



9 May 2023

Tēnā koe

On 6 April 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act) information about Benefit Review Committees.

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 the right of review. Of these approximately 4,700 requests are made for a formal review of decision 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 at the case. You can read more about the RoD process, here:

[www.workandincome.govt.nz/about-work-and-income/complaints/review-of-decisions.html](http://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. Of the other 65%, half are overturned by the Ministry, and half are withdrawn by the client.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.

To aid clarity, each of your questions will be grouped and responded to in turn:

1. *We are writing on behalf of Community Law Waikato | Te Tari Ture ā-Hapori o Waikato to request information under the Official Information Act 1982 (OIA) related to Benefit Review Committees (BRC) in the Waikato, Bay of Plenty and Southern regions (as these are defined by MSD for administrative purposes).*
2. *We have reviewed publicly available statistics relating to BRCs contained in the Ministry's 2021/22 Annual Report.<sup>2</sup> From this, we are aware that:*
  - (a) *4,638 Review of Decision applications were received 2021/22.*
  - (b) *3,256 review applications resolved prior to progressing to a formal BRC, out of a total of 4,407 review applications nationwide.*
  - (c) *1,085 BRC hearings occurred between 1 July 2021 and 30 June 2022, of which 84% were upheld, 6% were partially upheld and 10% were overturned.*
3. *We seek a breakdown of the above statistical information in relation to Review of Decision applications relating to decisions taken by service centres in the Waikato, Bay of Plenty and Southern regions. Please ensure all information provided is presented separately for each of these three regions. In particular, we seek the following information for the 2021/22 period referred to in the Annual Report:*
  - (a) *How many Review of Decision applications related to decisions taken by service centres in the Waikato, Bay of Plenty and Southern regions?*
  - (b) *How many Review of Decision applications in the Waikato, Bay of Plenty and Southern regions resolved prior to progressing to a formal BRC?*
  - (c) *Of the Review of Decision applications in the Waikato, Bay of Plenty and Southern regions that resolved prior to progressing to a formal BRC, how many were:*
    - (i) *Withdrawn?*
    - (ii) *Overtaken at the initial review stage?*
  - (d) *How many BRC hearings were held in the Waikato, Bay of Plenty and Southern regions?*
  - (e) *Of the Review of Decisions resolved by BRCs in the Waikato, Bay of Plenty and Southern regions, how many were:*
    - (i) *Confirmed (upheld)?*
    - (ii) *Varied (partly upheld)?*
    - (iii) *Revoked (overturned)?*

Responding to requests 1 through to 3(e)(iii), please refer to **Table One** through to **Table Three** in the attached **APPENDIX ONE**.

- (f) *What was the average time from receipt of a Review of Decision application in the Waikato, Bay of Plenty and Southern regions to:*

- (i) Resolution prior to progressing to a formal BRC (where applicable)?
  - (ii) A BRC holding a hearing?
  - (iii) A BRC issuing its report?
- (g) What was the longest time from receipt of a Review of Decision application in the Waikato, Bay of Plenty and Southern regions to:
- (i) Resolution prior to progressing to a formal BRC (where applicable)?
  - (ii) A BRC holding a hearing?
  - (iii) A BRC issuing its report?

Responding to your questions (f) through to (g)(iii), this information cannot be made available without substantial collation or research because the Ministry does not compile collatable records of the time taken from the date of receipt of a RoD application to various stages of the BRC process. Therefore, in order to respond to the information requested with the required particularity, the Ministry would have to go through individual records of every RoD application in the three regions of interest. As such, this part of your request is refused under 18(f) of the Act as Ministry staff would have to manually review a substantial number of files. 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, in the interests of being helpful, the Ministry provides the information in **Table Four** of the attached **APPENDIX ONE**, which shows the average, longest and median time taken from the date of receipt of a RoD application to the date of resolution for all resolved cases in each of the three specified regions.

- (h) Of the Review of Decision applications in the Waikato, Bay of Plenty and Southern regions from 2021/22 that remain unresolved, please advise (as at 6 April 2023) how many:
- (i) Are still awaiting internal review?
  - (ii) Of those that have undergone internal review, are yet to have a BRC hearing?
  - (iii) Of those that have had a hearing, are still awaiting the relevant BRC issuing its report?

On 28 April 2023, at the request of the Ministry, you agreed to change the as-at date from 6 April 2023 to instead be as-at 31 March 2023. Responding to questions (h) through to (h)(iii), please refer to **Table Five** in the attached **APPENDIX ONE**.

4. *We are writing on behalf of Community Law Waikato | Te Tari Ture ā-Hapori o Waikato to request the following information under the Official Information Act 1982 (OIA):*

- (a) *All policies, protocols and other documents setting out MSD's expectations for and oversight of the Benefits Review Committee (BRC) process, particularly in relation to BRC process timeframes and timeliness of BRC decision-making.*

On 28 April 2023, at the suggestion of the Ministry, you agreed to refine your request to encapsulate the National Standards document and any relevant publicly available resources. Accordingly, we have attached in an **APPENDIX TWO** the four National Standards documents which were developed to assist the Ministry to monitor current performance in RoD cases. These documents assist Ministry staff with improving the quality of RoD and BRC processes.

The below link to the Ministry's publicly available website contains information relevant to the complaints and the ROD processes. The panel on the right hand side of the web page, entitled 'Documents' provides links to downloadable copies of various information packs and forms that may also be of interest to you: [www.msd.govt.nz/about-msd-and-our-work/contact-us/complaints/review-of-decision.html](http://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'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](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response related to information about Benefit Review Committees, 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](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui

A handwritten signature in black ink that reads "D C Anderson". The signature is written in a cursive, flowing style.

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

## Appendix Two

### Review of Decisions - National Standards

## National Standards and Measures Internal Review

Performance Standards – Review of Decision Internal Reviews	
<b>Transparency of decision</b> <ul style="list-style-type: none"><li>• Being able to see how a decision was made by the Ministry including the legislation that applied in the case and making sure that the decision is justified.</li></ul>	
<b>Fair Process (Access to Natural Justice)</b> <ul style="list-style-type: none"><li>• Ensuring that the applicant is being fairly represented throughout the process and that the case is being progressed in a timely manner.</li></ul>	
<b>Professionalism</b> <ul style="list-style-type: none"><li>• Ensuring that the standard of professionalism is kept safeguarding the Ministry's reputation.</li></ul>	
Measures – Review of Decision Internal Reviews	
<b>Transparency of decision</b> <ul style="list-style-type: none"><li>• Details of the decision as well as the date the decision was have been included.</li><li>• Correct legislation referenced</li><li>• Correct policy referenced</li><li>• Relevant Regulations, Ministerial Direction or Welfare Programme referenced (if applicable)</li><li>• Key reasons for the decision have been noted</li><li>• The applicant's points have been addressed</li><li>• Conclusion clearly states the desired outcome (e.g. it is upheld, overturned or partially upheld)</li></ul>	
<b>Fair Process (Access to Natural Justice)</b> <ul style="list-style-type: none"><li>• Full copy of the applicant's review of decision has been attached</li><li>• Internal decision has been implemented and the resolution in HIYA is appropriate</li><li>• Delay reasons have been fully documented</li></ul>	

<p><i>Timeliness:</i></p> <ul style="list-style-type: none"><li>• Acknowledgement letter sent within 24 hours of receipt of ROD</li><li>• Internal Review completed within 5 working days</li></ul>	
<p><b>Professionalism</b></p> <ul style="list-style-type: none"><li>• Final versions of letters sent, and Internal Review are saved in HIYA templates or files so that information can be accessed Ministry-wide</li><li>• Decision dates in HIYA and the internal review match</li><li>• MSD Style Guide followed</li></ul>	

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# National Standards and Measures Report to the Benefits Review Committee

Performance Standards – Report to the Benefits Review Committee	
<p><b>Transparency of decision</b></p> <ul style="list-style-type: none"> <li>• Reports to the Benefits Review Committee (selected by sample survey) show how a decision was made by the Ministry including the legislation that applied in the case and making sure that the decision is justified.</li> </ul>	
<p><b>Fair Process (Access to Natural Justice)</b></p> <ul style="list-style-type: none"> <li>• Ensuring that the applicant is being fairly represented throughout the process that the case is being progressed in a timely manner.</li> </ul>	
<p><b>Professionalism</b></p> <ul style="list-style-type: none"> <li>• Ensuring that the standard of professionalism is kept to safeguard the Ministry's reputation.</li> </ul>	
Measures – Report to the Benefits Review Committee	
<p><b>Transparency of decision</b></p> <ul style="list-style-type: none"> <li>• Decision being reviewed is detailed</li> <li>• A full summary of facts has been stated</li> <li>• Correct legislation quoted</li> <li>• Correct policy quoted</li> <li>• Relevant Ministerial Direction or Welfare Programme quoted (if applicable)</li> <li>• Facts of case have been applied to correct policy and legislation and reasons for decision made are clear – full explanation of decision given</li> <li>• Conclusion clearly states the desired outcome</li> <li>• No new information (not previously referred to) included within the conclusion</li> </ul>	
<p><b>Fair Process (Access to Natural Justice)</b></p> <ul style="list-style-type: none"> <li>• Details of the applicant's circumstances and income support included</li> <li>• Summary of reasons given by applicant for reviewing decision have been included</li> </ul>	



<ul style="list-style-type: none"> <li>• Internal decision has been implemented</li> </ul> <p><i>Timeliness</i></p> <ul style="list-style-type: none"> <li>• Report to the Benefits Review Committee completed within 14 days of receiving it</li> <li>• Delay reasons have been fully documented (if applicable)</li> </ul>	
<p><b>Professionalism</b></p> <ul style="list-style-type: none"> <li>• Final versions of letters sent and Report to the Benefits Review Committee are saved in HIYA templates or files so that information can be accessed Ministry-wide</li> <li>• MSD Style Guide followed</li> </ul>	

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# National Standards and Measures

## Report of the Benefits Review Committee

Performance Standards – Report of the Benefits Review Committee
<p><b>Transparency of decision</b></p> <ul style="list-style-type: none"><li>• Benefits Review Committee (BRC) outcomes (selected by sample survey) are clear and include legislation that was applied in the case and makes sure that the decision is justified.</li></ul>
<p><b>Fair Process (Access to Natural Justice)</b></p> <ul style="list-style-type: none"><li>• Ensuring that the applicant is being fairly represented throughout the process and that the case is being progressed in a timely manner.</li></ul>
<p><b>Professionalism</b></p> <ul style="list-style-type: none"><li>• Ensuring that the standard of professionalism is kept to safeguard the Ministry's reputation.</li></ul>

Measures – Report of the Benefits Review Committee	
<p><b>Transparency of decision</b></p> <ul style="list-style-type: none"><li>• Decision being reviewed is detailed</li><li>• A full summary of facts have been stated</li><li>• Correct legislation quoted</li><li>• Correct policy quoted</li><li>• Relevant Ministerial Direction or Welfare Programme quoted (if applicable)</li><li>• Reasons for the decision are provided and are clear (e.g. why the client's circumstances do or do not meet the criteria)</li><li>• All evidence contributing to the decision is documented in the Findings</li><li>• The report instructs the Ministry clearly on what action is required (if applicable)</li></ul>	
<p><b>Fair Process (Access to Natural Justice)</b></p> <ul style="list-style-type: none"><li>• Details of the applicant's circumstances and income support included</li><li>• Summary of reasons given by applicant for reviewing decision have been included</li><li>• Additional information reviewed from the client or the Ministry at the hearing has been included in the report</li><li>• Decision of BRC has been implemented</li></ul>	

<p><i>Timeliness</i></p> <ul style="list-style-type: none"> <li>• BRC Process completed within 32 days of Review of Decision being received (including outcome letter being issued to client)</li> <li>• Delay reasons have been fully documented (if applicable)</li> </ul>	
<p><b>Professionalism</b></p> <ul style="list-style-type: none"> <li>• Final versions of hearing letters sent and the Report of the Benefits Review Committee are saved in HIYA templates or files so that information can be accessed Ministry-wide</li> <li>• MSD Style Guide followed</li> </ul>	

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## National Standards and Measures Out of Time Reports

### National Standards –Out of Time Reports

#### Transparency of decision

- Out of Time Reports are clear and include relevant legislation.

#### Fair Process (Access to Natural Justice)

- Ensuring that the applicant is being fairly represented throughout the process and that the case is being progressed in a timely manner.

#### Professionalism

- Ensuring that the standard of professionalism is kept to safeguard the Ministry's reputation.

### Measures – Out of Time Reports

#### Transparency of decision

- Date the decision was made by the Ministry has been verified (decision letter attached)
- A full summary of facts has been provided
- All letters from acknowledgement letter through to Benefit Review Committee outcome letter sent out and copies attached to report
- All letters copied / sent to client representatives (hardcopy attached)
- Correct template letters used
- Section 392 has been included

#### Fair Process (Access to Natural Justice)

- Details of applicant's circumstances and income support included, with special attention paid to Out of Time details supplied by the client
- Summary of the applicant's reasons for delay are included and detailed without reference to the substantive issue
- The applicant has been asked for reasons of delay in lodging Review of Decision

<p>application</p> <ul style="list-style-type: none"><li>• Conclusion states the desired outcome clearly in both reports</li><li>• No new information (not previously referred to) included within the conclusion</li></ul>
<p><b>Professionalism</b></p> <ul style="list-style-type: none"><li>• Final versions of letter sent and report (if applicable) are saved in HIYA templates or files so that information can be accessed Ministry-wide</li><li>• MSD Style Guide followed</li></ul>

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