



08 JUN 2020

Tēnā koe [REDACTED]

On 11 May 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *A copy of all cases the department has lost before the Benefit Review Committee in relation to the department declining an application for a New Zealand Pension since the current social security agreement came into effect between Australia and New Zealand*
- *A copy of all cases the department has won before the benefit Review Committee in relation to the department declining an application for a New Zealand Pension since the current social security agreement came into effect between Australia and New Zealand*
- *A copy of all cases the department has lost before the Social security appeal committee in relation to the department declining an application for a New Zealand Pension since the current social security agreement came into effect between Australia and New Zealand*
- *A copy of all cases the department has won before the Social security appeal committee in relation to the department declining an application for a New Zealand Pension since the current social security agreement came into effect between Australia and New Zealand*
- *A copy of any case law the department has in its possession in relation to the Australia and New Zealand Social Security agreement this is to include but not limited to any Australian or New Zealand case law as it relates to declining a pension application being declined*

On 19 May 2020, further clarification of your request was sought. During your conversation with the Advisor, and following subsequent email correspondence, you were advised that the Ministry is unable to provide you with actual copies of Benefits Review Committee (BRC) cases as the content is considered private to natural persons. You were also advised that although the Ministry is unable to release this information to you, we can provide you with the relevant statistics.

You were also advised that the information you requested regarding Social Security Appeal Authority cases is not held by the Ministry, rather it was believed to be held by the Ministry of Justice (MOJ) for reply.

A request for a partial transfer of these aspects of your request was sought with MOJ. The agency advised that while the Social Security Appeals Authority (the Authority), is one of the Tribunals that it administratively supports, the information you seek is not held by their agency, rather it is held by the Authority which is not subject to the Act. This request for partial transfer was therefore declined.

Having regard to the principle of availability, you were provided with a link to the MOJ website which contains a 'Decision Finder' for recent decisions, and a separate search engine that redirects you to the New Zealand Legal Information Institute (NZLII) database for decisions prior to 2015.

For ready reference, and to further assist you in your search, you can find a list of Authority cases that have been filtered specific to appeals against a decision of the BRC regarding New Zealand Superannuation (NZS) applications. Approximately 740 relevant cases were found and can be located on the NZLII website at: www.nzlii.org/cgi-bin/sinosrch.cgi?method=auto&query=superannuation&meta=%2Fnz&mask_path=nz%2Fcases%2FNZSSAA.

You were advised that if the information available on this website does not meet the intent of your request you can make a request for this information to the Authority directly. You were provided with the appropriate contact details should you wish to make a request for this information.

It was concluded that your request would be refined to the following information:

- 1. Statistics on all cases the department has lost before the Benefit Review Committee in relation to the department declining an application for a New Zealand Pension since the current social security agreement came into effect between Australia and New Zealand*
- 2. Statistics on all cases the department has won before the benefit Review Committee in relation to the department declining an application for a New Zealand Pension since the current social security agreement came into effect between Australia and New Zealand*
- 3. A copy of any case law the department has in its possession in relation to the Australia and New Zealand Social Security agreement this is to include but not limited to any Australian or New Zealand case law as it relates to declining a pension application being declined*

As you are aware, New Zealand has bilateral Social Security Agreements with several countries. Each agreement enables New Zealanders access to certain benefits or pensions when moving to those countries and allows similar entitlements to people who move to New Zealand from those countries.

Social Security Agreements are amended from time to time as provisions in those agreements become outdated. These amendments are designed to take into account any legislative changes in either or both countries that may have occurred in the intervening period since the agreement was last amended. Amendments may also be made to reduce or increase the scope of the benefits covered by the agreement.

The amended Social Welfare (Reciprocity with Australia) Order 2017 (the Agreement) came into force from 1 July 2017. The previous Agreement was signed in 2001.

The intent of the Agreement was not changed and continues to cover long-term entitlements, such as age and disability payments. It enables both Governments to share the costs of benefits paid to superannuitants, who have lived for part of their working lives in both countries. It allows for New Zealand Superannuation to be paid in Australia in certain circumstances and governs the way entitlement is calculated. It also allows former residents of one country access to certain benefits and pensions under the other country's social security system. Accordingly, Australian working age residence between 20 years of age and the qualifying age for the Australian Age Pension (up to a maximum of 45 years) can be regarded as residence in New Zealand to help a client meet the residence qualifications for New Zealand Superannuation.

It is however important to note that a decision to decline the grant of NZS would be based on entitlement qualifications for NZS in terms of age and residency as laid down in the relevant sections of the *New Zealand Superannuation and Retirement Income Act 2001* rather than the *Social Welfare (Reciprocity with Australia) Order 2017*.

You can download a copy of this Agreement on the NZ Treaties website at: www.treaties.mfat.govt.nz/search/details/t/3871.

Work and Income administers benefits and pension entitlements for over 1 million people and acknowledges that they don't always get it right. The benefits review process is designed to ensure people have access to an independent review of benefit entitlement decisions.

The BRC is a review body that is established under the Social Security Act to make correct and fair decisions with regard to procedure and law. It enables people to ask for a Review of Decision that has been made about an application for income support or pension.

A Review of Decision is an application for the decision to be heard by the BRC.

BRC members meet regularly, and they comprise three people who have had no involvement with the original decision. One will be a person from the community that the Minister for Social Development has appointed. The other two are usually experienced staff from the Ministry.

In response to questions one and two of your request, the table overleaf shows the number of BRC hearings regarding the decision to decline a NZS application, broken down by outcome for each financial year from 2017/18 (when the current social security agreement came into effect between Australia and New Zealand) to 2019/20, up to 30 April 2020.

Table One: Number of Benefit Review Committee hearings regarding applications for a New Zealand Superannuation being declined, broken down by outcome for each financial year from 2017/18 to 2019/20, up to 30 April 2020

| Financial year | BRC outcome | | | Total |
|----------------|-------------|------------------|--------|-------|
| | Overtured | Partially upheld | Upheld | |
| 2017/18 | 3 | 0 | 57 | 60 |
| 2018/19 | 2 | 5 | 33 | 40 |
| 2019/20 | 3 | 0 | 46 | 49 |

Notes:

- The Social Welfare (Reciprocity with Australia) Order 2017 came into effect from 1 July 2017.
- The figures have been extracted from the 'Resolved with BRC Hearings' data tables provided by the Information Development Team.
- The figures relate to all cases listed as 'New Zealand Super' under the Assistance Reviewed' field and as 'Being declined' in the 'Reason for Action' field.
- The figures therefore relate to all cases of NZS being declined and as such, have no co-relation to the Reciprocity with the Australia Order 2017.

With reference to question three of your request for *any case law the department has in its possession in relation to the Australia and New Zealand Social Security agreement including any Australian or New Zealand case law as it relates to declining a pension application*, please note, this information is publicly available on the NZLII website which provides free access to legal information such as case law from across the various courts and tribunals.

As such, this aspect of your request is refused under section 18(d) of the Act on the basis that the information requested is already publicly available.

You can access New Zealand case law here: www.nzlii.org/databases.html#nz_cases. By selecting either one of the following categories: 'Supreme Court of New Zealand 2004', 'Court of Appeal of New Zealand 1888', 'High Court of New Zealand 1847', or 'Social Security Appeal Authority of New Zealand Decisions 2003', you will be directed to the database search function which provides the various cases relevant to these categories that are believed to be in scope of your request.

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 available to the wider

public. 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 BRC cases in respect of NZS applications being declined, 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.

Nāku iti noa, nā



Diane Anderson

**Manager, Complaints Management, Insights and Improvement
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