



1 July 2022

Tēnā koe

On 6 May 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *What processes does MSD have in place to learn from decisions of the BRCs, the SSAA and the courts, and ensure that any errors identified in such decisions can be avoided in future? In particular:*
- *Are the guidelines in the Manuals and Procedures regularly reviewed in light of the decisions of these bodies?*
- *Is there any other process for identifying any lessons from the decisions of these bodies and disseminating those lessons to decision-makers across MSD?*

On 3 June 2022, the Ministry emailed you to advise that more time was required to respond to you, due to the consultations necessary to make a decision on the request.

Reviews of Decision and the Benefit Review Committee

In general, decisions the Ministry makes about benefit and superannuation entitlement can be formally reviewed, such as a decision to cancel a benefit or to set a particular rate.

Approximately eight million decisions per year have review rights attached; of these are approximately 4,700 requests for a formal review of decision received each year, which equals less than 0.06% of the decisions made by the Ministry.

The first step in the process is an internal administrative review, known as a Review of Decision (RoD). If a client disagrees with a decision made by the Ministry, they can ask for a formal review of the decision. The Ministry will then look over the decision that was made to determine whether it should be overturned or upheld. If a decision is upheld, the Ministry will send a report

to the Benefit Review Committee (BRC) to ask them to take a fresh look over the case. You can read more about the RoD process, here: <https://www.workandincome.govt.nz/about-work-and-income/complaints/review-of-decisions.html>.

Of the RoDs received by the Ministry, approximately 35% proceed to a formal BRC. For the other 65% half are overturned by the Ministry, and half are withdrawn by the client.

The BRC is a review body that is established by legislation but is internal to the Ministry. The characteristics of a review body include the composition of its members being internally provided, or, in the case of the Community Representative, appointed by the Minister and being administratively managed internally by the Ministry. A review body such as the BRC takes a “fresh eyes” approach and it may only confirm, vary, or revoke the original decision. It does not have the trappings of a tribunal-type body, such as independent tenure, the right of review for both parties, the ability to compel evidence, to order costs or to take any necessary steps to carry into effects its decision.

Social Security Appeal Authority

When the original decision is upheld (or partially upheld) by the Benefit Review Committee, the client can appeal to the Social Security Appeal Authority (SSAA). The SSAA is an independent judicial tribunal administered by the Ministry of Justice.

High Court and the “case stated” process

If either the Ministry or the client is unhappy with a SSAA decision, they can appeal the matter to the High Court. Appeals to the High Court can only be on questions of law. The SSAA, with input from the client and the Ministry, state questions of law to the High Court to be answered. Cases normally proceed without hearing further evidence. Approval of the Deputy Solicitor-General is required before the Ministry can appeal an SSAA decision to the High Court.

Appeals to the Court of Appeal

Appealing to the Court of Appeal requires leave from the Court. An appeal by the Ministry would require the consent of the Deputy Solicitor-General.

When considering leave the Court must consider the public importance of an appeal and any miscarriage of justice that could result if an appeal does not proceed.

Appeals to the Supreme Court

Appeals to the Supreme Court require leave of the Court. An appeal by the Ministry would require the consent of the Deputy Solicitor-General. The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.

MSD Appeals Committee

The MSD Appeals Committee is a consultative group, established to review all decisions of the Social Security Appeal Authority, Student Allowance Appeal Authority and High Court judgements (whether they are dismissed or allowed) to consider whether the Ministry should seek leave to appeal to the High Court or Court of Appeal and the implications of the decisions on the Ministry.

The Appeals Committee's functions start when decisions are released by the Social Security or Student Allowance Appeal Authorities and the High Court. The Appeals Committee considers the outcomes, to identify if there are any wider implications for the Ministry and determines which business group should be delegated to be the "lead business group".

There is no statutory requirement on the Ministry to apply decisions of the Social Security or Student Allowance Appeal Authorities to like cases. However, the Ministry operates a 'client centred, principle-based approach' to Authority decisions. This means that we implement Authority decisions fully or seek to appeal if we do not agree with the decision on a point of law.

The Committee determines the appropriate action for the Ministry to take following decisions and judgements within scope.

If the decision or judgement has minor implications for Ministry policy or practice, the Committee will designate a lead, and support members, to make the changes necessary to implement the decision.

The Ministry looks at each case on its own merits, and in limited cases the Ministry may consider it unnecessary to make operational or legislative changes and may not seek to appeal the decision. This may occur where the Ministry considers that an Authority decision is limited in effect to the particular facts of the case.

Where appropriate, there is also the option of seeking legislative amendment.

The Ministry chooses to act as if we were required to apply decisions of the Authority to analogous cases so that each affected client does not have to appeal to the Authority to have their application determined in accordance with the Authority's view of the law.

Where the Ministry has found significant payment errors it will seek to address them. Ideally legislation, policy and practice should be clear and aligned. However the combination of a complex welfare system, changing social and economic settings, and on-going interpretation of legislation through reviews and appeals has led to a number of legislation/practice alignment issues. The Ministry has a central point to register, access, prioritise and progress issues where it is considered that legislation is not consistent with the policy intent or practice. If there are other issues that are out of scope of the Programme, these will be referred to the appropriate business group.

Ministry reporting

The Ministry completes monthly reporting that shows a snapshot of the monthly statistics regarding RoD cases and highlights any fundamental issues or trends noticed by the Client Advocacy and Review Team.

The RoD performance monitoring process is based on National Standards and measures at all the three stages of the RoD process. There are a set number of categories that are checked which fall under the transparency of decision, fair process, timeliness, and professionalism measures. Each check has a number of categories which are assessed:

- **Transparency of decision:** Looks at how a decision was made by the Ministry including the legislation that is applied, showing whether the decision was justified.
- **Fair process (access to natural justice):** Ensures that the applicant is being fairly represented throughout the process and that the case is being progressed in a timely manner.
- **Professionalism:** Ensures that a standard of professionalism is kept.

Manuals and Procedures

Introduced in 1999, Manuals and Procedures (MAP) provides easy online access to the most up to date policy, legislation, rates/thresholds and processing guidelines for Work and Income. MAP is predominately used as a guideline by Work and Income staff for decision making when delivering services to our clients. MAP is a central repository of information to support the quality, consistency and accuracy of Work and Income's service.

It is also used as a resource across a range of service lines and areas within the Ministry's National Office (in the main Work and Income, Social Policy and Knowledge, Legal, Communications, and Ministerial and Executive Services). Our clients also use the information on MAP to locate information on Work and Income products and services. Other government agencies and administrations access MAP to gain an understanding of our business and

associated services. You can view a public version of MAP here: <https://www.workandincome.govt.nz/map/index.html>.

MAP is updated when there is a change in policy. Because BRC decisions are individual, they do not set a precedent that requires the Ministry to update our guidelines in MAP.

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 on the Ministry'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, 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