



16 June 2022

Tēnā koe

On 18 May 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- 1. A copy of all policies, procedures and any other administrative guidance given to staff when applying the ordinarily resident test to a Section 26 Application.*
- 2. What other case law, which has occurred since the Supreme Court case, has been reviewed by MSD, specifically relating to a Section 26 application. There are cases!*
- 3. What guidelines/training are given to Customer services staff when making these very serious decisions about peoples benefits/incomes. ie Section 26 applications.*
- 4. What is being done to address the anomalies between a section 8 Application related to Ordinarily resident and a Section 26 application related to Ordinarily Resident.*

On 1 June 2022, the Ministry emailed you enquiring whether your request was regarding the Greenfield case. On 3 June 2022, you emailed the Ministry back confirming your request was regarding the Greenfield case.

As part of the criteria for meeting entitlement to New Zealand Superannuation, Section 8(1)(a) of the New Zealand Superannuation and Retirement Income Act 2001 (NZSRIA) provides that a person is "ordinarily resident in New Zealand on the date of application for New Zealand Superannuation (NZS).

Where a person is applying under Section 26 of the NZSRIA to receive NZS payments overseas, Section 26B provides that a person is not entitled to be paid NZS unless they are ordinarily resident and present in New Zealand on the day they make their application.

For the sake of clarity, I will address your questions in turn.

1. *A copy of all policies, procedures and any other administrative guidance given to staff when applying the ordinarily resident test to a Section 26 Application.*
3. *What guidelines/training are given to Customer services staff when making these very serious decisions about peoples benefits/incomes. ie Section 26 applications.*

To address parts one and three of your request, you can find information in relation to the attributes associated with being ordinarily resident, procedures and administrative guidance for how the Ministry decides whether a person is an ordinarily resident, and further information at the following link:

www.workandincome.govt.nz/map/income-support/main-benefits/new-zealand-superannuation/deciding-ordinarily-resident-in-new-zealand-01.html.

Ordinarily resident means someone who is normally and lawfully in New Zealand and intends to stay here. That is, they consider New Zealand to be their home. Please see enclosed the *Ordinary Residence Questionnaire*. This questionnaire is provided to clients to complete in cases where their ordinary residence status is unclear. It is modifiable depending on the client's particular circumstances.

There is no set guidance regarding training as assessing ordinary residence requires a case-by-case assessment. Staff would often discuss their cases together or with their manager and the Seniors Review of Decision team, to help them make decisions regarding ordinary residence.

2. *What other case law, which has occurred since the Supreme Court case, has been reviewed by MSD, specifically relating to a Section 26 application. There are cases!*

The only High Court case in scope of your request, that considered Greenfield in relation to section 26 was Pridmore vs the Chief Executive of the Ministry of Social Development. You can find the judgment at the following link:

<https://forms.justice.govt.nz/search/Documents/pdf/jdo/9f/alfresco/service/api/node/content/workspace/SpacesStore/c466ed91-415a-4b3e-a2fb-11cb7c00735f/c466ed91-415a-4b3e-a2fb-11cb7c00735f.pdf>.

4. What is being done to address the anomalies between a section 8 Application related to Ordinarily resident and a Section 26 application related to Ordinarily Resident.

The meaning of ordinarily resident is the same across the Social Security Act 2018 (SSA) and the NZSRIA. Although there is no definition of 'ordinarily resident' prescribed in the NZSRIA, section 4(2) of the NZSRIA provides that unless otherwise stated, any expression used but not defined in the Act has the same meaning as it has in the SSA. "Ordinarily resident in New Zealand" is defined in schedule 2 of the SSA.

The Ministry of Social Development's application of ordinarily resident is guided by decisions made by the New Zealand Courts and the Social Security Appeal Authority. *Greenfield v Ministry of Social Development* [2015] NZSC 139 is a key judgment which provides several considerations that apply to determine whether a person is ordinarily resident in New Zealand.

Typically, particular language used within a statute will be interpreted consistently throughout the act. This means that references to "ordinarily resident" in section 8 of the NZSRIA refer to the same application of ordinarily resident in sections 26 and 27 of the NZSRIA. There is no anomaly in the interpretation and application of ordinary residence to be resolved. Accordingly, no work is being done to this effect.

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 regarding ordinarily residents and Section 26 applications, 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

Bridget Saunders

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