCity applied for the wage subsidy on 4 April 2020.

The application was considered by the Fraud Intervention team, as required for all applications from businesses that employed more than 80 staff.

Sky City said revenue would decline by more than 30%, but did not specify which month revenue was expected to decline and which previous month the decline was being compared to. However with the borders closed, there were no tourists and the casinos were closed, a 30% or more decline on revenue could be expected. The application recorded how all staff were advised by email of the intention to apply for the subsidy. Several staff objected to their names being forwarded to MSD and they were not included in the wage subsidy application. MSD spent several days checking staff numbers and the application was approved on 15 April 2020 for $15,374,320. A further payment, which was for salaried employees was made to SkyCity was approved on 20 April 2020. The total subsidy paid to SkyCity was $21,672,862.

SkyCity also applied for and obtained the wage subsidy extension scheme and was paid $2,745,808.

Sky City applied for the August 2021 wage subsidy. As described earlier, this scheme paid the subsidy in 8 fortnightly payments. Applicants had to apply each fortnight for the subsidy.

The MSD reviews of the SkyCity applications illustrated how the limited reviews should have been carried out for all applications from large employers.

Detailed evidence was provided on how the revenue decline was calculated at all three casinos by 89%.

Later applications did not include the Queenstown casino, where revenue had fallen by 32% as it did not have the same operating restriction as the rest the Auckland region. SkyCity described the steps they had taken to mitigate the financial impact of COVID-19. These included reducing operating costs and stopping capital expenditure.

The notes made by the investigator into the August 2021 applications record that under the heading ‘Mitigation’, SkyCity said that they had stopped capital spending where possible, and two casino sites had been reconfigured to operate safely under level 2 restrictions. There was no indication in the notes that SkyCity was asked about cash reserves or whether consideration had been given to accessing other sources of finance. Was the subsidy being paid to a cash rich company? No one knows as such questions were not asked.

Adecco New Zealand

Adecco NZ is a recruitment agency that earns revenue by hiring out staff to over 1550 employers in a range of industries. Adecco has 17 offices around New Zealand. At any one time there are up to 1800 or more staff employed by Adecco. Staff are casual, temporary workers on individual employment contracts.

The application was considered by the Fraud Intervention Service on Saturday 11 April 2020. The Fraud Investigator asked about the revenue decline and was told that: 'Only essential workers being employed so massive revenue reduction well over 30%.

Income was being received from staff hired out to essential industries, but the investigator did not try and establish the proportion of Adecco income being received from having staff employed in essential industries. The investigator was also told that employee consent had been received for their names to be forward to MSD as part of the wage subsidy application, but no evidence of their consent was provided or how their consent was obtained. For example, were staff sent an email?

The other problem with the application was, according to a file note, that the employee count for Adecco exceeded the number of Adecco staff as recorded on the Inland Revenue database. However, the fraud investigator noted that 'Fixed up incorrect IR numbers and duplicate employees'. Payment of $11,165,556 was approved on 15 April 2020, for 1658 employees. However this was still not the correct number of employees. Further work undertaken by MSD revealed a further 150 employees. The final amount paid to Adecco was $12,219,996 for a total of 1806 staff.

Adecco applied for the August 2021 wage subsidy extension, and was paid over $1.6 million. The application contained details about the revenue decline period and enclosed a spread sheet showing how the 51% decline in revenue was calculated. These calculations were supported by spreadsheets provided by Adecco. All staff were emailed about the intention to apply for the subsidy. Adecco said there had been discussion with their bank about mitigation actions, but these actions were not described, and Adecco was not asked about cash reserves or asked to provide any documentation about their cash situation.

Farmers Trading.

Farmers Trading was paid $8 million under the August 2021 wage subsidy scheme. As with all the applications from businesses with more than 80 employees, there was now close scrutiny of these applications, and Farmers supplied a spreadsheet showing the revenue decline against a comparable period. MSD questioned what steps had been taken to mitigate the impact of the pandemic on their business. Farmers said they had approached their bank for additional seasonal funding and were waiting on the outcome. Rent relief was also been negotiated with landlords. MSD never asked about their cash position. Earlier in this chapter there was reference to a tax expert who commented, back in July 2020, that one of the criteria for applying for the wage subsidy meant that businesses should expect MSD auditors to examine; 'What cash reserves the business had at the time of making the claim.' Alas, it never seemed to occur to the MSD auditors to ask this question and to obtain relevant documents. Farmers is a privately owned company that was paid over $36 million in wage subsidy payments. The MSD auditors were supposed to check that the subsidy was not being paid to businesses that may have been flush with cash. Such checks were never carried out in respect of Farmers or any other of the thousands of businesses that were paid the wage subsidy.

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Doing the right thing.

A number of large companies decided to repay the wage subsidy. These companies had not been asked by MSD to repay the subsidy, but paid it back because business conditions were better than expected.

On December 21 2020, The Warehouse announced that it had decided to repay the $68 million wage subsidy that it had accepted. The Warehouse CEO said that the company was able to pay back the subsidy due to the strong trading conditions in the lead up to Christmas and went on to say that:

Due to this sustained sales momentum, [profit after tax] for the half year is expected to exceed $70m, which is pre impact of repayment of wage subsidy, compared to $46.2m in (2020 financial year).

We are grateful to have received the government wage subsidy which allowed us to commit to paying our 11,000 team members quickly, and in full, during a time of great uncertainty.

It could be argued that it was pressure from the Government that was a factor in persuading The Warehouse to pay back the subsidy. In June 2020, the then Prime Minister was reported as follows:

Prime Minister Jacinda Ardern says she's 'angry' at the Warehouse Group for proposing to cut up to 1080 jobs.

Ardern on Tuesday morning said the Kiwi retailer had traded on an image of being 'for the community' yet was proposing to cut jobs as other businesses worked hard to keep staff on.

I'm angry, if I'm speaking frankly ... because at the moment, I'm getting hundreds of letters from small business owners, who are giving up everything to try and keep their staff on.

The CEO of The Warehouse disputed the comments by the Prime Minister and said that:

"The company was working to get 'fit and healthy' in a 'rapidly changing world', and the restructure would have happened regardless of Covid-19, and said the company had been unfairly targeted."

Did the criticism by the Prime Minister have any impact on The Warehouse? Who knows, but it was good that a profitable company decided to pay back the wage subsidy.

The transport firm Mainfreight paid back the $10.6 million it received in a wage subsidy from the Government, because trading conditions have been better than expected. The company said that:

Pleasingly, our trading levels have improved through late April and into May, and our efforts to reduce overhead costs, defer capital expenditure, and gain new business in the period, have been relatively successful. Our offshore businesses have also traded better than expected for the most part. Cash flows remain positive, and our bank debt headroom has not been needed. Therefore we are in a

better position than many, and while qualifying under the Government's criteria, we felt it was appropriate to return the subsidy.

Another large company that decided to pay back the wage subsidy was Coca-Cola Amatil which paid back $7.2 million, citing a 'strong' 2020 performance in New Zealand as the reason for its decision.

Analysis by the NZ Herald showed that as at June 2023, ten of the largest companies had voluntarily returned over returned over $200 million of wage subsidy funds, making up nearly one-quarter of all wage subsidy repayments.

The curious case of Crimson Education

Tens of thousands of businesses with less than 80 employees applied for and obtained the original wage subsidy. The news media queried why some companies received the wage subsidy. One company queried by the media was Crimson Education, which attracted media interest because it had the appearance of being a wealthy company with sufficient financial resources to see out the lockdown. It was also a company that operated an entirely online business. Staff could work from home. Students using the Crimson online education service studied from home.

In late March 2020 and in April 2020, Crimson submitted several wage subsidy applications and obtained a total wage subsidy of $527,131, for 77 staff.

One view on why Crimson attracted criticism for the wage subsidy payment was said to be because Crimson had undergone rapid growth and that:

Such growth has attracted the attention of well-heeled backers, and so then opprobrium for taking advantage of a scheme intended to support struggling businesses and protect everyday jobs.

An article in Stuff in 2019 said that the company, which began in 2013, was estimated to be worth $400 million. One of the co-founders owned 31% of the company, making him a multi-millionaire. Crimson received financial backing from a USA billionaire, and other venture capitalists have invested millions of dollars in Crimson Education. New Zealand's private company disclosure laws mean there is little public information on Crimson's financials.

Crimson Education started in 2013 by offering tutoring and mentoring services for New Zealand and other international students seeking to attend elite American universities. The education service provided by Crimson was an on-line mentoring service. The contract with students signing with Crimson said that: Tutoring, mentoring, coaching and other services provided by Crimson Education staff will be delivered on a one-to-one basis through online audiovisual platforms.

The business was expanded in August 2019, when approval was obtained from the Ministry of Education to provide an online private high school, opening in 2020.The online high school was expected to have 20-40 students each year and would not have a physical campus.

As the education service provided by Crimson was online, did the company suffer a 30% decline in revenue? During the lockdown, did pupils continue with the Crimson on-line tutoring and mentoring services and continue to pay their fees?

Stuff asked Crimson about their wage subsidy payment and reported that:

In a written statement a Crimson Consulting spokesman said it was eligible for the wage subsidy and, while many staff internationally could work from home, this was not universal and there was significant disruption in the education sector. Without the wage subsidy, and other cost savings, we would have faced the prospect of job losses,' the spokesman said. 'The subsequent economic bounce-back meant we did not need to apply for any later rounds of wage subsidies.'

This was a view that was probably shared by many companies at the start of the COVID lockdown in March 2020. No one knew what was going to happen and tens of thousands of companies applied for the subsidy, expecting that the subsidy would be needed if the economy collapsed. However the economy did not collapse and many companies did not suffer a fall in revenue.

The real problem is that MSD never asked all those companies that received the subsidy if they could confirm whether or not they had suffered a 30% decline in revenue.

Did Crimson suffer a 30% drop in revenue?

An article in the NZ Herald of October 2022 said that;

The Herald understands Crimson's annual revenue topped $100m for the first time when it reached $110m for the year to July [2021] after having grown at around 65 per cent during each of the two previous years.

In 2020 and 2021, Crimson had annual revenue of tens of millions of dollars. Crimson publishes numerous articles about its activities and in October 2022, an article by Crimson said the company was now valued at almost $1 billion.

The question here is: did this wealthy, online company really need a taxpayer ailout?

FAILURE TO ADVISE MINISTERS

The MSD failed to provide Ministers with all the information they had on the need for repayments. It failed to properly implement recommendations made by the Auditor-General and did nothing about the results of the inadequate and badly flawed reviews it carried out. In 2022 work on wage subsidy repayments was quietly dropped and Ministers were not told that billions could still be repaid if all recipients were written to for the first time.

On 8 June 2020 and before the end of the 12 weeks for the original wage subsidy, the MSD said in response to an OIA request about asking recipients for repayments that : 'In the vast majority of cases, employers are doing the right thing. In many cases where entitlements have been wrongly claimed, it is due to uncertainty about eligibility criteria, rather than deliberate attempts at deception.' The MSD has often repeated this and the Minister is quoted below as saying something very similar.

Xxx

A Joint Report by Treasury and MSD to Ministers in March 2021 on the draft report by the Auditor-General did not mention the criticisms made by the Auditor-General and, as the following quotes show, the joint report was misleading in what it said about the Auditor-General's report.

They said in an Executive Summary:

‘The Office of the Auditor-General has shared the draft performance audit report with Agencies. The draft report finds that the scheme was managed effectively overall and that many integrity steps were consistent with best practice. The report notes some further steps that could be taken to strengthen the audit and assurance processes and recommends an approach to address these, including for payments made to date.’

‘In summary, key findings of the report are:

a. The Wage Subsidy Scheme was managed very effectively in terms of its quick development, and timely processing and payment;

b. Many of the integrity steps taken were consistent with best practice for emergency situations; and

c. There are some additional enforcement and audit actions that MSD should take to provide assurance around scheme expenditure.’’

Clearly, Ministers were misled about what the highly critical report actually said. This will be explained in a later chapter about the Auditor-General.

On 9 May 2022 the MSD gave TVNZ an exclusive story about the wage subsidy that led the 6 p m News.

Social Development Minister Carmel Sepuloni told 1News there are always people who will misuse or abuse schemes, but she expects New Zealanders will rightly hold them to account. A number of businesses have also repaid funds.

“Just under $800 million has been returned, those that haven’t there’s an expectation from the whole public of New Zealand that people would act with integrity,” she said.

The Minister acknowledged that all New Zealanders have the expectation that those who have abused the scheme will be held to account but the MSD failed to do this

In a 26 July 2021 article about wage subsidy repayments, Social Development Minister Carmel Sepuloni said the Government did not have set expectations for how much would be paid back. She said the ministry changed its approach over time and carried out more targeted integrity checks with Inland Revenue, which prompted more repayments.

‘Through further integrity work to date, they believe the vast majority of businesses that received wage subsidies did so honestly. The vast majority of times where wage subsidies were wrongly claimed, it was an honest misunderstanding about eligibility rather than a deliberate attempt to deceive. MSD has been encouraged by the number of businesses voluntarily refunding their wage subsidy money because their situation changed.’

It is difficult to believe that business owners and highly paid executives could not understand what they signed. The MSD ignored recommendations by Deloitte and the Auditor-General to write to recipients. If they had done this, they could have explained anything that they thought might have been misunderstood.

In March 2022 there was a very critical report by the Auditor-General regarding $290 million being given to some tourism businesses in mid-2020. The MBIE failed to properly check applications and do post payment checks but when there was a post lockdown boom they did advise Ministers to stop the programme or make changes. In contrast, the MSD ignored the post lockdown boom and the resulting over $5,000 million in overpayments. The MSD officials did not give any advice to Ministers or make recommendations regarding the situation, as was stated in an OIA response. This is another example of the MSD deliberately not doing anything that would lead to repayments or prosecutions.

The MSD was sent all the Government and business data and information The Gama Foundation had obtained and at the beginning of each OIA Request a summary was provided. Therefore, they were well aware of important details that should have been communicated to Ministers when reporting and providing advice

The following OIA request was made on 12 January 2021 but three months later was refused under section 18(e) of the OIA Act because the information did not exist.

Please provide documents relating to any advice or direction received by or sought by the MSD from any Minister or Government Department or other organisation relating to any of the following:

(a) Whether the quick payment of wage subsidies on what was described by some as a high trust model, should be taken to mean that no action was to be later taken to ensure that normal standards were followed regarding the prudent and correct payment of taxpayer money to every recipient.

(b) Whether the MSD should write to every recipient of a wage subsidy to clarify an update the wage subsidy rules, as agreed, and request them to provide evidence that they did not sign a false Declaration and have not wrongly obtained or retained all or part of the wage subsidy.

(c) Whether recipients of the wage subsidy for 12,20 or 22 weeks should be advised that they can only retain payments for those weeks when they were closed and their workers were at home and unable to do any work for the business.

(d) Whether the rules and standards relating to investigations, audits and prosecutions should be different or more relaxed for the wage subsidy when compared to Benefits.

(e) Whether complaints should be largely ignored and only a small proportion investigated.

(f) Whether no or very few prosecutions should occur.

The following advice to ministers was given in a joint report on future options from MSD and Treasury.

‘Note that following your previous decisions on the wage subsidy and assuming you agree to the recommendations in this report, the core proposals for the Covid-19 Wage Subsidy in the resurgence Cabinet paper will be:

a. A wage subsidy scheme that is triggered by Cabinet after 7 days at Alert Level 3 or 4;

b. Retaining key scheme settings of a weekly rate of $585.80 (full-time) or $350 (part-time), 40% revenue-drop test and employee retention obligations;

c. A clearer link between the current alert level escalation and eligibility for support;

d.Two-weekly payments that match the duration of Alert Level 3 or 4 to the nearest fortnight.

e. increased visibility of audit, enforcement and repayment activity.

f. existing settings enabling the wage subsidy to be used to pay for annual leave

g. no new repayment obligations for firms who have reported increased revenue, profit or dividend payments, but an added obligation for firms to keep records to show they have met these existing obligations.

h. possible Ministerial communications on an expectation that firms should repay the subsidy if they experience increased revenue or profits or pay a dividend'

Note that two weekly Payments were a big improvement and there were other small changes but big loopholes still remained.

The advice does not recommend taking into account increased revenue or profits for a business at the end of their financial year. However, GST returns for the months around a lockdown are a better, quicker and more accurate measure of whether a business suffered losses during and after a lockdown.

' We have considered some potential options for additional repayment rules, should Ministers wish to consider these. All options would need further exploration with stakeholders and would be subject to further advice. The repayment options are:

a. A non-binding public expectation. Government could make a public statement expecting firms to repay the subsidy if they have made 'substantial profits,'though this would not be enforceable.

b. A trigger based on profit. Subsidy could be repaid if a reported year-end profit exceeds the amount of the wage subsidy received. This would ensure firms are not put in a loss for repaying the subsidy.) (iv) OIA, s9(2)(k) OIA

The definition of large firms (e.g. firms with more than 50 FTEs on wage subsidy -this would be aligned with SBCS limit) ii The ratio of profit to subsidy received iii The calculation of profit (e.g. taxable profit or accounting profit)

c. A dividend payment trigger. The subsidy could be repaid if a firm makes a dividend payment. s9(2)(f)(iv) OIA, s9(2)(k) OIA

d. Revenue recovery trigger. This trigger would be related to the revenue drop test. For example if the revenue of a firm increased by more than twice as much as the drop they had previously recorded. This does not necessarily indicate profitability and seasonality of revenue for some firms would be a factor to consider.

22. Further details on all options would need to be considered in future advice to delegated Ministers, following further engagement with stakeholders.

23. All of these options have several common risks:

a. No option would be able to cover every possible situation, and there are likely to be unintended consequences. There may be perceived or real differences in treatment between some firms who are in similar situations (for example large private firms and large publicly listed firms);

b. The public may have decreased support for the scheme if gains are seen as being unfairly distributed due to distortions caused by these triggers;

c. Firms may feel these changes create uncertainty about the availability of future support.

There seems to be a heavy bias towards doing what stakeholders (businesses) want even though this has resulted in taxpayers losing many billions of dollars. The reasons given for not making more changes seem like feeble excuses when compared to the huge potential losses involved.

The advice completely fails to mention the following:

(a) It is extremely easy to fiddle a drop in revenue for 30 days.

(b) The reported widespread abuse of the wage subsidy costing taxpayers many billions of dollars.

(c) The Reserve Bank figures showing a 24% increase in business net bank deposits and IRD figures showing businesses were 14% better off, even without taking into account the wage subsidy. Also a lot of other official and business statistics

(d) Currently over $830 million has been repaid by those who were honest so this indicates that major changes were needed to improve the Scheme.

(e) Public confidence in the wage subsidy is low due to publicity about abuse and a survey showed that 96%want repayments to be made.

(f) Normal work during levels 1 and 2 is outside the objectives so repayments should be made.

(g) Rare checks not audits

MSD TOKEN PROSECUTIONS

MSD officials decided to ignore the huge amount of information they had regarding abuse of the wage subsidy and they only sought details that could be used in a prosecution when they could not avoid doing this.

The MSD said ‘The repayment process gives the opportunity for employers to repay the subsidy or negotiate a payment plan with MSD. If the employer does not engage, or refuses to pay, then MSD could take civil enforcement action through the Courts. In some cases MSD may have the option of commencing bankruptcy proceedings in respect of individuals, or liquidation proceedings in respect of companies. The decision to do so would consider the impact on businesses and employees.‘

Clearly, businesses who commit fraud and are caught are not prosecuted if they repay or if they are established and jobs could be affected.

Staff instructions in July 2021 started by saying:

‘By July and August 2020 MSD’s integrity teams had identified some fraud and, through MSD Legal, sought Crown Law advice about how to investigate fraud in the context of the wage subsidy scheme. Many of these cases continue to be investigated.’

The MSD did not ask for advice about prosecuting so a year later had not prosecuted anyone.

The Auditor-General’s report dated May 2021 said :

‘The public organisations managing the Wage Subsidy Scheme have identified a number of applicants they consider might have acted unlawfully. In my view, it is important to pursue prosecutions of these applicants. This is because it is important to maintain public trust and confidence in government schemes.

We recommend pursuing prosecutions to recover funds and/or to hold businesses to account for potentially unlawful behaviour.’

4.89. The Ministry of Social Development can request information from recipients in accordance with consents given under the declaration, or apply to the New Zealand Police for production orders under the Search and Surveillance Act 2012. The Ministry anticipates using a combination of prosecution (under the Crimes Act 1961), recovery through a civil claim, and restraint and/or forfeiture pursuant to the Criminal Proceeds (Recovery) Act 2009 to support its enforcement work. 4.90 In our view, effective prosecutions where there is evidence of fraud or abuse are critically important to maintaining trust and confidence in the Scheme. This work needs to be adequately resourced and prioritised.’

The MSD said: ‘ From March 2020 through 2021 most of MSD’s Client Service Integrity resources have been focused on assessing the legitimacy of Wage Subsidy applications, including, from July 2020 investigating and preparing cases for civil recovery and/or prosecution. These resources would otherwise have been focused on benefit fraud.

14. Between May 2020 and September 2020 the team was also supported by up to 25 Department of Inland Revenue (Inland Revenue) compliance specialists and up to 11 staff from the Department of Internal Affairs.

In July 2020 they started preparing cases for civil action or prosecution so why the 15 month delay in taking a prosecution?

The failure to prosecute was a result of the facts outlined in this document. Officials failed to follow wage subsidy objectives and Ministers requirements. They prepared an inadequate Declaration so that all businesses could be paid the wage subsidy. They ignored widespread abuse and overpayments amounting to thousands of millions of dollars. Businesses who made a lot of money from the wage subsidy had inappropriate influence over the rules. Officials ignored numerous articles about abuse, data showing businesses better off and most of the complaints they received. Their stated different approach to that used for checking on Benefit fraud involved ignoring overpayments, calling inadequate checks audits, not 'monitoring and adapting' and not writing to recipients.

The Minister of Finance said that the wage subsidy was a high trust model but giving it this label does not mean that normal standards regarding the prudent use of taxpayer money can be abandoned. It is clear that most recipients signed a false Declaration and later failed to comply with it and to make repayments. The MSD had a duty to ensure that all taxpayer money which was wrongly obtained or retained by businesses and individuals was repaid.

One prosecution early on could have led to hundreds of millions of dollars being repaid.

A Joint Report at 27 November 2020 stated that:

'54. At current levels, our management of application exceptions, targeted audits and complaints is expected to be completed prior to 23 December 2020 by focusing most FIS resources on these areas of work.

The MSD stated that some children under 5 and adults over 80 had been paid the wage subsidy.

An 11 December 2020 Cabinet paper is on the Treasury website and states that children doing a paper run received the wage subsidy so a minimum age of 18 was proposed. It stated that complaints had been made about some employers who required their employees to use their holiday leave entitlement during the lockdown. This was a blatant breach of the Declaration signed by employers so action should have been taken against them.

The Declaration signed by the employer stated that they had discussed their application with employees and got their consent in writing. If this had happened, the MSD would not have received

thousands of complaints from employees. The MSD knew that many employers ignored this and other Declaration requirements but it failed to take prosecution or civil action.

An OIA response stated that staff were given no instructions regarding investigations and whether to refer a case for possible prosecution. Beneficiary instructions could have easily been adapted so this clearly demonstrates that officials were not interested in investigating or prosecuting.

‘Your request for written instructions given to staff regarding which complaints to investigate and accepting or rejecting explanations about the Wage Subsidy being wrongly obtained are refused under section 18(e) of the Act as this information does not exist or, despite reasonable efforts to locate it, cannot be found.

Your request for written instructions given to staff regarding which investigations will be escalated to prosecution is also refused under section 18(e) of the Act as this information does not exist or, despite reasonable efforts to locate it, cannot be found.’

Xxx

Please list all the enforcement actions the Ministry considers available to it in respect of the wage subsidy.

The Ministry’s enforcement actions may include prosecution, recovery through the civil courts, and/or recovery through restraint and forfeiture pursuant to the Criminal Proceeds (Recovery) Act 2009.’

1. The repayment process gives the opportunity for employers to repay the subsidy or negotiate a payment plan with MSD. If the employer does not engage, or refuses to pay, then MSD could take civil enforcement action through the Courts. In some cases MSD may have the option of commencing bankruptcy proceedings in respect of individuals, or liquidation proceedings in respect of companies. The decision to do so would consider the impact on businesses and employees. (This shows that businesses who committed fraud and were caught were not prosecuted if they repaid or if they were established and jobs could be affected.)

1. Employers who committed fraud in filing WSS applications or misappropriated WSS payments (e.g. by failing to inform MSD that their circumstances changed) may be liable for prosecution under the Crimes Act 1961.

Most businesses did not report and repay when they had a boom in business half way through the 12 week payment period.

MSD said in a report that ‘applicants we approach are under no obligation to respond or provide any verification requested.’

This statement was wrong and helps explain why information was deliberately not obtained that could allow prosecutions to proceed.

An OIA response said:

‘ Decisions about prosecutions are made only after a thorough investigation process. 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.’

If a recipient claimed uncertainty, they could avoid an investigation and possible prosecution.

A MBIE OIA Response said:

‘As of 15 July 2021, the Ministry has received a total of 6,519 wage subsidy complaints. Of those, 4,208 relate to not receiving the full wage-subsidy entitlement and include one or more of the following topics:

- Subsidy not passed on;
- Employer paying incorrect subsidy rate; and
- Employer applied for wage subsidy without employee’s knowledge.

Of those 4,208 complaints, 379 have become Labour Inspectorate cases and of those 379 cases, 115 have either been investigated or are currently under investigation. A further 73 have been managed by the Labour Standards Team as guided self-resolution, of which 37 cases have been resolved.

Furthermore, 5300 of these complaints have been received through the submission of the online wage subsidy complaint form, with the remainder having been passed on to the Ministry by other government departments or entities who have received the complaints in error.

Since 18 September 2020 (the date the Early Resolution Team took over the wage subsidy), the Ministry has received 261 complaints relating to the wage subsidy from the wage subsidy complaint form, Ministerial correspondence and the Early Resolution online web form.

Please be aware that every complaint received by the Early Resolution team is assessed and appropriate action is undertaken to manage it. At the point of triage, a complaint is referred to MSD, if appropriate, or allocated to an Early Resolution Officer to attempt resolution.

Wage subsidy complaints are triaged by a Principal Labour Inspector who assesses the appropriate way to manage the complaint. At triage, the Principal Labour Inspector refers the complaint to MSD if there is a clear allegation of a breach of the terms of the Declaration signed by the employer when applying for the wage subsidy. For example:

- The employer is not passing on the wage subsidy in accordance with the terms in the Declaration
- The employer has applied for employees who are no longer in their employment or never were in their employment or family members not working in the business
- The business has received the wage subsidy but does not meet the criteria (30% less income than for the same time the previous year)
- The employer is not making ‘best endeavours’ to pay 80% of the wages
- Employees being made redundant immediately after the employer received the wage subsidy
- The employer claimed full time subsidy for part time workers

- The employer using the wage subsidy funds for anything other than wages (for example - increase in personal wealth).

How many complaints did MBIE refer or recommend to MSD for possible prosecution?

As of 15 July 2021, 2129 complaints have been referred to either MSD or the mediation service. However, as breaking down these figures accordingly would require substantial research and collation, this part of your request is refused under section 18(f) of the Act.

A substantial number of complaints must have been referred to MSD for possible prosecution but it is unknown how many and what happened to them.

Up to October 2022 the Employment Relations Authority made over 100 determinations where the wage subsidy was mentioned. A check of some of these cases brought by employees shows that they involved breaches of the wage subsidy Declaration. The MSD has done nothing about them.

An interest.co.nz report on 19 October 2022 stated:

‘The tax department monitors 750 foreign-owned multinational firms that operate in New Zealand. At the end of 2020, 376 foreign-owned multinational entities each with an annual turnover in excess of $30m had received $830m in wage subsidies. The Inland Revenue saw that, although the wage subsidy was geared to underpin employment in New Zealand, that the benefits could be transferred overseas using transfer pricing. When they said that this was not acceptable, $33 million was voluntarily repaid

This is another example of how the wage subsidy was not used to support struggling businesses to retain an attachment to employees during a shutdown. It also shows that money will be voluntarily repaid if a letter about expectations is sent.

PANEL DECISION-MAKING

A Recovery and Response Panel was established 11 months after the start of the wage subsidy. After a further 8 months it had considered a few cases and decided to prosecute two where there was blatant dishonesty due to multiple applications for the same or non existent employees. Other cases required further investigation or civil action if repayment arrangements could not be made.

The MSD Panel Terms of Reference included the following in the first 2 paragraphs:

1 The wage subsidy was to support employers in retaining staff.

2 Where the wage subsidy was fraudulently obtained or retained, there is a high expectation of MSD action.'

' In 11 cases the Panel agreed to seek civil recovery through issuing a demand letter, continuing engagement with the applicant on the issue of repayment or, if necessary referring the matter for civil recovery'

'The Panel considers four principles and objectives when making determinations about wage subsidy recovery responses'

:

Recovery in the public interest: Recovery promotes MSD's responsibilities for efficient and economical delivery of the wage subsidy scheme and to responsibly manage assets of the Crown, It helps ensure that taxpayer money is going where it is intended to go, to support the economy. It maintains public confidence in the wage subsidy scheme.

Deterrence: The necessity of a high trust model and the cost of the delivery of the scheme means that abuse should be met with action. Denunciation of offenders will also promote wider recovery.

Fairness and balance: While there may be actions available to MSD, for instance, civil recovery or criminal prosecution, those actions will not always be appropriate or in the public interest. Lesser actions, such as ongoing communication about repayment obligations and options, may at times be more appropriate. MSD's approach will always consider and balance the interests of the community at large.

Consistency: The Panel will have regard to the importance of consistency when making decisions across a high volume of varying cases.'

This paragraph states that taxpayer money was intended to support the economy but that was not what the MSD was told to do. The Reserve Bank created $50 billion and part of this was used for the wage subsidy to help employees retain an attachment to their employer when they were unable to do their normal work.

The Panel does not appear to have taken any notice of its own requirements for responsible management of taxpayer assets, deterrents and denunciations. The stated need for consistency meant that the MSD had to ignore huge volumes of overpayments and fraud and only pick on unusual

and rare cases for token prosecutions. The voluntary repayment of $792 million out of $831 million of total repayments as at August 2025 indicates that vastly more repayments would have been made if they had been requested in an email for the sake of consistency and fairness.

The Auditor-General said in his report that prosecutions were critically important but MSD ignored this. ‘

The importance of deterrents, denunciations and prosecutions that could encourage a huge number of recipients to repay thousands of millions of dollars was not considered by the MSD because they did not want this to happen.)

Robyn Walker, a tax partner at Deloitte, said in a Stuff article that she would expect small refunds to continue to come in, but it would depend what the Government chose to do with the Auditor-General’s report.

‘One thing that was suggested was that they should be seeking written confirmation from all applicants that they are confident they did comply with criteria.’

‘That could trigger a lot of people to stop and think and make a decision on whether keeping the subsidy is the right thing to do.’

She said ‘the initial wage subsidy rules were loose and while people who met the criteria could keep it, whether they should could be a different question.’

MSD said that ‘Both the declaration and the application form comprise the application made by each recipient. The declaration requires the applicant to declare they have met the eligibility criteria for the scheme and that they will comply with the obligations specified in the scheme. The declaration forms a legal contract between MSD and the recipient of the wage subsidy.’

These comments by MSD indicated that signing of the declaration created a legal contract between MSD and the recipient of the wage subsidy funds. This means that MSD could demand documents from the recipient for auditing purposes.

Convictions for wage subsidy fraud

MSD restrictions on gathering audit information

One of the reasons why criminal convictions for wage subsidy fraud were a lot less than for benefit fraud, was that MSD wrongly decided that there were restrictions on their powers to gather relevant documents when auditing the wage subsidy scheme. Although MSD had available signed

Declarations made by wage subsidy applicants agreeing to provide documents requested by MSD, a very cautious approach was adopted when it came to asking for documents to confirm eligibility for the subsidy.

Because the wage subsidy scheme was established by Cabinet direction, rather than under the Social Security Act, staff were told that they could not use the powers contained in that Act to obtain information about wage subsidy compliance. Their information gathering powers were therefore more limited in comparison to the investigation of benefit fraud and that ; Broadly, MSD was required to obtain information by consent, either from an applicant themselves, disclosure by third parties pursuant to privacy principle 11(e) of the Privacy Act 2020, or through memoranda of understanding with other government agencies. MSD could also collaborate with the Police to seek production orders under ss 71 to 74 of the Search and Surveillance Act 2012.

MSD said that it could only obtain information by consent and could not demand a wage subsidy recipient to produce documents. This approach is reflected in instructions to staff carrying out post payment 'audits'. The instructions say: 'You ask for documentation that you know they are able to produce'.

But the documents that a recipient decides to tell MSD that they are able to provide may not be the documents necessary to establish if there has been compliance with the criteria for claiming the subsidy. It is unlikely that someone subject to a telephone audit would provide a document that might prove they were not entitled to the subsidy.

. MSD deliberately handicapped the effectiveness of its integrity checks by wrongly believing that recipients could decide which documents would be provided to MSD.

The instructions to staff carrying out the post payment audit sampling also state that; ' if in the course of speaking with an applicant you suspect that they may have committed fraud, you must stop the conversation and issue a caution'.

These instructions probably reflect a concern to avoid a situation where continuing the discussion would lead to self-incrimination. However MSD is conducting post payment integrity reviews. It is not engaging in a criminal investigation. The instructions to the MSD staff are about the questions to be asked about the nature of the business, questions about the documents they have which could for example demonstrate a fall in revenue. These are all 'pre-existing' documents which MSD can ask about without the need to provide any warnings.

Again, MSD has deliberately handicapped itself by wrongly assuming that audit checks are criminal investigations.

The cases where MSD has successfully prosecuted wage subsidy recipients usually involve individuals submitting multiple claims, claiming under another person's name, or claiming for non-existent employees. There have not been any prosecutions of businesses for not using cash reserves etc or not advising MSD that the revenue decline criteria had not been met or not advising a change in circumstances when normal trading resumed or not getting employees consent to apply.

There is no such offence as 'wage subsidy fraud'. Any prosecutions are under the Crimes Act, sections 228 and 240. The relevant offences that a person can be charged with include 'dishonestly taking or using a document'; 'obtaining or causing loss by deception'.

The 'dishonest use of a document' could include situations where an applicant has submitted an application knowing that the application contains material inaccuracies and knowing that this would cause MSD to make a subsidy payment that the applicant is not be entitled to. Such situations could include where an employer has deliberately misrepresented their number of employees or claimed for a business that never traded.

MSD has succeeded in obtaining a number of convictions for wage subsidy fraud. As at 30 June 2025, MSD had obtained convictions of 45 people for abuse of the wage subsidy scheme and a further 49 people suspected of wage subsidy fraud are before the Courts.

These cases have involved false identities, claiming for non- existing employees, recording part time employees as fulltime.

Some convicted recipients were sent to prison for offences involving relatively small amounts when compared to the tens of millions of dollars paid to some businesses with one owner.

One feature of the cases that have been successfully prosecuted is that they involve individuals who have submitted multiple wage subsidy applications. There have been five wage subsidies. Most of the cases before the Courts relate to the original scheme and some to the two later schemes in 2020 and involved multiple applications from the same person or company, many of which were approved. Some information about cases where convictions have been found is on the MSD website. There is more detail in the press reporting of some recent cases and it is worth looking at these cases.

The case of Wright Hip Hop Trend Ltd and Mirror Image Tee's Ltd.

Wright Hip Hop Trends was a beauty salon and Mirror Image Tee's Ltd was a clothing business. Both companies were based in Christchurch.

John Silbery and Larissa Wright were the directors and shareholders of both companies.

Between March and September 2020, the pair submitted 43 wage subsidy applications. Of those, 28 were approved totalling $184,000.

The Ministry of Social Development (MSD) investigated and found $88,000 of that was obtained dishonestly.

PAYE schedules showed the number of employees at Wright Hip Hop Trends went from three in March 2020 to seven in April and ten by June 2020.

The pair dishonestly included some staff members on their applications who were not employed by their businesses at the time. They also represented some staff as full time when they were part time. Both also made applications for themselves as sole traders when they were not. Both Wright and Silbery were sentenced to eight months home detention.

The mystery is how 28 applications were approved. Were complete checks made with Inland Revenue, before the subsidy was paid?

The case of the fake construction company.

On 17 April 2020, a Mr Filimoehala, who was bankrupt at the time, registered 42 Construction Limited with the Companies Office.

His construction company never built anything and never traded. It was set up to obtain wage subsidy funds. Mr Filimoehala went on to make six applications, all of which were approved and he received $126,532. An additional attempt to receive $42,491 was unsuccessful. The employees he listed were actual people, but they never worked for the company. Some were already receiving wage subsidies from their actual employers.

The issue here is that Mr Filimoehala was bankrupt, his company never traded and the applications included names of people who never worked for him. Had MSD checked these details with Inland

Revenue before paying the subsidies, then the subsidies would never have been paid. Mr Filimoehala was imprisoned for his fraud.

The case of a company with no employees

Mr Nathan Downey operated a company called Protective Systems Ltd (PSL), with an office in Wairoa. Mr Downey was the sole director and shareholder of the company, which had no staff. The company paid contractors to provide painting and fire proofing services.

Between March and August 2020, Downey submitted 19 separate wage subsidy applications, 13 of which were successful, in the name of PSL. The applications provided details of numerous purported employees, some of whom were entirely fictitious, others who were known to Downey, including as contractors who had previously completed work for PSL.

He obtained almost $200,000 in wage subsidy funds. Downey paid $57,000 to contractors and kept the rest of the money for his personal use. MSD said Downey made several other unsuccessful wage subsidy applications totalling $66,781.20. Between March and June 2020, He was also receiving the wage subsidy as a full-time employee of a company run by his mother. Downey was sentenced to prison.

The issue is, again, how Downey could have successfully applied for, and received, wage subsidy money for 13 applications for his company PSL.

Were these applications checked with Inland Revenue before they were paid? If they had been checked, the fact that his company had no employees would have been detected by Inland Revenue.

The case of the fraudulent accountant

Mr Brent Knock, an Auckland accountant who attempted to claim almost $70,000 that he was not entitled to, was sentenced to eight months home detention. He had admitted 10 charges of dishonestly taking or using a document. Between March 28 and May 8, 2020, Knock submitted 12 fraudulent wage subsidy applications. Eight were successful, and Knock was paid $40,629.60 in total. The four unsuccessful applications were worth a further $28,000. Nine of the applications were made on behalf of companies Knock had, or claimed to have, an interest in. The remaining three were companies controlled by others. All 12 successful applications listed Knock as the contact person and nominated the same bank account. None of the directors and shareholders of these companies ever received any wage subsidy funds from him.

The fraudulent claims were all made under the original wage subsidy scheme. He had applied using the names of other companies, that he claimed to have an interest in, but in all cases he named himself as the contact person and nominated the same bank account. MSD were supposed to check the details of each application. Presumably this did not happen as Inland Revenue records would have revealed that he had no involvement with the companies he was claiming for. Four applications were rejected, but if Knock had not made so many claims would his fraud have been uncovered?

A case of multiple applications from the same company.

An Auckland woman, Ms Sara Hale, was sentenced to community detention in August 2023 for receiving almost $85,000 in wage subsidy payments she was not entitled to.

On 9 April 2020, Hale fraudulently claimed that she was self-employed on a wage subsidy application in her own name. Between 8 and 17 May 2020, MSD also received four fraudulent wage subsidy applications made in the name of a registered company that supplied Hale’s bank account details.

There was only one wage subsidy operating at this time; the original wage subsidy scheme, that ran from 17 March 2020 to 9 June 2020. So how is it possible that four applications were approved for one company? There is really no explanation, other than a lack of checking of applications with Inland Revenue before payments were approved. It appears that at that time, MSD had no effective internal process to check new applications against old applications before payments were made and was not checking all applications with Inland Revenue.

MSD has successfully prosecuted some people for wage subsidy fraud. It is good that a few of those defrauding the scheme were brought to justice but the MSD has ignored the vast majority. They have picked on individuals and given larger businesses a free run.

FAILURE TO PROSECUTE COMPARED TO WELFARE BENEFICIARY PROSECUTIONS

The MSD had a large staff to investigate benefit overpayments and fraud but engaged no extra staff to investigate complaints and a huge amount of information about abuse of the wage subsidy. It deliberately avoided gathering any wage subsidy information that would force it to investigate and then prosecute.

In the first 18 months of the wage subsidy, the Ministry of Social Development had not started any prosecutions to recover money which had been overpaid or wrongly obtained or retained by over 750,000 recipients. This contrasts with the 65 prosecutions of welfare beneficiaries to recover overpayments, that occurred in the 12 months to 30 June 2020. All staff had been used from late March for processing wage subsidies so this indicates that there would otherwise have been about 100 prosecutions for the year to 30 June 2020.

Max Rashbrooke stated the following in a September 2021 article: 'MSD figures show the number of beneficiaries prosecuted has fallen from 453 in 2016-17 to just 44 in the year to March 2021.' This shows that MSD can investigate and prosecute when it wants to and even managed 44 prosecutions in the year to 31 March 2021 when for most of the time staff were dealing with wage subsidy payments and doing a few post payment checks.

If someone had received a Benefit for 12 weeks from late March 2020 but it was later discovered that they had been working for 7 weeks during the post lockdown boom, they would have been made to pay back the 7 week overpayment. In contrast the business they worked for that needed extra labour

to cope with increased sales, would not have been asked to pay back the 7 week overpayment they received.

Some citizens who went overseas in 2021 were unable to return to New Zealand due to managed isolation places being unavailable. Senior citizens were told in a MSD September 2021 newsletter that: 'If you can't get back and you're away for longer than you're allowed under usual Absence from New Zealand rules, you may need to pay some of your payments back to Work and Income.' The 7,000 caught in this situation could have had a lot of extra expense and inconvenience so requiring repayment of all money received while overseas does seem wrong.

The MSD always require repayments even if a beneficiary is not at fault. Businesses who predicted that they might have a problem were given large amounts of money and many cut the wages of employees by the allowed but illegal 20%. Most of those employees then actually had a major problem but if they approached the MSD, they were only offered a small loan.

An OIA request to the Minister of Finance resulted in a July 2020 MSD report being provided. The following was stated in the report:

'21 MSD has developed an investigation approach for the scheme, which differs from that used to investigate benefit fraud. '

The MSD knows that most recipients were overpaid and that official and business data indicates that there was widespread abuse of what was referred to as a high trust model. There have been over 7,500 complaints about wage subsidy fraud made to the MSD and over 150 articles in the news media about those who abused the wage subsidy or should be making repayments. The MSD has not followed up on most complaints but has said that if they did contact a business, a repayment might be requested where 'an employer did not fully understand the criteria for payment.'

The Auditor-General's report of May 2020 said:

3.36 Although the declaration form was relatively clear, it was lengthy and contained a lot of information. It also changed between the different stages of the Scheme.

3.37 There is a risk that some applicants did not fully read the form or did not fully understand the obligations. Many applicants agreed to the declaration at a time of uncertainty and stress (unrelated to the Ministry of Social Development's actions). The declaration was read out to some applicants over the phone, who agreed to it verbally.

Generally, not understanding something is not regarded as an acceptable excuse by the MSD and other Government Departments. It has not been given as a reason to not take action against welfare beneficiaries who have been overpaid, many of whom are less well educated than business owners and executives.

In the year to 30 June 2020 the MSD spent over $14 million on 65 prosecutions of beneficiaries and was awarded $3,747,459. It is unknown how much of this money will be recovered and over how many years. The amounts involved ranged from $1,417 to $251,622. In the case of the wage subsidy, far greater amounts were involved and thousands of millions of dollars could have been recovered by simply writing to recipients to clarify the rules and asking for repayments if they could not provide evidence to show that the rules had been followed and that the wage subsidy was only being retained for the weeks when staff were unable to work. Nothing has been done about taking this simple and cost effective action. This could be because extra work would be created for the MSD staff and repayments would go to The Government consolidated fund.

Most recipients of the wage subsidy would have only made repayments if they thought that prosecution was a possibility. The MSD stated that decisions about prosecution involve a public interest test and it appears that they decided that it would not be in the public interest for thousands of millions of dollars of wage subsidy money to be repaid. They have a different public interest test for Benefit fraud and, presumably, think that it is in the public interest to spend four times more on prosecutions than the total awarded, which might be partly recovered over many years.

For the financial year 1 July 2020 to 30 June 2021, the Ministry completed 55 prosecutions in relation to welfare benefits with the total amount of overpayment being $3,803,482.

COMPLETED PROSECUTIONS from the MSD Annual Report

2016/17 453

2017/18 291

2018/19 127

2019/20 63

2020/21 60

2021/2022 36

The 2020 annual Report explains that the reasons for the decline over 5 years were early intervention, enhanced prosecution processes and Covid-19.

In the five years from 2015-2019, MSD successfully prosecuted 2359 people for benefit fraud. Since the start of the wage subsidy scheme in 2020, MSD has successfully prosecuted, as at 30 June 2025, 45 people for defrauding the wage subsidy scheme.

Why has MSD obtained so few convictions for wage subsidy fraud when compared to the number of convictions obtained for benefit fraud? Is this because, as claimed by MSD, that in the case of the wage subsidy scheme: in the vast majority of cases, employers have done the right thing and met eligibility criteria for the wage subsidy, or have repaid their wage subsidy. Was the phone call method of auditing the wage subsidy scheme the reason why so few fraudsters were detected or were there other reasons?

A good starting point is to examine the procedures for MSD investigations into benefit fraud and compare this to the procedures for wage subsidy fraud investigations.

Benefit fraud

The Client Services Integrity Unit within MSD investigates possible cases of benefit fraud. This is loosely defined in section 290 of the Social Security Act 2018 and is interpreted as meaning anyone who makes a false or misleading statement to MSD staff about the benefit they receive or apply to receive.

The penalty for breaching section 290 of the Act can be a fine of up to $5000 or imprisonment of not more than 12 months. Sections 291, 360 and 361 address various aspects of benefit fraud, including proof of fraud, the recovery of overpaid benefits. Although the Social Security Act provides penalties for benefit fraud, in practice most (83%) of offenders are charged under the Crimes Act, probably because the penalties are harsher. Investigations into cases of suspected benefit fraud have a legislative base for this work and MSD has well established policies and procedures for investigating benefit fraud.

When investigating a possible case of benefit fraud, the procedure is that MSD will, after giving five days' notice to the person being investigated, ask for documents including bank records, employment details tenancy agreements, and school enrolment records. MSD investigators will also request an interview to discuss the beneficiary's situation. The interview is voluntary and a beneficiary can bring a support person, including a lawyer to the interview. Section 305 of the Social Security Act 2018 provides that MSD can specify the information that a beneficiary must provide. Schedule 6 of the Social Security Act 2018 sets out a Code of Conduct for obtaining this information.

MSD benefit fraud investigations are just that; investigations into alleged cases of fraud. The 2019 report of the Privacy Commissioner into MSD fraud investigations said that:

The Ministry receives around 13,000 fraud allegations per year. This is on top of referrals from its intelligence unit, local Work and Income offices, and through information matching programmes. The Ministry's Fraud Investigations Services (fraud team) investigates between 2300 and 5100 fraud cases a year.

Where do fraud allegations come from and how are they assessed? The majority of fraud cases are identified through external tip-offs. In the 2017/18 financial year there were 12,578 allegation line calls answered by the Ministry, resulting in 9210 allegations being recorded and 2187 being assessed as 'high risk'. This is on top of referrals from sources inside the Ministry such as the Intelligence Unit, local Work and Income offices and through information matching programmes with other agencies. In 2017/18 there were 2735 internal referral fraud investigations.

The MSD benefit fraud investigations involve the systematic checking of the entitlement to a benefit against criteria for accepting a benefit. MSD fraud investigations are usually triggered because it is suspected that fraud may have been committed.

In response to an OIA request asking about the MSD approach to benefit fraud, MSD described, in a letter dated 7 March 2024, their approach as follows:

‘The Ministry’s overall approach is to intervene early when concerns are raised, to make it easy for clients to do the right thing and avoid unnecessary overpayments and debt while still responding appropriately to serious fraud. The Ministry has a three-tier graduated model to respond to allegations of benefit and social housing fraud:

• early intervention – engaging with clients early to discuss any integrity issues raised, confirm obligations, and adjust entitlements where appropriate.

• facilitation – working more intensively with a client to assess their situation against their entitlements and adjust these entitlements where necessary. This could mean an overpayment for a client in some situations.

• investigation – gathering information and acting on serious client integrity issues, which could result in an overpayment and in the most serious cases prosecution. Prosecutions are considered in line with the Solicitor General’s guidelines, taking into account the full circumstances of each individual case.

The three-tier approach helps the Ministry better manage fraud activity. All allegations of potential fraud or abuse of benefit payments are responded to in a manner proportionate to the nature of the information received and the potential seriousness of offending. There will always be cases of serious fraud which will be fully investigated and prosecuted where it is appropriate to do so’.

MSD has a focus of prevention and early intervention and will prosecute cases where there are serious integrity issues. Proposed prosecutions must take account of the Solicitor General’s Prosecution Guidelines. The Guidelines are set out on the MSD website. The guidance includes;

• 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 Solicitor General’s Prosecution Guidelines are intended to avoid taking unnecessary prosecutions that have little chance of success and prosecutions that are not in the public interest. The public interest test referred to in the guidelines includes taking account of an agency’s statutory objectives and enforcement activities.

Proposed prosecutions are reviewed by an independent panel, the Prosecution Review Panel, which decides which cases of suspected fraud should be prosecuted. The terms of reference for the panel require it to consider the facts and circumstances of each case and determine if it is in the public interest to refer the case for prosecution. Cases are reviewed by MSD’s legal team prior to being considered by the Panel.

MSD has well established processes, procedures, and a legislative mandate, for investigating suspected cases of benefit fraud and specifying the documents that must be provided. While MSD has a focus on prevention, significant numbers of convictions for benefit fraud have been obtained as a result of investigations following an allegation of fraud. Fraud investigations involve interviews, gathering documents from a beneficiary and the process may become adversarial as evidence is being gathered that could result in legal proceedings.

MSD said it intended to audit the wage subsidy scheme. Auditing means obtaining documents and using these documents to check compliance with the criteria for the wage subsidy scheme. Audits are carried out to check that things have been done correctly. If there was not compliance with for example the reduction requirement, demands could be made for return of the subsidy money.

The focus of the integrity checks was to obtain a verbal assurance that there had been compliance with the conditions for payment of the wage subsidy. This is very different from the MSD benefit fraud investigations. These investigations are undertaken when benefit fraud is suspected and the investigators were looking for wrong doing.

Of course had MSD undertaken wage subsidy audits that examined actual company records, such an approach would have provided evidence that could lead to investigations for fraud. Instead MSD preferred to conduct its audits by chatting to people over the phone.

If MSD wanted to review financial documents, which apart from one small exercise, MSD seemed to have little interest in doing, it was restricted by a deliberate mistaken belief that it had to gain consent to obtain relevant documents.

The belated Auditor-General wage subsidy report

The Office of the Auditor General (Auditor-General) conducted a performance audit of the wage subsidy scheme and tabled a report in Parliament in May 2021. The Auditor-General reports to Parliament and the reports, which are carefully checked to ensure there are no factual errors, are considered to be very reliable assessments of any subject examined by the Auditor-General. The wage subsidy report was considered by the Parliamentary Select Committee on Finance and Expenditure in August 2021 and the Auditor-General provided a further report to the Committee in December 2021 about the actions taken on its recommendations.

The office is headed by the Controller and Auditor General, a role that dates back to the 1840s. After restructuring in the early 1990s, the Auditor-General became an Officer of Parliament, appointed by the Governor-General on the recommendation of Parliament, under the Public Audit Act 2001.

The Auditor-General is funded by Parliament and its work includes:

- Providing advice to Select Committees.
- Carrying out inquiries into any aspect of how a public entity has used its resources.

- Carrying out research and special studies about the public sector.

- Undertaking performance audits.

Undertaking performance audits is a function of the Auditor-General that is specifically provided for in the Public Audit Act. Section 16 of the Public Audit Act provides the authority for the Auditor- General to carry out performance audits, which examine:

- how effectively and efficiently a public organisation is working;
- whether a public organisation is complying with its statutory obligations;
- any act or omission that might waste public resources; and
- any act or omission that might show (or appear to show) a lack of probity or financial prudence by a public organisation or one or more of its members, office holders, and employees.

What is a performance audit?

Performance auditing is not something a lot of people are familiar with. Essentially, a performance audit requires that the auditors develop audit criteria, or bench marks, of what would constitute good performance by an entity. The auditors then measure the performance of the entity against these benchmarks. Audit criteria, or benchmarks, are specific to the entity being audited and are discussed with the entity before the start of the audit.

It is the existence of audit criteria that distinguishes a performance audit report from other types of Auditor-General reports, such as inquiry reports, or reports that review expenditure.

The Canadian Audit and Accountability Foundation describes performance audit criteria as follows:

Audit criteria represent the standards expected to be met by an audited organization. Audit criteria are a key contributor to an audit's strength and potential impact. Audit procedures focus on determining whether criteria are met or not met. Suitable criteria are clear, concise, relevant, reliable, neutral, understandable, and complete. Finding suitable criteria is a challenge for any performance (value-for-money) audit.

Performance audits carried out by the Auditor-General also state that a key feature of a performance audit is the establishment of criteria or bench marks that are used to measure performance against. The Auditor-General says of performance audits that; 'We create a set of audit criteria or expectations, against which we assess performance'.

Performance audits must be carried in accordance with a set of auditing standards set by the Auditor–General. Performance audit reports are tabled in Parliament and are a public document.

The audit of the Wage Subsidy Scheme.

The Auditor-General report covered the first three iterations of the scheme, from 17 March 2020 to 3 September 2020. These schemes were:

- The original wage subsidy
- The extension wage subsidy.
- The resurgence wage subsidy.

These three schemes paid out almost $14 billion. In his introduction to the wage subsidy report, the Auditor-General said that this amount of expenditure is: 'about the same as the Government's total annual spending on education, and nearly three times its total annual spending on law and order'.

There was limited checking of applications before they were paid as applicants were assumed to be honest and to act with integrity. The Cabinet acknowledged that the flip side to the high trust model was that there would be a need for later verification and potential repayment of wage subsidy funds if eligibility requirements were not met. The fast payment of such a huge amount of public money, together with the limited verification of applications, meant there was a high risk of fraud and error. This expenditure, and the conditions under which it was paid, was bound to attract the attention of the Auditor-General, who decided to undertake a performance audit of the wage subsidy programme. A report was belatedly published a year after over $10 billion had been quickly paid out. The report

discussed issues around setting up the scheme, how payments were made, how the integrity of the scheme was protected and arrangements for monitoring the scheme.

But the primary focus of the performance audit was described by the Auditor-General as follows:

‘Our work focused on the extent to which the public organisations involved in administering the Scheme were aware of the risks of fraud or error, and the actions they took to manage those risks through prevention, detection, and recovery work’.

In response to this focus on fraud and error, the audit criteria in the Auditor-General report was drawn from the work of the International Public Sector Fraud Forum on how to manage the risks of fraud for tax-payer funded crisis support. A table in the report sets out the principles of fraud control, methods to counter possible fraud and the techniques that should be applied to reduce the incidence of fraud.

Table 10 below summarises what the Auditor-General said about the management by MSD of the risks from fraud and error and what the Auditor-General failed to say about how these risks were managed. Table 10 also summarises some of the points in the later report to the Finance and Expenditure Select Committee.

Table 10: Summary of the reporting failings.

What the Auditor-General said.	What the Auditor-General failed to do.
In previous reports on the Canterbury earthquakes, the Auditor-General said that the greatest risk and opportunity for fraud is at the early stages of any emergency.	Did not focus on the key risks for fraud and overpayment of the wage subsidy when the scheme was opened to all businesses and when billions of dollars were paid as fast as possible. The Auditor-General failed to assess these risks and examine the MSD system for evidence of how these risks were controlled. What it did not do was to sample those earlier applications and MSD records to assess if MSD systems had been effective in mitigating those risks during the early stages of the scheme.
After the Canterbury earthquakes, the Auditor-General said in its May 2021 report that valuable lessons had been learnt from operating a high trust wage subsidy scheme and that MSD had experience in matching information in subsidy applications with information that other public organisations held.	Failed to state what lessons were learnt about the risks from handing out, as fast as possible, vast amounts of taxpayer money on a high trust basis. Were there any lessons learnt about the need to later verify the claims made by applicants? Was there over-reliance on the high trust approach? Put another way, what exactly were the lessons from this high trust approach when combined with the fast pay-out of money?
MSD had only 2 days' notice that it was to operate the wage subsidy scheme and the Auditor-General said this caused few problems.	• Failed to explain how hundreds of staff were trained in a matter of days to process tens of thousands applications. What were the policies and procedures put in place before the scheme started on 17 March 2020, to ensure staff paid money to only eligible applicants? When the scheme was later opened to all businesses, and at a time when the country was shut down, what were the work arrangements for the 1800 MSD staff processing applications? Staff working from home had to be provided with new laptops that had to be built with the relevant software and delivered to staff; a major undertaking. Was everything in place when the scheme was expanded? What was the level of supervision considered necessary for the staff processing applications worth billions of dollars? What assessments were made that staff working from home were able to connect remotely to MSD systems, and were able to access technical assistance if there were problems? • Did MSD have in place systems for the efficient and effective allocation of the thousands of applications? For example, did the MSD systems prevent a situation where too many applications might be allocated to some staff and not enough to others? The accurate processing of applications was vital to the integrity of the scheme, but seemed of limited interest to the Auditor-

General

That there was separation of duties.

The separation of duties means that the same person processing a payment does not approve it. This is an important internal control in any organisation and is intended to reduce the risk of errors and possible fraud. For the wage subsidy scheme, and despite what the Auditor-General claimed, there was no separation of duties. Once the staff member processing an application pressed the enter button, the payment was auto approved by the system.

(Note; The financial audit of MSD is carried out by Audit NZ found there was no separation of duties).

The Auditor-General said that, for the original scheme, before paying the subsidy, MSD staff had to phone Inland Revenue to compare the information that applicants provided against the Inland Revenue records. The Auditor-General said this was an important check to ensure each applicant was a genuine business operating in New Zealand and that the application was for bona fide employees.

The Auditor-General did not check the number of phone calls received by Inland Revenue and matched this number with the number of calls made by MSD staff to check all applications.

Consequently, the Auditor-General failed to notice that tens of thousands of applicants were either approved or declined without MSD first checking details with Inland Revenue.

It is hard to see how the Auditor-General could conclude the scheme was well managed when thousands of applications could have been approved without any assurance that money was being paid to genuine businesses and for bona fide staff. This opened a gateway to possible fraud yet went unnoticed by the Auditor-General, even though its report was supposed to have a focus the risks of overpayments because of error and fraud.

Testing the phone based audit system

The Auditor-General wanted MSD to test the effectiveness of the phone based audit system against actual documents. This was to confirm that the phone based auditing system was effective. MSD conducted a random survey of 339 recipients who had already been the subject of a telephone audits and found to be compliant. The 339 recipients were asked to

In its report to the Select Committee on Finance and Expenditure, the Auditor-General did not tell the Committee;

- That the sample of wage subsidy claims tested by MSD was not a representative sample of all phone based audits.
- That in its report to the Committee, the Auditor-General did not explain that it had now reworded one of the recommendations in its May 2021 report to Parliament. The rewording obscured the fact that the MSD testing of its post payment audits was not representative of all post-payment checking.
- That MSD told recipients of the survey that they could choose what documents they wished to provide.

produce documentation to confirm their entitlement to the subsidy. This survey was supposed to determine how much reliance could be placed on the phone based checks system. It was of vital importance in terms of validating the effectiveness of MSD 'audits'.	When the Auditor-General reported to the Select Committee in late 2021, MSD had not completed its testing of the phone based audits system. But based on interim results, the MSD sampling exercise showed that 7.5% of recipients were overpaid. The Auditor-General told the Committee that it was concerned with this high level of non-compliance. When MSD later completed its audit sample of 339 applicants, 9.3% of businesses with more than six employees were found to be non-compliant with eligibility requirements. In the case of applicants with five or less employees, 12.4% were found to be non-compliant. These results showed the situation to be worse than originally reported to the Committee, but Auditor-General did not tell the Committee about this and whether such a high rate of noncompliance meant little reliance could be based in the thousands of audits conducted over the phone.
MSD enforcement work. The Auditor-General recommended that MSD needed to prioritise remaining enforcement work, including obtaining written confirmation that applicants had complied with the criteria for being paid the subsidy.	There had been no systematic checking that applicants complied with the revenue reduction requirement. The Auditor-General said that writing to recipients and obtaining written confirmation of compliance was to be part of the MSD enforcement activities. MSD surveyed 1000 recipients, but the Auditor-General did not check that the survey was conducted in a manner that would provide evidence that could result in enforceable action. The Auditor-General simply accepted the results given to them. Neither did the MSD query why the survey excluded 'risk identified' applicants and whether this skewed the survey results. These issues are discussed in more detail in the next chapter.
The 'active steps' criterion. The Auditor-General said it could find no evidence of compliance with the 'active steps' criterion.	The Auditor-General failed to assess the financial impact of non-compliance and the extent to which the wage subsidy was paid to cash rich businesses.
Performance audits must establish expectations of good performance to measure actual performance against. The specified audit expectations for assessing the management of risks relating to fraud and error	The Auditor-General report offered little evidence that it had undertaken any comprehensive and systematic assessment of MSD's performance against the audit expectations described by the International Public Sector Fraud Forum. Having set out these expectations in the Auditor-General report, they were largely ignored by the Auditor-General. The Auditor-General claimed that its performance audit was intended to examine

were set out in the Auditor-General report, derived from the; International Public Sector Fraud Forum's, good practice information, on how a public organisation should Manage the risks of fraud for Taxpayer-funded crisis support.	how MSD managed the risks from fraud and error. The Auditor-General appeared to be using the criteria suggested by the International Public Fraud Forum but then, inexplicitly, failed to comprehensively assess the management of these risks against the audit criteria suggested by the Forum and endorsed by the Auditor-General

The Auditor-General said the performance audit report was aimed at examining the extent to which the risks of fraud had been managed and concluded that overall, the wage subsidy scheme had been effectively managed. However Table 10 contains a summary of the matters relating to fraud and error that the Auditor-General failed to address and it is hard to see how the Auditor-General could conclude that the risks to the scheme had been effectively managed. The Auditor-General said that 'some aspects' of the fraud management techniques were implemented, but failed to explain what is meant by the term 'some aspects' If only some aspects of the management of the risks from fraud and error had been implemented, did this mean that there had been effective management of these risks and other aspects had been ignored?

Equally, for a report that was said to be focussing on how well MSD had managed the risk of fraud and error of the 'High Trust' wage subsidy scheme, it is strange that the report offers few insights into the nature or extent of any fraud of the scheme and fails to draw conclusions as to the adequacy or effectiveness of MSD's actions in controlling fraud.

Auditor-General'S FAILURE TO ACT AS THE GUARDIAN AND WATCHDOG OF PUBLIC MONEY

The Auditor-General allowed his recommendations to be rendered almost worthless by the MSD. Despite this, the inadequate and badly flawed surveys carried out by the MSD showed that billions of dollars should be repaid but this was ignored by the MSD and Auditor-General. All the information and statistics showing that many billions of dollars should be repaid that have been discussed so far, were made available to the Auditor-General but he chose to ignore this data and avoid doing any further work on the wage subsidy.

On the Auditor-General's website there are hundreds of references to his concern about the good stewardship of public money and his role as the watchdog and guardian of public money. This work involves relatively trivial amounts when compared to what happened with the wage subsidy but he was determined to do nothing about the wage subsidy abuse. If the Auditor-General continues to fail to do his job properly, then there is no-one else that taxpayers can rely on to look after their interests.

In a letter to the Finance and Expenditure Committee on 21 December 2021, the Auditor-General described the work carried out on the implementation of recommendations to date made in the May 2020 report on the wage subsidy scheme. It may have been hoped that the letter would be forgotten by the time that the Christmas holiday period was over. The Auditor-General letter was a consequence of an investigation by the Committee.

In August 2021, the Parliamentary Select Committee on Finance and Expenditure considered the Auditor-General's report on the wage subsidy scheme. One of the recommendations of the Select Committee was that the Auditor-General should conduct a follow-up audit of the management of the scheme, with a particular focus on the MSD's implementation of recommendations in the report.

The Auditor-General report of May 2021 had three recommendations with 1, 3 and 4(a), being essential to providing assurance that wage subsidy funds were only paid to businesses who complied with the scheme's criteria. The successful implementation of these recommendations would validate assurances that there had been no widespread fraud of the scheme or overpayments to businesses. Alas, none of these recommendations were effectively implemented.

Recommendation 1: The Active Steps Criteria

The Auditor-General report on the wage subsidy scheme addressed the need to clarify the active steps in paragraphs 3.20 – 3.21:

'In our view, if the Ministry of Social Development had required applicants to make a statement about what steps they had taken, they might have been more likely to comply this this requirement. As a result, there would have been information that could have been verified in any assurance work carried out after payment was made'.

Recommendation 1

We recommend that, when public organisations are developing and implementing crisis-support initiatives that approve payments based on 'high-trust', they ensure that criteria are sufficiently clear and complete to allow applicant information to be adequately verified.

In our view, this is especially important when high-trust approaches are being used because it is primarily applicants who assess whether they are eligible and not officials'.

The Auditor-General believed that the 'active steps' criteria were not clear to applicants and this is why it was largely ignored. The intent of this recommendation was to ensure that for any future wage subsidy schemes, criteria would be plain enough to ensure applicant information could be verified. The Auditor-General saw this as very important as it was applicants who assessed whether or not they had taken active steps, and not officials.

It is hard to see what exactly the problem is here. Before businesses applied for the subsidy, they were required to first consider their own ability to survive the pandemic by using their own resources or from other sources and had 'actively' explored these options. In any event, the Auditor-General recommended that this criteria needed to be clarified. However, when it came to reporting back to the Committee on the progress made with the need to clarify the

‘active steps’ criteria, no change had been made, but the Auditor-General was keen to tell the Committee that:

‘MSD has committed to ensuring that criteria are sufficiently clear and complete to allow applicant information to be adequately verified’.

Nothing had been done about rewording the ‘active steps’ criteria in the Declaration form, but the Auditor-General was very happy to tell the Committee that MSD was committed to doing something. The Auditor-General is an easily pleased auditor. He again failed to appreciate the significance of the widespread lack of compliance with the ‘active steps’ criteria. . It was the lack of compliance that the Auditor-General should have been concerned about. In any event, the fact that MSD had not made any change to the criteria meant it had concluded that no change was needed.

MSD did in fact do something. There was a change made to the pre-payments checks of applicants with more than 80 employees. For the August 2021 wage subsidy scheme, MSD amended the guidance material provided to fraud investigators carrying out the pre-payment checks on businesses with more than 80 employees. These businesses were asked to explain what steps had been taken to mitigate the impact on their business of the August 2021 lockdown. Applicants had to give specific examples. In the case of the application by Farmers Trading, an email from the company advised that: ‘We have approached our bank for additional seasonal funding and await the outcome of this. In addition we are negotiating rent relief with landlords, we have an agreement with IRD to defer certain tax payments and have employees working from home where possible and are managing cash flows as tightly as we can’.

Information was provided that could be verified if MSD later decided to carry out a post-payment review. No questions were asked about the level of cash reserves.

The Auditor-General’s recommendation 3 was that ‘ In relation to the Wage Subsidy Scheme, we recommend that the Ministry of Social Development test the reliability of a sample of the post-payment assurance work it carried out against documentary evidence held by applicants’.

This recommendation was based on an Auditor-General finding that the MSD post-payment audits did not involve examining documentary evidence, such as financial accounts, which are a key part of any audit. The Auditor-General believed that unless such documents were examined, then there has been no objective validation of an applicant’s compliance with the revenue reduction requirement. This is why the Auditor-General recommended that MSD should test the integrity of the phone based post-payment reviews. This would involve drawing a sample of the phone based reviews and comparing these with the financial documents held by applicants.

In its report to the Select Committee, the Auditor-General said that MSD had started to implement this recommendation and told the Committee that:

‘Some previously unknown non-compliance with requirements of the Scheme. For example, MSD asked for supporting documentation from a sample of 339 applicants it had previously subjected to a post-payment review. By late October 2021, 186 people had responded. Subsequently 14 (7.5%) of those were required to provide a full or partial refund and two were referred for further investigation based on the evidence or lack of evidence provided’.

With the survey still not completed, 7.5% of recipients of the subsidy were found to have wrongly retained it. The Auditor-General said that:

‘If the level of non-compliance identified to date is indicative of the level across the whole Scheme, it could involve a significant amount of public money’.

Keep in mind that this was the level of non-compliance found after these recipients had already been the subject of phone based post-payment review and found to have complied with the wage subsidy criteria.

But what if the level of compliance was found to be more than 7.5% once the survey was completed? Would the Auditor- General be even more concerned?

When MSD did complete its survey of 339 post payment reviews, the results were that 9.3% of businesses with more than six employees were found to be non-compliant with some eligibility requirements but some important criteria were not checked.

The Auditor- General was concerned when the interim results from the MSD sampling exercise showed that 7.5% of recipients were overpaid.

The final results showed an average non-compliance rate of 11%, or 46% more that the figure that originally was of concern to the Auditor-General. It might be expected that the Auditor -General would express further concern that the wage subsidy scheme had resulted in the over payment of significant amounts of public money. However, this was ignored and nothing more was said publicly.

The intention of recommendation 3, as explained in the Auditor-General's report on the wage subsidy scheme of May 2021, was for MSD to confirm that the thousands of post -payment phone reviews were a reliable method of providing assurance that only valid subsidy claims were paid and that there were no wrongly retained claims. To be of any use, the sample would need to be representative of all the phone-based post-payment reviews and include the main obligations.

It might be assumed, from the wording of Recommendation 3 that the sample analysed by MSD would be a sample that was representative of all phone based post-payment reviews carried out by MSD. Sadly, this was not the case.

In a MSD letter dated 16 January 2023, in response to an OIA request, the General Manager for Client Services explained that the results of this sampling:

Cannot be extrapolated across all recipients of the scheme. They are only representative of those applicants subject to a random post-payment integrity check (around 3,700 checks) prior to the Ministry's shift to targeting post-payment integrity checks to areas of risk including through risk analysis conducted by Inland Revenue.

But why was the sample not representative of all post-payment reviews? An internal MSD memo of July 2021 described the sampling method. The memo said that 'It had been determined that the focus should be on random integrity checks'. These checks were carried out between 27 March 2020 and 22 May 2020. A sample of 339 post-payment reviews were randomly selected, comprising 9% of all the random reviews.

A footnote to this memo said that:

`In early May 2020, when post payment integrity checks were predominantly random, only 5% of applicants subject to these checks were found to require a partial or full repayment. By end of the October 2020, when post payment integrity checks were predominantly targeted, repayments were required in 15% of cases'.

So MSD decided to focus its sampling work on random reviews, the least effective, according to MSD, of its post-payment review methods and a method it had largely abandoned by late May 2020. It appears that MSD did not consider it relevant to sample the post payment reviews that had been completed by the end of October 2020 and which would have included the original wage subsidy scheme, the extension scheme and the resurgent scheme. The Finance and Expenditure Select Committee heard evidence from MSD on its management of the wage subsidy scheme, and in its report of August 2021. The Committee said that: 'MSD will no longer rely on random reviews for post-

payment assurance, but will instead focus on targeted reviews. This was because the random reviews had identified relatively few issues of concern'.

What is puzzling is that MSD had found that its targeted post-payment reviews had shown that 15% of applicants that were the subject of a targeted review had to make a repayment. Yet neither the Auditor-General nor the Finance and Expenditure Select Committee appeared to know about this significant finding. Had the sampling of the post-payment reviews been extended to the targeted reviews and recipients required to provide evidence relating to their most important obligations, a much greater percentage of recipients would have been identified.

But there is another baffling aspect to the evidence provided by the Auditor-General to the Select Committee.

In the report to the Finance and Expenditure Committee of 21 December 2021, the Auditor-General referred to Recommendation 3 using the following words:

' Recommendation 3: Test the reliability of a sample of the earlier post-payment assurance work. We recommended, in relation to the Wage Subsidy Scheme, that MSD test the reliability of a sample of the earlier post-payment assurance work it carried out against documentary evidence held by applicants.'

In this version of recommendation 3, the word 'earlier' has been inserted, implying that the Auditor-General had recommended that sampling should be from the ineffective random reviews. This was not how Recommendation 3 was worded in the May 2021 wage subsidy report that was tabled in Parliament. The original recommendation did not contain the word 'earlier'.

It does seem that for its report to the Select Committee in December 2021, the word 'earlier' could have been inserted to cover the fact that MSD had decided to restrict its sampling to the earlier random reviews only and that these results would not be representative of all post-payment checking.

Why would the Auditor-General now wish to amend the wording of a recommendation in its wage subsidy report that was tabled in Parliament in May 2021? Did this later change now misrepresent the earlier recommendation?

In a Newsroom article of 26 October 2021 the journalist David Williams wrote about the sampling of the post-payment reviews. Newsroom had obtained a MSD report dated July 2021, concerning recommendation 3 about the need to sample post-payment reviews. The Newsroom article explained the focus of the MSD sampling would be on:

'Random post-payment integrity checks undertaken between March 27 and May 22 – rather than those selected under a more targeted approach adopted later.

The July memo by MSD's Henare raises questions about post-payment checks over the last 12 months. It says the latest integrity work relates to wage subsidy schemes that closed on June 9 2020. 'We have not focused on later schemes, because enhanced integrity controls were in place by 10 June 2020 for the Wage Subsidy Extension (WSX) and Wage Subsidy Resurgence (WSR) payments.'

In fact, the stricter controls over the wage subsidy scheme were not introduced until March 2021, when applicants had to retain documents relating to a fall in revenue.

But Newsroom had made public the fact that the MSD sampling was restricted to the earlier, and now largely discarded, random audits.

Is this why the Auditor-General felt it had to amend the wording of recommendation 3 to now reflect the more limited sampling work being undertaken by MSD?

The fact is that the Auditor-General had originally recommended that MSD should test the reliability of a sample of the post-payment assurance work it carried out against documentary evidence held by applicants. The intention was to find out if the phone based review method was reliable. Restricting the sample to the random reviews, which MSD had little faith in and had largely been abandoned, would not provide the level of assurance sought by the Auditor-General. The sample was not representative of the post payment audit reviews and proved nothing.

The mystery here is why the Auditor-General did not tell the Select Committee that MSD had chosen a sampling method that did not provide any assurance about the reliability of the phone- based review system.

The further mystery is why, in a report to a select committee, the Auditor-General would reword a recommendation of a report already tabled in Parliament to imply that MSD could select its sample from the early, and largely discarded, phone review method.

There is a further point still. When an Auditor-General report is tabled in Parliament, it becomes an official document and forms part of the parliamentary record. Rewording a recommendation in a later report to a select committee compromises the integrity of the audit report that was tabled in Parliament. This is definitely not best practice.

Recommendation 4; seeking written confirmation from recipients.

The Auditor-General recommended that MSD should seek written confirmation from applicants that they complied with the criteria for the scheme and stated that:

`MSD should prioritise remaining enforcement work, including seeking written confirmation from applicants (which could be targeted towards larger or risk-indicated applicants) of compliance with the eligibility criteria and the obligations of receiving the subsidy'

To give effect to this recommendation, MSD carried out an email survey of 1000 applicants that simply required a yes or no response.

Auditor-General reporting of the survey results.

In its December 2021 report to the Finance and Expenditure Select Committee the Auditor-General explained the interim results of the survey:

'MSD told us that, as at 18 October 2021, 535 replies had been received. Of these, 532 employers confirmed they had met the eligibility criteria and had complied with their obligations. Three applicants who responded to MSD's request indicated that they might not meet the criteria for the Scheme. Two of those applicants have paid back the subsidy in part or in full, and it was determined the third applicant was eligible.

There may be additional applicants who assess that they have not met the criteria when MSD sends reminder emails to applicants who have not yet confirmed their compliance with the eligibility criteria and obligations.

MSD plans to send reminder emails to those employers who have not yet replied, after applications from the August 2021 iterations of the Scheme have closed. In our view, seeking confirmation of eligibility from applicants has been useful to identify non-compliance and is relatively inexpensive compared with other actions MSD could take to protect the integrity of the Scheme'.'

In this response, the Auditor-General seems to have forgotten that he had originally recommended that writing to recipients was to be part of MSD's enforcement work, requiring a formal written and signed response from recipients. Simply pressing a yes or no button was insufficient.

The obvious conclusion to be drawn from these interim survey results is that there were very few problems with payments under the wage subsidy scheme. But there were problems and these relate to how the survey was conducted, specifically:

- The survey required either a Yes, or No response. The survey was not part of any enforceable action, as recommended by the Auditor-General.

- MSD decided to sample 1000 of the 'larger' businesses, defined as businesses with more than 6 employees, and weighted towards businesses with more than 80 employees. MSD decided to ignore the 'risk-indicated businesses'. The survey of 1000 businesses was weighted so that it included 500 businesses with more than 80 employees and 500 with more than 6 employees but less than 80. In other words, care was taken to avoid any 'risk indicted' businesses that were suspected of not complying with the criteria for payment of the subsidy, and also heavily weighting the survey towards those businesses with more than 80 employees. This could be interpreted to mean there was a deliberate attempt to avoid any problem areas. The Auditor-General had recommended that the letter to recipients was to be part of MSD enforcement activity and therefore should have included 'risk indicated' businesses.

- The 500 businesses with more than 80 employees had already undergone the MSD assessment process before subsidy payments were made. MSD knew these were genuine businesses and had checked details such as staff numbers with Inland Revenue. MSD did not regard large companies as being a risk. Given these circumstances and in order to understand the survey outcome, the results should have been analysed to show the results from the 500 large businesses with more than 80 employees separately from the results for the other 500 businesses. But the survey results had not been analysed in this way. In an OIA request, MSD was asked if the results could be grouped to show the survey results for the businesses with more than 80 employees and those with less than 80 employees. MSD advised this was not possible.

The survey was finally completed in 2022, and the results were contained in an MSD letter of 14 March 2023 in reply to an OIA request. The survey showed that only six recipients were found to be in breach of the subsidy conditions.

These results would again seem to indicate an extremely high level of compliance; out of 1000 business only six businesses (0.6%) said they no longer complied with the criteria for accepting the subsidy. Of course all recipients had to do was press a button. No signed letter of confirmation was required.

But are the survey results really that good?

The survey was completed in late 2022. MSD was unable to contact 47 recipients and has accepted that it will never be able to trace these businesses. MSD also deleted 136 recipients from the survey because of 'data limitations'. The 136 recipients were removed because they were either sent the wrong declaration form or the emails from MSD 'bounced back', meaning the email address was no longer in use. MSD has explained that the 'bounced back' emails could have been because the employee who handled the original application no longer worked for the company.

MSD was asked how many of the 136 businesses were sent the wrong declaration form and how many were sent emails that were 'bounced back'. MSD advised that it does not have these details and staff would need to be diverted from other standard operations to find such details and considered this would be an inefficient use of MSD resources.

MSD advised that:

`We can confirm that the Ministry collected a range of details from employers as part of the wage subsidy application process, including a physical address for the company and their contact information. However, while carrying out the survey, we found that some phone numbers and email

addresses held on application forms were no longer in use (such as where the business was no longer operating, had changed ownership, or where the person responsible for submitting the application was no longer employed). Please note, that this was an assurance exercise employing a survey-based approach (as opposed to a full Ministry investigation, which would only be undertaken in cases of potential fraud). As such, the extent of our follow up in this instance was based solely on the contact information provided in the application forms, without further information being requested.'

In other words, the survey was sent to the email addresses provided in the original application form and MSD found that a large number of the emails and phone numbers were no longer in operation. A quick online check could have provided alternative addresses but MSD did not bother doing this.

Some businesses stop operating within a couple of years and can be hard to trace. However the inability to contact businesses, either by phone or email, and which had received substantial government funding, paid out in an emergency situation, could also suggest that fraud may be involved. Large amounts of public money were involved. For the original scheme, businesses were paid 12 weeks in advance, amounting to $7029 for each full time employee. There were a total of 183 companies that could not be traced, and assuming that each business had a minimum of 6 employees, this equates to a payout of at least $7.7 million.

But all is not lost. Wage subsidy payments were paid into bank accounts. MSD was also asked, through an OIA request, whether assistance had been sought from Inland Revenue to trace the name and address of the account holders. MSD said that:

'It should be borne in mind, however, that the purpose of the survey was to seek written confirmation of eligibility from a sample of wage subsidy recipients, as per the 2021 recommendations of Audit New Zealand and the Office of the Auditor-General. There was no expectation that the Ministry verify an applicant's eligibility with banks, Inland Revenue, or with any other agencies.'

But the Auditor-General recommendation said that MSD should prioritise its remaining enforcement work, including writing to recipients of the subsidy to confirm their eligibility for the subsidy. The expectation was that the survey would form part of MSD's enforcement work. As such, it might be expected that MSD would follow up any anomalies in the survey result which might suggest that fraud was involved. But clearly MSD had a different view, and did not see this survey as part of enforcement work.

This money went into someone's bank account and could be traced. If the same amount of effort that is applied to tracking beneficiaries' suspected of fraud was also applied to the businesses that did not reply, then these businesses could have been found.

There is a further issue. MSD is not able to display the survey results according to size of the businesses. That is, how many of the non-compliant or missing businesses were in the group of businesses with more than 80 staff and how many in the group with less than 80 staff. As MSD knew that the large businesses were genuine and could not easily disappear without trace, it is reasonable to suspect that the 183 companies that have disappeared, or cannot be contacted by phone or email, are all in the businesses with less than 80 employees. In other words, 37% of the businesses with less than 80 employees may have been involved in submitting fraudulent claims. On the face of it, this result indicates possible widespread fraud of the scheme. But unless more effort is applied to resolving this issue, no one will ever know the true situation.

In the covering letter to the Finance and Expenditure Select Committee, enclosing the Auditor-General report on the progress that had been made implementing its recommendations, the Auditor-General said:

'It is important for officials to continue post-payment assurance work until such time as they can provide the public and Parliament with reasonable confidence that public funds have only been paid

to businesses who have met the Scheme's criteria and obligations. In my view, we are not there yet'.

The problem is that several years after the Auditor-General made this statement, the Auditor-General and the public are still in the dark as to whether or not 'we are there yet'. The two crucial surveys that were supposed to provide assurance that public funds were only paid to businesses that were entitled to taxpayer support have failed to provide this assurance. Parliament, and the public have been badly letdown.

SUMMARY OF MSD WAGE SUBSIDY FAILURES

The MSD failure to clarify or include in the wage subsidy Declaration important Cabinet objectives, requirements and conditions.

The MSD failure to adopt established beneficiary investigation and prosecution processes and, consequently, to use lax processes that rarely resulted in a prosecution.

The MSD avoidance of requesting evidence that could be used in a prosecution

The MSD failure to ever ask for evidence of compliance with some main Declaration requirements.

The MSD stated aim to complete investigations by December 2020.

The MSD failure to quickly carry out and publicise investigations and prosecutions in order to encourage repayments and deter fraud continuing after the original wage subsidy.

The MSD failure to request extra investigation staff, despite a 171% increase in payments, as pointed out by the Finance and Expenditure Committee.

The MSD failure to write to all recipients as recommended by Deloitte, Audit N Z and the Auditor-General in 2020 and 2021.

The MSD failure to request the repayment of the 5 or 7 week overpayment for most businesses who received the Original wage subsidy an then the up to 8 week overpayment of the extension wage subsidy.

The MSD failure to take any action to recover the billions of dollars of wage subsidies that its very limited investigation work revealed were wrongly obtained or retained and should be repaid.

The MSD false public claims about phone calls being audits and using investigation staff who were inexperienced in business and accounting processes.

The MSD failure to ask anyone for verifying evidence of compliance except for evidence of part compliance in rare circumstances.

The MSD failure to take any notice of criticisms by 6 Professors of accounting, business and economics.

The MSD failure to take any notice of potential fraud revealed in over 150news media articles and also on its database.

The MSD failure to recognize that the voluntary repayment of 95% of the $831 million repaid indicates that vastly more repayments would be made if requested.

The MSD failure to accept that businesses had been hugely overpaid after it was supplied on many occasions with verifying data from IRD, Reserve Bank, Statistics N Z and data collection businesses.

The MSD failure in quarterly reports to alert Ministers to huge overpayments and major problems that needed to be corrected and the potential for billions of dollars to be repaid by simply writing to recipients.

The MSD failure to prosecute anyone for 18 months until forced to start taking token actions against individuals for blatant dishonesty.

The MSD failure to deal with overpayments and fix other major problems that were brought to its attention.

The MSD failure to properly deal with Auditor-General recommendations, criticisms and suggestions.

The MSD unacceptable actions in getting Audit N Z and the Auditor-General to change and delete recommendations and then undermining the remaining recommendations.

The MSD failure to request copies of GST returns, as the only accurate way to verify revenue declines, as suggested by the Auditor-General.

The MSD failure to properly design the reviews and evaluations recommended by the Auditor-General resulting in them revealing lower percentages of fraud when the total should have been far

higher. Then ignoring the results.

The MSD stopping work on the wage subsidy and not requesting that recipients repay billions of dollars that had been overpaid or wrongly obtained or retained.

POLITICAL PARTIES KEEP QUIET

Whether or not political parties obtain or retain power is dependent on the amount of money they receive from wealthy business interests. This meant that politicians were not prepared to say that those who made a lot of money from the wage subsidy should make repayments. They did not want to annoy those who had done very well and could afford to increase their political party donations.

Politicians ignored the numerous news media articles and criticisms by accounting and business academics. The news media were an essential service so did not close and were able to increase revenue due to the public demand for news about the pandemic. Newspapers claimed the wage subsidy but still printed a lot of stories about abuse of the wage subsidy. The state owned TVNZ appeared to have a ban on any stories about wage subsidy abuse but it did broadcast MSD wage subsidy news items based on the news strategy developed by MSD. There were news items and Checkpoint interviews on RNZ but the Morning Report programme had a ban on any stories about wage subsidy abuse and the need for repayments. At the same time it broadcast a lot of trivial stories of limited public interest. It appears that the producer of Morning Report, who had been in this role for over 20 years and was nearing retirement, had a vested interest in suppressing news that could negatively impact the investment profits that he and his relatives and friends had made from the wage subsidy.

Attempts were made to try to embarrass politicians into demanding action on repayments. To get some publicity, judicial reviews were filed regarding not following established policies but these were not successful due to legal technicalities. Requests made to some trade unions and a few charities to speak out about the need for repayments were ignored. This included writing twice to the Salvation A

rmy following them complaining about poverty.

A large advertising campaign was launched but it did not get news media attention so politicians did not respond. The advertising campaign invited people to sign a petition regarding getting repayments but only 15,000 did so. This indicates a huge amount of complacency so did people then have the right to complain about high interest rates, soaring rents and a cost of living crisis?

A letter was sent to the N Z National Party in May 2023 regarding the close to $10 billion that should be repaid by businesses and asking them if they supported repayments being made.

In June 2023, the following statement made on behalf of the National Party leader Christopher Luxon and Social Development spokesperson Louise Upston was received:

‘The National Party supports the wage subsidies provided by the Ministry of Social Development, to better help those in need of employment.We also support the notion that businesses who have been overpaid and/or wrongly retained these subsidies, pay it back to Ministry of Social Development.This is the expectation for individuals who have incorrectly received the benefit, and therefore we believe it should apply to businesses as well.’’

Once the National Party was in government, they made a lot of cuts to services and complained about lack of money. Copies of their email were sent to the Prime Minister and Ministers but they failed to do anything about getting repayments. Some journalists were also sent a copy of the email but they did nothing about it.

Over the past 40 years the democratic process in New Zealand has become increasingly corrupted and the wage subsidy is a good example of what happens. Unlike other similar countries, New Zealand has no controls on lobbying and weak regulations on political party donations. As a result, business interests get what they want at the expense of the community and future generations.