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## Social Security Act 2018

The rewrite of Social Security Act has been passed in Parliament and comes into force on 26 November 2018. It won't change anyone's benefits or entitlements and it will make the legislation clearer and simpler to follow.

There are three separate Acts:

- Social Security Act
- Artificial Limb Service Bill
- Residential Care and Disability Support Services Bill.

[Read more about the Social Security Act rewrite on the MSD website](#)

The relevant legislation relating to a review of decision depends on when the decision date is.

If the decision date was before 26 November 2018, the relevant legislation for the reports, letters etc is the **Social Security Act 1964**.

If the decision date is on or after 26 November 2018, the relevant legislation for the reports, letters etc is the **Social Security Act 2018**.

There are also new regulations which replace 24 existing regulations. See regulation 295 Revocations for a list of the regulations which have been revoked.

The Social Security Act 2018 and the Social Security Regulations 2018 can be found on the following links:

[Social Security Regulations 2018](#)

[Social Security Act 2018](#)

## Recruitment of Community Representatives

Welcome to our new Community Representatives who have recently been recruited.

This year, the Auckland, Central, Nelson, Northland, Southern, Taranaki and Wellington regions have recruited new Community Representatives to replace those whose tenures have ended.

The Bay of Plenty region is currently finalising their recruitment.

Our team has conducted training for all of the new Community Representatives.

## **Mileage rates for Community Representatives**

The mileage rate for the reimbursement of motor vehicle expenses has increased from 73 cents to 76 cents per kilometre.

The BRC Coordinators and Community Representatives information packs have been updated with the new rate.

## **Expense claim form accessible for the visually impaired**

The expense claim form for Community Representatives has been updated and is now in an accessible format that can be read by assistive technology for use by visually impaired people.

[Download the Boards & Committees - expense claim form for meeting attendance fees & other related expenses](#) (Word – 871.38KB)

[Further information about applying for a review of any income support or pension decision made by the Ministry](#)

## **Feedback from Performance Monitoring**

Every month a sample of Review of Decision reports are checked as to whether they are in line with national standards. Community Representatives should receive any feedback from any hearings they were part of and the Report of the BRC was sampled.

## **Use of Pseudonyms**

You may have seen reporting in the media about the recent High Court decision that we can no longer use pseudonyms. This practice was only used in a small number of cases.

We're going to make some changes to our remote service.

We're putting in place a different approach to provide services to clients we won't see in service centres or help on our general phone lines, because they pose a safety risk.

We're letting current clients of the Remote Client Unit know if any changes impact them.

## **BRC recommendations and ex gratia payments**

Sometimes a Benefits Review Committee will not only decide the outcome of a review of decision but they may make a recommendation to the Ministry as well. For example, if a review was about the amount granted for Disability Allowance, the panel may make a recommendation that the Ministry test the applicant's eligibility for Temporary Additional Support (TAS).

If the BRC makes a recommendation, the BRC co-ordinator is responsible for ensuring that the Ministry considers the recommendation, the HIYA record is updated with the outcome of that consideration and the client is advised.

A Benefits Review Committee may recommend that an ex gratia or settlement payment to be considered. Whether sufficient moral obligation exists will depend on the individual circumstances of each case. An ex gratia or settlement payment involves the expenditure of taxpayer funds and needs to be carefully considered in terms of whether it is necessary and appropriate.

## **Some interesting stats**

Work and Income makes approximately 5 million decisions a year, which affect a person's benefit entitlement. Between 4,500 and 5,000 applications for a review of decision are received each year which is approximately 0.1% of the decisions made each year. A key reason for the low percentage of review applications is Work and Incomes willingness to correct a decision at the earliest possible stage.

We received 5,000<sup>[1]</sup> applications for review of decisions for F2017/18, while 1,504 applications were resolved by a BRC: of those, 1,156 (77 percent – consistent with recent years) confirmed the original decision, 139 (9 percent) varied the original decision, 194 (13 percent) were revoked, and 15 were outside the jurisdiction of the BRC.

[1] This compares to 4,736 in 2016/17 and represents an increase of nearly 5.6 percent. The increase is mainly related to Child Care Assistance and Housing Assistance Special Needs Grant decisions.

## **Check what you might get**

There is a new calculator for a person to check what financial assistance they might be able to receive.

The Check What You Might Get online calculator also has some new features, including headings in te Reo, explanations about why we ask particular questions and the ability for clients to print or email their outcome page.

[Check what you might get – Online calculator](#)

## **Recent reminders**

The following information are recent reminders that have been sent out to BRC Coordinators and those involved on RODs/ BRCs.

## The Report of the BRC

The BRC is not only responsible for writing the Findings section of the report of the BRC, they are responsible for the whole report.

While it is smart practice to copy the relevant information from the report to the BRC into the report of the BRC, it is important to remember that it is now the committee's report. The committee is welcome to add, amend or delete any information to any section of the copied report. This includes correcting and amending spelling and grammatical errors, adding critical legislation that may have been missed out, and adding the submissions, verbal and/or written, to the appropriate sections of the report. Finally, the committee then records the deliberations and decision instructions in the Findings.

All three panel members are responsible for checking that the Report of the BRC is a fair representation of the hearing and fully explains to the applicant the reason for the decision made by the committee. If you believe an area has not been sufficiently covered in the report you need to send through your amendments for inclusion in the final version.

The QA of the Report of the BRC should also check that the Findings include an explanation of how the legislation has been applied to the facts and that the Findings reflect all of the considerations that the panel had to take into account to reach their decision.

When the applicant and the Ministry presenter attends a BRC hearing the Report of the BRC should include what the applicant and Ministry presenter contributed to the hearing. If the applicant or the Ministry presenter does not add anything further the Report of the BRC should reflect this.

## Impartiality and disqualification

This is a reminder of the importance of impartiality of panel members and possible disqualification of panel members on the Benefits Review Committee.

### Impartiality

A panel member is not on the committee as a representative of the Service Line, i.e. Work and income or StudyLink, but as a representative of the Ministry. The issue of independence is very important. The Act requires Ministry members to have had no prior involvement in the case.

The Benefits Review Committee is a review body and you must act accordingly. You should take great care to ensure that you openly act independently and fairly.

The role of the Benefits Review Committee is to independently review the Ministry's decision in accordance with the law.

## **Disqualification**

No member of the Benefits Review Committee can hear a case if he or she:

- Has a direct financial or personal interest in the outcome;
- Has had any prior involvement in the case;
- Has some personal connection with the applicant, presenter or witness(es) – apart from working relationships;
- Has a personal prejudice for or against a person(s) involved in the case;
- Has pre-decided the case and come to it with a closed mind.

If any of these criteria apply the BRC member (including community representatives) must disqualify him or herself from the hearing.

It is important that panel members consider any small contact with the applicant when considering disqualification. This may cause difficulties in service centres in isolated areas; however it is important that the integrity of the BRC process is maintained.

Further information can be found on pages 11 and 21 of the Panel members information pack.

[Go to the information pack on the MSD website](#)

## **Panel member is dissenting from the decision**

If one panel member disagrees or dissents from the decision, it should be recorded that this is the case with the reasons for their dissent. The dissenting decision should follow directly after the majority and should point to the factors or issues that contributed to the different conclusion.

In the Report of the BRC template under the decision, it states to record the reasons why the panel member is dissenting from the decision. This should be included in the Findings under the heading Panel member dissenting opinion.

In the HIYA template for the Report of the BRC there is a tick box if a panel member has dissented and a section to complete the reasons why they are dissenting.

All three members of the committee sign the final report and initial each page as being a fair representation of the events of the hearing and the decision made. Note the sign off can be by email.

For more information see pages 32 and 33 of the Panel Members Information pack.

[Go to the information pack on the MSD website](#)

## **After the hearing – documenting the decision**

It is good practice to schedule some time after the hearing to write up notes of all points raised including the deliberations, reasoning and decisions of the committee. A 'notes page' that can be used for this, can be found on page 34 of the Panel Members Information Pack.

[Go to the information pack on the MSD website](#)

Or take a laptop to the hearing and draft the key points directly into the report of the BRC template.

If there is time, the panel members can start to write up the findings while it is still fresh in the panellists' minds.

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## **Including references to Appeal Authority cases in reports**

Take care if including Social Security Appeal Authority cases to back up decisions, for example in the Case for Ministry of the Report to the BRC.

Case law is the body of law built up from decisions of the Courts and Social Security Appeal Authority. The courts have made rulings on certain issues thereby setting precedent, it is important to understand the strength of precedent value.

High Court decisions are binding precedents – this means that you should come to the same decision as the earlier case, where the facts and law of the case are the same or very similar. You should talk to your regional solicitor regarding cases where you want to apply a case law to ensure that the facts of the case are applicable.

Other case law such as decisions of the Appeal Authority are indicative (as opposed to binding). This means that we must follow the Appeal Authority's decision in that particular case but the decision is not binding precedent for us in respect of future cases. However it is obviously wise for us to follow their decision in future cases so they do not end up at appeal.

The Report Writers Information Pack includes the following about case law:

*Case law is the body of law built up from decisions of the Courts and Appeal Authority. Some case law has a strong precedent value. What this means is that you should come to the same decision as the earlier case, where the facts and law of your case are the same or very similar. Other case law is indicative, rather than binding. What this means is that earlier decisions will give you guidance on how a court is likely to decide future cases. An example is Ruka v. Department of Social Welfare which concerned what constitutes a relationship in the nature of marriage. It is important to remember that a Court case may be subject to appeal, there may have been a change in the legislation since the case or the facts of the case may be different from the one currently before the decision maker.*

*Try to set out how the principles of the cases you quote are relevant to the case the BRC is going to consider. Don't just say that according to "Ruka" the Ministry made the right decision. You must identify what factors in the case supports your decision.*

*When you write your report, you will need to set out the relevant Law. You should consult your regional legal advisor if you need any assistance in applying or referring to relevant case law.*

In most cases there should be legislation and /or policy guidelines that you can rely on to back up your decision rather than relying on Social Security Appeal Authority cases.

## Handy references

The following page has useful links and information about the ROD/BRC process including the expense claim form, information packs and the HIYU newsletter:

[Go to information on the MSD website](#)

## Feedback

Please let us know if you find these newsletters useful or if there is other information that you would like included in these. The Complaints Management Team welcomes any feedback from you. The team's contact details are below.



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