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Action Item response: Social Security Amendment Bill

Document	Social Security (Fraud Measures and Debt Recovery) Amendment Bill
Committee/Writer	Family Affairs – Billa Field
Action Item due date	12 May 2013
Documents at	http://www.legislation.govt.nz/bill/government/2013/0098/latest/versions.aspx
Responder, eg Name of Branch, NOS, individual	
Number of people contributing to response	

The main aim of this bill is to strengthen the approach to relationship fraud by making spouses and partners, as well as beneficiaries, accountable for fraud.

Relationship fraud makes up approximately one-third of all welfare fraud prosecutions. In most cases of relationship fraud, where only 1 person has claimed for welfare assistance, the person’s spouse or partner is not currently liable to prosecution or for any of the debt established, regardless of the spouse’s or partner’s knowledge of, or gain from, the fraud.

The Bill seeks to overcome these inequities by ensuring that spouses and partners, as well as beneficiaries, are appropriately held to account.

This is to be achieved through –

- Enabling payments, credits, or advances to which a beneficiary was not entitled, and that were obtained by fraud by the beneficiary, to be recovered from the beneficiary’s spouse or partner who knowingly benefited, or ought to have known he or she was benefiting, from the fraud
- Widening the circumstances in which an amount of benefit in excess of the beneficiary’s entitlement can be recovered from the beneficiary’s spouse or partner if that spouse or partner makes any false statement to, or misleads, the Ministry of Social Development (MSD).
- Making it a criminal offence for a beneficiary’s spouse or partner to benefit from an excess amount that the beneficiary obtained by fraud if the spouse or partner knows, or is reckless as to whether, the amount is an excess amount and obtained by the beneficiary’s fraud.

MSD will have new powers to recover debt more effectively, with the removal of the requirement to tell people they are being investigated.

NCWNZ has no policy on this issue, nor are there any past submissions to help guide us. As this is a new subject for NCWNZ it is important that the membership responds, so that the comment received truly reflects a large proportion of the membership.

The following comments to the questions have come from a NCWNZ lawyer member who has helped with further explanation and information on the issue.



Questions in respect of making the partner liable to repayments:

These changes are aimed at the situation where a woman/man does not disclose her/his true circumstances to MSD (for example living in a relationship) and receives a benefit on the basis of the false information. If she/he is prosecuted for fraud MSD may recover the full amount of the overpayment. The partner who benefited from the financial assistance remains untouched by the prosecution and repayments. In other words one of the parties carries all the consequences.

Currently, a beneficiary fills out a form once a year with questions about his/her current circumstances, sources of finances, changes in either. The (false) answers to these questions usually form the basis of claim of fraud by the Ministry. After the criminal process has run its course, MSD usually recovers the overpayment, which, if it ran over years may amount to tens of thousands of dollars.

The proposed change is to make the partner who benefited liable. This would potentially halve the beneficiary's repayment amount.

Questions in respect to making the partner liable for the fraud:

- 1: If you think these proposed changes impact unfairly on women and their families, please give reasons for your answer and say what you think that impact will be?
- 2: If you think these proposed changes have an impact on protecting women and their families please give reasons for your answer and say what you think that impact will be?
- 3: How do you think the proposed changes will impact on women who receive a benefit?

Questions in respect of investigating people without informing the person.

MSD has sweeping powers in investigating beneficiaries by the Social Security Act 1964. The Act contains a code of conduct and other restrictions on the Ministry when investigating. This is to prevent the Ministry from conducting interviews as a "fishing expeditions" and being able to ask questions of others (kindergarten or school for instance) without reasonable cause.

Changes to the law on how MSD conducts investigations would need to show that existing powers are not sufficient. They would also need to be looked at in the light of the balance of power between beneficiary's right to privacy and the Ministry's obligation to account for public spending.

Questions in respect to beneficiaries being investigated without being informed of the fact.

- 3 What sort of guidelines could be used when investigating suspected cases of benefit fraud?
- 4: If you think the Ministry of Social Development should have to prove that current investigative powers are insufficient please tell us why?
- 5: If you think we need more punitive laws to recover benefit debt, please tell us why?