

# 'Relationship status' and the Welfare System in Aotearoa New Zealand



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## About this Report

This report is designed to provide a contextual overview of the way relationships are defined, incentivised, and sanctioned in the current welfare system in Aotearoa, and how this compares with similar systems overseas. Our hope is that the information provided here will encourage a rethink and redesign of the way we support parents, children and families.

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## Executive Summary

- **This report argues that New Zealand’s benefit system reflects traditional thinking about dependence on a partner and relationships within a family.** However, relationships can be complex and the family unit has changed considerably in the last 60 years. Current rules can act as a disincentive for family relationship building which is good for both adults and children.
- **The definition of what constitutes a relationship is unclear, and decisions are often left in the hands of Work and Income staff.** The penalties for getting this wrong can be long lasting for both women and children. This can lead to accusations of ‘benefit fraud’ and possible conviction in court.
- **The investigative process during a review of entitlements can be intrusive and demeaning.** There is growing concern regarding the reliability of the anonymous tip-off process. This report finds Ministry staff are urged to be mindful of informants’ motives yet it appears that the ‘guilty until proven innocent’ rhetoric often prevails.
- **New Zealand, Australia and the UK have similar punitive approaches to beneficiaries.** A ‘dob in’ culture is particularly strong in New Zealand while tip-off recording systems and relationship verification forms are common forms of surveillance elsewhere.
- **Relationship rules require immediate reform.** A system based on kindness and empathy rather than distrust should form the basis of our welfare system.
- **Further work would require a qualitative study,** supported by sole parents, organisations assisting sole parent beneficiaries, and advocacy groups such as Auckland Action Against Poverty and Child Poverty Action Group.

## Introduction

Relationship rules in New Zealand's benefit system reflect traditional thinking about dependence on a partner in a relationship and normative assumptions about family structure and relationships within a family. However, relationships for individuals are often complex and society has become more accepting of different family forms. The treatment of relationships by the system can be a barrier for those on benefits to partner or re-partner. As such, the welfare system, intentionally or otherwise, has embedded a set of disincentives for family relationship building, which may run counter to the current government's policy objectives to reduce child poverty and improve child wellbeing.

This report examines this conundrum by identifying the historical design of the welfare system with respect to sole parents (Section 1); the complexity of the current welfare and tax system (Section 2); and the diverse nature of relationships and definitions thereof (Section 3). While the focus of this report is on sole parents, individuals receiving other forms of welfare assistance – such as New Zealand Super – may also encounter difficulty due to differing rates of payment based on relationship status and living arrangements.

A more in-depth examination of the way Work and Income New Zealand engages with beneficiaries is provided, including a discussion of the 'dobbing in' process for those who suspect someone is committing 'benefit fraud'. Sections 4 and 5 discuss the investigative process and the Benefit Review Committee (BRC). This report was completed prior to the release of the Privacy Commissioner's Report into the Ministry of Social Development's Exercise of Section 11 of the Social Security Act (1964), which examined the Ministry's use of its investigative powers (see Appendix Three for a summary).

Research to date has focussed on the 'economics' of why people are living together or apart and often misses the social aspect of the issue. Academic research on 'relationship fraud' globally is scant. Section 6 investigates existing regulations and current processes in both Australia and the UK. Centrelink in Australia and the Department for Work and Pensions in the UK have similar practices to Work and Income in NZ in that they serve to promote a sense of surveillance among staff and society towards beneficiaries. Section 7 considers how the Courts of New Zealand view benefit fraud cases, while Section 8 discusses the implications of one man's successful appeal to the Social Security Appeal Authority and how this could affect disputed overpayment cases relating to relationship status in the New Zealand welfare system.

Section 9 provides a number of key policy recommendations for consideration. Currently, the overly punitive and harsh approach to welfare in New Zealand actively serves to punish some of our most vulnerable members of society, especially mothers and children. With increasing diversity in family structure, a move away from the use of a traditional nuclear family model in the welfare system would allow women to gain greater independence and financial freedom. The report concludes in Section 10 by outlining a series of next steps and suggestions for future research and strategies for change.

## 1 Sole parents and welfare

There are more than 200,000 'one parent with children' families in New Zealand, representing 18 per cent of all family types. Of these families, 84 percent are headed by women. (Ministry of Social Development, 2010; Statistics New Zealand, 2014).

Sole parents in New Zealand have been more susceptible to poverty than others. For example, financial aid for single mothers was limited to 'charitable aid' until 1911 when widows with dependent children were able to claim a means-tested pension (Uttley, 2000). By the 1960s there were a greater number of women giving birth outside of marriage, combined with a rise in the rates of separation and divorce. To curb growing levels of poverty, the Domestic Purposes Benefit was introduced to New Zealand in 1973 under the Social Security Amendment Act.

The growing influence of neoliberalism became apparent during the 1980s when beneficiaries were placed under increasing pressure to enter the workforce alongside receiving state support. This culminated with the 'Mother of all Budgets' in 1991 which saw significant changes to the welfare system, including a reduction in benefit rates and amendments to the eligibility criteria, particularly impacting women and children. Benefits rates relative to average wages have never been restored, eligibility criteria for benefit receipt have been tightened and the allowed thresholds of earnings before abatement have become more stringent through lack of indexation.

To be eligible to receive Sole Parent Support the applicant must not be in a 'relationship in the nature of marriage' and must meet part-time work obligations if there is a child aged 3 to 13. To meet such obligations, parents are required to 'take reasonable steps to prepare and plan for work' (Ministry of Social Development, 2019). Failure to meet work tests could result in a benefit reduction or termination. The relationship test is examined next.

## 2 Relationships in the New Zealand welfare and tax system

While the New Zealand family unit may have seen considerable transformation over the last 60 years, the welfare system still reflects traditional thinking around women's financial dependence on a partner. The benefit system differs significantly from the tax system where individual treatment applies. It is also at odds with other parts of the welfare system such as Accident Compensation Corporation and New Zealand Superannuation payments, where there is an individual entitlement despite rates being based on marital status.

Table 1 (page 9) shows the different rates of payment for four common welfare benefits by relationship status. The weekly Supported Living Payment for those who are single with children is \$379.19; compared to \$237.09 each for those who are married, in a civil union or in a de facto relationship. Therefore, those who are partnered may be better off financially if they separated given two singles would receive a combined amount of \$758.38 compared to \$474.18 as a couple. The financial penalty on couples is a difference of \$282.20 a week. Those who are single can of course still be sharing accommodation.

Furthermore, if a relationship exists and only one is paid a benefit, or the married rate of benefit is paid to each partner, a joint income test applies. This means for example that a couple on the Jobseekers' benefit can earn only an extra \$80 between them before a punitive income test applies. Thus, an unemployed or sick person is not entitled to a benefit in their own right without regard to their partner's earnings.

**Table 1: Single and married rates of common welfare benefits 1 April 2018<sup>1</sup>**

<b>Benefit</b>	<b>Marital Status</b>	<b>Net weekly rate, after tax</b>
Sole Parent Support	Single	\$334.05
Jobseeker Support: without children	Single, 25 years or over	\$215.34
	Married, civil union or de facto couple, each	\$179.44
Jobseeker Support: with children	Single	\$334.05
	Married, civil union or de facto couple with 1 or more children, each	\$192.25
Supported Living Payment: without children	Single, 18 years or over	\$269.15
	Married, civil union or de facto couple, each	\$224.28
Supported Living Payment: with children	Single	\$379.19
	Married, civil union or de facto couple with 1 or more children, each	\$237.09
NZ Superannuation or Veteran's Pension	Single, living alone	\$400.87
	Single, sharing	\$370.03
	Couples, each	\$308.36

Currently, the different rates of New Zealand Superannuation are based on marital status and living arrangements. There is no joint income test. The three rates of payment are:

- Single, living alone
- Single, sharing
- Couples, each.

Superannuitants who live alone receive an extra \$30 a week in comparison to those who are single but share accommodation. Two people who share are each paid the single, sharing rate unless they are a 'couple'. It is assumed couples living together in a married, civil union or de facto relationship will have 'economies of scale' that will make them better off financially than individuals in shared

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<sup>1</sup> <https://www.workandincome.govt.nz/products/benefit-rates/benefit-rates-april-2018.html>

accommodation. They can then be paid less. According to the Ministry of Social Development (2016) a married couple:

- *Could be able to enjoy lower accommodation costs than two people*
- *Could be able to have their personal household effects on one insurance policy whereas two single people who are sharing accommodation would be more likely to have separate insurance costs totalling a higher amount*
- *Could share vehicle expenses, while two single people may be more likely to have their own individual transport and vehicle costs*
- *Could generally share meals, while two single people sharing accommodation may not have merged their lives to that extent.*

Relationship rules within the benefit system are also based on the assumption that if a man and woman live together, they will share their income (Edwards, 1983; St John, 1991). In her 1983 doctoral thesis titled, 'The Income Unit in the Australian Tax and Social Security System', Meredith Edwards found great diversity in the financial arrangements of 50 Australian couples (Edwards, 1983). While some pooled income and decided together on how best to spend or save their money, others preferred to keep their finances separate altogether. Fleming with Taiapa, Pasikale and Easting (1997) found people who re-partner may have different systems of resource sharing and allocation, which is in contrast to the current assumptions in the benefit system. More recently, Elizabeth (2001) found that couples who chose cohabitation rather than marriage engaged in practices of independent money management to avoid issues of financial dependency. Due to this, power relations within the relationship remained equal and established a sense of autonomy. However, the current system assumes that when a woman enters into a new relationship, her new partner will financially support her and her children. Yet placing such a huge financial responsibility on the new partner could negatively impact the relationship. This suggests new empirical research on income sharing and resource allocation in modern New Zealand families would be helpful to understand the various ways in which the distribution of money occurs across the life cycle, and on the extent to which women's partnership decisions are influenced by benefit rules.

### 3 The complex nature of defining a relationship

The Work and Income website outlines the following as a guide to what they consider to be a relationship:

*When we look at what benefits you can get, we consider you to be in a relationship if you are<sup>2</sup>:*

- *married*
- *in a civil union with someone of the same or opposite sex, or*
- *in a de facto relationship with someone of the same or opposite sex*

*There needs to be a degree of companionship in which 2 people:*

- *are committed to each other for the foreseeable future, and*
- *are financially dependent on each other*

*To give you a better idea of what we mean by this, think about whether*

- *you live together at the same address most of the time*
- *you live separately but stay overnight at each other's place a few nights a week*
- *you share responsibilities, e.g. bringing up children (if any)*
- *you socialise and holiday together*
- *you share money, bank accounts or credit cards*
- *you share household bills*
- *people think of you as a couple*
- *you give each other emotional support and companionship*
- *your partner would be willing to support you financially if you couldn't support yourself*

While Work and Income lists a range of possible situations that could constitute a 'marriage-type relationship', it is still an arbitrary checklist. Relationships are likely to be different for different people and it is difficult to see the point of this process. For a woman with dependent children

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<sup>2</sup> <https://www.workandincome.govt.nz/on-a-benefit/tell-us/are-you-in-a-relationship.html>

receiving Sole Parent Support and unsure of her relationship status, it is unlikely a checklist of scenarios will be of help, and may instead cause more worry.

Due to the fluid nature of relationships it may be difficult to ascertain when one technically 'begins', unlike marriage. In the Australian context, Sleep, Tranter and Stannard (2006) suggest 'women and children are expected to be either in a totally dependent relationship with a man, or they are to be utterly independent of men' (p. 10). While the Work and Income website may give clients a better understanding of what *they mean*, there are no fixed guidelines (Jørgensen, 2018). Nowhere does it state how many nights a beneficiary can spend with a partner before they are considered in a relationship nor does it state what constitutes 'living together most of the time'. The question is, when does dating turn into a financially dependent relationship?

Work and Income also asks beneficiaries if they have provided all required information<sup>3</sup>:

*Have you told us everything?*

*When you receive income assistance, it's very important you tell us everything about your personal situation that might affect your entitlement, for instance if you're working or in a relationship. It's also important that you answer honestly questions we may ask about your personal situation.*

*If your situation changes in any way that may affect your entitlement, you must tell us straight away. If you don't tell us about these changes, you could be breaking the law. This could result in you and your partner getting a fine, having a debt you both have to pay back, being prosecuted or imprisoned.*

*Call us if there's anything you're uncertain about – we're happy to answer your questions.*

In 2013, Work and income introduced a 'Relationship status verification form'.<sup>4</sup> The purpose of this form is to document information from a person nominated by the client in regard to their relationship status when applying for a Sole Parent Support payment. Alongside providing name and contact details, the nominated person is required to describe the relationship status of the

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<sup>3</sup> <https://www.workandincome.govt.nz/on-a-benefit/tell-us/are-you-in-a-relationship.html>

<sup>4</sup> <https://www.workandincome.govt.nz/documents/forms/relationship-status-verification-form.pdf>

person involved. The form includes a declaration stating that providing false information could lead to possible fines, imprisonment or prosecution. Nominated individuals who are concerned about the information they are being asked to provide are encouraged to call or email the Fraud Allegation Line.

The definition of what constitutes a relationship is thus unclear and the penalties for getting it wrong can be severe.

According to the Ministry of Social Development (2013a), the two most common forms of benefit fraud are:

- *Failing to declare employment and wages received (often by continuing on benefit after starting work).*
- *Failing to declare a relationship (particularly if the relationship starts, or resumes, while at least one partner is receiving a single or sole parent rate of benefit).*

'Relationship fraud' is said to occur when 'a person is living in a de facto, marital or civil union relationship claims a single or sole parent rate of benefit for which they are not eligible' (Ministry of Social Development, 2013a, p. 5). However, failing to purposely declare employment by continuing on a benefit and failing to declare a new relationship while receiving Sole Parent Support are arguably two very different scenarios. Moreover, the use of the term 'benefit fraud' is problematic, in part because in many cases the contested payment is the result of misunderstandings and errors in a highly complex system of rules and regulations (Mosher & Herman, 2004). While we do not deny or downplay 'relationship fraud' that is purposefully committed, the large majority of cases may be better described as 'disputed overpayments'.

**Table 2** (page 14) shows the number of allegations, investigations and prosecutions of alleged benefit fraud for the period 2012-13 through to the end of the 2018 financial year. It is evident that over this period the number of allegations received from all channels has almost halved (from 17,387 to 9,728). The number of investigations completed has also halved, (now at 5490). Of these 3094 were for 'relationship fraud', down from 6131 in 2014-15.

**Table 2: Number of benefit fraud allegations, investigations, overpayments and prosecutions between the 2012/13 and 2017/18 financial years.**

	Financial year					
	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
<b>Allegation Line calls received</b> (some are screened out because the alleged person is not receiving income support)	16,772	14,587	14,647	13,940	11,834	12,578
<b>Allegations received from all channels</b>	17,387	15,708	12,530	9,756	8,968	9,728
<b>Public allegations recorded</b>	16,008	14,736	11,592	8,898	8,393	9,210
<b>Investigations completed (total)</b> (This refers to the investigation as concluded but it may, or may not, be followed by prosecution. Also, the number completed does not relate directly to the allegations recorded as those recorded may not be completed in the same year)	10,033	7,650	10,491	8,689	5,992	5,490
<b>Investigations closed related to a marriage type relationship</b> (includes all cases completed including those where a prosecution has been finalised)	Not available	Not available	6,131	3,724	3,042*	3,094
<b>Overpayments established</b> (however, identifying overpayment does not mean the client has committed fraud)	1,902	2,270	1,619	2,250	1,829	1,664
<b>Prosecutions Completed</b>	957	893	958	619	453**	291
<b>Successful Prosecutions</b>	906	868	927	598	436**	277

**Notes:**

- This table includes people of all ages.
- Investigation items are a count of investigations completed; a person may have more than one investigation in a period.
- Prosecution items are a count of prosecutions; a person may have more than one prosecution in a period.
- For the financial year ending June 2018, cases that were withdrawn beyond the Ministry's control have been removed.
- This does not include prosecutions for internal fraud in the 2017/18 year, however it does include prosecutions for internal fraud up until 2016/2017.
- 'Investigations completed' is related to a marriage-type relationship. Note that investigations may have several lines of enquiry. This data reflects where a marriage-type relationship was one of those lines of enquiry.
- \*This number differs from the Swedlund response as the 2016/17 data used in that response was based on 'closed investigations'. This table includes 'completed investigations' which is more accurate.
- \*\*Prosecutions 'completed' and 'successful' differ from the Swedlund response as this table includes internal fraud for 2016/17 year.

The number of overpayments established has also declined (to 1664 – its lowest level since 2012-13), with 291 prosecutions completed, 277 of which were ‘successful’. Thus, fewer beneficiaries are being unnecessarily subjected to the scrutiny associated with a fraud investigation than five years ago. One additional point of note is that while in 2012-13, 5 per cent of allegations resulted in prosecutions, this proportion had dropped to 2 per cent by 2017-18. This suggests that the culture of ‘dobbing’ may result in unnecessary actions.

Data on the ethnicity of those being investigated by the state needs to be treated with some caution (see OIA response in **Appendix 2** for more information on this – additional quality assured data will be released in due course). However, we see in **Table 3** that 46% of those investigated for relationship fraud identify as Māori, compared to 35% of New Zealand European and 7.5% of Pacific peoples. Te Puni Kōkiri reported the number of Māori ‘one parent with child(ren)’ households in 2006 was around 32%.<sup>5</sup> This represents a decline from the 41% reported by Statistics NZ in 1996.<sup>6</sup>

**Table 3:** *Number of people investigated in marriage-type relationship fraud investigations completed in the 2016/17 and 2017/18 financial years, broken down by ethnicity.*

Ethnicity	Financial Year	
	2016/17	2017/18
Māori	2,575	2,627
New Zealand European	1,835	1,981
Pacific Peoples	368	424
Other /Unspecified	571	655
<b>Total</b>	<b>5,349</b>	<b>5,687</b>

**Notes:**

- This is a count of people, not investigations as an investigation may include multiple people.
- Ethnicity data is self-identified and multiple ethnicities may be chosen by an individual, as fits their preference or self-concept.
- Multiple selected ethnicities are then prioritised into a hierarchy. The Māori ethnicity has the highest priority in this hierarchy, followed by Pacific peoples. New Zealand European has the lowest priority. This is to ensure that smaller and politically significant ethnic groups do not get overwhelmed by the larger ethnic groups. A single ethnicity is assigned to an individual based on this hierarchy. Ethnic groups do not currently align with Statistics New Zealand ethnicity groupings.
- Some of the people investigated may never have been clients of the Ministry and therefore there are no demographic records for these people. As such, they appear as 'Unspecified'.

<sup>5</sup> <https://www.tpk.govt.nz/en/a-matou-mohiotanga/demographics/maori-families-and-households/online/1>

<sup>6</sup> [http://archive.stats.govt.nz/browse\\_for\\_stats/people\\_and\\_communities/Children/nzs-children.aspx](http://archive.stats.govt.nz/browse_for_stats/people_and_communities/Children/nzs-children.aspx)

## 4 The investigative process

The draconian nature of ‘dobbing in’ is common in New Zealand. Those who suspect someone is committing possible relationship fraud are required to think about and report the following information:<sup>7</sup>

- *do they live with a partner but say they’re living alone?*
- *the full name of their partner and any other names they’re known by*
- *their partner’s age and date of birth*
- *their partner’s address*
- *whether their partner works and who employs them*
- *why you think they’re a couple*
- *how long they’ve been in a relationship*
- *whether they have had children together*
- *the names and ages of any children they have*

Everyone has the freedom to ‘dob in’ another member of the public, whether or not they genuinely believe that person is committing a suspected fraud. A document released under the Official Information Act has outlined the process for investigating allegations. The ‘Investigation Unit Training Package – Investigations Module’ covers a range of topics from planning an investigation to conducting search warrants. According to the Ministry of Social Development, informants can be classified into five categories: the average citizen, fellow employees, employees from government agencies, other persons in receipt of benefit, and ex-partners or family members.<sup>8</sup> The motivations of informants are grouped into the following:

- *Civic duty/sense of justice*
- *Revenge*
- *Vindictiveness*
- *Personal satisfaction*
- *Trade-off for personal favourable treatment*

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<sup>7</sup> <https://www.workandincome.govt.nz/about-work-and-income/contact-us/report-suspected-fraud/info-suspected-fraud-allegation.html>

<sup>8</sup> Official Information Act request, D. Dickinson, personal communication, 8 August 2018

- *Work & Income client*

There are no official statistics on the number of allegations made by an ex-partner or disgruntled family member, although this could be reasonably high (St John, MacLennan, Anderson & Fountain, 2014). Given the seriousness with which all suspected allegations reported to Work and Income are treated, it can be regarded as a simple way of seeking revenge.

While Ministry staff are urged to be 'mindful of malicious informants'<sup>9</sup>, a recent case involving a solo mother only referred to as Ms F would suggest otherwise. Following a tip-off from an ex-partner, Ms F spent the following more than eight years fighting her innocence after bank loans and credit cards were classified as income (Fleming, 2018). The ex-partner later admitted to reporting untruthful claims of benefit fraud. A High Court appeal in 2017 ruled the Ministry was wrong to classify a loan from a finance company and a credit card as income given this was to be paid back in full. The long dispute with the Ministry, alongside dealing with an abusive relationship and raising children, would have been 'enough to break' most people, according to lawyer Catriona MacLennan (Fleming, 2018).

Questions must be raised around current dobbing practices. It is hard to see any justification for anonymous tip-offs. Particularly for allegations that are not anonymous, motives should be thoroughly checked.

Chunn and Gavigan (2004) believe 'welfare law is principally (and ideologically) concerned with the lives and issues of poor women, especially lone parent mothers' (p. 220). In April 2018, a woman had her benefit cut after going on two Tinder dates (Corlett, 2018). The sole mother had informed her case manager at Work and Income of the dinner and movie (paid for by the man) and was told such actions were classified as a 'dependent relationship'. However, Work and Income later claimed the case manager had made an error in cutting the woman's benefit. According to the Ministry there had been allegations the woman was in a long-term relationship. The investigation was later suspended due to lack of evidence. Additional case studies of investigations that appear to breach MSD's Code of Conduct are documented in the Privacy Commissioner's Report.<sup>10</sup>

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<sup>9</sup> Official Information Act request, D. Dickinson, personal communication, 8 August 2018

<sup>10</sup> <https://www.privacy.org.nz/assets/Uploads/2019-05-15-OPC-Inquiry-into-MSD-Final-Report-2.pdf>

A new Work and Income policy introduced in June 2018 requires two senior level members of staff to sign off on any decision relating to benefit suspension.<sup>11</sup> However, allegations remain highly damaging for not only the beneficiary, but also for the children. The implications of the process of allegations and investigations can be particularly detrimental for children. One of the important ways that children are impacted is by the loss of income which may result from a benefit cut or the termination of a payment altogether. An Office of the Privacy Commissioner (OPC) inquiry has found the Ministry of Social Development (MSD) systematically misused its investigatory powers while pursuing benefit fraud, unjustifiably intruding on the privacy of many beneficiaries.<sup>12</sup> This is an issue we will explore further in our future research.

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<sup>11</sup> <https://www.beehive.govt.nz/release/changing-face-work-and-income-launched-today> 26 June 2018

<sup>12</sup> <https://www.privacy.org.nz/assets/Uploads/2019-05-15-OPC-Inquiry-into-MSD-Final-Report-2.pdf>

## 5 The appeal process – the Benefit Review Committee

The purpose of the Benefit Review Committee is to investigate decisions challenged by beneficiaries. The Committee panel consists of two members of staff from the Ministry of Social Development and one community representative. If the beneficiary is not satisfied with the outcome of the Benefit Review Committee, he or she has the right to appeal to the Social Security Appeal Authority and further to this, the High Court, the Court of Appeal and, finally, the Supreme Court. Whether the beneficiary has the opportunity to take these courses of action is a different matter.

In current New Zealand law, beneficiaries who are subject to the investigation process are not entitled to legal aid. Unless the individual is detained or arrested, there is no obligation to provide legal assistance.

In some cases, beneficiaries may be unaware they are able to contest Work and Income decisions. They may also not know how the debt or overpayment was originally determined. Having access to legal representation early on in the investigation may be crucial to subsequent decisions later on. Furthermore, there is a power imbalance between beneficiaries and the Ministry with welfare recipients requiring the security of their benefit income for day-to-day living to support their family. In addition, they may be too scared to challenge any decision or outcome. According to Mosher and Herman (2004) in Australia:

*The fear of a possible criminal charge...forces recipients to agree all too readily to administrative sanctions such as terminations or overpayments in hopes of avoiding a criminal charge (p. 25).*

The length of the investigation process (which can be upwards of 32 days) may also deter some from taking action. A community law report, titled 'Access to Justice for Beneficiaries', has explored the legal requirements of people on benefits. Interviews were conducted with agencies involved in the benefit system and a number of beneficiaries themselves. The report spoke of a lack of 'impartiality' among panel members in support of the Ministry (Morton, Gray, Heins & Carswell, 2014). One beneficiary described the process as 'rubber stamping', explaining how the Committee decisions would likely favour Work and Income staff (p. 90).

Often forgotten during these processes is the significant cost associated to the taxpayer. Reviews, appeals, imprisonment and debt recovery all require government expenditure. A report by

MacLennan (2016) describes 'Kathryn's story' and how the government spent over \$100,000 on legal costs over 17 years and are still to this day pursuing debt which advocates argue she should not have had in the first place. After serving a prison sentence, she was expected to repay \$120,000 out of an invalid's benefit.

Currently, the Ministry of Social Development has a team of over 100 'fraud investigators' working throughout New Zealand alongside an Intelligence Unit designed to identify risk and investigate allegations made by members of the public. There are four regional fraud 'Investigation Hubs' located across the country and an Integrity Intervention Centre aimed at matching information with other government agencies to 'detect overpayments and fraud sooner' (Ministry of Social Development, 2015, p. 26). Dependent on the level of risk involved, allegations and suspicions of potential benefit fraud are either investigated through the Integrity Intervention Centre or the National Fraud Unit (Ministry of Social Development, 2013b).

## 6 Current practice in Australia and the UK

In Australia, Centrelink (who provide social security assistance and payments to those living in Australia) consider the following when identifying a relationship:<sup>13</sup>

- *financial aspects of your relationship*
- *nature of your household*
- *social aspects of your household*
- *if you have a sexual relationship*
- *nature of your commitment to each other*

Similar to the NZ Work and Income webpage, Centrelink have a section at the bottom of the site titled 'updating relationship changes' (Australian Government Department of Human Services, 2018). Clients are urged to inform Centrelink of *any* changes to their relationship status or risk harsher penalties in the future. In 2006, Sleep, Tranter and Stannard stated:

*The nebulous nature of the cohabitation rule subjects Centrelink clients, and those around them, to intense surveillance, with the routine gathering of documentary evidence from banks, employers, schools, real estate agents through to the active requesting of statements from associates, family and teachers and ultimately the commissioning of video surveillance and the acting upon anonymous tip offs (p. 8-9).*

Suspected 'welfare cheats' in Australia are subject to continuous surveillance and monitoring and similar practices are witnessed in New Zealand which fosters a harmful culture of immense distrust. During investigations for potential 'relationship fraud', beneficiaries can be the source of gossip and scrutiny from those closest to them. While the justice system works on the 'innocent until proven guilty' principle, it is much the opposite when beneficiaries are involved, whereby it is assumed that they are 'guilty until proven innocent' (Sleep et al., 2006).

In 1998, Centrelink introduced a tip-off recording system and this was followed by a toll-free telephone number in 2005 (Prenzler, 2011). 'Support the system that supports you' was a large-scale media campaign launched in 2005 designed to encourage welfare recipients to inform the

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<sup>13</sup> <https://www.humanservices.gov.au/individuals/enablers/your-relationship-status>

Department of Social Services of any changes that may impact their eligibility to entitlements, including a change in relationship status. The Fraud Tip-off Line bears a striking similarity to the Work and Income New Zealand website with the opportunity to report a suspected fraud both online and over the phone.

In a recent development, Centrelink clients who are seeking single-parent welfare are now required to 'verify' their relationship status to government officials. Single-parents are required to find a referee, who most importantly cannot be related, to sign a legally binding document which states the welfare recipient is in fact single (Knaus, 2017). However, there are questions about what happens to those recipients who do not have a referee. This could especially impact women who have been in abusive relationships and have no suitable advocate. Surveillance practices such as this are likely to fuel the already negative connotations attached to beneficiaries.

In the United Kingdom, the Department for Work and Pensions (2014) – responsible for the administration of all benefit and pension related payments – launched a six-week nation-wide advertising and poster campaign in a targeted effort to reduce benefit fraud. Posters were emblazoned with the following questions:

*Claiming benefits? Got a new job? Make sure you tell us. We're checking benefit claims.*

*When you report benefit fraud, we investigate it. If you know someone claiming benefits who shouldn't be, call us. Help us catch benefit cheats.<sup>14</sup>*

When reporting cases of suspected benefit fraud to the Department for Work and Pensions, members of the public can go as far as including detailed information regarding the person's physical appearance, from eye colour to tattoos (Cowburn, 2018).

Earlier this year, a benefit fraud campaign in the UK led to soaring numbers of tip offs from the public, yet a lack of evidence has meant no further action can be taken (Cowburn, 2018). It raises the question of whether the system is actually working or if the system is encouraging an ugly culture of mistrust and suspicion.

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<sup>14</sup> <https://www.gov.uk/government/news/new-benefit-fraud-and-error-campaign-benefits-are-you-doing-the-right-thing>

Literature from the UK has focussed on the possibility of a 'couple penalty' and how dependency on the state could impact relationship stability and potentially deter some women from partnering or re-partnering (Bennett & Annesley, 2011; Draper, 2009; Hirsch, 2012). The 'couple penalty' or 'partnering penalty' proposes families on low incomes may be financially better off apart, rather than living together due to the current structure of the benefit system. For example, Griffiths (2017) investigates the extent to which welfare entitlements influence women's decisions to live with or without a partner. All women spoke openly of the fear of living with a new partner:

*I've always been quite independent. If I did get in a relationship and we wanted to live together, they'd expect a man to keep me and my child that wasn't his. So, they'd pretty much stop...all my money (p. 582-583).*

Griffiths (2017) also found that forced financial dependency in relationships had the potential to alter power relations among new couples. With this, comes a reluctance to inform social services of a change in circumstances. While re-partnering may be a route out of poverty for many sole parents and their children, current rules in the benefit system can make women fearful of being subject to fraud-type allegations.

New Zealand, Australia and the UK all have similar approaches to welfare beneficiaries, especially in regard to the treatment of relationships. Whether this is through the introduction of relationship verification forms, mass advertising campaigns or the use of 'dob in' fraud lines, it appears that a culture of distrust and 'othering' has become the norm.

## 7 Benefit fraud in the eyes of the court

The view commonly held by New Zealand courts is that benefit fraud is as serious as any other fraud.

According to *Faiers v Police*,<sup>15</sup>

*Fraud on a public agency is not to be treated for sentencing purposes as being more serious, or less serious, than fraud upon individuals or private companies or organisations. What is determinative is the degree of dishonesty, the amounts obtained, the repetitiveness and premeditation of the behaviour, the need to denounce the conduct and to deter others when balanced against the mitigating features relating to the offence and to the offender. Where offending constitutes in a serious example of fraud, whether described as “benefit fraud or otherwise” because of all the aggravating features a term of imprisonment may be justified.*

The reasoning behind this was further expanded upon in *Brown v Ministry of Social Development*,<sup>16</sup> which affirmed a strong requirement to hold ‘benefit fraudsters’ accountable for harm done.

*There is harm done to the community by your offending because this is money that could be otherwise used within the community for people that are entitled to benefits or other areas for Government expenditure. For example, health and education.*

There is no argument that some benefit fraud should be treated as a serious offence. For example, a middle-class woman receiving a Sole Parent Payment when she is in fact married with a financially supportive husband is a very different scenario to a sole parent who is in an ‘on again off again’ relationship with a man who is not providing her any form of (and her children) emotional commitment or financial stability. However, relationship overpayment disputes have become labelled as fraud instead of disputed over payments.

The features most common in ‘relationship fraud’ cases are discussed in *Hogan v Ministry of Social Development*.<sup>17</sup> The defendants usually include young mothers (or sometimes fathers), otherwise of good character, often acting with the purpose of alleviating financial burden within the family. This appears to stem from partners who do not support them. Although these would appear to be ‘mitigating factors’ to the seriousness of the crime, the Courts do not view this as sufficient.

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<sup>15</sup> *Faiers v Police* (1989) 5 CRNZ 186.

<sup>16</sup> *Brown v Ministry of Social Development* [2018] NZHC 313.

<sup>17</sup> *Hogan v Ministry of Social Development* [2005] BCL 888.

However, lack of greed and dishonesty are viewed as mitigating factors for sentencing, but not enough to warrant a non-custodial sentence.

There are cases that demonstrate the failure of the legal process to apply definitions established in the *Ruka* case when it comes to determining relationship status. In *Brown v Ministry of Social Development*<sup>18</sup>, the defendant was initially sentenced to 25 months' imprisonment after failing to declare a 'marriage type' relationship for 15 years and, in doing, so received an overpayment of a benefit. However, after a lengthy appeal process The High Court judge reduced this sentence to nine months home detention accepting that the District Court Judge had failed to take into account that her partner had not been financially supportive and 'was not a stable presence in her life or the lives of her children and grandchildren'.

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<sup>18</sup> *Brown v Ministry of Social Development* [2018] NZHC 313.

## 8 Recent developments in New Zealand

In December 2018, the Social Security Appeal Authority ordered the Ministry of Social Development to wipe the debt of a seriously ill beneficiary who was forced to live in his car on and off because the Agency did not believe his situation to be an emergency (Checkpoint, 2018). A lack of available housing meant the man required motel accommodation and was later asked to pay back the \$10,000 expense to the Ministry, even though he had no way of doing so. While this case is not directly related to relationship status in the benefit system, the implications of this case are, with the Child Poverty Action Group (CPAG) now calling for an inquiry to review *all* the debts of current and former Ministry of Social Development clients. Referring to the decision, CPAG spokesperson Susan St John notes that:

*It shows that compassion can still be found in the Social Security and Welfare systems in New Zealand. If it exists for one case, then all other cases that have caused hardship must be reviewed (CPAG, 2018a).*

While there has been considerably more media coverage regarding problems in the welfare system in the last 18 months, it remains to be seen whether such stories gain traction under a Labour-led government that aims to improve the wellbeing of all New Zealanders and significantly reduce child poverty. For example, the Child Poverty Reduction Act 2018 does not speak explicitly of sole parent families (New Zealand Parliament, 2018) and, as at April 2019, advice to the government from the Welfare Expert Advisory Group on Poverty had not been released.

## 9 Policy directions – reshaping the welfare system

A recent report published by Auckland Action Against Poverty (2017) expressed the hope that future reforms to the welfare system can ‘redefine relationships based on whānau, not finance’ (p. 8). This is in line with findings from CPAG’s *Welfare for Wellbeing* report (2018b). CPAG argues that the values which should underpin our welfare system are:

- *Compassion, empathy, aroha*
- *Respect and dignity*
- *Care, kindness and help*
- *Equality and fairness*
- *Understanding, acceptance and trust*
- *Honesty, integrity and transparency*
- *Embracing of community, whakawhanaungatanga and diversity*
- *Honouring of Tiriti o Waitangi*
- *Non-judgemental*

This means that policies which encourage family relationship building should be at the forefront of any discussion. Currently, the treatment of relationships by the welfare system can act as a barrier for women on benefits who may want to re-partner. This is a serious problem given sole parents in New Zealand face multiple disadvantage across a number of key life domains: employment, health, education, income and homeownership (Krassoi Peach & Cording, 2018; Superu, 2017). Healthy, stable relationships are beneficial for both adults and children and future reforms to welfare should consider whether policies are strengthening or undermining good family relationship building. Lifting the couple rate, so that the single and couple rates were aligned, would remove some of the discrimination against the family unit in the New Zealand benefit system, and enhance the current and future wellbeing of children.

One change, while potentially difficult to implement, would be to allow sole parents themselves to decide when they were in a relationship in the nature of marriage. Or they could be allowed to retain their benefit for a period of time while beginning a relationship. This would acknowledge the fluid and often complex nature of modern day relationships. However, there are a number of issues with such a reform. Firstly, a ‘transition period’ might reinforce the traditional thinking about dependence on a partner and family roles (where the male is assumed to provide financial support and assistance to both mother and child). Second, a ‘transition period’ would require a relationship

start date and, as discussed previously, this can be difficult to ascertain. Lastly, there is the question of how a period of grace could be determined, and whether it would be at the discretion of the case manager? Or alternatively, would social welfare agencies determine how long a sole parent could be in a new relationship before a review of entitlements occurred?

When a relationship ends, under the Property (Relationships) Act, a couple's property is to be divided equally if the relationship has lasted at least three years. It is worth considering whether a similar timeframe could be used for determining relationships and Sole Parent Support payments for women in the welfare system. This suggests another option could be to treat the sole parent as completely independent of her partner until the three-year mark. Although not perfect, it would remove the varying and subjective definitions of 'relationship' currently used by the Ministry.

A complete overhaul or removal of the Benefit Review Committee is necessary to allow for fair, objective and independent decisions regarding disputed overpayments. A review system as currently designed favours the Ministry of Social Development.

To sum up: relationship rules in the New Zealand welfare system require immediate reform. The current relationship test is confusing and unclear, and decisions are often left in the hands of Work and Income staff. Fear of allegations may cause some women to avoid partnering while receiving Sole Parent Support payments from the government. The issue predominantly affects women and is particularly harming for those with dependent children. Ultimately, a system based on kindness and empathy to others should take priority in the future.

## 10 Future research and next steps

This report has summarised the impact of current relationship rules for beneficiaries in New Zealand on sole parent partnering decisions. The report has also outlined some consequences for sole parents and their children's wellbeing (financial and emotional).

As with any research project or study, there are strengths and limitations to consider. While the lack of literature both in New Zealand and overseas has been disappointing and at times challenging, we have summarised – to the best of our ability in the timeframe given – the current relationship rules in New Zealand and how these punitive measures impact women and children in poverty.

There has been no recent research conducted in New Zealand on the partnering decisions of women in receipt of welfare assistance and this is an area for future consideration. Though potentially difficult to measure, it would be important to understand the extent to which the 'couple penalty' may influence a woman's decision to partner or re-partner.

In sum, we have highlighted in this report that:

- A system based on kindness and empathy should form the basis of our welfare system.
- Current relationship rules disincentivise family relationship building which is good for both adults and children.
- Punitive sanctions around what constitutes a relationship in the eyes of Work and Income require immediate change. Existing definitions of relationships in the welfare system are subjective and ambiguous. This causes great harm to women and children.
- The Benefit Review Committee should be overhauled or disestablished because the body works in favour of the Ministry of Social Development.
- Relationship fraud cases should instead be labelled as disputed overpayments.
- Consider allowing sole parents to retain their benefit until they decide it is no longer required.
- A qualitative study is required involving sole parents and beneficiary advocacy groups.

## Epilogue

After this report had been finalised, the Welfare Expert Advisory Group (WEAG) released its report, *Whakamana tāngata: Restoring dignity to social security in New Zealand*<sup>19</sup>. The Government has since announced a complete overhaul of the country's welfare system<sup>20</sup>. In response to the issue of relationship formation, the WEAG noted that the existing definition of what constitutes a 'relationship' is unclear, and is not reflective of the complexities and diversities of family types that exist today. In addition, the WEAG recommend greater flexibility around the period of time before a relationship is deemed to have formed and whether a relationship is likely to work. As we have recommended here, the WEAG also suggest the need to close the gap between current couple and single benefit rates. Such considerations are important because they affect beneficiary entitlements.

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<sup>19</sup> <http://weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>

<sup>20</sup> <https://www.beehive.govt.nz/release/supporting-people-work-and-income-security-%E2%80%93-priorities-welfare-reforms>

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## Appendix 1: Original Project Objectives

This project was initially scoped as part of a much larger study which was intended to:

1. Investigate using qualitative research how sole parents' relationship decisions are affected by the current structure of entitlements and sanctions
2. Research alternative policy options, including the pros and cons of each approach, and review a range of policy solutions used in other countries
3. Develop and put into place a campaign for change to the definition and use of relationship status in determining sole and partnered parents' benefit entitlements

Here we have provided the background for a more comprehensive piece of work, which would include qualitative data collection (semi-structured interviews with current and former sole parent beneficiaries and advocacy groups), analysis of benefit fraud court cases, as well as comparative policy and cost-benefit analyses. CPAG and the PPI are continuing to explore these project options.

The results of this will be developed for use by CPAG in their campaigns for policy change and in the production and dissemination of evidence-based policy solutions through the Public Policy Institute.

## Appendix 2: OIA Application February 2019



### MINISTRY OF SOCIAL DEVELOPMENT

TE MANATŪ WHAKAHIATO ORA

Ms Olivia Healey  
[o.healey@auckland.ac.nz](mailto:o.healey@auckland.ac.nz)

Dear Ms Healey

On 8 February 2019 you emailed the Ministry requesting, under the Official Information Act 1982, information regarding benefit fraud related to a marriage type relationship.

On 21 February 2019, you confirmed that for question one, you would like information for the financial years 2012/13, 2013/14, 2014/15, 2015/16 and 2017/18, and for question three, you would like information for the 2016/17 and 2017/18 financial years.

For the sake of clarity, I will address each of your questions in turn.

1. *On page 3 of 7, there is a table showing numbers of allegations, investigations and prosecutions with a series of explanatory notes for the 2016/2017 financial year (see print screen below in Appendix 1). I would like to request the 2017/18 figures and the number of allegations, investigations and prosecutions for the time period between 2012-2014.*

Please refer to table one enclosed which shows the number of benefit fraud allegations, investigations, overpayments and prosecutions between the 2012/13 and 2017/18 financial years.

The Ministry is unable to provide you with the number of investigations completed related to a marriage type relationship in 2012/13 and 2013/14 as this information is held in notes on individual case files. In order to provide you with this information Ministry staff would have to manually review thousands of files. As such, your request is refused in part under section 18(f) of the Official Information Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

2. *On page 5 of the response to Swedlund, MSD state,*

*"You may be interested to know that the Ministry has since produced a document that contains data about allegations, investigations and prosecutions with an ethnicity breakdown. Please let the*

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*ministry know if you would like to request this information and it can be accessed for release".  
I would like to request a copy of the document that contains data with the ethnicity breakdown.*

Enclosed is a copy of the excel document which details the Investigations and Prosecutions completed for the 2017 financial year, broken down by ethnicity. Please note that:

- This data was intended for internal indicative purposes only and was not part of any formal decision making processes.
- It does not meet the standards normally required for data published externally, and hasn't been through the regular quality assurance process; therefore the data should be treated cautiously.
- The Ministry is currently developing robust data in regards to this area. I am happy to provide you with this data via email when it comes through the quality assurance process.

*3. Answers to the following:*

- a. How many investigations are triggered internally by case managers;*
- b. How many are triggered through alternative processes such as the anonymous tip off line*
- c. The gender, age and ethnic breakdown of those investigated of being in a marriage type relationship when they say they are single*

We are unable to provide data around the investigations triggered by case managers and through the allegation line as this information currently isn't reported in a robust and conclusive way. This information is kept in individual case files and Ministry staff would have to manually review all allegation files to find this information. As such, this part of your request is refused under section 18(f) of the Official Information Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that in either case, the Ministry's ability to undertake its work would still be prejudiced.

Enclosed are the following three tables:

- Table Two: Number of people investigated in marriage type relationship fraud investigations in the 2016/17 and 2017/18 financial years.
- Table Three: Number of people investigated in marriage type relationship fraud investigations in the 2016/17 and 2017/18 financial years, broken down by age group.

- Table Four: Number of people investigated in marriage type relationship fraud investigations completed in the 2016/17 and 2017/18 financial years, broken down by ethnicity.

*d. The number of successful prosecutions completed by a marriage type relationship;*

The Ministry is unable to provide you with the number of successful prosecutions completed by a marriage type relationship as this information is held in notes on individual case files. A client may be prosecuted for multiple reasons at one time. As such; Ministry staff would have to manually review all prosecution files to ascertain if this prosecution was linked to a marriage type relationship. Your request for this information is refused under section 18(f) of the Official Information Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your request given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

*e. What type of sentence resulted?*

The Ministry does not record information about the associated sentences that have arisen from a prosecution in a way that can be reported in relation to the type of benefit or the relationship status of the client. This information is held on individual case files. In order to provide you with this information, Ministry staff would have to manually review thousands of files. As such I refuse your request under section 18(f) of the Official Information Act. The greater public interest is in the effective and efficient administration of the public service. Relevant case files may be held by the court. The Court does have a policy for releasing information in some situations. Further information regarding this can be found at: [www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/access-to-courtinformation/](http://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide/access-to-courtinformation/).

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public shortly. The Ministry will do this by publishing this letter on the Ministry of Social Development's website. Your personal details will be deleted and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'G. Van Ooyen', with a stylized, cursive script.

George Van Ooyen

**Group General Manager, Client Service Support**

**Table One: Number of benefit fraud allegations, investigations, overpayments and prosecutions between the 2012/13 and 2017/18 financial years.**

Item	Financial year					
	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Allegation line calls answered	16,772	14,587	14,647	13,940	11,834	12,578
Allegations received from all channels	17,387	15,708	12,530	9,756	8,968	9,728
Public allegations recorded	16,008	14,736	11,592	8,898	8,393	9,210
Investigations completed total	10,033	7,650	10,491	8,689	5,992	5,490
Investigations completed related to a marriage type relationship	Not available	Not available	6,131	3,724	3,042*	3,094
Overpayments established	1,902	2,270	1,619	2,250	1,829	1,664
Prosecutions Completed	957	893	958	619	453	291
Successful Prosecutions	906	868	927	598	436	277

Notes:

- This table includes people of all ages.
- Investigation items are a count of investigations completed; a person may have more than one investigation in a period.
- Prosecution items are a count of prosecutions; a person may have more than one prosecution in a period.
- For the financial year ending June 2018, cases that were withdrawn beyond the Ministry's control have been removed.
- This does not include prosecutions for internal fraud in the 2017/18 year, however it does include prosecutions for internal fraud up until 2016/2017.
- 'Investigations completed' is related to a marriage type relationship. Note that investigations may have several lines of enquiry. This data reflects where a marriage type relationship was one of those lines of enquiry,
- \*This number differs from the Swedlund response as the 2016/17 data used in that response was based on investigations'. This table includes 'completed investigations' which is more accurate.
- \*\*Prosecutions 'completed' and 'successful' differ to the Swedlund response as this table includes internal fraud for 2016/17 year

**Table Two: Number of people investigated in marriage type relationship fraud investigations in the 2016/17 and 2017/18 financial years, broken down by gender.**

Gender	Financial year	
	2016/17	2017/18
Female	2,978	3,110
Male	2,285	2,482
Unspecified	86	95
Total	5,349	5,687

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**Table Three: Number of people investigated in marriage type relationship fraud investigations in the 2016/17 and 2017/18 financial years, broken down by age group.**

Age Group	Financial year	
	2016/17	2017/18
17 and under	91	102
18-19	60	61
20-24	828	829
25-29	1,178	1,328
30-34	913	982
35-39	713	741
40-44	515	536
45-49	388	396
50-54	267	293
55-59	182	191
60-64	105	106
65 +	109	122
Total	5,349	5,687

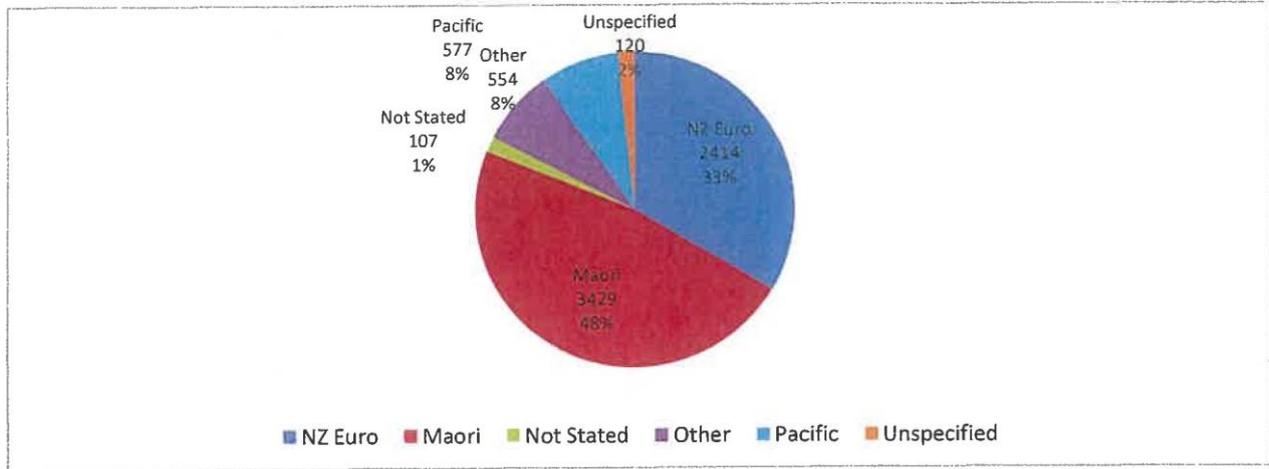
**Table Four: Number of people investigated in marriage type relationship fraud investigations completed in the 2016/17 and 2017/18 financial years, broken down by ethnicity.**

Ethnicity	Financial year	
	2016/17	2017/18
Māori	2,575	2,627
New Zealand European	1,835	1,981
Pacific Peoples	368	424
Other Unspecified	571	655
Total	5,349	5,687

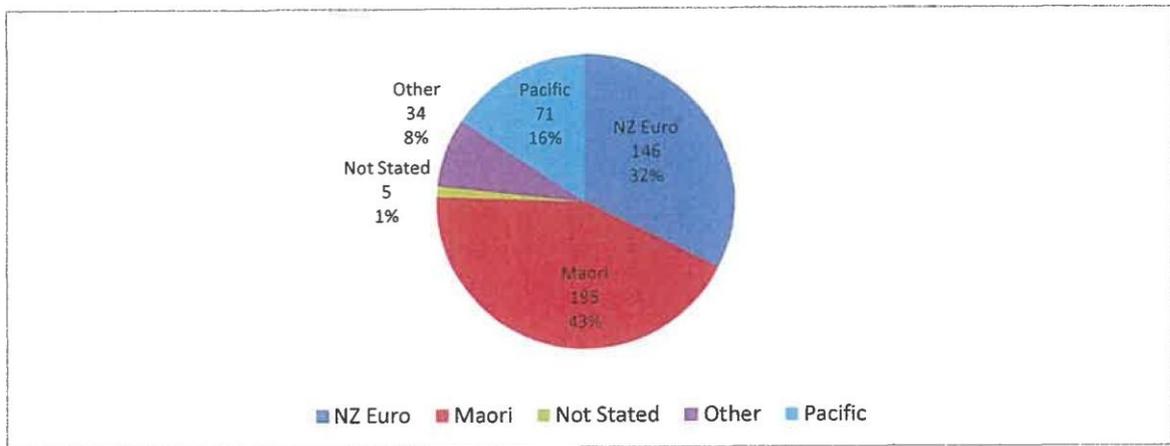
**Notes for tables Two to Four:**

- This is a count of people, not investigations as an investigation may include multiple people.
- Ethnicity data is self-identified and multiple ethnicities may be chosen by an individual as fits their preference or self-concept.
- Multiple selected ethnicities are then prioritised into a hierarchy. The Māori ethnicity has the highest priority in this hierarchy, followed by Pacific peoples. New Zealand European has the lowest priority. This is to ensure that smaller and politically significant ethnic groups do not get overwhelmed by the larger ethnic groups. A single ethnicity is assigned to an individual based on this hierarchy. Ethnic groups do not currently align with Statistics New Zealand ethnicity groupings.
- Some of the people investigated may never have been clients of the Ministry and therefore there are no demographic records for these people. As such, they appear as 'Unspecified'.

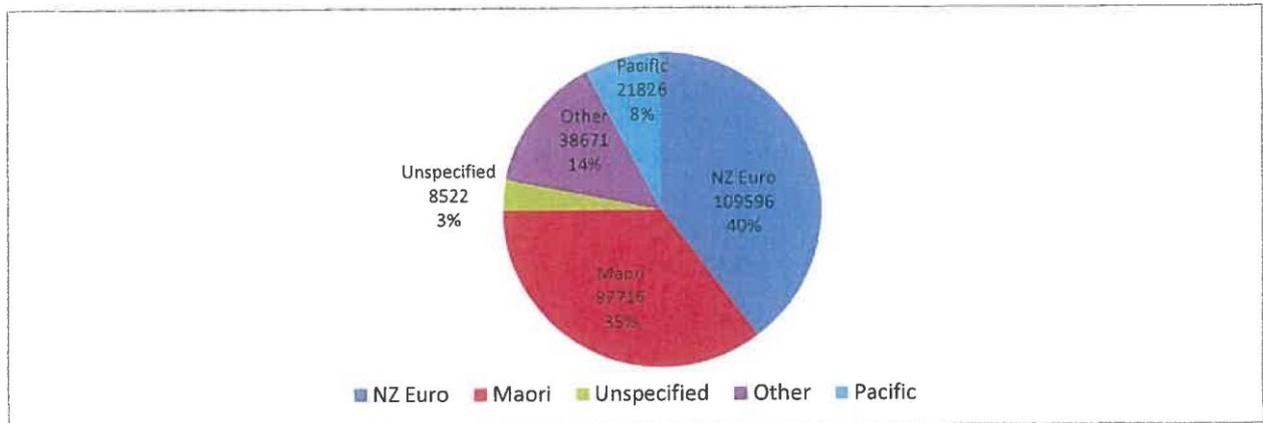
### Investigations



### Prosecutions



### Working age main benefit population by ethnicity (as at end of June 2017)



## Appendix 3: Executive Summary and Recommendations,

### *Privacy Commissioners Inquiry into the Ministry of Social Development's exercise of its information gathering powers under section 11 of the Social Security Act, 1964.*<sup>21</sup>

In 2018 I was approached by a community group concerned about the Ministry of Social Development's (the Ministry's) information gathering practices when conducting fraud investigations.

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.

The Ministry has powers under the Social Security Act 1964 (section 11) to collect "any information" about a person in receipt of a benefit in order to assess their entitlements – including retrospectively, as is the case with fraud investigations. I recognise the importance of the Ministry being able to investigate potential abuses of the social security system as part of the effective administration of the Social Security Act.

The Ministry's exercise of its information gathering powers is regulated by a Code of Conduct (the Code)<sup>22</sup>, which requires that the Ministry first seek information from a beneficiary client before requiring the production of that information by a third party, unless to do so would prejudice the maintenance of the law. As the Code itself notes this provides some measure of privacy protection, as well as ensuring that individuals are kept informed about the nature of the enquiries being made about them.<sup>23</sup>

In 2012 the Ministry advised its fraud investigation staff that they could bypass the requirement to seek information directly from a beneficiary and instead to go direct to third parties. The Ministry believed that an amendment to the Code enabled this.<sup>24</sup> The Office of the Privacy Commissioner was consulted at the time and supported the amendment but advised the Ministry that we disagreed with its interpretation of the amendment's effect.

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<sup>21</sup> Now set out in Schedule 6 of the Social Security Act 2018.

<sup>22</sup> <https://www.msd.govt.nz/documents/about-msd-and-our-work/about-msd/legislation/code-of-conduct-section-11-ssa.pdf>

<sup>23</sup> See the Explanatory Note of the Code of Conduct at page 9.

<sup>24</sup> The Ministry believed that by simplifying the definition of 'prejudice to the maintenance of the law' this allowed them to bypass beneficiaries under investigation for fraud in favour of requesting information direct from third parties.

The 2012 practice change resulted in the Ministry using its powers to collect large amounts of highly sensitive information about beneficiaries from third parties without approaching those beneficiaries first. Information collected included, but was not limited to, text message content, domestic violence and other Police records, banking records, and billing information from a range of providers.

This change in practice was part of a suite of changes targeting beneficiary fraud. The Ministry has since advised that staff only bypass the beneficiary in certain cases deemed 'high risk'.

On average per year between 2600 and 2300 fraud investigations are categorised as 'high risk'.<sup>25</sup>

### **The Ministry has acted improperly in its exercise of section 11 powers and infringed on individual privacy**

Since 2012, the Ministry's routine failure to ask beneficiaries for information before approaching third parties has likely impacted thousands of clients. Between 49-64% of investigations<sup>26</sup> each year result in no formal detection of fraudulent activity.<sup>27</sup>

New Zealand's Privacy Act 1993 protects people's ability to determine for themselves when, how, and to what extent their information is shared with others. Requesting information from the person concerned first is an important privacy safeguard – which is reflected in the drafting of section 11 and the Code. Accepting there will be cases where it is appropriate to approach third parties first, allowing people to provide relevant information to the Ministry themselves gives them greater control over their personal information, can assist to ensure that information is accurate, and may prevent the need for more intrusive investigations.

The Code contains additional safeguards around the types of information that can be collected; for example health care workers cannot be asked to provide comment on whether an individual is in a relationship. These safeguards were enacted in 1997 and reflected the limited nature of the data available to the Ministry at the time.<sup>28</sup> The data sources now accessible by the Ministry have increased significantly. For example, in 1997 telecommunication companies did not offer widespread text

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<sup>25</sup> Numbers have been difficult to ascertain see para 3.5 for further explanation.

<sup>26</sup> N.B. Investigations can be into more than one individual.

<sup>27</sup> N.B. The Ministry notes that as a result of a fraud investigation individuals may have their entitlements changed i.e. their benefit adjusted or revised but no overpayment debt established, or prosecution undertaken. While these actions may result following a fraud investigation they do not result in a formal finding of fraudulent activity.

<sup>28</sup> While the Code of Conduct has been reviewed since 1997 the safeguards have not been amended as a result of any of the reviews. Reviews involve consultation with the Office of the Privacy Commissioner and concerns about the nature of the information available were not made during those reviews.

messaging services or have the capacity to provide clients' location data.

The 2012 practice change provided for the almost unrestricted collection of extensive amounts of highly personal information on a large number of beneficiary clients. This is excessive, disproportionate to the Ministry's legitimate needs and inconsistent with the Ministry's legal obligations and the information privacy principles.

As part of my Inquiry we have interviewed beneficiaries and reviewed fraud investigation files provided by the Ministry. As a result, we have seen cases where individual privacy has been infringed upon. Examples have included:

- Failing to ask beneficiary clients for information before seeking it from a third party leading to inaccurate assessments of the information;<sup>29</sup>
- Overly broad requests leading to the provision of unnecessary and sensitive information (e.g. a woman's birthing records);
- Requests for highly sensitive information that may be unreasonable in the circumstances (e.g. every text message sent and received by an individual over lengthy periods); and
- Disproportionate collection of information.

I am disappointed to have to be making this report given this Office's opposition to the 2012 practice change and the repeated calls on the Ministry since 1994 to improve its practices around information gathering and record keeping in fraud investigations from a range of observers.<sup>30</sup> Due to the poor record keeping practices and inconsistencies between fraud teams, we have been unable to establish whether the Ministry has been bypassing beneficiaries in all fraud investigations or only those categorised as 'high risk'. While individual files contain some records of section 11 notices being issued, it is disappointing that the Ministry does not keep centralised records of when and how many section 11 notices are issued by its staff.

I have found that the Ministry has infringed on individual privacy through its improper application of section 11, its disproportionate information gathering practices, and its failure to update its policy or practice around section 11 in line with important jurisprudence and legal developments such as the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). I note also that the Ministry is required to review the Code every three years, but it has not done so since 2012.

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<sup>29</sup> <https://www.justice.govt.nz/assets/Documents/Decisions/2017-nzssaa-062.pdf>.

<sup>30</sup> See Appendices B, C and E.

## Recommendations

### Recommendation one:

The Ministry immediately cease its blanket application of the ‘prejudice to the maintenance of the law’ exception when issuing section 11/schedule 6 notices.

### Recommendation two:

Without delay, undertake a comprehensive review of the Code in consultation with stakeholders and with consideration given to the findings of this report, including introducing accurate record keeping and limiting the scope and type of information requested under notice, in order to comply with the Bill of Rights Act. The Code should also be reviewed again within 12 months of this review.<sup>31</sup>

### Recommendation three:

Without delay, and in consultation with this Office develop training material and guidance for all fraud investigation teams. Training and guidance should include:

- fraud investigators’ obligations under the Code;
- general privacy awareness information;
- Bill of Rights Act obligations; and
- natural justice and procedural fairness obligations.

This training should be developed in light of the State Services Commission’s standards on Information Gathering and Public Trust.

### Recommendation four:

The Ministry undertake a review of section 11, in light of recent legal and administrative developments<sup>32</sup> with a particular focus on Bill of Rights Act and search and surveillance jurisprudence, including the Supreme Court decision in *R v Alsford*.<sup>33</sup>

### Recommendation five:

The Decision Support Tool used to assess allegations of beneficiary fraud should be reviewed alongside the process for assessing internal allegations in line with the Ministry’s requirements to take reasonable steps to assess the accuracy and completeness of information before use.

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<sup>31</sup> The Privacy Commissioner has the ability to issue his own Code of Practice that would take precedence over the Ministry’s Code of Conduct if he considers that the Ministry’s review of the Code has failed to provide adequate privacy protections.

<sup>32</sup> For example, see: ‘Inquiry into the Use of External Security Consultants by Government Agencies’ – Doug Martin and Simon Mount QC 2018.

<sup>33</sup> *R v Alsford* [2017] NZSC 42, [2017] 1 NZLR 710.

## About the Researchers

**Olivia Healey** is a Research Analyst with the Public Policy Institute and the Centre of Methods and Policy Application in the Social Sciences (COMPASS) at the University of Auckland. She was the recipient of a Marsden Grant Masters Scholarship in Ageing and Society and has a First-Class Master's Degree in Public Health from the University of Auckland. Prior to this, she obtained a Bachelor of Arts in Sociology from the University of Otago. Her interests span across a variety of disciplines, including ageing, poverty and disability research. However, she is passionate about all research that has positive flow-on effects for her community and wider New Zealand.

**Susan St John** (BSc, MA, PhD, QSO) was the primary expert adviser on this report. She is an Honorary Associate Professor at the University of Auckland, Director of the Retirement Policy and Research Centre at the Auckland Business School, and a founding member of, economics spokesperson and policy analyst for Child Poverty Action Group. She has authored and edited a number of CPAG reports, including *Our children, our choice: priorities for policy* (2014), *Left Further Behind: How policies fail the poorest children in New Zealand* (2011) and *Left Behind: How social and income inequalities damage New Zealand children* (2008). Susan is co-author of other CPAG material, including *Cut Price Kids: Does the 2004 Working for Families' Budget work for children?* (2004) and *Our Children: The Priority for Policy* (2001, 2003).

**Jennifer Curtin** is a Professor of Politics and Director of the Public Policy Institute at the University of Auckland, and was also an adviser on the project. She has published widely on comparative policy analysis, and gender and public policy. She is currently working on a project to design a gender budgeting initiative for New Zealand that draws on best practice from abroad, and engages with civil society groups and communities as well as our public sector. Examining the impact that public finance decisions have for different groups of women and men early on in the policy making process has real potential to deliver more equitable outcomes for Aotearoa.

## About the Public Policy Institute

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