



22 DEC 2017

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s 9(2)(a) OIA

Dear s 9(2)(a) OIA

On 13 November 2017, you emailed the Ministry requesting, under the Official Information Act 1982, information relating to New Zealand Superannuation (NZS).

People who have received financial assistance from the Ministry may owe money to the Ministry through overpayments, recoverable assistance, or as a result of fraud.

Overpayments are established when it is determined that a superannuitant has received payments to which they were not entitled. Most overpayments occur because the individual failed to inform Work and Income of a change in their circumstances. Online services, such as MyMSD, help to prevent debt by making it easier for people to notify Work and Income about changes in their circumstances.

Overpayments may also be established as a result of a benefit fraud investigation or data matching. The Ministry works hard to protect the integrity of the welfare system to ensure it remains fair for all New Zealanders, which can include prosecution where clear evidence of fraud exists. The Ministry has a dedicated team of specialist fraud investigators throughout the country, and an Intelligence team that identifies emerging fraud risks and trends. It works with other government agencies to identify and reduce incidents of fraud and also investigates cases which arise through allegations from members of the public.

Although the Ministry has mechanisms to detect fraudulent applications it's assessment of each application starts with the presumption that it is not fraudulent. This allows the Ministry to provide assistance to clients without making the process burdensome.

For clarity, each of your questions are addressed in turn.

- *Are these statements correct? If so, how long has this policy been in place. If not what is the situation and how long has it been wrong? When will the website be corrected?*

The statements regarding a superannuitant's obligation as detailed at the following website are correct: www.workandincome.govt.nz/eligibility/seniors/superannuation/obligations-for-partners.html#null

When a person is in receipt of the NZS, they have an obligation to inform the Ministry of any changes that may affect their entitlement. Where this doesn't happen clients can incur an overpayment resulting in a debt.

- *In the last ten financial years how many supernnuitants have made false statements regarding partner relationships to the department?*
- *How much money was involved?*
- *How many superannuitants who were over paid have been required to repay extra money? What is the average penalty? Has anyone had to repay three times the overpayments?*

Information relating to the amount of overpayment established, whether the three times overpayment penalty was applied and the reason the overpayment was established is recorded in notes on individual case files. In order to provide you with this information Ministry staff would have to manually review in excess of 730,000 client files. As such your request is refused under section 18(f) of the Official Information Act. The greater public interest is in the effective and efficient administration of the public service.

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

- *How many have been prosecuted? What was the penalty in each case?*

Between the 2014/15, 2015/16 and the 2016/17 financial years, a total of 6 clients have been successfully prosecuted for NZS overpayments. In 1 other case the prosecution was not successful. There were no cases with a Veteran's Pension component. This figure is not inclusive of investigations or prosecutions where an overpayment wasn't created.

The penalties were as follows:

- 6 months community detention.
- 9 months home detention and a reparation of \$78,138.41.
- 5 months community detention and 150 hours community service.
- 8 months home detention.
- 70 hours community work.
- 3 years and 3 months imprisonment.

- *What is the average overpayment? The highest over payment?*

Please refer to the below table for the mean and maximum values of overpayments established between the 2013/14 and 2016/17 financial years, broken down by year ending 30 June.

Financial year ending 30 June	Mean value of overpayment established	Maximum value of overpayment established
2013/14	\$679	\$120,964
2014/15	\$621	\$165,272
2015/16	\$629	\$84,543
2016/17	\$625	\$207,139

- *What is the department's criteria for deciding in the case of false information regarding partner information that the overpayment must be:*
 - *Repaid?*
 - *That there will be a prosecution?*

In cases where an investigation has established that a person has deliberately acted in contravention of the Social Security Act 1964, the Ministry will consider the matter against the Solicitor General's Prosecution Guidelines. As a government agency, any criminal prosecution action brought by the Ministry must be in accordance with the 'Test for Prosecution' set out in the Solicitor General's Prosecution Guidelines www.crownlaw.govt.nz/assets/uploads/prosecution-guidelines/prosecution-guidelines-2013.pdf

The Ministry has a legislative duty to take all practicable steps to recover debt, with exceptions to this duty only where the debts are caused by administrative error, uneconomic to recover, remitted or suspended under regulations, or written off for public finance purposes. Debt that is written off is provisional and in some circumstances may be reactivated.

- *Has all the money over paid been recovered?*
- *Can the department give an assurance that all superannuitants are treated the same way? If not, why not?*
- *If the department believes the applicant is mentally affected as a result of his age is leniency shown?*
- *If an applicant has made repeated false declarations does this effect the department's decisions and if not why not?*

The Ministry has some discretion in determining the method and rate of recovery, or in exceptional circumstances, temporarily deferring recovery. As such, not all debt has yet been recovered.

While the Ministry has a legislative duty to recover debt, it considers a number of factors in order to avoid causing further hardship. Each client's individual circumstances, mental state, financial situation and the extent and nature of any

previous offences are taken into consideration before a decision is made to forward a case to prosecution or negotiate repayments.

- *What is the department's criteria for deciding in the case of false information regarding partner information that the overpayment must be:*
 - *That an extra payment must be made in repayment?*

The decision as to the size and value of a monetary penalty must be based on the circumstances of the individual case and the need to create an effective deterrent. The decision must be documented.

A monetary penalty may be imposed when:

- the secondary and further factors are considered more significant than any major factors or
- there are no major factors present and consideration of the secondary and further factors do not warrant prosecution.

The extent of the penalty is at the discretion of the Ministry. While the maximum size of the penalty is three times the size of the overpayment, Work and Income considers that generally the maximum value of a penalty should not exceed \$5,000 unless there are exceptional circumstances.

In cases where it is considered this amount should be exceeded, it must be clear that the penalty remains "effective". To be an effective deterrent, the penalty must:

- be clearly recognised and understood by the client.
- be appropriate to the seriousness of the offending.

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

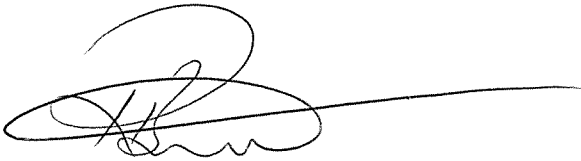
- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

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

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response regarding superannuation fraud, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ruth Bound', with a long horizontal flourish extending to the right.

Ruth Bound
Deputy Chief Executive, Service Delivery