



20 OCT 2020

Tēnā koe

On 6 September 2020, you emailed the Ministry of Social Development (the Ministry) via FYI-requests website requesting, under the Official Information Act 1982 (the Act), information in relation to the Benefits Review Committee, Internal Review Committee and the Social Security Appeal Authority. Each request came in separately, however, for clarity and context, the Ministry will be responding to all three requests within this letter.

On 16 September 2020, the Ministry informed you that your request for information about the Social Security Appeal Authority was transferred to the Ministry of Justice for response.

On 1 October 2020, the Ministry informed you that your request for information about the Benefits Review Committee and Internal Review Committee was granted, however, further time was required to consult on the information before it was released.

A client can apply for a Review of Decision (RoD) if they receive a formal notification from the Ministry of a decision that they do not agree with. Once a client applies for a RoD, Ministry staff conduct an internal review (IR) to see if any information was missed or a mistake was made that meant that the outcome should have been different.

If the decision is still not favourable to the client, the decision goes before the Benefits Review Committee (BRC) for a hearing. Once the hearing is complete, the client will receive a BRC Report, which outlines the outcome of the decision. However, if the client still disagrees, they can appeal to the Social Security Appeal Authority. This function is managed by the Ministry of Justice. More information about Reviews of Decision can be found on the Ministry's website at the following link: www.workandincome.govt.nz/about-work-and-income/complaints/review-of-decisions.html.

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

Internal Review (IR)

- 1. Who conducts Internal Reviews and under what authority?*
- 2. Are the members of the Internal Review independent from the MSD?*
- 3. How are people conducting the Internal Review chosen to participate in the process? E.g. Can people volunteer? Or are they allocated this role?*

The IR is an opportunity for the Ministry to have another look at the decision that was made.

The IR is an administrative process only and it is completed by a Ministry staff member in the Service Centre or Unit where the original decision was made. The management of RoDs and BRCs varies between Work and Income Regions and Units.

If the IR outcome is not favourable to the client, the decision must go to the BRC without any further request from the client.

More information about this process is located starting on page 25 of the *Reviews of Decision Report Writers Information Pack* at the following link: www.msd.govt.nz/documents/about-msd-and-our-work/contact-us/complaints/report-writers-information-pack.pdf.

4. Do the people conducting the Internal Review have particular expertise, training and/or qualifications?

There are several training resources available to help Ministry staff with the RoD process, including an introductory document, training manual on the RoD monitoring system and process, an online 'Knowledge Pack' on the subject of Reviews and Appeals and an instructor or facilitator-led classroom training sessions. This type of training gives the participants the opportunity to discuss specific problems and to develop their skills via simulation and exercises related to the Benefits Review process.

For your reference, please find the Ministry's *BRC Regional Panellist Checklist* attached to this response. The checklist provides insight into the skills assessment that is used by panel members when selecting new members.

5. How many MSD employees work in the Internal Review process? Are the original decision-makers consulted during the Internal review? Are any external sources consulted in the decision-making process? If so, who?

As mentioned earlier, IR is an administrative process and is completed by a Ministry staff member in the region that the application for review was made. Although the details of the staff who worked on a particular IR are recorded in the database of RODs, it not held in a form that can be readily collated. Additionally, Ministry staff that engage in the IR process perform a variety of other tasks within the Ministry. These staff do not track the proportion of their time that they spend on this work.

In order to provide you with this information, Ministry staff would have to manually review thousands of files. As such, I refuse your request under section 18(f) of the Act. The greater public interest is in the effective and efficient administration of the public service.

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

As mentioned, IR is an administrative process and the review looks at evidential sufficiency to determine whether the original decision was correct if not. The original decision maker may or may not be consulted as part of this process.

There are no external sources involved in the IR process unless extra information is needed to resolve the matter. As such, any external contact will not be made without the Applicant's consent. Applicants could obtain the information themselves as well.

6. How are complaints delegated or allocated in the Internal Review process?

A complaint is any expression of dissatisfaction when the Ministry has not met the expectation of a client and, therefore, a response or resolution is explicitly or implicitly expected.

A complaint could be about:

- An incident or service issue
- Practice
- Process
- Policy
- An income support or pension decision

Where a complaint is identified to be part of a client's application for review, this will be managed separately, because complaints about service delivery are outside the jurisdiction of a BRC to address.

7. How are Internal Review decisions made? What is the process undertaken, and what is the criteria for a favourable and unfavourable decision?

Your request for this information is refused under section 18(d) of the Act on the basis that the information requested is publicly available.

This information is located on pages 8 and 25 to 29 of the *Reviews of Decision Report Writers Information Pack* at the following link: www.msd.govt.nz/documents/about-msd-and-our-work/contact-us/complaints/report-writers-information-pack.pdf.

8. Are Review of Decisions and reasoning provided to benefit recipients?

A final report is sent to the applicant with a covering letter. If the IR decision is not in the applicant's favour, or only partially favourable, they are informed of the right to appeal to the Social Security Appeal Authority.

Information about this is located on page 33 of the *BRC Panel Members Information Pack*, located at the following link: www.msd.govt.nz/documents/about-msd-and-our-work/contact-us/complaints/v9.2-panel-members-information-pack.pdf.

9. Are Internal Review decisions publicly available? If so, can MSD provide a link to or example of an Internal Review?

IR decisions are not publicly available, as they are part of an administrative process. Therefore, your request for a link to a publicly available IR is refused under section 18(e) of the Act, as this information does not exist.

However, for your interest, I have attached the Ministry's *Internal Review template* to this response.

10. What is the outcome of a favourable or unfavourable Internal Review decision? E.g. change the primary decision or send the decision back to the decision-maker?

I refer you to my response to Question 7.

11. Are benefit recipients entitled to legal representation at or during the Internal Review?

Legal representation is not required at or during the IR, as it is an administrative process.

12. What rights and entitlements does the Internal Review process recognise and incorporate under:

- a. Social Security Act 2018*
- b. Bill of Rights Act 1990*
- c. Privacy Act 1993*
- d. International conventions including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (UNCROC)*
- e. Any other relevant acts.*

The Ministry's RoD process is underpinned by the principles of natural justice.

The primary focus for the IR is on the Social Security Act 2018 decision, that the applicant is able to review and appeal under Sections 391, 397 and 398.

Section 391 sets out the right to seek a RoD made by the Ministry under delegation. Sections 397 and 398 set out the right to appeal a decision under specified social assistance enactments and reciprocal agreements.

An IR is a preliminary review of the same issues that a BRC and the Social Security Appeal Authority are able to consider.

The review process attempts to be fair and enable an applicant to be heard and articulate their view of a decision made under the Social Security Act 2018 (or related legislation).

If an applicant were to raise an issue about the Bill of Rights Act 1990, Privacy Act 1993 or an International Convention and those submissions were also directly related to the specific decision made under the Social Security Act 2018 (or related legislation), an informal internal RoD should address this.

13. Are benefit recipients entitled to legal aid throughout this process? If yes, how many accessed legal aid during this process from 2000 to 2020?

The IR process is an administrative internal process. It is a review body not recognised as a court of law. Clients can have legal aid, however, because the IR body is not legally recognised, clients will have to pay for their aid on their own. Therefore, your request for information on how many beneficiaries accessed legal aid

is refused under section 18(g)(i) of the Act as this information is not held by the Ministry.

14. *Can MSD provide the number of cases that have been through the internal review process where a line of enquiry was relationship status (or marriage type relationship fraud) from 2000 to 2020?*
15. *Can MSD provide the outcome of the cases seen by the Benefit Review Committee where a line of enquiry was relationship status (or marriage type relationship fraud) from 2000 to 2020?*

The Ministry is only able to provide information from 1 March 2003 to 30 June 2020 and not from 2000 to the end of February 2003. This is because the Ministry's RoD monitoring system did not become active until 1 March 2003 and the data is recorded by financial year and by quarter. Therefore, your request for information prior to 1 March 2003 is refused under section 18(g)(i) of the Act, as this information is not held by the Ministry.

I can confirm that 728 'Relationship Status' review application/enquiries had been through the IR process in the period 1 March 2003 to 30 June 2020.

I can also confirm that from 1 March 2003 to 30 June 2020, there were 1,073 cases identified as RoD applications, where the reason for lodgement has been noted as 'Marriage Type Relationship'.

Of the 1,073 RoD cases for 'Marriage Type Relationship', 345 were withdrawn and 230 were overturned at IR. Additionally, 13 were partially upheld at IR, 482 were upheld at IR and 3 were overturned but proceeded to BRC.

Benefits Review Committee (BRC)

1. *Other than reasons for disqualification, on what criteria are the two members on the Benefits Review Committee from the Ministry of Social Development selected?*

The BRC is a review body that was established by legislation to make correct and fair decisions with regard to procedure and law. The BRC is made up of three members. Two members are from the Ministry and the third member is a community representative. All three members of the panel must be present at the hearing to make a decision.

Your request for this information is refused under section 18(d) of the Act on the basis that the information requested is publicly available. Information about how the members are selected is publicly available in the *BRC Panel Members Information Pack* on page 20, located at the following link: www.msd.govt.nz/documents/about-msd-and-our-work/contact-us/complaints/v9.2-panel-members-information-pack.pdf.

2. *Is an applicant's culture, religion, or ethnicity acknowledged in any way when selecting members for the Benefits Review Committee?*

The selection of the BRC panellists is not based on the culture, religious or ethnicity of the person seeking the review. However, if requested, the Ministry will make a reasonable attempt to accommodate the request in line with the principles of natural justice.

3. *What steps does the Ministry of Social Development take to ensure that no member of the Benefits Review Committee has personal prejudice against a person involved in the case, or has pre-decided the case and come to it with a closed mind?*

Your request for this information is refused under section 18(d) of the Official Information Act on the basis that the information requested is publicly available.

As mentioned in Question 1, I refer you to page 20 of the *BRC Panel Members Information Pack*. On this page there is an explanation of the Disqualification and Impartiality processes.

4. *How does the Ministry of Social Development ensure that Benefits Review Committee members are sufficiently knowledgeable on the application of the law to each case?*

Along with the training mentioned in Question 4 in the IR section of this response, the BRC panel members take a fresh look at decisions made by the Ministry. The report to the BRC is a crucial document in the BRC process, as it presents more detailed information to the BRC who are not familiar with the events of the case. It may also help clarify matters for the applicant so that, although they may not agree, they may understand why the particular decision was made. The report is also used to ensure that the process is open, and that the applicant knows how the Ministry came to the decision.

5. *How many Ministry of Social Development employees worked in the Benefit Review Committee per year between 2000-2020?*
6. *Of the Ministry of Social Development's employees who have worked in the Benefit Review Committee, on average how many cases have each employee heard?*

As noted in my response to Questions 14 and 15 in the IR section of this response, the Ministry is only able to provide information from 1 March 2003 to 30 June 2020 and not from 2000 to the end of July 2005. This is because the Ministry's RoD monitoring system did not become active until 1 March 2003 and the data is recorded by financial year and by quarter. Therefore, your request for information prior to 1 March 2003 is refused under section 18(g)(i) of the Act, as this information is not held by the Ministry.

Additionally, Ministry staff who are panel members or co-ordinators for BRC perform a variety of other tasks within the Ministry. These staff do not track the proportion of their time that they spend on this work.

Therefore, in order to determine the number of individual Ministry employees that sat on a BRC Panel between 1 March 2003 to 30 June 2020 and the average number of cases each employee heard, the Ministry would have to manually check hundreds

of records. This task would involve substantial manual collation in order to report on the numbers within the scope of this question.

As such, I refuse your request under section 18(f) of the Official Information Act. The greater public interest is in the effective and efficient administration of the public service.

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

However, I can confirm that 498 BRC Hearings were held between 1 March 2003 to 30 June 2020 in relation to RoDs relating to 'Marriage Type Relationships'. Therefore, there would have been 996 instances where Ministry employees were on the panel of such BRCs. Please note, the same employee could have sat on different BRC Hearings at different times.

7. How many community representatives are there currently in each regional pool?

I refer you to the table below which provides the number of BRC Community Representatives in each Work and Income regional pool.

The number of Benefit Review Committee Community Representatives in each Work and Income regional pool, as at 30 June 2020

Region	Total
Auckland	8
Bay of Plenty	7
Canterbury	6
Central	5
East Coast	5
Nelson	8
Northland	4
Southern	13
Taranaki	3
Waikato	7
Wellington	4

Note:

- Community Representatives also sit on BRCs on other Ministry service lines, including the Senior Services, Fraud Intervention Services and StudyLink

8. How regularly are previous Social Security Appeal Authority decisions used to assist in deciding a particular case?

I am unable to provide you with this information as it is held within BRC reports in individual RoD records. In order to provide you with this information, Ministry staff would have to manually review hundreds of records.

As such, I refuse your request under section 18(f) of the Act. The greater public interest is in the effective and efficient administration of the public service.

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

9. Is there any requirements for the Benefits Review Committee to ascertain whether an applicant understands any legal constraints or requirements?

The RoD and BRC processes attempt to be fair and enable an applicant to be heard and articulate their view of a decision made under the Social Security Act (or related legislation).

The Ministry's RoD process upholds the principles of natural justice. When the Ministry acknowledges an application for a RoD, a list of voluntary organisations or advocacy services in a client's area or region where they could access help and free legal advice is sent.

Additionally, there is publicly available information on the Ministry's website that provides applicants with resources on how to get legal and benefit advice in the region they reside. This is available at the following link: www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/review-of-decision.html.

10. How many cases seen by the Benefit Review Committee between 2000 to 2020 involved a line of enquiry as to relationship status or marriage-type relationship fraud? If this is too broad, how many cases seen by the Benefit Review Committee between 2000 to 2020 principally concerned relationship status or marriage-type relationship fraud?

The Ministry is only able to provide information from 1 March 2003 to 30 June 2020 and not from 2000 to the end of February 2003. Therefore, your request for information prior to 1 March 2003 is refused under section 18(g)(i) of the Act, as this information is not held by the Ministry.

From 1 March 2003 to 30 June 2020, there were 1,073 cases identified as RoD applications where the reason for lodgement has been noted as 'Marriage Type Relationship'.

11. In these cases, how many:

- a. Upheld the prior decision;*
- b. Upheld in part the prior decision (varied);*
- c. Overturned the prior decision*

As noted in my response to Questions 14 and 15 in the IR section of this response, of the 1,073 RoD cases for 'Marriage Type Relationship', 345 were withdrawn and 230 were overturned at Internal Review. Additionally, 13 were partially upheld at Internal Review, 482 were upheld at Internal Review and 3 were overturned but proceeded to BRC.

Additionally, as noted in my response to Question 6 in the BRC section of this response, out of the 498 cases for 'Marriage Type Relationship' that were heard by the BRC, 50 were overturned, 34 were partially upheld, and 348 were upheld.

Additionally, 10 were identified as being outside the jurisdiction of the BRC and 56 were declined by the BRC at the Out of Time Hearing.

Please note, the numbers are of resolved BRC cases reported in the period 1 March 2003 to 30 June 2020.

12. Could you please supply the latest versions of the following information?

- a. Benefits Review Committee Panel Members Information Pack*
- b. Benefits Review Committee Co-ordinators Information Pack*

Your request for this information is refused under section 18(d) of the on the basis that the information requested is publicly available.

Please find both Information Packs at the following link: www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/review-of-decision.html.

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. The Ministry will do this by publishing this letter and attachments 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 the IR and BRC processes, 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.

Ngā mihi nui



Diane Anderson
**Manager, Client Advocacy and Review
Ministerial and Executive Services**

Internal Review template

Name:
(Responsible for internal review)

Name:
(Original Decision Maker)

Applicant's details

Client name:

Client number:

HIYA alert number:

Section 1 – Application for Review of Decision received	Yes	No
<ul style="list-style-type: none">• ROD entered into HIYA-ROD within 24 hours of receipt.<ul style="list-style-type: none">◦ If not within 24 hours, what was the reason for delay?	<input type="checkbox"/>	<input type="checkbox"/>
	Completed	
<ul style="list-style-type: none">• Acknowledgement letter has been sent to the client• "cc" letter has been sent if appropriate (To authorised Agent/Advocate/Client Representative).	<input type="checkbox"/>	<input type="checkbox"/>
Case for the applicant		
<ul style="list-style-type: none">• ROD attached to this template		<input type="checkbox"/>
Section 2 – Decision being reviewed		
What is the decision being reviewed?		
This decision was made on Click here to enter a date.		

Section 3 – The law and policy

What legislation was this decision made under?

Relevant Ministerial Direction/Welfare Programme/Regulation to consider: *(Delete all the lines that don't apply to your case, if none of them apply then enter N/A or Nil)*

- Ministerial Direction – *(include here the type of direction - eg Advance Payment of benefits)* given under section 7 of the Social Security Act 2018
- Reciprocal Order – *(include here the Country - eg Australia)* given under sections 380-382 of the Social Security Act 2018
- Regulation - Social Security Regulations 2018 given under sections 418-451 of the Social Security Act 2018
- Welfare programme – *(include here the type of welfare programme - eg Special Needs Grant)* given under section 101(1) of the Social Security Act 2018

Please copy the link to the relevant MAP page below:

Section 4 – Debts

Yes No

- | | | |
|--|--------------------------|--------------------------|
| • The decision relates to a debt <i>(If no, go to Section 5)</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| • The debt has been correctly established | <input type="checkbox"/> | <input type="checkbox"/> |
| • The amount of the debt/overpayment has been correctly calculated | <input type="checkbox"/> | <input type="checkbox"/> |
| • A full breakdown of the debt has been supplied to the applicant | <input type="checkbox"/> | <input type="checkbox"/> |
| • The debt has been considered against the regulation 208 criteria | <input type="checkbox"/> | <input type="checkbox"/> |
| • The debt is recoverable | <input type="checkbox"/> | <input type="checkbox"/> |

Section 5 – Reasons for the decision

Completed

- Check the decision is in line with the law and policy
- All the Applicant's points have been considered and addressed

Yes No

- The decision maker used discretion when making this decision

If yes, please explain how discretion was exercised. (What was taken into account, what wasn't?)

Yes No

- Advice has been sought (Helpline/Legal/Income Determination team)

Completed

If so, attach advice to this checksheet.

Yes No

- Does the evidence support the decision?
- Has the correct decision been made?

You must enter the key reasons for your decision below:

Section 6 – Internal Review recommendation

Upheld / Upheld in part / Overturned (delete options that do not apply)

Section 7 – General

Completed

- The final versions of the template and letters have been saved into HIYA-ROD.

Save the internal review into your S: drive/desktop and print a hard copy for your manager to sign off. Once signed off, save the final version to the HIYA record as an attachment.

Section 8 – Manager Decision (circle one)

Upheld / Upheld in part / Overturned

Manager Sign off

Name:

Title:

Signature:

Date:

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

BRC Regional Panellist Checklist

Applicants Details

Name: *Name*
Position Title: *Case Manager, Senior Investigator, etc*
Site: *Name of Service Centre/unit*

Communication

Excellent written and oral communication skills	
Sound questioning methods and the ability to apply appropriate methods to different situations	
Active listening skills, both verbal and non-verbal	
Ability to interpret reports and request clarification where necessary	

Law

Excellent knowledge and understanding of the Social Security Act 2018	
Displays an ability to understand and apply relevant case law	
Ability to understand legislation and other documentation and apply to individual cases	
Knows when it is appropriate to seek legal advice from a Regional Solicitor (through the Ministry Representative) during or after the hearing	
Has a good understanding of the principles of natural justice	
Understands the difference between law/policy and mandatory/discretionary	
Understands and demonstrates the ability to exercise discretion within the scope of the law	

Facilitation

Proven ability to chair meetings/hearings	
Uses a variety of questioning methods to gather information	
Can build rapport with others and can use influence positively	

Environmental Awareness

Respects views, beliefs and cultural perspectives of others	
Ability to remain neutral in a hearing setting	
Respects the privacy and confidentiality of individuals	
Displays sensitivity, empathy and respect for others and their situation	
Is ethical and honest	
Ability to remain impartial to the case and put personal reactions to people aside	
To act with respect and no bias	
Able to focus on the "big picture" while managing detail	

Judgement/Analysis

Ensures that decisions are made in a fair and transparent manner	
Approaches problems and decision in a logical manner	
Proven ability to reach sound conclusions and logically justify decisions	
Ability to distinguish relevant information when looking at a decision	
Ability to logically justify all decisions made	

Experience

Experience in facilitation of or chairing meetings and or hearings	
Experience and competence in interpretation of legislation	
Has a clear understanding of the benefits and supplementary allowances administered under the Social Security Act	
Understands the review process	
Is considered an expert by their peers and management	
Has experience in written, formal correspondence	

RELEASED UNDER THE
OFFICIAL INFORMATION ACT