

<b>COMPLAINT NUMBER</b>	23/152
<b>COMPLAINT ON BEHALF OF</b>	Ministry of Social Development
<b>ADVERTISER</b>	The Integrity Institute
<b>ADVERTISEMENTS</b>	Integrity Institute Print, Television, YouTube, Billboard, Facebook and Website
<b>DATE OF MEETING</b>	11 July 2023
<b>OUTCOME</b>	Upheld in part, Not Upheld in part Advertisements not to be used again in current form No Jurisdiction – Website.

### Summary of the Complaints Board Decision

The Complaints Board upheld in part a complaint about The Integrity Institute Print, Radio, Television, YouTube, Billboard and Facebook advertisements regarding the management of the COVID-19 wage subsidy. The Board said some of the factual statements made in the advertisements were misleading, because they had not been adequately substantiated. Examples include statements referring to overpayments of \$10 billion dollars or up to \$10 billion dollars, and one Auckland businesswoman being given \$45,000,000. The Board said other claims in those advertisements were statements of opinion, and as such did not need to be substantiated. The Complaints Board did not have jurisdiction to consider the complaint about the website content.

### Description of the advertisements:

The advertisements were in seven different types of media:  
Print, Radio, Television, YouTube, Billboard, Facebook and Website.

### Advertisement 1- Print

The print advertisements from The Integrity Institute were in full-page and half-page versions, in a range of newspapers. Both versions had the same text. The advertisements were headed “\$10,000,000,000 OVERPAID.” The advertisements included the following text:

“You and other taxpayers will each have to pay thousands of dollars in extra tax because the Ministry of Social Development overpaid \$10 billion in wage subsidies and they refuse to take action to get the money back”.

“One Auckland businesswoman was given \$45,000,000 but she and a huge number of businesses have never been asked to repay money that they are not entitled to keep.”

“A beneficiary overpaid as little as \$20, is chased by the Ministry to repay the money. How is that fair?”

“To find out more about what has been going on and to sign a petition demanding action go to the Integrity Institute website: [theintegrityinstitute.org.nz](http://theintegrityinstitute.org.nz).” The advertisements also included the Advertiser’s logo.

### Advertisement 2 - Radio

The Integrity Institute radio advertisement said:

“Guess who will be picking up the tab for the \$10 billion dollars of wage subsidies the Ministry of Social Development overpaid to businesses during COVID? It will be you and other taxpayers who will each have to pay thousands of dollars in extra tax. The Ministry needs to do what’s right and get businesses that have been overpaid and wrongly retained the wage subsidy to pay it back. Go to the Integrity Institute’s website at [theintegrityinstitute.org.nz](http://theintegrityinstitute.org.nz) to find out what has been going on and to sign a petition demanding action.”

### **Advertisement 3 – Television**

The television advertisement from The Integrity Institute showed a man speaking at a meeting saying to the group “You and other taxpayers are each going to have to pay thousands of dollars in extra tax because the Ministry of Social Development overpaid up to 10 billion dollars of wage subsidies and they refuse to take action to get the money back.” A woman at the meeting speaks to the group and says “If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?” The original speaker says, “We are suffering from a cost-of-living crisis, so I think the billions of dollars overpaid should be paid back.” The advertisement ends with a call to action to sign a petition demanding action and includes The Integrity Institute logo and website address.

### **Advertisement 4 - YouTube**

The YouTube advertisement from The Integrity Institute showed a man speaking at a meeting saying to the group “You and other taxpayers are each going to have to pay thousands of dollars in extra tax because the Ministry of Social Development overpaid up to 10 billion dollars of wage subsidies and they refuse to take action to get the money back.” A woman at the meeting speaks to the group and says “If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?” The original speaker says, “We are suffering from a cost of living crisis, so I think the billions of dollars overpaid should be paid back.” The advertisement ends with a call to action to sign a petition demanding action and includes The Integrity Institute logo and website address.

Below the video advertisement was the text: “If the money is not repaid, every taxpayer will each have to pay several thousands of dollars in taxes to pay back the debt the government has occurred.”

### **Advertisement 5 - Billboard**

The Integrity Institute billboard advertisement said:

“[TheIntegrityInstitute.org.nz](http://TheIntegrityInstitute.org.nz). “\$10 BILLION in wage subsidies overpaid! COME ON MSD – MAKE BUSINESSES PAY IT BACK.” The advertisement ends with the Integrity Institute’s logo.

### **Advertisement 6 – Facebook**

The organic Facebook advertisement from The Integrity Institute begins with the text, “MSD has overpaid \$10 billion in wage subsidies to businesses that should never have received them. Taxpayers may have to repay the debt and the extra money in the economy is driving inflation. We want the Ministry to fix the problem, do what’s right and make them pay it back.” The advertisement includes a yellow box with the wording, “\$10 billion in wage subsidies overpaid yet MSD refuses to take action. Find out more and to sign a petition demanding action at [TheIntegrityInstitute.org.nz](http://TheIntegrityInstitute.org.nz)”.

### **Advertisement 7 - Website**

The Integrity Institute website advertisement, as identified by the Complainant, is a section of The Integrity Institute website headed “\$10,000,000,000 overpaid to businesses”. The introductory paragraph says: “Public Servants gave away many billions of dollars to businesses and when it became clear that about \$10 billion of Covid 19 assistance had been overpaid or wrongly obtained or retained, they did nothing about getting this money back. The following pages are a small part of the sworn evidence presented to the High Court in an

affidavit.” The page includes the text “SIGN THE PETITION”, which, if selected, provides a link to further information about how to do this.

Other headings on the website are “Struggling families badly treated”, “How scams impact you”, “Political party donations/bribes”, “Lobbying corrupts decisions”, “Low corruption myth”, “Auditor-General ignores scams” and “Action you can take”.

### **Summary of the Complaint**

The Complainant, the Ministry of Social Development, was concerned the advertisements were misleading. The Complainant said:

- The \$10 billion figure being claimed is incorrect. It appears to be based on a misunderstanding of the criteria of the Wage Subsidy Scheme.
- In instances where wage subsidy ineligibility or misuse has been discovered by the Ministry or brought to our attention, we *have* acted in every case.’
- So far MSD has commenced civil recovery action in relation to 31 businesses for overpayments totalling over \$4 million.
- There is no evidence to substantiate the claim that the Government has, or will intentionally raise taxes as a direct result of up to \$10 billion in wage subsidy “overpayments”.
- The advertisement creates a false impression that the Ministry takes a heavier hand with beneficiaries compared to businesses... we support those who have debt established with the Ministry... (to) not cause further hardship.
- There is no evidence to suggest a recipient receiving \$45,000,000 was ineligible to receive this payment. The advertisement neglects to mention the significant number of employees, approximately 4000 (Farmers, Whitcoulls and Pascoes).

A copy of the complaint is in Appendix 1.

### **Issues Raised:**

- Truthful presentation
- Use of data
- Advocacy advertising

### **Summary of the Advertiser’s Response**

The Advertiser, The Integrity Institute, defended the advertisements and said:

- The advertisements are part of an advertising campaign which the Institute funded because they are concerned that the taxpayer funded wage subsidy scheme has been open to abuse.
- The purpose of the advertising was to inform people about the wage subsidy scheme and the extent to which businesses have, in their view, been overpaid or payments made have been wrongly retained.
- The purpose of the advertising was also to get people to go to The Integrity Institute website and sign a petition requesting the Ministry of Social Development to write to all recipients and to better manage the post payment management of the wage subsidy.

The Advertiser provided detailed responses to each of the issues identified by the Complainant. The Advertiser referred to reports on the wage subsidy scheme conducted by Audit New Zealand. The Advertiser also provided a folder of supporting documents of over 200 files on a USB drive.

A copy of the Advertiser's primary response is in Appendix 2. The files on the USB drive have not been included in Appendix 2 due to the volume of material, but they were provided to the Complaints Board.

### **Summary of the Media Responses**

Responses were received from the Commercial Approvals Bureau, NZME, Stuff and Lumo. The Commercial Approvals Bureau, NZME and Stuff Media said they were satisfied the advertisements complied with the ASA Codes, in the context of advocacy advertising.

Copies of the Media responses are in Appendix 3.

### **Relevant ASA Codes of Practice**

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

#### **ADVERTISING STANDARDS CODE**

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2(b): Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**Rule 2(e) Advocacy advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

ASA Guidance Note on Responding to a Complaint about Misleading Claims

ASA Guidance Note on Advocacy Advertising

The Chair noted the Complainant had suggested the complaint also be considered under Rule 2(c) – Use of data. The Chair said the complaint was more appropriately considered under Rule 2(b), as the Print, Radio, Television, YouTube, Billboard and Facebook advertisements did not use tests, surveys, research results or quotes from technical and scientific literature.

### **Relevant precedent decisions**

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/279, which was Upheld and the Appeal of 19/279, which was allowed, complaint subsequently Not Upheld.

The full versions of these decisions can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

**Decision 19/279** concerned an advertisement on the New Zealand National Party Facebook page which compared the Government funding for the Provincial Growth Fund with new funding for Pharmac. The advertisement showed a picture of Hon Shane Jones, Minister for Regional Economic Development, with the text: "Despite claiming to be caring and compassionate, this Government only put an extra 1% in the Budget for life-saving drugs.

That doesn't even cover inflation. National will invest \$200 million more into cancer drugs. Our bottom line is you."

The majority of the Complaints Board said the advertisement was misleading because the substantiation provided by the Advertiser was insufficient for the level of claim made in the advertisement and the political advocacy advertisement was likely to confuse or deceive consumers.

**Decision 19/279 Appeal 19/011** concerned the Advertiser's appeal of 19/279, on the grounds it was against the weight of evidence and the Complaints Board had failed to take into account considerations of context, time and understanding of Government Appropriations. The Advertiser provided the context and substantiation for its position that the advertisement was comparing what it considered to be "new" funding within the context of an advocacy advertisement.

The Appeal Board considered the additional context and substantiation provided by the Advertiser in their Appeal Application and said it showed that, read as a whole, the Facebook advertisement focused on what the National Party considered to be "new" budget appropriations to highlight its view of the Coalition Government's spending priorities in the 2019 Budget.

The Appeal Board agreed the advertisement, seen within the lens of advocacy advertising, presented a political point of view which was not misleading, when considered in this context.

The Complaints Board noted these precedents confirm the level of substantiation provided should support the level of claim made.

### **Complaints Board Discussion**

The Chair noted that the Complaints Board's role was to consider whether there had been any breaches of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
  - Context: Cost of living crisis, Scrutiny of Government initiatives to support businesses and keep people employed during the COVID-19 pandemic, General Election in October 2023
  - Media: Print, Radio, Television, YouTube, Billboard, Facebook and Website.
  - Audience: Adult New Zealanders.
  - Product: Advocacy advertising critical of the Government's approach to the COVID-19 wage subsidy scheme.

### **Definition of the Wage Subsidy Scheme**

The Chair noted that according to the Auditor General the Wage Subsidy Scheme was designed to help businesses and employees.

"On 17 March 2020, the Government introduced the Wage Subsidy Scheme to support businesses affected by Covid-19 to retain employees. The Government intended that this would help preserve employment connections between employers

and employees and provide income for employees even when they were unable to work.<sup>1</sup>

There were three stages of the Wage subsidy Scheme:

1. the original wage subsidy
2. the wage subsidy extension; and
3. the resurgence wage subsidy.

**Were the advertisements advocacy advertising: Was the identity and position of the advertiser clear?**

The Complaints Board agreed that each of the advertisements fitted the definition of advocacy advertising, and the identity and position of the Advertiser were clear in each case. The Board noted that each of the advertisements contained the website address of The Integrity Institute.

The Complaints Board noted the Advertiser was expressing their opinion that the taxpayer funded wage subsidy scheme was open to abuse and should have been managed differently. The Advertiser stated the purpose of the advertising was to encourage people to go to The Integrity Institute website to read more about the Advertiser's concerns and sign a petition, requesting the Ministry of Social Development to write to all the recipients of the subsidy seeking information and if necessary, repayment of any money which was wrongly obtained or retained.

**Did the advertisements contain any factual information, and if so, have the facts been adequately substantiated?**

The Complaints Board considered each of the advertisements in turn, to consider whether they contained statements of fact or opinion, or both, and where there were statements of fact, if they had been adequately substantiated.

**Advertisement 1- Print**

*Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was the Ministry of Social Development has overpaid a significant amount of money; \$10,000,000,000, in wage subsidies, and action should be taken to ensure these overpayments are returned.

The Complaints Board discussed the use of the word "overpaid", in the context of this advertising. The Board noted that the Complainant and the Advertiser provided different definitions for the word "overpaid". The Complainant said the word "overpaid" implies that wage subsidy recipients were ineligible to receive all or part of their payments. The Advertiser cited a definition used by Audit New Zealand calling "overpayments" all advance payments that turned out to be wrong.

The Complaints Board noted these different perspectives appear to relate to differences in timing - eligibility for receiving the payment, as assessed at the time of applying for the payment compared to audits of eligibility, which are conducted retrospectively. The Complaints Board said that despite these different perspectives, both the Complainant and Advertiser saw the word "overpaid" as referring to amounts that were wrongfully paid or paid in error (i.e. amounts that were paid to ineligible recipients), as opposed to merely "wastefully" paid, which could imply an opinion.

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<sup>1</sup><https://oag.parliament.nz/2021/wage-subsidy/part1.htm#:~:text=On%2017%20March%202020%2C%20the,they%20were%20unable%20to%20work.>

*Was the advertisement Misleading?*

The Complaints Board considered each of the statements in the advertisement, in turn.

**“\$10,000,000,000” OVERPAID”**

The Complaints Board said the use of the figure "\$10,000,000,000" in the text "\$10,000,000,000 OVERPAID" and "...the Ministry of Social Development overpaid \$10 billion in wage subsidies..." was misleading.

The Complaints Board said this figure was presented as a statement of fact. Where numbers are presented as absolute numbers in advocacy advertising, substantiation is required.

The Board said that while the Advertiser had provided an explanation for how they had calculated this figure, they had also acknowledged that this figure was an estimate. The Board referred to the following [excerpt](#) from the Advertiser's website:

“Sign the Petition ... The following pages are a small part of the sworn evidence presented to the High Court in an affidavit... The original wage subsidy cost just under \$1,000 million per week so *I have estimated* that the overpayment cost taxpayers over \$5,000,000,000... 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 over \$10 billion...”

The Complaints Board said the “\$10,000,000,000” / “\$10 billion” number was presented as an absolute number. It was not clear in the advertisement it was an estimate calculated by the Advertiser.

The Complaints Board then discussed the use of the term “OVERPAID”. The Board noted the different views from the Complainant and the Advertiser about the meaning of this term. The Board agreed the inclusion of the absolute number of \$10 billion in association with the term “OVERPAID” made this statement misleading.

**“You and other taxpayers will each have to pay thousands of dollars in extra tax”**

The Complaints Board said the text “You and other taxpayers will each have to pay thousands of dollars in extra tax” was not misleading. This is because it is the Advertiser's opinion of the Government's management of the wage subsidy scheme and as such did not need to be substantiated. The Board said it is common parlance to talk about costs to “the taxpayer” as being a shared cost across the community, and the consumer is not likely to be misled by this. The Board also said that predictions about what might happen in the future are clearly opinion, and it is not possible to substantiate them in advance.

**“they refuse to take action to get the money back”**

A majority of the Complaints Board said the text “they refuse to take action to get the money back” was a statement of opinion, in the context of advocacy, and was not misleading. The majority said the statement refers to the Advertiser's concerns about the administration of the wage subsidy scheme and the decision not to write to all the recipients, which they disagree with.

A minority disagreed. The minority said “they refuse to take action to get the money back” was a statement of fact, that suggested that the Ministry of Social Development has refused to take any action to get any of the money back, and this statement is misleading. The minority said the Ministry of Social Development had provided information about civil recovery action and criminal proceedings being taken, where wage subsidy ineligibility has been identified. They had also referred cases of fraud to the Serious Fraud Office.

In accordance with the majority the Complaints Board said this statement did not reach the threshold to be misleading.

**“One Auckland businesswoman was given \$45,000,000 but she and a huge number of businesses have never been asked to repay money that they are not entitled to keep”.**

The Complaints Board said the likely consumer takeout of this statement was one Auckland businesswoman had been given \$45,000,000 she was not entitled to keep.

The Complaints Board said this was a statement of fact, which the Advertiser had not substantiated, and as such it was misleading. In addition, the statement implies wage subsidies of \$45,000,000 were inappropriately paid to one individual person. The Board said the statement does not include any reference to the number of companies or employees this amount might relate to, and therefore is also misleading by omission.

**“A beneficiary overpaid as little as \$20, is chased by the Ministry to repay the money. How is that fair?”**

The Complaints Board said the text “A beneficiary overpaid as little as \$20, is chased by the Ministry to repay the money. How is that fair?” was an opinion, in the context of advocacy advertising, and as such did not need to be substantiated. The Board said this statement was not misleading.

The Complaints Board noted the Complainant said the Ministry of Social Development is obliged by legislation to recover certain types of debt and any annual profit a business may have made, after receiving the wage subsidy, does not affect their eligibility.

### **Advertisement 2 - Radio**

*Was the advertisement Misleading?*

The Complaints Board agreed the advertisement was misleading. This is because the voiceover said “Guess who’ll be picking up the tab for the \$10 billion dollars of wage subsidies the Ministry of Social Development overpaid to businesses during COVID? ...” The Board said the reference to the “\$10 billion dollars of wage subsidies the Ministry of Social Development overpaid to businesses during COVID” was a statement of fact and the Advertiser had not provided sufficient substantiation to support it.

The Complaints Board said the “\$10,000,000,000” / “\$10 billion” number was presented as an absolute number. It was not clear in the advertisement it was an estimate calculated by the Advertiser.

The Complaints Board then discussed the use of the term “OVERPAID”. The Board noted the different views from the Complainant and the Advertiser about the meaning of this term. The Board agreed the inclusion of the absolute number of \$10 billion in association with the term “OVERPAID” made this statement misleading.

### **Advertisement 3 – Television**

“You and other taxpayers are each going to have to pay thousands of dollars in extra tax because the Ministry of Social Development overpaid up to 10 billion dollars of wage subsidies and they refuse to take action to get the money back.”

*Was the advertisement Misleading?*

The Complaints Board considered each of the statements in the advertisement, in turn.



**“You and other taxpayers are each going to have to pay thousands of dollars in extra tax”**

The Complaints Board said the text “You and other taxpayers will each have to pay thousands of dollars in extra tax” was not misleading. This is because it is the Advertiser’s opinion of the Government’s management of the wage subsidy scheme and as such did not need to be substantiated. The Board said it is common parlance to talk about costs to “the taxpayer” as being a shared cost across the community, and the consumer is not likely to be misled by this. The Board also said that predictions about what might happen in the future are clearly opinion, and it is not possible to substantiate them in advance.

**“the Ministry of Social Development overpaid up to 10 billion dollars of wage subsidies”**

The Complaints Board agreed the advertisement was misleading. This is because it contained a statement of fact that had not been adequately substantiated. The Board said the reference to “up to 10 billion dollars”, while not making as high a claim as the more definite “\$10,000,000,000 OVERPAID”, still suggested a significantly high amount of money and it was necessary for the Advertiser to provide evidence to support this amount, or an amount close to it.

The Complaints Board said the text “up to 10 billion dollars” did not make it clear the number was an estimate calculated by the Advertiser.

The Complaints Board then discussed the use of the term “OVERPAID”. The Board noted the different views from the Complainant and the Advertiser about the meaning of this term. The Board agreed the inclusion of the absolute number of \$10 billion in association with the term “OVERPAID” made this statement misleading.

**“they refuse to take action to get the money back”**

A majority of the Complaints Board said the text “they refuse to take action to get the money back” was a statement of opinion, in the context of advocacy, and was not misleading. The majority said the statement refers to the Advertiser’s concerns about the administration of the wage subsidy scheme and the decision not to write to all the recipients, which they disagree with.

A minority disagreed. The minority said “they refuse to take action to get the money back” was a statement of fact, that suggested that the Ministry of Social Development has refused to take any action to get any of the money back, and this statement is misleading. The minority said the Ministry of Social Development had provided information about civil recovery action and criminal proceedings being taken, where wage subsidy ineligibility has been identified. They had also referred cases of fraud to the Serious Fraud Office.

In accordance with the majority the Complaints Board said this statement did not reach the threshold to be misleading.

**“If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?”**

The Complaints Board said the text “If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?” was an opinion, in the context of advocacy advertising, and as such did not need to be substantiated. The Board said this statement was not misleading.

The Complaints Board noted the response from the Complainant that the Ministry of Social Development is obliged by legislation to recover certain types of debt and any annual profit a business may have made, after receiving the wage subsidy, does not affect their eligibility.

#### Advertisement 4 – YouTube

“You and other taxpayers are each going to have to pay thousands of dollars in extra tax because the Ministry of Social Development overpaid up to 10 billion dollars of wage subsidies and they refuse to take action to get the money back.” A woman at the meeting speaks to the group and says “If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?” The original speaker says, “We are suffering from a cost of living crisis, so I think the billions of dollars overpaid should be paid back.” Below the video advertisement was the text: “If the money is not repaid, every taxpayer will each have to pay several thousands of dollars in taxes to pay back the debt the government has occurred.”

#### *Was the advertisement Misleading?*

The Complaints Board considered each of the statements in the advertisement, in turn.

#### **“You and other taxpayers are each going to have to pay thousands of dollars in extra tax”**

The Complaints Board said the text “You and other taxpayers will each have to pay thousands of dollars in extra tax” was not misleading. This is because it is the Advertiser’s opinion of the Government’s management of the wage subsidy and as such did not need to be substantiated. The Board said it is common parlance to talk about costs to “the taxpayer” as being a shared cost across the community, and the consumer is not likely to be misled by this. The Board also said that predictions about what might happen in the future are clearly opinion, and it is not possible to substantiate them in advance.

#### **“the Ministry of Social Development overpaid up to 10 billion dollars of wage subsidies”**

The Complaints Board agreed the advertisement was misleading. This is because it contained a statement of fact that had not been adequately substantiated. The Board said the reference to “up to 10 billion dollars”, while not making as high a claim as the more definite “\$10,000,000,000 OVERPAID”, still suggested a significantly high amount of money and it was necessary for the Advertiser to provide evidence to support this amount, or an amount close to it.

The Complaints Board said the text “up to 10 billion dollars” did not make it clear the number was an estimate calculated by the Advertiser.

The Complaints Board then discussed the use of the term “OVERPAID”. The Board noted the different views from the Complainant and the Advertiser about the meaning of this term. The Board agreed the inclusion of the absolute number of \$10 billion in association with the term “OVERPAID” made this statement misleading.

#### **“they refuse to take action to get the money back”**

A majority of the Complaints Board said the text “they refuse to take action to get the money back” was a statement of opinion, in the context of advocacy, and was not misleading. The majority said the statement refers to the Advertiser’s concerns about the administration of the wage subsidy scheme and the decision not to write to all the recipients, which they disagree with.

A minority disagreed. The minority said “they refuse to take action to get the money back” was a statement of fact, that suggested that the Ministry of Social Development has refused to take any action to get any of the money back, and this statement is misleading. The minority said the Ministry of Social Development had provided information about civil recovery action and criminal proceedings being taken, where wage subsidy ineligibility has been identified. They had also referred cases of fraud to the Serious Fraud Office.

In accordance with the majority the Complaints Board said this statement did not reach the threshold to be misleading.

**“If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?”**

The Complaints Board said the text “If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?” was an opinion, in the context of advocacy advertising, and as such did not need to be substantiated. The Board said this statement was not misleading.

The Complaints Board noted the response from the Complainant that the Ministry of Social Development is obliged by legislation to recover certain types of debt and any annual profit a business may have made, after receiving the wage subsidy, does not affect their eligibility.

**“If the money is not repaid, every taxpayer will each have to pay several thousands of dollars in taxes to pay back the debt the government has occurred.”**

The Complaints Board said the text “If the money is not repaid, every taxpayer will each have to pay several thousands of dollars in taxes to pay back the debt the government has occurred” was not misleading. This is because it is the Advertiser’s opinion of the Government’s management of the wage subsidy and as such did not need to be substantiated. The Board said it is common parlance to talk about costs to “the taxpayer” as being a shared cost across the community, and the consumer is not likely to be misled by this. The Board also said that predictions about what might happen in the future are clearly opinion, and it is not possible to substantiate them in advance.

**Advertisement 5 - Billboard**

“\$10 BILLION in wage subsidies overpaid!”

*Was the advertisement Misleading?*

The Complaints Board said the use of the figure “\$10 BILLION” in the text “\$10 BILLION in wage subsidies overpaid!” was misleading.

The Complaints Board said this figure was presented as a statement of fact. Where numbers are presented as absolute numbers in advocacy advertising, substantiation is required.

The Board said that while the Advertiser had provided an explanation for how they had calculated this figure, they had also acknowledged that this figure was an estimate. The Board referred to the following [excerpt](#) from the Advertiser’s website:

“Sign the Petition ... The following pages are a small part of the sworn evidence presented to the High Court in an affidavit... The original wage subsidy cost just under \$1,000 million per week so *I have estimated* that the overpayment cost taxpayers over \$5,000,000,000... 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 over \$10 billion...”

The Complaints Board said the “\$10,000,000,000” / “\$10 billion” number was presented as an absolute number. It was not clear in the advertisement it was an estimate calculated by the Advertiser.

The Complaints Board then discussed the use of the term “OVERPAID”. The Board noted the different views from the Complainant and the Advertiser about the meaning of this term. The Board agreed the inclusion of the absolute number of \$10 billion in association with the term “OVERPAID” made this statement misleading.

## Advertisement 6 – Facebook

“MSD has overpaid \$10 billion in wage subsidies to businesses that should never have received them. Taxpayers may have to repay the debt and the extra money in the economy is driving inflation. We want the Ministry to fix the problem, do what’s right and make them pay it back.” The advertisement includes a yellow box with the wording, “\$10 billion in wage subsidies overpaid yet MSD refuses to take action.

*Was the advertisement Misleading?*

The Complaints Board considered each of the statements in the advertisement, in turn.

**“MSD has overpaid \$10 billion in wage subsidies to businesses that should never have received them” and “\$10 billion in wage subsidies overpaid”**

The Complaints Board said the use of the figure “\$10 BILLION” in the text “MSD has overpaid \$10 billion in wage subsidies to businesses that should never have received them” and “\$10 billion in wage subsidies overpaid” was misleading.

The Complaints Board said this figure was presented as a statement of fact. Where numbers are presented as absolute numbers in advocacy advertising, substantiation is required.

The Board said that while the Advertiser had provided an explanation for how they had calculated this figure, they had also acknowledged that this figure was an estimate. The Board referred to the following [excerpt](#) from the Advertiser’s website:

“Sign the Petition ... The following pages are a small part of the sworn evidence presented to the High Court in an affidavit... The original wage subsidy cost just under \$1,000 million per week so *I have estimated* that the overpayment cost taxpayers over \$5,000,000,000... 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 over \$10 billion...”

The Complaints Board said the “\$10,000,000,000” / “\$10 billion” number was presented as an absolute number. It was not clear in the advertisement it was an estimate calculated by the Advertiser.

The Complaints Board then discussed the use of the term “OVERPAID”. The Board noted the different views from the Complainant and the Advertiser about the meaning of this term. The Board agreed the inclusion of the absolute number of \$10 billion in association with the term “OVERPAID” made this statement misleading.

**“MSD refuses to take action.”**

A majority of the Complaints Board said the text “MSD refuses to take action” was a statement of opinion, in the context of advocacy, and was not misleading. The majority said the statement refers to the Advertiser’s concerns about the administration of the wage subsidy scheme and the decision not to write to all the recipients, which they disagree with.

A minority disagreed. The minority said “MSD refuses to take action” was a statement of fact, that suggested that the Ministry of Social Development has refused to take any action to get any of the money back, and this statement is misleading. The minority said the Ministry of Social Development had provided information about civil recovery action and criminal proceedings being taken, where wage subsidy ineligibility has been identified. They had also referred cases of fraud to the Serious Fraud Office.

In accordance with the majority the Complaints Board said this statement did not reach the threshold to be misleading.

## Advertisement 7 - Website

### *ASA jurisdiction over website content*

The Complaints Board discussed whether it had jurisdiction to consider the complaint about a section on the Advertiser's website [www.integrityinstitute.org.nz](http://www.integrityinstitute.org.nz) titled "10 billion overpaid to businesses". The Complaints Board agreed the website content promotes the Advertiser's causes and ideas from their particular perspective.

The Board referred to the [ASA Explanatory Statement on Jurisdiction and Scope 2022](#) and noted it says in part: "A complaint will not be considered if it is about content on their (the Advertiser's) own websites."

The Board confirmed the section of the website complained about is outside its jurisdiction.

### **In Summary**

The Complaints Board said taking into account context, medium, audience and product, statements in the Print, Radio, Television, YouTube, Billboard and Facebook advertisements were misleading and the advertisements were in breach of Principle 2, Rule 2(b), and Rule 2(e) of the Advertising Standards Code. The Complaints Board said the advertisements did not breach Rule 2(c). The Complaints Board said it did not have jurisdiction to consider the complaint about the website content.

### **Outcome**

The Complaints Board ruled the complaint was **Upheld in part and Not Upheld in part**.

Print, Radio, Television, YouTube, Billboard and Facebook advertisements to be removed and not to be used again in the current form.

### **APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website, [Appeal Process](#). Appeals must be made in writing with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
  3. Responses from Media
- 

### Appendix 1

#### COMPLAINT

The Ministry of Social Development wishes to lodge a complaint about the “\$10,000,000,000 IN SUBSIDIES OVERPAID” advertising campaign being run by [The Integrity Institute](#) across television, radio, print, and social media. Details of placement are attached.

The Ministry considers that the advertisements contain various breaches of the Advertising Standards Code, particularly:

- a. **The Integrity Institute failed to properly comply with the requirements of Rule 2(b) – Truthful presentation:**

*Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.*

*Obvious hyperbole identifiable as such is not considered to be misleading.*

The Ministry’s view is that the advertisements fail to comply with this requirement as they contain demonstrable untruths and exaggerations that are misleading the public on a major and important programme of government spending over the COVID-19 period.

They abuse the trust and lack of knowledge of the public on the detail of MSD’s substantial programme of recovery of wage subsidy misuse or overpayments, and instead allege without basis that a substantial portion of the \$18b in wage subsidy payments were overpayments.

The advertisements present the views of The Integrity Institute as expert opinion, linking to the Institute’s website, which says that research has been carried out “by researchers who have PhD or other relevant qualifications”.

These advertisements present the advertiser’s opinion as fact that is universally accepted, when this is not the case. No evidence has been provided in the actual advertising to substantiate the claims being made. The advertiser has substantially misrepresented the actual Ministry practice of eligibility assessment, debt calculation and recovery processes.

Despite the allegations in the advertising, we continue to review and investigate applications where potential fraud or incorrect payment has been identified, which includes responding to allegations of Wage Subsidy misuse.

The claims in the advertising do not reflect the views of the external and independent reviews of the Ministry's management of the scheme and integrity program. For example, the Auditor-General undertook a performance audit of MSD's management of the Wage Subsidy Scheme, publishing a report in 2021. Aspects of the scheme have also been included in Audit New Zealand's annual audit of the Ministry.

In relation to this alleged breach, we draw the ASA's attention to the following specific examples:

***"Use of the phrase "the Ministry of Social Development overpaid up to \$10 billion dollars of wage subsidies", and a whiteboard displaying the words: "\$10,000,000,000 OVERPAID"***

- Use of the term "overpayment" implies the wage subsidy recipients were ineligible to receive all or part of their payments. The \$10 billion figure being claimed is incorrect. It appears to be based on a misunderstanding of the criteria for the Wage Subsidy Scheme. The annual profit a business might have made after receiving the wage subsidy does not affect their eligibility at the time of their application.

***"They [MSD] refuse to take action to get the money back"***

- This is an obvious untruth. The Wage Subsidy Scheme provided an unprecedented level of financial assistance to support New Zealand's economic recovery from COVID-19. We take our duty to taxpayers seriously and have always been committed to taking action, where appropriate, to recover ineligible or misused wage subsidy funds. In instances where wage subsidy ineligibility or misuse has been discovered by the Ministry or brought to our attention, we *have* acted in every case. As of March 31, we have completed 15,367 pre-payment and post-payment checks on wage subsidy applications, resolved 6703 allegations of wage subsidy misuse, and completed 627 wage subsidy-related investigations. This has contributed to 24,732 voluntary and requested Wage Subsidy repayments being made, totalling \$819.1 million to date.
- So far MSD has commenced civil recovery action in relation to 31 businesses for overpayments totalling over \$4 million, with civil court action having commenced in seven of these cases.
- Our integrity work and analysis to date has given us confidence that the vast majority of businesses that received wage subsidies did so honestly.

We have found that where wage subsidies were wrongly claimed, it was often an honest misunderstanding about eligibility rather than a deliberate attempt to deceive.

- When this is not that case, we also consider prosecution. So far, we have commenced criminal proceedings against 36 people for wage subsidy misuse, with the total amount of public money involved in these cases being approx. \$3 million. A further 12 cases are in the process of having charges filed. Additionally, eleven significant and complex cases of alleged wage subsidy fraud, involving larger sums of money, have also been referred to the Serious Fraud Office. The SFO has since filed 95 charges in the Auckland District Court against an individual who is alleged to have fraudulently claimed over \$2.3 million from various COVID-19 relief funds and GST returns, of which he allegedly received \$624,000. We expect more court cases for wage subsidy misuse to follow as we continue our investigations, which involve a mix of individuals and businesses.
- Progress on MSD's wage subsidy integrity work has been regularly communicated to the public via Ministry documents that are publicly available as well as a significant number of media articles since the wage subsidy began.

***"You and other taxpayers are each going to have to pay thousands of dollars in extra tax" (said during broadcast advertisement); and "If the money is not repaid, every taxpayer will each have to pay several thousands of dollars in taxes to pay back the debt the government has incurred" (contained in text below YouTube video)***

- No evidence to substantiate this claim that the Government has, or will, intentionally raise taxes as a direct result of up to \$10 billion in wage subsidy "overpayments" that the advertiser has not proven exist.

***"If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?"***

- Unfairly conflates debt to the Ministry, which we are obliged by legislation to recover, with wage subsidy payments that the advertiser has decided businesses were not worthy of receiving. This neglects the fact that any annual profit a business might have made, after receiving the wage subsidy, does not affect their eligibility. This also creates a false impression that the Ministry takes a heavier hand with beneficiaries compared to businesses. The reality is that we support those who have



debt established with the Ministry by putting a plan in place that sees them pay a regular amount they can afford, which will not cause further hardship.

**"One Auckland businesswoman was given \$45,000,000 but she and a huge number of businesses have never been asked to repay money that they are not entitled to keep." (contained in newspaper advertisement)**

- No evidence to suggest this recipient was ineligible to receive this payment. On a review of our records, we can identify the class of employers this allegation might apply to. This statement is also misleading by omission, in so far as it neglects to mention the significant number of employees, approximately 4000, who would have been supported by amounts of this size. In many of these types of cases refunds have been received.

**b. The Integrity Institute failed to properly comply with the requirements of Rule 2(c) – Use of data**

*Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.*

The Ministry's view is that insofar as the reasoning being used by the advertiser to justify their claims (which is not presented in the video advertisements but is on the website and Billboard advertisement) have not been verified by an independent and objective body using industry-accepted methodology, casting doubt over its veracity.

In relation to this alleged breach, we draw the ASA's attention to the following specific examples:

- The advertiser is claiming a majority of wage subsidy recipients were ineligible and \$10 billion was overpaid. No evidence is presented in the advertising to substantiate these claims, which the Ministry reject. The reasoning presented on the advertiser's website in support of their claim is also, in the Ministry's view, unverified and unscientific. This includes the advertiser misapplying the results from our integrity program across the entire scheme. The advertiser uses phrases such as "I have estimated" and "I have calculated" without explaining their methodology behind this.

**"You and other taxpayers are each going to have to pay thousands of dollars in extra tax" (said during broadcast advertisement); and "If the money is not repaid, every taxpayer will each have to pay several**

***thousands of dollars in taxes to pay back the debt the government has incurred*** (contained in text below YouTube video)

- As stated above there is no evidence to substantiate this claim that the Government has, or will, intentionally raise taxes as a direct result of up to \$10 billion in wage subsidy "overpayments" that the advertiser has not proven exist.

We request your urgent attention to this matter given the false claims and misleading information on an important and significant programme of government spending.

We look forward to your reply and early resolution.

### **Examples of advertising**

**Website:** <https://theintegrityinstitute.org.nz/articles/10000000000-overpaid-to-businesses/>

**YouTube:** [https://www.youtube.com/watch?v=PPtoC\\_CiW2k](https://www.youtube.com/watch?v=PPtoC_CiW2k)

**Television:** Above advertisement aired during first ad break of *1News at 6pm* on Monday, 19 June 2023.

**Outdoor:** electronic billboard on the corner of Whitmore & Stout streets in central Wellington

Full page advert that ran on Page 10 of The Post - 21/06/2023.

Half-page versions of this advert have also run across all of Stuff's other main mastheads 21 June, including:

- Page 18 of The Press
- Page 2 of the Waikato Times
- Page 5 of the Manawatu Standard
- Page 12 of The Southland Times
- Page 5 of the Nelson Mail
- Page 5 of the Marlborough Express
- Page 13 of the Taranaki Daily News

*(Images of these advertisements were provided, but not included in this decision).*

Half-page versions of this advert have also run across all of NZME's main mastheads 21 June, including:

- Page 4 of the New Zealand Herald
- Page 8 of The Northern Advocate
- Page 9 of the Bay of Plenty Times

- Page 5 of the Whanganui Chronicle
- Page 4 of the Rotorua Daily Post
- Page 7 of Hawke's Bay Today

## Appendix 2

### RESPONSE FROM ADVERTISER, THE INTEGRITY INSTITUTE

#### RESPONSE TO COMPLAINT BY THE MINISTRY OF SOCIAL DEVELOPMENT

Prepared by Grant Nelson

[...address and contact details]

#### INTRODUCTION

As the advertising is advocacy advertising, I think that it is important to provide some background information about the experiences and motivation that has led my wife and I to fund an advertising campaign.

I have a BCom in economics and accounting and was a public servant for ten years. As I was born with very low vision and was legally blind, I had increasing difficulty doing the work required so started a business working from home. This expanded into a large business selling building materials throughout New Zealand but in 1995 I received an offer to purchase the business so my wife and I decided to sell it and put the proceeds into a charitable trust.

We have got research done on governance, wealth inequality in New Zealand and responsible spending of public money amongst many other issues.

Financial support has been given to budgeting services and a booklet and website have for many years provided those on low incomes with information on how to keep spending to a minimum. This concern has extended to the wasteful spending of taxpayer money when there are many urgent unmet community needs.

My wife and I have worked full-time in the charitable sector for 28 years without any remuneration and have become concerned that the urgent social and environmental problems facing the country have been getting steadily worse but at the same time businesses, farmers and wealthy people have greatly increased their wealth because they are able to use their money and influence to get the decisions they want. The wage subsidy is a good example of this.

When the wage subsidy was announced in March 2020, I realised, based on my accounting and business experience, that it was wide open to abuse. Since then I have done a lot of research on all aspects of it and have accumulated over 500 Computer files on the subject.

After three years of trying to bring to public attention the huge amount of public money that should be repaid but coming up against conflicts of interest in the news media and elsewhere, we decided that the wage subsidy was symptomatic of wider problems and the only way to alert the public to what was going on was to fund an advertising campaign.

#### GENERAL COMMENTS

A folder of over 200 files have been couriered to you on a USB drive. These files are some of the over 500 files on the wage subsidy that have informed our view of how the MSD has dealt with the wage subsidy. Some of the files provided are mentioned in this response but a search of the files in the folder can provide more information.

As I rely on a screen reader, I am limited in what I can do on the computer. Some files might have spelling, punctuation, spacing or formatting mistakes.

I have referred to files that I recall have been created over the past three years but in responding I may have left out some files or some facts that seem obvious to me but may not be obvious to someone who is not familiar with the subject. If you require clarification or further evidence on anything that you are not sure about, please contact me. gama@xtra.co.nz

Lots of messages of support have been received and no-one, apart from the MSD, has questioned the facts and figures in the advertisements or on the website.

We have often encountered people who are not interested in repayments being made because they have an interest in a business or have a partner, relatives or friends who have made money from overpaid and wrongly retained wage subsidies. It would be advisable to check to ensure that anyone dealing with the complaint does not have a conflict of interest.

From the start we have just wanted the MSD to write to all recipients, as recommended by audit NZ, the Auditor-General and Deloitte. The refusal by the MSD to do this has prompted us to do a lot of research that has uncovered many unacceptable things that the MSD has done to cover up their lack of action. We have nothing to gain by claiming that the MSD has not done its job properly and would have been happy if they had done so because this would have saved us a huge amount of time. The purpose of the advertising is to get people to go to the website to find out more and to sign a petition requesting the MSD to write to all recipients.

The following documents are attached with this MSD complaint response document:

MSD wage subsidy \$10 billion overpaid evidence. (The calculation of this figure and supporting evidence)

MSD wage subsidy overpaid extra evidence. ( Mainly about wrongly obtained or wrongly retained wage subsidies. As with other large documents, there is a Contents )

MSD wage subsidy failures quotes. (All wage subsidy quotes with file names so that the original document can be searched for in the 'Wage subsidy documents' folder)

MSD wage subsidy failures summary. (20 brief points)

Time has not permitted a file reference to be inserted after each paragraph but original documents can be searched for or I can provide the file name.

We wanted to start advertising much earlier but we had problems getting documents from the MSD. We are not supporters of any political party but took the precaution of obtaining confirmation from the Electoral Commission that the advertising is not political advertising.

The MSD has made a lot of general CLAIMS without any evidence so we have briefly dealt with these but have covered them in more detail when responding to the claims about what has been said in the advertisements. Each of the complaints by the MSD are dealt with under the appropriate rule with the advocacy rule coming first as it impacts on the other two rules.

### **Rule 2 (e) Advocacy advertising**

### **Guidelines**

The advertising is advocacy advertising so some of the stricter rules relating to products and services do not apply and an allowance is made for freedom of speech. 'the Boards support issues being openly debated and endeavour not to apply a technical or unduly strict interpretation of the rules and guidelines when adjudicating on complaints. The Boards also consider the protection for freedom of expression under the New Zealand Bill of Rights Act 1990'

This advocacy issue involves a large amount of information going back over three years so it is difficult to condense it into a 30 second advertisement or into a newspaper advertisement that will be read to the end. The basic advertising principles of getting attention, creating interest and then getting action, have been followed.

The advocacy here involves trying to alert the public to something that should not be happening. The other party holds most of the important documents but is reluctant to hand them over or admit that they have done anything wrong. We have made numerous OIA requests but often parts or all of a request are denied for various reasons. Early on we made a complaint about a delay to the Ombudsman but the process was long and time consuming so we did not try again. It has been rare to receive an OIA response within the statutory 20 working days and most have taken two or three times longer. To avoid delays, we tried requesting only one document in an email but the emails were lumped together and the usual delay occurred. (Refer to folder documents MSD OIA reply and MSD OIA response)

All the important information provided here has been sent to the MSD over the past three years but they have chosen to ignore it.

. Rule 2(b) - Truthful presentation:

Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.  
Obvious hyperbole identifiable as such is not considered to be misleading.

#### CLAIM

They abuse the trust and lack of knowledge of the public on the detail of MSD's substantial programme of recovery of wage subsidy misuse or overpayments, and instead allege without basis that a substantial portion of the \$18b in wage subsidy payments were overpayments.

#### RESPONSE

The MSD paid out 19.6 billion in wage subsidies but they deducted the repayments of \$800 million and often said that they had paid out \$18.8 billion. They now state that they paid out \$18 billion so they have even misled the ASA in order to make our calculation of \$10 billion look out of proportion.

This general claim will be dealt with under the claims about what is stated in each advertisement and in the attached documents.

#### CLAIM

The advertisements present the views of The Integrity Institute as expert opinion, linking to the Institute's website, which says that research has been carried out "by researchers who have PhD or other relevant qualifications".

These advertisements present the advertiser's opinion as fact that is universally accepted, when this is not the case. No evidence has been provided in the actual advertising to substantiate the claims being made.

#### RESPONSE

There is nothing in the television, radio and billboard advertisements that claims that what is said is the opinion of experts. The television advertisement has one person at the front addressing the people in the room with what could be regarded by some as fact or his opinion and then two others react with their opinions. The voiceover then says that : "If you agree and would like to find out more and to sign a petition go to the Integrity Institute website."

In the newspaper advertisement it does state: "After the first three wage subsidies were to have been used to pay employees, Reserve bank data shows businesses had \$22.7 billion more in the bank than a year earlier. Economists have reported this 24% increase was mainly due to the wage subsidy." (Refer to wage subsidy reserve bank data and Bernard Hickey 2112 his wage subsidy article)

The claim that 'the advertisements present the advertiser's opinion as fact that is universally accepted, when this is not the case.' Is ridiculous. There would be no

point in us doing advocacy advertising if we thought what is stated is universally accepted.

The claim is made that 'No evidence has been provided in the actual advertising to substantiate the claims being made' but this would be impossible for most of the advertisements and would be unrealistic and not normal in a newspaper advertisement. In every advertisement viewers, listeners or readers are encouraged to go to the website for more information.

#### CLAIM

The advertiser has substantially misrepresented the actual Ministry practice of eligibility assessment, debt calculation and recovery processes.

#### RESPONSE

There is nothing in the advertising relating to this claim and it is not clear what they mean.

Some relevant information is in the response to the complaint about part of the television ad referring to the refusal of the MSD to take action over the \$10 billion overpaid.

#### CLAIM

Despite the allegations in the advertising, we continue to review and investigate applications where potential fraud or incorrect payment has been identified, which includes responding to allegations of Wage Subsidy misuse.

#### RESPONSE

Our response is covered in the response to the complaint about part of the television advertisement referring to the MSD refusing to take action. (see below)

#### CLAIM

The claims in the advertising do not reflect the views of the external independent reviews of the Ministry's management of the scheme and integrity program. For example, the Auditor-General undertook a performance audit of MSD's management of the Wage Subsidy Scheme, publishing a report in 2021. Aspects of the scheme have also been included in Audit New Zealand's annual audit of the Ministry.

#### RESPONSE

The following notes have been copied



## Deloitte report

1. In March 2020 MSD commissioned Deloitte to undertake an external review of the administration of the wage subsidy scheme from an audit and assurance perspective. By the end of April 2020 Deloitte had provided a draft report containing 14 recommendations to enhance the integrity of the scheme.

Deloitte's recommendations to MSD included:

- (a) Use a targeted communications strategy when reminding recipients of their obligations to maximise the potential of early voluntary repayments;
- (b) Communicate to all stakeholders (including the general public) the audit and investigation work being undertaken as well as the reporting options available to stakeholders;
- (c) Develop a register of Fraud and Error risks;
- (d) Complete a review of the integrity and analytic work tested against the risks;
- (e) Require additional details including more bank account details, and more employee details;
- (f) Develop an audit programme;
- (g) Consider its ability to lead employer eligibility focussed schemes;
- (h) Provide extensive guidance to potential applicants; and
- (i) Consider using an external Intermediary to distribute payments, or consider paying employees directly.

The following about the Deloitte report was stated in the Auditor-General report dated May 2021:

4.77 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. This is consistent with one of Deloitte's recommendations to increase communications with recipients. We have also included it as part of Recommendation 4.

4.78 Using this type of correspondence is one of the anti-fraud techniques identified as being good practice for emergency situations. (Refer: Auditor-General wage subsidy report May 2021)

Deloitte reported during the first lockdown as at 24 April 2020 so they did not know when the lockdown would end and that there was going to be a 5 or 7 week overpayment. They were not asked to comment on the Declaration and eligibility criteria or the 30% revenue drop. They started by saying that the wage subsidy was a 'stimulus package' so the MSD must have told them that it was a handout to businesses.

The MSD contracted Deloitte to provide a second report to be delivered by July 2022 but the publication has been delayed for a year because the MSD is still discussing with Deloitte what

the report will say. Deloitte cannot resist too much because they need future work. (Refer to MSD 2306 OIA Response Nelson.pdf)

Report, Wage Subsidy extension: Report back on scheme integrity, dated 29 May 2020.(Refer to MSD OIA response 23 April planning and public interest)

This report said that a Deloitte 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 wage subsidy extension.

(Refer to Minister of Finance OIA February 2021)

MSD Report on audit processes 15 July 2020

33 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.

#### FINANCE AND EXPENDITURE COMMITTEE REPORT AUGUST 2021

In August 2021 the Finance and Expenditure Committee of Parliament reported on the wage subsidy and endorsed the criticisms and recommendations made by the Auditor-General. I copied the following quotes from their report:

‘The MSD has not fully implemented three of Deloitte’s recommendations’

‘Among its recommendations, Deloitte said that MSD should increase its capacity to investigate possibly fraudulent payments. We noted that over the last five years the number of staff in MSD’s investigations team has not changed. This is despite a 171 percent increase in the amount of money that MSD has given out. Given the scale of the Wage Subsidy Scheme, we asked MSD whether it had the necessary resources to conduct a sufficient number of investigations into payments made through the scheme.’ (Refer: Finance and expenditure committee wage subsidy report.pdf)

A Deloitte partner later said in a 27 May 2021 Stuff article that the initial wage subsidy rules were loose and that if recipients were written to they would then need to consider whether they should repay the subsidy.

( Refer to Auditor-General wage subsidy Report)

A year after the Deloitte report the Auditor-General reviewed MSD's management of the wage subsidies.

. His report dated 4 May 2021 was highly critical of the post payment management of the wage subsidy by the MSD but it was not able to deal with some of the more fundamental problems relating to the Declaration and other matters that I have identified. I copied the following paragraphs from the report as they outline the MSD failures and shortcomings to date.

3.17 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.

3.18 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.

3.20 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.

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.

4.14 Although there was some discussion of the risk associated with the high-trust approach to the Scheme in Cabinet papers and the official documentation available to us, we did not see any information that suggested the risk appetite and thresholds for the Scheme had been clearly

defined. Additional clarity might have further informed the design of, and decisions about, the post-payment assurance checks critical to the integrity of the Scheme. We accept that in these circumstances this would have been challenging, and the early advice to Ministers about different delivery options, in effect, explored different levels of risk.

4.62 Figure 10 (at the end of this Part) provides information about the number and results of each type of post-payment review.

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.

4.66 The Ministry of Social Development used the results of the random reviews over time to inform the criteria for targeted reviews. The amount of random reviews reduced as the Ministry learnt more about the actual risks it was observing.

4.67 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.

4.68 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.

4.69 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 Part 4 Protecting the integrity of the Wage Subsidy Scheme 42 interviews. They were provided with conversation guides to help them obtain the relevant information.

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. Recommendation 2 We recommend that, when public organisations are developing and implementing crisis-support initiatives that approve payments based on 'high-trust', they 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.

4.72 Inland Revenue told us that it followed this recommendation when implementing the Small Business Cashflow Scheme. Recommendation 3 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.

4.73 A review could result in an applicant being requested to repay funds or further investigative work. We are not persuaded that the reviews provide enough confidence that all applications that merit further investigation have been identified. As at 5 March 2021, the Ministry of Social Development had 392 active investigations in progress. A further 464 investigations had been resolved and 161 investigations were yet to start.

4.77 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. This is consistent with one of Deloitte's recommendations to increase communications with recipients. We have also included it as part of Recommendation 4.

4.78 Using this type of correspondence one of the anti-fraud techniques identified as being good practice for emergency situations.

4.80 Inland Revenue's work has also involved looking at whether some applicants' GST on taxable supplies (the supplies that a business uses and claims back the GST on when it purchased those supplies) had reduced for a relevant period. Analysis of this information might help to understand whether certain applicants' revenue declined sufficiently to make them eligible for the subsidy payment.

4.81 Ministry of Social Development staff made decisions about what enforcement steps to take, if any in response to the reviews Inland Revenue carried out. This is because Inland Revenue Staff do not have the legal authority to make decisions about enforcement steps for matters unrelated to tax compliance.

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.

4.86 There had been no prosecutions when we carried out our audit, but work is under way to support prosecutions.

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. Recommendation 4 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 report found that MSD did not require wage subsidy applicants to make any statement or provide corroborative evidence regarding the requirement to take steps to mitigate the impact of COVID-19 on their business prior to applying for the wage subsidy. The claimed audits were phone calls and did not request or involve substantive review of financial accounts. Other Criticisms included:

failure to write to recipients

failure to obtain verifying evidence of steps taken to engage with their bank and use cash reserves

failure to take 'critically important' prosecutions

The Auditor-General did not report on the MSD shortcomings that he was not aware of.

These included:

Failure to include in the Declaration the main wage subsidy objective that it was to be paid to businesses struggling to retain employees during a level 3 and 4 shutdown.

Failure to request businesses to make a repayment if they failed to notify any material change that affected their eligibility during the wage subsidy period and failure to get the consent in writing from their employees

A Joint Report by Treasury and MSD to Ministers in March 2021 (MSD OIA response 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’.

(Refer to MSD 2303 OIA Response)

4. Please advise how many times since December 2021 the MSD has had to co-operate with the Office of the Auditor-General in order to help them carry out work to determine how the recommendations requiring wage subsidy reviews have been carried out.

They state that they have frequent contacts and meetings with OAG/Audit N Z and they have advised that there were 5 meetings in 2022 but they only have a record of one. They might claim that the OAG has been happy with everything they have done but there appears to have been a close relationship and an acceptance of whatever the MSD said.

#### MSD AUDIT RECOMMENDATIONS CHANGED, REMOVED OR IGNORED

Audit N Z provides an interim audit report each year to give the MSD the opportunity to correct any errors. It is clear from an analysis of these reports since 2020 that the MSD got some recommendations regarding the wage subsidy deleted or changed in order to avoid requesting verifying evidence and prosecuting those who failed to comply.

1. The original interim report for 2020 recommended that all recipients be written to but after a few weeks a new interim report appeared that allowed the MSD to only contact a token number of recipients. This report was supplied to us by a former public servant. We cannot supply this without getting consent to do so.
2. The 2020 revised interim audit report was received by the MSD in August 2020 and in March 2023 extracts relating to the wage subsidy were supplied by the MSD to us . It appears that what the auditor wrote in the revised interim report about what Ministers said, what was on the website and what Cabinet did not specify were excuses not to write to all recipients that had been told to the auditor by the MSD. The auditor also said and may have been told that the MSD did not have to make sure that recipients complied with the obligations they agreed to. This is not correct and must have affected how future audits were conducted.

The auditor noted that the MSD had written to recipients to tell them how to apply for the 8 week extension scheme but it did not request a positive confirmation of continued eligibility from recipients subsequent to completion of the initial scheme.

3. The 2020 final audit report

In the 2020 interim report the auditor recommended that total voluntary repayments should be used to help indicate the total that needed to be repaid but his recommendation was left out of the 2021 final audit report. If it is estimated that for every business that voluntarily repaid another 10 would repay if asked, that amounts to about \$7.8 Billion. The MSD must have got the recommendation dropped to avoid finding out that they needed to get back billions of dollars. .

The Audit N Z auditor said that conversations with recipients were not acceptable but he followed the MSD and called them audits. The OAG May 2021 report on the wage subsidy said that phone conversations were not acceptable and calling them audits was misleading but despite this the MSD used conversations for its flawed sample of 339

The MSD said :’ The Ministry is currently considering what additional process it could use to ensure that recipients have adequately considered whether any repayment is required and confirm this assessment.’ The MSD actually did nothing about this and the auditor did not follow it up later.

4. In the 2021 interim report the auditor said that in 2020 ‘we recommended that the Ministry analyse the results of all integrity and assurance work undertaken to date to inform a risk-based assessment of next steps, and what further integrity work needs to be completed, if any, to strengthen the integrity of the Scheme’

The auditor accepted what MSD said about doing something and did not check on progress towards ‘next steps’. He was not told that MSD had found 15% and 35% non-compliance in October 2020 that should have resulted in next steps action to request repayments or evidence from all recipients.

5. The 2021 final audit report was received in December 2021

. The following claim is not correct.

‘We reviewed a sample of the completed rechecks and there is improved level of assurance obtained, with particularly good assurance over the criteria for the revenue drop. Other Scheme criteria and obligations are largely unverifiable, and reliance is placed on representations.’

The claim that other Scheme criteria and obligations are largely unverifiable is not correct. The report of Emeritus Professor Jilnaught Wong of Auckland University outlines how it is easy to verify cash reserves and engaging with their bank. Also getting employee written consent and notifying the MSD etc are verifiable. The written instructions given to MSD staff did not include asking questions about these obligations so it is not correct to say that ‘reliance is placed on representations.’

This Audit N Z final report was handed over in December 2021. It was after the OAG May 2021 wage subsidy report and a follow up report letter to the Finance and Expenditure



Committee also in December 2021. These documents did not mention what is quoted above.

6. The 2022 interim audit report said that ' We have not identified any significant new issues to bring to your attention.' It ignored the long delay and the flawed sampling and the lack of any decisions on next steps.

7. The MSD had discussions with the OAG in the months before the May 2021 report on the wage subsidy was published. It appears that the MSD arranged for the recommendations made to be so vague and imprecise that they could easily be circumvented with token gestures and delays.

The MSD used unacceptable methods to get unacceptable sample results and has for two years failed to take any action on the reviews that were intended to inform the additional integrity steps to be taken. If they had acted properly from the outset, substantial abuse would have been identified and thousands of prosecutions would have been taken against those who did not repay.

The document MSD wage subsidy quotes contains sections on reviews and evaluations. These sections are critical of the flawed design of reviews and the lack of action by MSD in order to avoid prosecutions.

In July 2021 the MSD requested a sample of 1,000 to confirm that they had complied with the Declaration they had agreed to. As 46% did not respond, in February and April 2022 they were sent reminders. The MSD advised in May 2022 that 29% had not responded.

When later the MSD were asked whether the review had been completed and what action had been taken, they advised in January 2023 that 5% had not responded and no action had been taken. After a further request for clarification, they advised that the drop to 5% was a result of reducing the number who should reply down to 864. The reasons given for doing this do not appear to be credible and the reality is that 28% of the 1,000 who received wage subsidy money did not respond. This failure to respond, despite reminders, indicates that many recipients were reluctant to risk prosecution.

(extra Refer to MSD 2301OIA response on reviews and MSD 2302 response clarification)

The sample of 1,000 was of 'early wage subsidy recipients' who received the original wage subsidy. The Declaration changed with each subsequent wage subsidy but an OIA response revealed that the sample of 1,000 were sent the link to the latest Declaration and not the original. They were asked to confirm that they had complied with the latest Declaration so this invalidates the whole sample.

The MSD claimed that there had been 'a very high level of compliance with obligations and eligibility criteria.' But this was only a result of the fiddling of figures and the poor methods employed by the MSD.

Phone calls were made to another sample of 339 recipients and they were asked about reduced revenue and employee changes. An unknown number were asked to provide unknown documents. Requests were not made for copies of GST Returns, details of cash reserves, employee written consent etc. The inadequate

sample size and inadequate questions and unknown documents requested meant that far more than 11% should have been asked to make repayments. Taking into account these inadequacies, it is possible to extrapolate the results to a total of \$5 billion that should be repaid. The first MSD affidavit indicates that between 15% to 35% should be repaid. The second MSD affidavit revealed that no new random or targeted requests had been made to any recipients since March 2022. However, probably none were made since the two sample reviews were sent out in July 2021. The badly flawed reviews gave the MSD the excuse to take no further action.

(Note that the affidavits are partly subject to confidentiality agreements so cannot be provided)

The review reports should have been completed by the end of 2021. If the results cannot be extrapolated to the whole wage subsidy, as claimed by the MSD, then there was no point in doing them. The MSD has used unacceptable methods to get unacceptable sample results and has for over 18 months failed to take any action on the reviews that were intended to inform the additional integrity steps to be taken. If they had acted properly from the outset, substantial abuse would have been identified and thousands of prosecutions would have been taken against those who did not repay.

The Auditor-General also recommended that evaluations be carried out and these should have been completed by the end of 2022. They were designed by the MSD to ignore the impact of the wage subsidy on businesses and to ignore what other countries did so the evaluations will be of little value.

#### AUDIT N Z REPORTS

Extracts from 5 Audit N Z interim and final reports were provided in attachments. (refer to audit nz reports)

The following are selected quotes from each report with some comments.

#### No. 1

Extracts from the Audit New Zealand –Report to the Chief Executive on the interim audit of the Ministry of Social Development for the year ended 30 June 2020 (Received August 2020)

The Scheme was designed to enable payments to be made at pace under a high trust model. It relies on recipients to repay the payments if they became ineligible under the Scheme. The Ministry was therefore not required to verify whether eligibility criteria was met before payment, or the recipient's compliance with the obligations agreed to.

We reviewed the accounting for the Scheme's payments and recoveries against the requirements of generally accepted accounting practice. We have also reviewed the relevant internal controls completed testing over payments and the assurance processes completed by the Ministry.

COMMENT: The claim that the MSD did not have to make sure that recipients complied with the obligations they agreed to is not correct and this must have affected how future audits were conducted.

The claim is made that overpayments were tested is untrue because billions of dollars of overpayments were completely ignored.

We have reviewed written communications that have been sent to recipients of the scheme. These have primarily covered communication on applications approved or declined. In addition to this communication has been made notifying recipients of the initial scheme and how to apply for the extension scheme. The Ministry has not requested a positive confirmation of continued eligibility from recipients subsequent to completion of the initial scheme.

COMMENT: The MSD promoted the extension wage subsidy but failed to remind recipients of their obligations. The MSD has been able to ignore the need to right to all recipients because recommendations did not say all recipients or how many recipients.

We note that the Cabinet paper did not require any subsequent communication with recipients after completion of the scheme. However, the scheme was granted based on estimates of revenue loss made by recipients and recipients also had a number of obligations as part of the scheme. The repayment of amounts by recipients when required was an important mechanism of the scheme's operation due to levels of uncertainty that existed on application.

Seeking re-confirmation will help the Ministry to target the risks around the scheme. In addition, a re-confirmation process enables recipients to comply with requirements of the scheme where they may not have completed a subsequent self-qualification assessment for example the accuracy of their revenue forecasts (that is they did indeed suffer at least a 30% drop in revenue in at least one month during the qualifying period).

We recommend that the Ministry seek positive confirmation (this could be targeted towards larger or risk indicated applicants) from recipients that they have assessed their situation, and confirm that they have subsequently met the requirements of the scheme

#### Management comment

Service Delivery are seeking positive confirmation from larger recipients through our audit processes. We are proactively contacting larger businesses prior to payment to seek this positive confirmation and contacted a number of other business through post payment auditing to do the same. The Ministry will consider the feasibility of contacting a broader range of clients.

COMMENT: It appears that the MSD told the auditor to say that the Cabinet did not specify subsequent communication. However, the Cabinet does not go into that type of detail. The MSD also wanted the auditor to say that only some larger recipients should be contacted and that recommendation flowed through into subsequent reports. Management did not do anything about contacting a broader range of recipients.

We note the Deloitte assessment which was completed during the scheme and recommend that the Ministry should consider completing a full post implementation review of the scheme.

Management comment Noted.

COMMENT: This did not happen

The Ministry have undertaken a number of follow up discussions with applicants. This process was also used to check all large recipients before payment. These processes are akin to a risk assessment and are completed substantially through discussion with entity representatives. Some are then tagged for further investigation. For our audit purposes we are unable to take assurance from these discussions as they centre on the self-assessment of the applicant and as such no additional documentation is submitted for independent assessment of the recipient's eligibility.

We recommend that the Ministry:

- Document and consider the overall assurance framework of the scheme against risks arising; and
- Make an assessment of the combined results of the each aspect of the Ministry's follow up assurance. This would include the amounts that have been requested/offered to be repaid by recipients to determine the potential portion of recipients that have subsequently not met the obligations under the scheme and the associated value of this.

Management comment

Please note as at 20 July, \$326.2m had been refunded and as at 30 June. \$229m had been refunded.

Given this was a High Trust Model, we took it on good faith that the recipients assessed their eligibility and obligations to use their funding appropriately, i.e. passing it on to employees once they received the money. Given the nature of the scheme we consider it to be difficult to accurately determine the portion of recipients who have not met their obligations. The Ministry will further consider the feasibility of doing this.

COMMENT: If 10% of businesses made repayments, that is a good indication of how much should be repaid. The MSD ignored the recommendation and it was not later mentioned.

No. 2

Extracts from the Audit New Zealand - Report to the Chief Executive on the final audit of the Ministry of Social Development for the year ended 30 June 2020 (Received March 2021)

- In the sample we reviewed, the level of documentation in completing the post-payment assessments was inconsistent - for example, some assessments documented the criteria and obligations discussed with the recipient, while others included just a brief high-level paragraph,
- The assessments did not evidence that all criteria were discussed, such as the requirement that a business had taken active steps to mitigate the impact of Covid-19 before it was eligible to apply for the Scheme; and
- Most of the pre and post assessment actions provided an unknown level of assurance about compliance because of the reliance on conversations with applicants. Those assessments generally involved limited or no documentary evidence to support the conclusions reached. Ultimately this extended the high trust\* basis into the pre- and post-assessment activity.

COMMENT: Despite these and other criticisms of having conversations, the MSD used conversations for its flawed sample of 339.

The Ministry is currently considering what additional process it could use to ensure that recipients have adequately considered whether any repayment is required and confirm this assessment.

COMMENT: The MSD did nothing about this and the auditor did not follow it up later.

No. 3

Extracts from the Audit New Zealand - Report to the Chief Executive on the interim audit of the Ministry of Social Development for the year ended 30 June 2021 (Received July 2021).

In our 2020 final report to the Chief Executive we recommended that the Ministry seek positive confirmation (this could be targeted towards larger or risk indicated applicants) that recipients confirm compliance with eligibility criteria and obligations. We also recommended that the Ministry analyse the results of all integrity and assurance work undertaken to date to inform a risk-based assessment of next steps, and what further integrity work needs to be completed, if any, to strengthen the integrity of the Scheme.

We understand the Ministry is working to implement its response to the recommendations made in our 2020 final report to the Chief Executive and the GAG report. We will continue to follow up progress with the Ministry.

COMMENT: Accepted what MSD said and did not check on progress towards 'next steps'. Did not know that MSD had found 15% and 35% non compliance in October 2020 that should have resulted in next steps action to request repayments or evidence from all recipients.

No. 4 Extracts from the Audit New Zealand - Report to the Chief Executive on the audit of the Ministry of Social Development for the year ended 30 June 2021 (Received December 2021)

We reviewed a sample of the completed rechecks and there is improved level of assurance obtained, with particularly good assurance over the criteria for the revenue drop. Other Scheme criteria and obligations are largely unverifiable, and reliance is placed on representations.

COMMENT: The claim that other Scheme criteria and obligations are largely unverifiable is untrue. The report of Emeritus Professor Jilnaught Wong of Auckland University outlines how it is easy to verify cash reserves and engaging with their bank. Also getting employee written consent and notifying the MSD etc are verifiable. The written instructions given to MSD staff did not include asking questions about these obligations so it is not correct to say that 'reliance is placed on representations.' This Audit N Z final report was handed over in December 2021. It was after the OAG May 2021 wage subsidy report and a follow up report letter to the Finance and Expenditure Committee also in December 2021. These documents did not mention what is quoted above.

No. 5

Extracts from the Audit New Zealand - Report to the Chief Executive on the interim audit of the Ministry of Social Development for the year ended 30 June 2022 (Received October 2022)

We have not identified any significant new issues to bring to your attention.

We followed up the Ministry's progress in addressing our previous two recommendations on the Scheme, and note the following:

- Seeking written confirmation from a sample of recipients

The Ministry selected a sample of 1,000 wage subsidy recipients who had applied between 28 March 2020 and 22 May 2020. The sampling is weighted towards larger recipients but includes recipients from across all ranges of employers.

The selected recipients have been requested to confirm their eligibility and compliance with obligations under the Scheme. The Ministry has received 711 of the responses so far; of these four are to repay the subsidy. A further reminder email is planned and the Ministry still expects to receive at least 800 responses over the next couple of months.

- ReCompleting a sample of integrity rechecks

The Ministry selected a sample of 339 previously completed random post payment checks. The decision to target random selections was due to the Ministry's judgement that targeted checks held better information, were focused and overall provided better assurance.

The selected recipients have been asked to provide supporting documentation to support eligibility. The Ministry has completed all the 339 rechecks with 10% (34) requiring either full or partial repayment.

The Ministry is working with an external provider to analyse the results of all integrity (including the results of the two pieces of work above) and assurance work undertaken to date to inform a risk-based assessment of next steps, and what further integrity work, if any, needs to be completed to strengthen the integrity of the scheme. We will continue to follow up with the Ministry on the progress made on our recommendations as part of the final audit for the year ended 30 June 2022.

COMMENT: Nothing new was found, including the small number of responses by the sample of 1,000, the use of previously condemned phone calls for the sample of 339 and the lack of any action' to inform a risk-based assessment of next steps' despite this requirement also being in the 2020 and 2021 reports.

: (REFER TO: AUDITNZ FINAL REPORT FOR 2021 2022 YEAR)

More information on the unacceptable actions of the MSD in relation to reports and auditing is under Rule 2 (c) near the end of this document.

## CLAIM

In relation to this alleged breach, we draw the A's attention to the following specific examples:

"Use of the phrase "the Ministry of Social Development overpaid up to \$10 billion dollars of wage subsidies", and a whiteboard displaying the words:

"\$10,000,000,000 OVERPAID"

- Use of the term "overpayment" implies the wage subsidy recipients were ineligible to receive all or part of their payments. The \$10 billion figure being claimed is incorrect. It appears to be based on a misunderstanding of the criteria for the Wage Subsidy Scheme. The annual profit a business might have made after receiving the wage subsidy does not affect their eligibility at the time of their application.

## RESPONSE

The MSD has publicly and in this complaint tried to make us look silly and divert attention away from The \$10 billion figure we calculated by them saying that it is based on a misunderstanding of the criteria for the Wage Subsidy Scheme. We have always concentrated on the big picture and have never made an issue of a business receiving increased profits. However, others have mentioned this, including some commentators. The small number of businesses that have to publish their annual accounts are only a tiny part of the problem.

The Auditor-General said:

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.'

The report by Emeritus Professor Jilnaught Wong of Auckland University said that the payment of a dividend showed that a business did have cash reserves that were required to be used before applying.

A stuff article on 22 12 2022 reported that company tax payments increased by 31% for the 2020/2021 financial year.

We obtained IRD GST data that showed business profitability increased by 14 % In the 9 months to September 2020, even without taking into account the wage subsidies received during this time.

Reserve Bank data shows that after the first three wage subsidies should have been paid to employees, businesses had \$22,700,000,000 more in the bank than a year earlier.



Payments made in advance can end up being overpayments because they have been paid for weeks when almost all businesses are operating normally or because payments made in advance have been wrongly obtained or wrongly retained.

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 for the advertising 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 report the following is stated about the need to recover overpayments but nothing has happened in the year 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.

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.’

(Audit NZ Final Report for 2021 2022 year)

The attached document called ‘MSD wage subsidy \$10 billion overpaid evidence’ ‘is important because the many pages outline the data and information used to calculate that \$10 billion was overpaid. About \$5 billion was overpaid for weeks when almost all businesses were operating normally and a further \$5 billion was overpaid for wrongly obtained or retained wage subsidy money.

Another attached document provides extra information on how businesses wrongly obtained and retained about \$5 billion by ignoring important Declaration clauses but the MSD has never asked anyone to provide evidence that they complied with these clauses.

CLAIM

They [MSD] refuse to take action to get the money back"

- This is an obvious untruth

## RESPONSE

The purpose of the advertising is to get people to go to the website to get more information and to sign a petition requesting the MSD to write to all recipients of the wage subsidy and ask them to provide evidence that they are entitled to keep the money they received. We asked them in a number of different ways to do this but they did nothing. At the outset Deloitte and Audit N Z recommended that they write to all recipients and the Auditor-General said that it was good practice to do this.

4.77 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. This is consistent with one of Deloitte's recommendations to increase communications with recipients. We have also included it as part of Recommendation 4.

4.78 Using this type of correspondence is one of the anti-fraud techniques identified as being good practice for emergency situations. (Refer: Auditor-General wage subsidy report May 2021)

They had what could be described as a ' Pay and walk away ' policy so they deliberately avoided doing anything that would create any extra work for them.

The second MSD affidavit revealed that no new random or targeted requests had been made to any recipients since March 2022. However, probably none were made since the two sample reviews were sent out in July 2021. The badly flawed and inadequate reviews gave the MSD the excuse to take no further action.

The review reports should have been completed by the end of 2021. If the results cannot be extrapolated to the whole wage subsidy, as claimed by the MSD, then there was no point in doing them. The MSD has used unacceptable methods to get unacceptable sample results and has for two years failed to take any action on the reviews that were intended to inform the additional integrity steps to be taken. If they had acted properly from the outset, substantial abuse would have been identified and thousands of prosecutions would have been taken against those who did not repay.

An OIA document said that they wanted to complete work by the end of December 2020 and they told the Auditor-General in early 2021 that they wanted to get back to their core services as soon as possible. (REFER to : Auditor General wage subsidy report.)

### Auditor-General report May 2021 quote

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 recommended review reports should have been completed by the end of 2021. If the results cannot be extrapolated to the whole wage subsidy, as claimed by the MSD, then there was no point in doing them. The MSD has used unacceptable methods to get unacceptable sample results and has for over a year failed to take any action on the reviews that were intended to inform the additional integrity steps to be taken. If they had acted properly from the outset, substantial abuse would have been identified and thousands of prosecutions would have been taken against those who did not repay. (Refer: MSD 2301 OIA Response and Reviews)

## CLAIM

The Wage Subsidy Scheme provided an unprecedented level of financial assistance to support New Zealand's economic recovery from COVID-19.

## RESPONSE

This statement shows a fundamental misunderstanding of the objectives of the wage subsidy scheme. It could help explain why the MSD has refused to do anything about getting back from businesses \$10 billion that was overpaid.

The stated objectives make it very clear that the wage subsidy was only payable to struggling businesses for level 3 or 4 shutdowns in order for employees to remain connected to their employer. The costs were to be shared between Government, employers and employees. While some tourism businesses could suffer a drop in revenue of more than 30% due to a lack of overseas visitors, the only way the vast majority of businesses could suffer such a drop was during a shutdown.

The Declarations signed by applicants for each wage subsidy did not state that the applicant required support to pay and retain named staff. The stated objectives and other documents state this requirement in 11 places and some said that Ministers thought that this was an important requirement. Ministers agreed twice 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 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 report by Emeritus Professor Jilnaught Wong showed that businesses had increased revenue for each month in 2020 except for two months when revenue declined but was less than the required 30% or 40% decline. (Refer to the "MSD wage subsidy quotes" document for full details.)

The claimed economic recovery did not exist. All the extra overpaid money in the economy pushed up prices, inflation and interest rates and helped create a cost of living crisis. (Refer: Bernard Hickey2201 his winners and losers article).

## CLAIM

1. We take our duty to taxpayers seriously and have always been committed to taking action, where appropriate, to recover ineligible or misused wage subsidy funds. In instances where wage subsidy ineligibility or misuse has been discovered by the Ministry or brought to our attention, we have acted in every case. As of March 31, we have completed 15,367 pre-payment and post-payment checks on wage subsidy applications, resolved 6703 allegations of wage subsidy misuse, and completed 627 wage subsidy-related investigations. This has contributed to 24,732 voluntary and requested Wage Subsidy repayments being made, totalling \$819.1 million to date.

## RESPONSE

We have never said that the MSD has done nothing but they have done relatively little when compared to the total wage subsidies paid out and a huge amount still needs to be repaid.

As mentioned above, the MSD wanted to end investigations by 23 December 2020 and get back to their core services. They failed to take any prosecutions for 18 months and then only did so after the Auditor-General said that prosecutions were 'critically important.' They knew how to prosecute because they had prosecuted up to 453 beneficiaries in one year. Payments increased by 171% but they did not employ any extra investigation staff. Instructions to staff told them to use phone calls and only ask about 2 of the 6 main post payment obligations. The MSD was not proactive and did not use their database to contact businesses whose names clearly showed that they were essential businesses and had not been closed. They only dealt with complaints and we tried sending some serious cases but these were ignored. etc.

(For full details refer to the attached document: 'MSD wage subsidy failures and shortcomings.')

## CLAIM

So far MSD has commenced civil recovery action in relation to 31 businesses for overpayments totalling over \$4 million, with civil court action having commenced in seven of these cases.

Our integrity work and analysis to date has given us confidence that the vast majority of businesses that received wage subsidies did so honestly. We have found that where wage subsidies were wrongly claimed, it was often an honest misunderstanding about eligibility rather than a deliberate attempt to deceive.

## RESPONSE

The MSD made this statement in an email to us two months after the first wage subsidy payments were made and they were in no position to make this claim. It has been repeated many times since then. The same excuse is not accepted for beneficiaries. If a business was caught out acting fraudulently but they repaid the money, no further action was taken.

## CLAIM

When this is not that case, we also consider prosecution. So far, we have commenced criminal proceedings against 36 people for wage subsidy misuse, with the total amount of public money involved in these cases being approx. \$3 million. A further 12 cases are in the process of having charges filed. Additionally, eleven significant and complex cases of alleged wage subsidy fraud, involving larger sums of money, have also been referred to the Serious Fraud Office. The SFO has since filed 95 charges in the Auckland District Court against an individual who is alleged to have fraudulently claimed over \$2.3 million from various COVID-19 relief funds and GST returns, of which he allegedly received \$624,000. We expect more court cases for wage subsidy misuse to follow as we continue our investigations, which involve a mix of individuals and businesses

## RESPONSE

As mentioned above the MSD was forced to take prosecutions. These were almost all of individuals. The average prosecution for the past three years is 12 and that is very low when compared to prosecutions of beneficiaries. If businesses were properly investigated and prosecuted, this would have a big payback and would encourage others to repay. No extra investigation staff were employed.

(Refer: Finance and Expenditure committee quotes)

## CLAIM

Progress on MSD's wage subsidy integrity work has been regularly communicated to the public via Ministry documents that are publicly available as well as a significant number of media articles since the wage subsidy began.

## RESPONSE

The MSD often told the public that they had conducted audits but the Auditor-General said that this was misleading because they only phoned businesses. They paid out \$19.6 billion but only used the net figure after repayments had been made. They gave the public the impression that they had recovered all or most of the

money repaid but 95% was voluntarily repaid. They combined prepayment checks of IRD numbers with limited post payment checks to tell the public that they had done thousands of investigations. There have been over 200 news media reports about use and abuse of the wage subsidy and criticisms from 6 academics. There standard response has been to provide figures relating to complaints but they have not said anything about taking pro-active action.

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 MSD took no notice of this.

## CLAIM

"You and other taxpayers are each going to have to pay thousands of dollars in extra tax" (said during broadcast advertisement); and "If the money is not repaid, every taxpayer will each have to pay several thousands of dollars in taxes to pay back the debt the government has incurred" (contained in text below YouTube video)

- No evidence to substantiate this claim that the Government has, or will, intentionally raise taxes as a direct result of up to \$10 billion in wage subsidy "overpayments" that the advertiser has not proven exist.

## RESPONSE

Any debt incurred by a Government has to be repaid by taxpayers. There are 3.3 million taxpayers in New Zealand so if on average they each have to pay an extra \$3,000, that will add up to \$9.9 billion This could be spread over many years but the debt has to be repaid. There is no scope for reducing Government spending that is already under pressure due to delayed spending on basic services, infrastructure replacement and climate change.

The figure of \$10 billion overpaid has been proven in the attached document and on the website in the section on \$10,000,000,000 overpaid to businesses. MSD staff would have read this before making their claim.

## CLAIM

"If a beneficiary gets overpaid as little as \$20, the Ministry makes them repay the money. How is that fair?"

- Unfairly conflates debt to the Ministry, which we are obliged by legislation to recover, with wage subsidy payments that the advertiser has decided businesses were not worthy of receiving. This neglects the fact that any annual profit a business might have made, after receiving the wage subsidy, does not affect their eligibility. This also creates a false impression that the Ministry takes a heavier hand with beneficiaries compared to businesses. The reality is that we support those who have debt established with the Ministry by putting a plan in place that sees them pay a regular amount they can afford, which will not cause further hardship.

## RESPONSE

We have never had any problem with money being quickly paid to businesses under the Original wage subsidy, but the MSD failed to carry out post payment checks on those who receive the money.

The MSD has deliberately avoided gathering evidence that would lead to wage subsidy debts being established. The profits businesses make has no connection with the opinion being complained about and mentioning it is a distraction. Some of the information so far provided and in the following paragraphs shows that the MSD goes easy on businesses and in comparison comes down hard on beneficiaries.

### FAILURE TO PROSECUTE COMPARED TO WELFARE BENEFICIARY PROSECUTIONS

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. They ignored recommendations to write to businesses but did not hesitate to tell beneficiaries. Some citizens who went overseas in 2021 were unable to return to New Zealand due to MIQ 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. (Refer: Minister of Finance OIA February 2021)

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 6000 complaints about wage subsidy fraud considered by the MSD and over 200 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.'

Auditor-General report May 2020

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 are involved and thousands of millions of dollars could be recovered by simply writing to recipients to clarify the rules and ask for repayments if they cannot 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 Treasury.

Most recipients of the wage subsidy will only make repayments if they think that prosecution is a possibility. The MSD has stated that decisions about prosecution involve a public interest test and it appears that they have 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. (Refer:MSD OIA response 2201 prosecutions)

#### COMPLETED PROSECUTIONS from 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.

#### CLAIM

"One Auckland businesswoman was given \$45,000,000 but she and a huge number of businesses have never been asked to repay money that they are not entitled to keep." (contained in newspaper advertisement)

- No evidence to suggest this recipient was ineligible to receive this payment. On a review of our records, we can identify the class of employers this allegation might apply to. This statement is also misleading by omission, in so far as is neglects to mention the significant number of employees, approximately 4000, who would have been supported by amounts of this size. In many of these types of cases refunds have been received.

## RESPONSE

The sentence complained about only highlights the failure of the MSD to write to all recipients. As explained earlier, at the outset the MSD ignored recommendations to do this from Audit NZ, the Auditor-General and Deloitte and we have also tried many times to get them to do this. It is obvious that \$45 million covers thousands of employees. It is not realistic or misleading to not include evidence in the advertisement but it can be found on the website. If other similar businesses have voluntarily made repayments, it would be sensible and equitable for the MSD to carry out proper investigations of all similar businesses.

The MSD has often claimed that the wage subsidy supported 1.6 million jobs, but in the following response to an OIA request they

Stated the following: The Ministry does not report on how many jobs would have been lost if the employee/employer had not received the Wage Subsidy Scheme. The Ministry would need to create information to answer this part of your request in the format you are asking. This would require the Ministry diverting personnel from their core duties and allocate extra time to complete this task. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. (Refer: MSD 2303 OIA

Response March 2023.pdf)

The document called 'Anne Norman keeps \$45 million' contains a lot of evidence showing that payments were made for many weeks when staff were working normally or only Auckland staff were not at work. She should have drawn on cash reserves and engaged with her bank, as required. Based on staff instructions, the MSD has never asked anyone if they have complied with these requirements.

## CLAIM

Rule 2(c) - Use of data

Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.

The Ministry's view is that insofar as the reasoning being used by the advertiser to justify their claims (which is not presented in the video advertisements but is on the website and Billboard advertisement) have not been verified by an independent and objective body using industry-accepted methodology, casting doubt over its veracity.

## RESPONSE

I have a BCom degree in accounting and economics and have done most of the research. Several people with a PhD have contributed to the research and one has read everything on the website. We do not believe that there is any requirement to have research checked by an outside organisation. No-one, apart from the MSD, has challenged the facts and figures on the website, even though we thought that some who received large overpayments might be motivated to do so. This is advocacy advertising so there is no industry-accepted methodology as claimed. The MSD is not prepared to admit that they have not done their job properly and have been unwilling to provide us with all the evidence to prove this. As a result we have had to get the evidence from many different sources to show the true position. There are no others doing research on this issue that involves a huge amount of money so I cannot provide documents written by a range of other researchers.

In relation to this alleged breach, we draw the ASA's attention to the following specific examples:

The advertiser is claiming a majority of wage subsidy recipients were ineligible and \$10 billion was overpaid. No evidence is presented in the advertising to substantiate these claims, which the Ministry reject. The reasoning presented on the advertiser's website in support of their claim is also, in the Ministry's view, unverified and unscientific. This includes the advertiser misapplying the results from our integrity program across the entire scheme. The advertiser uses phrases such as "I have estimated" and "I have calculated" without explaining their methodology behind this.

## RESPONSE

We have never said that a majority of wage subsidy recipients were ineligible. Applications were made and processed in a rush so we have never questioned this aspect of the wage subsidy. Our work has concentrated on the post payment management of the wage subsidy that was heavily criticised by the Auditor-General. Deloitte described the wage subsidy rules as being loose.

It is not realistic to provide large blocks of evidence in an advertisement. The information on the website is backed by hundreds of documents so can be verified.

It is obvious from the facts and figures presented, how estimates have been calculated and no explanation of methodology is required

The MSD has made many false claims to the public in order to cover up its failures and it is doing the same here. Some of these false claims are covered above and some are covered in the attached documents.

MSD had a practice of avoiding prosecutions by not properly carrying out post payment checks. They told the public and Ministers that they were doing post payment audits but the Auditor-General said in his report that phone calls were not audits. He said that calling them audits was misleading and not what Cabinet expected.

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.

4.63 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.

The Auditor-General said that verifying evidence had been required for the Australian Jobkeeper wage subsidy and IRD required it for the Covid-19 small business cash flow scheme and MSD should do the same. However, it was not a recommendation so MSD ignored this.

(Refer: Auditor-General wage subsidy report)

The following is a section with more details in the attached document (Refer: 'MSD wage subsidy failures quotes').

#### AUDITS ONLY DESK CHECKS AND CONVERSATIONS

Audit NZ produces an Interim Audit report so that clients can correct any factual errors and a Final Audit Report is issued a short time later. The MSD has got wage subsidy recommendations in Interim Audit Reports changed and deleted and it has taken about six months for Final Audit reports to be issued. It is over two years since the Auditor-General issued his May 2021 report but audit N Z have allowed the recommendations to be circumvented by the MSD and no repayment action has been taken as a result of reviews. An expert who is concerned about what has happened, is currently preparing a report on the breaches of auditing standards.

The auditor-General recommended conducting sample reviews but the MSD made sure that they were flawed and inadequate so nothing has been done about them for two years despite results showing that billions of dollars should be repaid.

The auditor-General also recommended that evaluations be carried out but a Newsroom article revealed that the MSD had decided that the impact on businesses would be excluded.

The attached document ' MSD wage subsidy failures quotes ' has the following sections:

MSD MISLEADING CLAIMS

AUDITOR-GENERAL RECOMMENDATIONS NOT PROPERLY IMPLEMENTED

MSD REVIEW AND EVALUATION FAILURES

THE UNACCEPTABLE ACTIONS OF TREASURY AND MSD OFFICIALS

is a quote from a MSD email sent to those receiving New Zealand Superannuation

#### **ADDITIONAL INFORMATION PROVIDED BY THE ADVERTISER**

In addition to the above response, the Advertiser also sent a USB containing academic articles, official information responses, reports from various Government departments, affidavits and other documents. The Advertiser also provided the following four documents:

1. MSD wage subsidy \$10 billion overpaid evidence
2. MSD wage subsidy failures quotes
3. MSD wage subsidy failures summary
4. MSD wage subsidy overpaid extra evidence

## Appendix 3

### RESPONSES FROM THE MEDIA:

#### Commercial Approvals Bureau, NZME, Stuff and Lumo

#### RESPONSE FROM COMMERCIAL APPROVALS BUREAU

Complaint 23/152 The Integrity Institute Key: INT23 01 30 Classification: G

This commercial for The Integrity Institute was approved 12/06/2023 with a 'G' general classification. It is categorised as an Advocacy advertisement.

The Ministry of Social Development (MSD) has made a cross-media complaint about the Integrity Institute's advertising campaign which includes outdoor, radio, print and digital in various iterations.

Only part of the MSD complaint is relevant to the television commercial, so CAB's response will highlight and respond to those relevant parts.

Scripts, concepts and storyboards for this commercial were reviewed by CAB in advance of its production. Advice was given that the commercial would be categorised as Advocacy advertising and adjustments were made to ensure that the relevant codes were met.

The television commercial clearly identifies The Integrity Institute as the advertiser, establishing a clear position, perspective and opinion. The institute present their viewpoint clearly, and offer a critique of government policy both past and present.

The kind of critique presented here is vital to robust public discourse, contributing to a diversity of voices on issues of public importance. MSD quote in their own letter that their work is 'regularly communicated to the public' and covered in 'a significant number of media articles'. The freeflow of public information requires that countervailing perspectives are also able to be heard.

CAB cannot comment on the advertisements outside of television broadcast, but we can confirm that this individual advertisement meets the requirements set forth by all of the relevant codes.

#### RESPONSE FROM NZME

We are writing on behalf of NZME (the publisher) in response to the above complaint regarding The Integrity Institute's radio and print advertising on NZME's radio stations and print publications.

The advertisements were designed and submitted on behalf of the client, but accepted by NZME for broadcasting and publication, as we believe the advertisements did not contravene ASA codes.

The ASA has identified Advertising Standards Code – Principle 2, Rule 2(b), Rule 2(c) and Rule 2(e) as potentially being breached:

#### **Advertising Standards Code - Principle 2: Truthful Presentation**

Advertisements must be truthful, balanced and not misleading.

**Rule 2(b) Truthful Presentation:**

Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise.

Obvious hyperbole identifiable as such is not considered to be misleading.

**Rule 2(c): Use of data:**

Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.

**Rule 2(e): Advocacy advertising:**

Advocacy advertising must clearly state the identity and position of the advertiser.

Opinion in support of the advertiser's position must be clearly distinguishable from factual information.

Factual information must be able to be substantiated.

Firstly, when vetting these advertisements, NZME was satisfied the advertisements complied with the ASA Codes based on the representations provided by the advertiser.

Furthermore, we are satisfied the advertisements meet the ASA's requirements for advocacy advertising as set out in Rule 2(e) of the Code. Consequently the Complaints Board should adopt a more liberal interpretation of the Code when assessing the advertisements.

In particular we note as follows:

- The advertiser is clearly identified in the advertisements, with both the full name of the advertiser and its website address included. The website contains detailed information on the advertiser's founders:

<https://theintegrityinstitute.org.nz/about/>

- The advertiser's position regarding the effects of Covid-related wage subsidies on New Zealand's economy and efforts by the Ministry of Social Development to recover Covid-related wage subsidy payments from ineligible businesses is clearly expressed.
- Opinions in the advertisements are clearly distinguishable from factual statements:

**Print advertisement:**

First paragraph: *"You and other taxpayers will each have to pay thousands of dollars in extra tax because the Ministry of Social Development overpaid \$10billion in wage subsidies and they refuse to take action to get the money back"*. In the context of an advocacy advertisement, NZME considers this statement is clearly presented as the opinion of the advertiser.

Similarly, the third paragraph (*"the vast amount of money given away has pushed up prices and contributed to New Zealand's cost of living crisis"*), fifth paragraph (*"A beneficiary overpaid as little as \$20, is chased by the Ministry to repay the money. How is that fair?"*) and sixth paragraph (*"The Ministry of Social Development needs to be*

*what's right and get businesses that have been overpaid the wage subsidy, or who have wrongly retained it, to pay it back")* are clearly presented as the advertiser's opinion.

In contrast, NZME considers the second and fourth paragraphs are clearly presented as factual statements.

**Radio advertisement:**

First paragraph: *"Guess who will be picking up the tab for the \$10 billion of wage subsidies the Ministry of Social Development overpaid to businesses during COVID? It'll be you and other taxpayers who will each have to pay thousands of dollars in extra tax."*

Second paragraph: *"The Ministry needs to do what's right and get businesses that have been overpaid and wrongly retained the wage subsidy to pay it back."*

In the context of an advocacy advertisement, NZME considers the above statements are clearly presented as the advertiser's opinion.

- We understand the advertiser is able to substantiate the factual statements contained in the advertisements.

For the above reasons we are comfortable that the advertisements do not breach the ASA codes.

**RESPONSE FROM STUFF**

We have reviewed the complaint.

Here is our response: Stuff always strives to maintain a high standard of integrity when it comes to legal and advertising codes.

This creative execution for The Integrity Institute has run on across our print platforms and programmatically. It was reviewed by one of our Media Sales Directors, checked by our Editor and Chief and approved before being accepted and has been reviewed again yesterday by our legal counsel. There were no major legal or advertising code issues identified.

The advertisement has a website displayed for more information and for our audience to be able to take a deeper look into the claims that The Integrity Institute is making. It is the advertiser's responsibility to be able to substantiate claims made in the advertisement.

**RESPONSE FROM LUMO**

I can confirm that the complaint letter has been sent through to the agency who booked this campaign. They have advised, that they will be speaking with their client but at this stage we haven't been informed on any changes to the current campaign.

As the campaign decision is under review, the agency at this stage won't look to make any changes until a decision has been reached. The OOH activity with us finishes this coming Sunday.