

26 January 2024

Tēnā koe

### **Official Information Act request**

Thank you for your email of 15 December 2023, requesting a copy of the Benefit Review Committee (BRC) review pilot Terms of Reference.

I have considered your request under the Official Information Act 1982 (the Act) and can advise that your request for this information is refused under section 18(e) of the Act as this document does not exist.

However, I can advise that a review pilot is being undertaken by the Ministry's Centralised Services business group with the intention of reviewing how it processes Review of Decisions. The pilot review is currently in the discovery phase of the following identified phases:

- a. Discover research, engage, understand and observe
- b. Define understand and confirm the problem statement (root cause)
- c. Ideate solutions sought, continuous improvements focus
- d. Prototype testing or piloting a new way of working, building on current practice
- e. Evaluate evaluations will be carried out quarterly across a 12-month period to gather insights on whether any changes are successful and to allow for a continuous improvement approach.

The review scope does not include technology, legislation, or the BRC.

I have appended for your information a response to a request made under the Act for all documents dated since 1 January 2007 held by MSD concerning any proposal to replace BRC with another body or mechanism for the review of decisions by the Ministry:

- Appendix one: OIA response dated 6 August 2020
- Appendix two: Memo S Request Social Security (Benefit Review and Appeal Reform) Amendment Bill (Member's Bill), dated 6 August 2009
- Appendix three: Report Background Information About the Benefits Review Committee Process, dated 20 November 2007
- Appendix four: Draft Business Process Improvement: Reviews of Decision Future State Options, dated August 2018

- Telephone 04-916 3300 - Facsimile 04-918 0099

- Appendix five: Business Process Improvement: Future State for Reviews of Decision, dated September 2018
- Appendix six: Report Review of the Benefit Review and Appeal System, dated 6 September 2000

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact <u>OIA Requests@msd.govt.nz.</u>

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at <u>www.ombudsman.parliament.nz</u> or 0800 802 602.

Yours sincerely

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Magnus O'Neill General Manager Ministerial and Executive Services



06 AUG 2020

Dear<sup>s9(2)(a)</sup>

s9(2)(a)

On 22 June 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982, the following information:

• All documents dated since 1 January 2007 held by MSD concerning any proposal to replace Benefits Review Committees with another body or mechanism for the review of decisions by MSD.

The following documents have been identified as being in scope of your request, and are attached below:

- 1. Memo S Request Social Security (Benefit Review and Appeal Reform) Amendment Bill (Member's Bill), dated 6 August 2009
- 2. Report Background Information About the Benefits Review Committee Process, dated 20 November 2007
- 3. Draft Business Process Improvement: Reviews of Decision Future State Options, dated August 2018
- 4. Business Process Improvement: Future State for Reviews of Decision, dated September 2018

Please note that the document titled "Draft – Business Process Improvement: Reviews of Decision Future State Options" is a draft document which was not finalised. The Ministry eventually progressed the document titled "Business Process Improvement: Future State for Reviews of Decision" which replaced this initial draft.

The work detailed in the document titled "Business Process Improvement: Future State for Reviews of Decision" has been ongoing however, was put on hold due to COVID-19 and will continue to be progressed at a later stage.

Please note that the following document is not in scope of this request but has been included in our response as it contains useful context into the last formal review of the benefit and appeal system.

 Report – Review of the Benefit Review and Appeal System, dated 6 September 2000 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 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 <u>OIA Requests@msd.govt.nz</u>.

If you are not satisfied with this response to your request for documents concerning any proposals to replace 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 or 0800 802 602.

Yours sincerely

Keriana Edwards General Manager Business Process Management



# MINISTRY OF SOCIAL DEVELOPMENT Te Manatū Whakahiato Ora

То	Debbie Power, Private Secretary	Date	6 August 2009
through	Sue Mackwell, Deputy Chief Exec	cutive, S	Social Services Policy
From	Jennie Nicol, Senior Analyst, Wo	rking Ag	e Peoples Policy
Security Level	UNCLASSIFIED		(O) x

# S REQUEST – SOCIAL SECURITY (BENEFIT REVIEW AND APPEAL REFORM) AMENDMENT BILL (MEMBER'S BILL)

Action For Information

#### Purpose

The purpose of this memo is to provide you with information in relation to the key changes proposed in the Member's Bill 'Social Security (Benefit Review and Appeal Reform) Amendment Bill' (the Bill), the implications of these and the cost involved.

The Member responsible for the Bill is Sue Bradford. The Bill was successful in the Ballot held for Member's Bills last week and consequently introduced on Thursday 30 June. It has not been set down for its first reading. The earliest this could occur would be on the next Member's Day. As the House is in recess next week and Member's Days are every two weeks the first opportunity for the first reading to occur will be 19 August.

The information in the memo has been provided by Jennie Nicol, Ed McIsaac, Neil Williamson, Diane Anderson and Kevin White.

### **Executive summary**

The changes that the Bill proposes are focused on the review and appeal rights in the Social Security Act 1964. There are six significant changes proposed, these are to provide for:

- the review functions in the Act to operate independently of the Ministry
- substantive changes in the way that a review is conducted
- the award of costs to a successful applicant for review
- the award of costs to an unsuccessful applicant when the reviewer considers they acted reasonably in applying for a review

- the abolition of the medical appeals boards
- limitation of the review of benefits.

The effect of the Bill is to convert an administrative review into a quasi-judicial review. We can see little advantage in having a further level of external adjudication of Ministry decisions. The establishment of the proposed process would also have considerable fiscal implications.

The introduction of the awarding of costs is also a significant change with major cost implications.

The Medical Appeals Boards were established so that where a benefit was declined on medical grounds this decision could be appealed to a group of people with the expertise to assess the information provided to them. In our view the current process is appropriate, abolishing the Medical Appeal Boards and instead having a decision reviewed by a person with no medical expertise is likely to cause considerable difficulties.

A number of the proposed amendments are purely legislating for what is current practice.

Given the fiscal and other implications of the Bill we recommend that the Government does not support the Bill being progressed at its first reading.

#### Background to the Bill

The changes that the Bill proposes are focused on the review and appeal rights in the Social Security Act 1964 (the Act).

The general policy statement indicates that the Bill has been developed as a response to the perception among beneficiaries that the Benefits Review Committee structure is one of bias in favour of the Ministry of Social Development, and this has been reinforced by the Supreme Court judgment *Arbuthnot v Chief Executive of the Department of Work and Income,* which, in finding that Benefits Review Committees' functions are purely administrative, is said to have changed the previously wide understanding that Benefits Review Committees performed a quasi-judicial function. The purpose of the Bill is to make provision for a benefit review process that is fair, and independent of the department that is responsible for the administration of the Social Security Act 1964<sup>1</sup>.

#### **Current process**

Under the present system if a person is not happy with a decision made by an employee of the Ministry under delegation<sup>2</sup> under the Social Security Act 1964, Part

<sup>&</sup>lt;sup>1</sup> The Ministry of Social Development is currently responsible for administration of the Social Security Act 1964.

<sup>&</sup>lt;sup>2</sup> There is no right to apply for a review by a BRC of a decision made by the Chief Executive personally, but the person can lodge an appeal directly to the Social Security Appeal Authority.

1 of the New Zealand Superannuation and Retirement Income Act 2001, Part 6 of the War Pensions Act 1954, or certain regulations they can generally<sup>3</sup> apply for a review by a Benefits Review Committee (BRC). Before the matter is referred to a BRC, an in-house review of decision (ROD) is undertaken. Sixty-five percent are resolved at this stage. If the ROD does not resolve the issue, the matter is formally considered by a BRC. The person has a right of appeal to the Social Security Appeal Authority from a BRC decision that has confirmed or varied the Ministry's original decision in the matter, and from the Appeal Authority's decision on a question of law to the High Court, Court of Appeal and Supreme Court. The right of review by a BRC and these appeal rights are established by legislation; the ROD process is not.

The Minister must establish a BRC for each office of the Ministry, and a BRC comprises two officers of the Ministry not involved in the decision under review and a community representative appointed by the Minister. A BRC has powers to confirm, vary, or revoke the decision under review,

The Supreme Court (*Arbuthnot v Chief Executive of the Department of Work and Income*) has confirmed that the BRC is an administrative body and not the equivalent of a judicial tribunal. It was not critical of its inferior status but instead commented that it was appropriate for an administrative review such as a BRC to take place.

"The Department administers many thousands of social welfare benefits. Naturally, its officials will make many decisions with which a beneficiary or someone claiming entitlement to a benefit will disagree. It would not be sensible for all of them to have to go immediately to a formal appeal process without the decision first being reviewed at a more senior level within the Department. Plainly, it would not be possible for the chief executive personally to undertake reviews on this scale.

Approximately five million decisions per year would have review rights attached; of these there are approximately 4,000 formal applications for reviews of decisions received each year which equals 00.1% of the decisions made by the Ministry. Of these 35% proceed to a formal BRC.

In our view some of the comments made in the Explanatory Note to the Bill are incorrect and do not describe the current process adequately.<sup>4</sup>

#### Key changes proposed in the Bill

There are six significant changes provided for in the Bill. These are:

<sup>&</sup>lt;sup>3</sup> Some decisions relating to incapacity can be appealed directly to a Medical Appeals Board under s53A of the Social Security Act 1964.

<sup>&</sup>lt;sup>4</sup> For example it states that the Social Security Act 1964 does not provide a specified manner for the Ministry to convey decisions to benefit applicants or beneficiaries. It goes to on to say "this results in decisions often being conveyed inadequately, and without notifying applicants of the right to review decisions to with which they disagree". This statement is not accurate. Although the legislation does not detail the process that must be followed the letters that the Ministry sends out are a standard template and all contain a paragraph setting out the review and appeal rights that a person has in relation to a decision that is made.

- for the review functions in the Act to be conducted by reviewers engaged on contract by the Ministry who must operate independently of the Ministry (clause 6: proposed new sections 10D and 10E)
- substantive changes to the way that a review is conducted, including requiring a hearing to be held, evidential matters, requiring the reviewer to consider the matter afresh, requiring (rather than empowering) a reviewer to either confirm, vary, or revoke the Chief Executive's decision (clause 6: proposed new sections 10F to 10I)
- the introduction of a requirement that the reviewer must award costs to a wholly or partially successful applicant for review (clause 6: proposed new section 10J)
- the introduction of a power for the reviewer to award costs to an unsuccessful applicant whom the reviewer considers acted reasonably in applying for a review (clause 6: proposed new section 10J)
- the abolition of the Medical Appeals Boards and repealing the provision that prevents the Social Security Appeal Authority hearing appeals on medical or incapacity grounds (clauses 8 and 9)
- limiting the review of benefits where a reviewer has made a decision (clause 10)

These are discussed and the implications of them outlined below.

Although the Bill does not propose any change to the scope of the review process ie the types of decisions that a client can ask to be reviewed is not changed it would substantially modify the current BRC process as currently provided for in the Act (a copy of the current section 10A is attached as Appendix One).

A number of the proposed changes are purely legislating for what is current practice as outlined in our guidelines. The detail of these and other minor changes are outlined in Appendix Two. The costs of the proposed changes are outlined in Appendix Three.

#### Establishment of review panels (Clause 6 sections 10D and 10E)

Probably the most significant change that the Bill proposes is that the chief executive must engage people on contract to act as reviewers. These people cannot be departmental employees (compare s10A(4)(b) of the Act). It also places a number of other conditions on the chief executive in relation to timeliness and impartiality. The Bill also places a duty on the reviewer to act independently and disclose any previous involvement with the decision.

#### Comment

Under the current Act the power to establish a BRC lies with the Minister and the Committee is made up of 2 officers of the department not involved with the decision under review and a person from the community appointed by the Minister.

It is not uncommon to have an internal administrative review (either statutory or nonstatutory) and is consistent with other public sector review systems in New Zealand and overseas. The kind of review currently carried out by a BRC is in practice a second level of administrative review and contracting out of this process is not seen as necessary or appropriate. In addition there is already an external independent check on the Ministry's decision-making by the Social Security Appeal Authority (SSAA) - a specialist judicial tribunal.

The effect of the Bill is to convert an administrative review into a quasi-judicial review. We can see little advantage in having a further level of external adjudication of Ministry decisions. Plus in addition there are three further levels of appeal available on questions of law above the SSAA, to the High Court, Court of Appeal and Supreme Court.

Standards in relation to timeliness are contained in the guidelines. In our view this is the appropriate place for them to be.

The proposal to require the Ministry to engage reviewers on contract will incur substantial administrative costs well in excess of the costs currently paid for community members of BRCs (refer Appendix 3).

#### Costs on review (section 10J)

Under the current legislation the costs of the community member on the BRC are paid by the Ministry (fees, travelling allowances and expenses). Costs are not awarded to the applicant. The Bill proposes that the Ministry is responsible for meeting all the costs incurred by a reviewer in conducting a review, and that the reviewer must awards costs to the applicant where the decision is in their favour and may award costs when it is not if the application for review was reasonably brought.

#### Comment

This is a significant change and could have major cost implications for the Ministry. It also leaves a number of questions unanswered. For instance what costs is the Bill referring to? The out of pocket costs for the person bringing the review such as travelling expenses, the costs of an advocate or solicitor if used? The regulation-making power in clause 8: new section 132K proposes regulations setting a scale of costs for the purposes of sections 10J and 120<sup>5</sup>.

The current drafting of the provision leaves it unclear as to what costs a reviewer might incur and what the Ministry would be liable to pay. If, for instance, the reviewer in the conduct of a review required the attendance of a specialist medical advisor or some other professional or sought legal advice, it would appear likely that the Ministry would be liable to pay those costs

There is no clear understanding in relation to the basis of which costs would be awarded. Legislating for the award of costs without prior decisions on the policy in relation to such questions would create risk. Legislation follows policy not the other way round.

<sup>&</sup>lt;sup>5</sup> Section 12O relates to the power of the SSAA to award costs.

#### Abolition of Medical Appeals Boards (Clause 9)

This clause repeals section 53A and subsection 12J(2) of the Act and by so doing abolishes the Medical Appeals Boards and the provision that prevents the SSAA from hearing appeals on medical or incapacity grounds. The impact of doing this is that the review function and flow-on right of appeal to the SSAA would apply to decisions to decline Invalids' and Sickness Benefits Veterans Pensions and Child Disability Allowance, **made on medical or incapacity grounds** ie a decision would be reviewed by the contracted reviewers and if the decision of the Ministry was upheld then the person would be able to appeal this to the Social Security Appeal Authority.

#### Comment

The Medical Appeals Boards (MABs) were established so that in cases where a benefit was declined on medical grounds this decision could be appealed to a group of people that had the expertise and knowledge to be able to assess the medical information that was provided to them. Decisions of the MABs are not able to be taken to the SSAA for the same reason<sup>6</sup> ie the SSAA did not have the expertise to overturn the decision of the medical experts in relation to assessing the medical condition of the applicant and his or her ability to work.

The current Act is quite specific in that the board has to comprise 3 members "being medical practitioners, rehabilitation professionals or other persons having appropriate expertise in the fields of vocational training or vocational support for a person with sickness, injury or disability " Abolishing the MABs and instead having a decision reviewed by a person with no medical expertise is likely to cause considerable difficulties – unless some of the reviewers that were contracted by the chief executive were medical or vocational experts.

A recent review by the Ministry of the medical appeals process resulted in a number of improvements being made, a number of which address the issues that the advocates have raised. These include:

- strengthening the operational guidelines to take account of the barriers that appellants may face when attending a hearing
- clarifying the operational guidelines to make it clear that a person appearing before a Medical Appeal Board is able to be reimbursed for actual and reasonable expenses
- the development of training for those involved to improve the consistency of the process
- establishment of communication lines between the Boards and the Health and Disability Advisors in order to be able to assist them with reporting procedures and consistency of reporting
- Regional Health and Disability Advisors having an oversight role of the process and being responsible for reporting on the reasons why appeals are upheld or dismissed

<sup>&</sup>lt;sup>6</sup> The legislation does not provide for this to happen.

- the development of guidelines in relation to non-attendance at Board hearings
- the development of better mechanisms for tracking and recording of decisions.

The appointment of in-house expertise in relation to health and disability has also allowed us to introduce an internal review step and clients also have the option of being referred to a Designated Doctor before a case goes to appeal to ensure that the medical information provided has been interpreted correctly.

The question of a further right of appeal has been raised on numerous occasions by the advocates – in particular whether there should be the right to appeal to the SSAA. The fact that people cannot appeal a Medical Appeal Board decision on their medical eligibility but people can appeal other eligibility decisions has been raised as an equity issue.

In a report to the Minister in relation to a review of medical appeals carried out by the Ministry in consultation with the Beneficiary Advocate Consultancy group in 2000 it was noted that:

"BACG representatives noted that the current process does not provide for any right of appeal from a decision of the Medical Appeals Board process. Their concerns about the composition of the boards and poor process heightened their concern about the Medical Appeals Board process being final. BACG representatives strongly recommended that a further right of appeal be considered to the Social Security Appeals Authority (SSAA) with the basis of the appeal being whether the law was actually applied properly in that case."

At present whilst a person cannot go to the SSAA if they are dissatisfied with the decision making process in relation to a Medical Appeals Board the option of a judicial review is always available to them (as is the case with other appeals).

Although a further appeal to the SSAA is considered inappropriate, as the Board is an appeals tribunal at the same level as the SSAA, the Ministry acknowledges that it is a big step for a person to go from an unsuccessful appeal at the level of a Medical Appeals Board to a judicial review.

At present there is also a lack of specificity in the current legislation regarding the powers of the Board and appropriate process and procedures. The issue of providing legislative direction as to the Board's purpose, membership and scope of powers has been identified as an issue to consider in the context of the rewrite of the Act should this occur at some future time.

#### Review of benefits (Clause 10)

This clause amends the current section 81 to remove the right of the chief executive to review a benefit in order to ascertain that the person is still entitled to receive it, where the entitlement or rate has been set by a reviewer unless there is information available that was not available to the reviewer.

#### Comment

It is possible under the current Act for the chief executive to use his power under section 81 of the Act to reconsider a BRC decision. However the Court has indicated that the chief executive's discretion under section 81 should be exercised carefully.

In the Arbuthnot case cited previously the Supreme Court held that beneficiaries are entitled to expect that the Department's decisions, once made, will not be disturbed without very good reason.

[35] ... To use s81 simply as a means of re-appraising facts already known to the Department at the time of an earlier review would run counter to that expectation. The chief executive's discretion under s81 should be exercised with this consideration in mind.

The Court held that, in a case like Mr Arbuthnot's, to resolve an inconsistency between a BRC decision and a later Appeal Authority decision, the CE would be entitled to review the benefit going forward. However, where payments have been made following a BRC decision it will seldom be appropriate to carry out a retrospective review.

The Supreme Court held that:

[36] In a case like the present, however, and assuming no change in the circumstances of the beneficiary, we consider that the chief executive would be entitled to use the power to review under s 81 to re-assess eligibility for continuance of a benefit in the future, once an inconsistency has been created by a decision of the Appeal Authority. While this might result in suspension or termination of the benefit, when past payments have been made as a consequence of a decision of a BRC, upon which the beneficiary has been relying, it would seldom be appropriate for the chief executive to 'reasonably determine' under s81 (2) to recover from a past date.

Given this guidance it would be extremely rare for the Ministry to consider overturning a BRC decision. We are therefore not convinced that a provision of this nature is necessary. A review would normally only occur where there has been a change of circumstances that impact on eligibility or rate of payment going forward.

#### Recommendation

For the foregoing reasons, we recommend that the Government does not support the Bill being progressed at its first reading.

### Current provisions in the Social Security Act 1964 in relation to Benefit Review Committees

#### 10A Review of decisions

(1) This section applies to-

(a) an applicant or beneficiary affected by a decision made by any person in the exercise of any power, function, or discretion conferred on the person by delegation, against which the applicant or beneficiary has a right of appeal under section 12J; or

(b) an applicant, beneficiary, or other person in respect of whom a person makes any decision in the exercise of a power under section 19D(1)(a) of the <u>Social Welfare (Transitional Provisions) Act 1990</u> conferred on the decision-making person by delegation, against which the applicant or beneficiary or other person has a right of appeal under <u>section 12J</u>.

- (1A) A person to whom this section applies may apply in writing for a review of the decision to the appropriate benefits review committee established under this section.
- (1B) The application must be made-
  - (a) within 3 months after receiving notification of the decision; or
  - (b) if the committee considers there is good reason for the delay, within such further period as the committee may allow on application made either before or after the expiration of that period of 3 months.

(1C) For the purposes of subsection (1), a person in respect of whom a decision or determination is made under Part 4 or under regulations made under <u>section 155</u> is to be treated as a beneficiary.

- (2) The Minister shall establish at least one benefits review committee for every office of the Department where decisions or recommendations in relation to the matters to which this Act applies are made or were made
- (3) Every benefits review committee shall consist of
  - (a) a person resident in or closely connected with that office of the Department appointed by the Minister to represent the interests of the community on the committee:
  - (b) repealed
  - (c) two officers of the department appointed by the chief executive  $\square$ 
    - $\Box$ i) from time to time; or
    - (ii) in respect of the particular review.
- (4) The member of the benefits review committee appointed under subsection (3)(a) of this section□
  - (a) shall hold office during the Minister's pleasure:
  - (b) may be paid out of the Department's Bank Account, from money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and

expenses, in accordance with the Fees and Travelling Allowances Act 1951; and that Act shall apply accordingly:

- (c) shall not be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of his or her membership of the benefits review committee
- (5) All secretarial and administrative services required for the purposes of the review committee shall be supplied by the Department.
- (6) At any meeting of the review committee the quorum shall be the total membership, and the decision of any 2 members of the review committee shall be the decision of the committee.
- (7) No officer of the Department shall act as a member of the review committee if that officer was involved in the decision being reviewed.
- (8) As soon as practicable after receiving an application for review the review committee shall review the decision and may, in accordance with this Act, confirm, vary, or revoke the decision.
- (9) On reaching a decision on any review, the review committee shall give written notification of its decision to the applicant for review and shall include in the notification—
  - (a) the reasons for the review committee's decision; and

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(b) advice that the applicant has a right of appeal against the decision to the Social Security Appeal Authority.

#### Other changes proposed in the Bill

#### Application process (Clause 6 sections 10B and 10C)

The Bill provides for there to be considerably more detail about the process in legislation. For example an application for a review has to be in writing and has to be provided to the chief executive. It also has to identify the decision or decisions that are being asked to be reviewed; the grounds on which it is made and *the relief sought*. The chief executive also has to acknowledge the application in writing

A significant change that is proposed is that it would no longer be the Committee's decision as to whether or not it accepted a late application. This decision would be made by the chief executive and the provision includes a number of reasons why a late application must be accepted. These include: failure by the chief executive to notify the applicant of the decision; failure by an agent acting on behalf of the applicant to make the application in time and where the applicant was so affected or traumatised by events at the time of receiving the decision that he or she could not consider his or her review rights.<sup>7</sup>

#### Comment

The only stipulation in the current Act is that the request has to be in writing. The proposed provisions that are not part of the current guidelines are the requirement to state the grounds on which the application for a review of decision is made and the relief sought.

The current Act provides for the Committee to accept a late application if there is a good reason for the delay. This provides the Committee with the discretion to take all the circumstances of the individual into account.

The examples given are likely to be seen as good reasons for the delay. It would be hard to establish (after the event) that a person was so traumatised by the decision that an application could not be pursued. It could also be hard to determine what is meant by 'affected'.

The Ministry already has standards in place for acknowledgment of an application (within 24 hours of receipt of the application).

#### Conduct of review: general principles and hearings (sections 10F and 10G)

These two provisions set out the principles that should be complied with during the process of the review. These are currently set out in the Ministry guidelines and standards.

<sup>&</sup>lt;sup>7</sup> Refer clause 6 section 10B(3)(c)

#### Comment

The principles of natural justice and impartiality are stressed in the current guidelines and are an underlying premise in any review and appeal process.

The New Zealand Bill of Rights Act (section 27(1): the right to the observance of the principles of natural justice) states that:

"Every person has the right the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law."

The requirement that a person must disclose any previous involvement with the decision is already in place, and the disqualification rules are well established (refer section 10A (7).

#### Review decisions: formalities and substance (sections 10H and 10I)

These two provisions set out the steps that should be taken in making the decision and informing the applicant of that decision. The proposed Bill would place a timeframe on the reviewed for making a decision (14 days) under the current legislation it is 'as soon as is practicable'. It also provides for the review decision to be binding on both parties.

#### Comment

The current legislation simply provides for the Committee to confirm, vary or revoke a decision. It also stipulates that decision has to be provided to the applicant in writing, including the reasons for their decision and informing them that they have the right of appeal (refer section 10A(9).

Although the legislation only refers to 'as soon as practicable' there are timeliness standards in place.

Although the current legislation is silent on whether or not the decision of the BRC is binding on the chief executive generally the decision of a BRC will bind the chief executive and it will be extremely rare for the Ministry to consider overturning a BRC decision.

Making the review decision binding on **both** the applicant and the chief executive as is proposed raises the question of appeal rights? Currently the Ministry has no right of appeal from a BRC decision. This is because a decision made by the BRC has the same standing as one made personally by the chief executive. The chief executive cannot appeal his or her own decision. However an independent reviewer would not be acting in place of the chief executive it therefore should follow that the chief executive should be able to appeal that decision.

#### Procedure on Appeal (Clause 7)

The Bill proposes to insert a new provision in section 12K (Procedure on Appeal) that restricts the Authority to matters raised in the notice of appeal and such other matters to which the appellant consents.

#### Comment

The proposed provision would limit the scope of the Authority to the matter raised in the notice of appeal unless the appellant consents. The Authority at present can consider any evidence that it believes is relevant to the case at issue. Under section 12M of the Act prescribes that appeals before the Authority are by way of a rehearing.

The amendment proposed in the Bill would in effect overrule the recent Supreme Court Judgment by limiting the scope of the Authority.

#### Regulations relating to reviews and appeals (Clause 8)

This clause provides for a regulation making power in relation to prescribing rules for the conduct of reviews and setting the costs in relation to new section 10J and 12O. Section 12O currently provides for costs to be paid in relation to Appeals but does not give any indication of what these should be

#### Comment

This is a new provision but the insertion of a new regulation making power would only have an impact if the power was invoked.

#### Notices (Clause 11)

This clause amends section 86J by inserting a requirement that the chief executive must give notice to an applicant of their right of review (and right of appeal) of a decision and details what that notice must say.

#### Comment

There is no need for this to be legislated for both of these are common practice now and the template letters that are used are adequate. Section 12K(11) of the Social Security Act 1964 already provides for notices of decisions to be given by post and there is little that the proposal would add to that.

#### APPENDIX THREE

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# Cost associated with establishing an independent review procedure to replace the Benefit Review Committee process

This costing comes with the caveat that it has been completed with insufficient details and assumptions have been made which may or may not eventuate. Some aspects have not been included because of time constraints and lack of detail – for example communication costs, business processes and costs around payment of awarded costs and the tendering process for the contractor.

As with the similar review process for ACC decisions, it can be expected the expertise required of reviewers conducting a quasi-judicial process will be predominantly held by lawyers (except in medical or incapacity matters), and therefore that reviewers would be largely recruited on contract from the legal profession. The requirement to engage reviewers on contract will also incur additional costs from those of employees, given that remuneration rates will include elements (for example, overheads) that are not applicable to Ministry employees, and that reviewers would likely seek indemnities or reimbursement for public liability insurance to protect them against action from disappointed applicants for review for statements made in the course of a review.

A <u>full year cost</u> for BRC adjudications to be heard by an independent contractor would be around \$3.6 million net (excl GST) after deduction of savings.

This represents a cost for each case heard by the contractor and some provision for expenses where the contractor is required to travel and be accommodated away from their usual locality. It does not include the cost of indemnity insurance which could be quite considerable

A cost has also been included for a Quality Assurance function in each of the 13 regions to ensure that reports are of an acceptable standard before going to the independent contractor. This represents a higher level of quality control than currently applies and was suggested by Diane Anderson's team.

The costing also reflects an offset for savings that would arise because staff would no longer be involved in the BRC hearing process (i.e. as panellists and chairpersons) and the chairperson position would not be required to spend time drafting decisions. There are also savings because community representatives are not included in the proposal and fees will no longer be paid. Savings for staff time and payments to community representatives are estimated at around \$847,000 a year.

Apart from the operating costs there would be an initial one off cost of approximately \$444,000 for IT changes and for a project team to undertake the implementation. This amount is made up of \$250,000 for IT changes and a further \$194,763 for the project team.



# MINISTRY OF SOCIAL DEVELOPMENT Te Manatū Whakahiato Ora

То	Jackie Theobald, Private Secretary	Date	20 November 2007
From	Diane Anderson, National Rela Representatives	ationship M	Nanager for Client
Security Level	UNCLASSIFIED		. 6

# BACKGOUND INFOMATION ABOUT THE BENEFITS REVIEW COMMITTEE PROCESS

Action For Information

The purpose of this report is to provide you with:

- information about the current Benefits Review Committee (BRC) process
- background information about the 2000 policy review of the benefit review and appeal process
- information about the National Review of Decisions (ROD) Team

#### The benefit review process

In general, decisions the Ministry makes about benefit entitlement can be formally reviewed, for example a decision to cancel a benefit or set a particular rate. Approximately five million decisions per year would have review rights attached; of these there are approximately 5,000 formal review of decisions received each year which equals 00.1% of the decisions made by the Ministry. Off these 40% proceed to a formal Benefits Review Committee.

#### **Review of Decisions Received by Service Line**

The proportion of Review of Decisions received by the different services lines has been fairly consistent over the last four years. Work and Income receives approximately 80% and Specialist Services; which includes Benefit Control, National DataMatch Centre, International Services, Community Services Card Centre and StudyLink receiving the remaining 20%.

The first step in the process is an internal administrative review (called a Review of Decision or ROD) within the Ministry. This is an opportunity to re look at the decision

and to consider any additional information that might have been provided. This gives us the option to change the decision (in hindsight should have been different or based on the additional information we are now able make a different decision) or to reaffirm that the original decision was correct. This also gives us a second chance to çt 1982 explain how and why the decision was made to the client.

Outcome of Internal Review (ROD) based on approximately 5000 reviews:

Upheld	1,900	38%
Partially Upheld		3%
	2,050 (pro	ceed to a BRC)
Overturned	1,000	20%
Withdrawn	1,600	32%

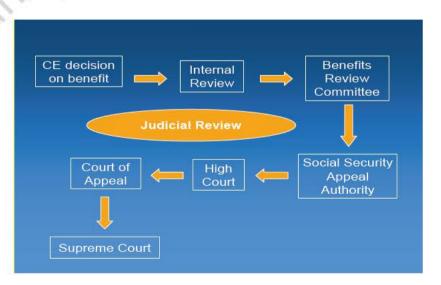
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The number overturned demonstrates that the Ministry's internal review process is working well and incorrect decisions are being corrected at the earliest opportunity.

If the decision stands (is upheld) the review then automatically goes before a BRC; approximately 2000 cases. A committee has three members. Two members are Ministry of Social Development representatives and the third is a Community Representative appointed by the Minister of Social Development and Employment. Committee members should not have had any prior involvement in the case to be heard.

The committee must act independently of the Ministry and make a decision within the law. The committee will look at the relevant Law and Policy and how this should be applied in the particular situation and whether the decision was fair and reasonable in line with the relevant Law and Policy.

The Social Security Appeal Authority (SSAA) is an independent judicial tribunal administered by the Ministry of Justice. The diagram below sets out each stage of the review and appeal process:



#### Policy Review of the Benefits Review and Appeal System

During 2000 a working party consisting of representatives from the then Ministry of Social Policy (MSP) and the Department of Work and Income (DWI) and the National Beneficiaries Advocates Consultation Group (NBACG) conducted a review of the benefit review and appeal process.

Recommended options from this review could only be implemented through the budget process because of fiscal and legislative implications. Due to competing priorities for government this was not advanced.

Background on the two options considered in 2000:

- Option A<sup>1</sup>: Internal Model -setting up a specialised unit within DWI to handle reviews; and
- (ii) **Option B<sup>2</sup>: External Model** -an externally contracted body completely separate from DWI would be responsible for carrying out reviews.

The working group did not reach consensus representatives from the NBACG preferred Option B because of its independence from DWI's delivery function which they considered essential to achieve a fair, impartial and accessible review process.

DWI and MSP preferred Option A as it was in line with general principles for a review system; it would build capability by retaining a strong feedback loop between review and delivery functions and would maintain a core function within the public service.

Options A (Internal Model) formed the working group's recommendation, although the lack of consensus with the NBACG was noted. The Minister asked for this proposal to be amended to include Community Representatives.

#### Fiscal Implications

0/02

These are summarised in the table below based on the information available to the Working Group in 2000.

For the following reasons the costs must be regarded as indicative only:

- lack of data to accurately assess volumes of cases (DWI has only recently started to collect monitoring information on reviews); and
- commercial sensitivity of costing information for the private insurers model (the costings for option B are based on costing scenarios provided by Dispute Resolution Services).

<sup>&</sup>lt;sup>1</sup> Refer Appendix 1 for details of Option A

<sup>&</sup>lt;sup>2</sup> Refer Appendix 2 for details of Option B

Summary of the Estimated Cost of the Options as at September 2000

	Option A (Internal Option)	Option B (External Option)
Total one-off costs	\$575,000	\$224,000
Total annual costs	\$2,174,000	\$5,318,000

#### National ROD Team

The Ministry continued to be concerned that BRCs were not operating as efficiently and as effectively as they could. This is despite our efforts over time and the incremental improvements that had been made by Work and Income and Specialist Services.

A project team with representatives from the NBACG was established in 2004 to review the operational processes relating to the BRC system and make the necessary changes aimed at improving the effectiveness of the system. The work that the project team completed included:

- establishing best practice standards
- · consolidating and improving the resource material and support for BRC's
- launching a BRC iNet site
- developing and implementing a performance monitoring system

A national ROD Team was established in February 2005 which recognised that the ROD/BRC process needed to be more consistent and transparent across all of the Ministry's service lines. The ROD team is a permanent part of Corporate and Governance and operates within the whole MSD structure. The core function of the permanent team is primarily of support and quality assurance which:

- provides Work and Income and Specialised Services with a one stop shop for advice, training and support
- is independent of the service lines
- monitors the ROD/BRC performance standards
- manages the recruitment, review and administration of Community Representatives
  - maintains and enhance resources required in the ROD process



# **BUSINESS PROCESS IMPROVEMENT: Future State for Reviews of Decision**

### Introduction

Reviews of Decision (RoDs) provide clients with an avenue to seek a review of any formal decision made in relation to their income support and/or housing. This provision is under section 10A of the Social Security Act 1964.

Problem Process ownership of around the dedicat required to comple process step, resulti and inappropriate allocation.	and clarity ed resources te each ng in delays <b>Causes</b>	<ul> <li>Over half of RoDs have a delay reason entered into the system, resulting in significant time delays</li> <li>There's significant variation in which roles perform each step because there is no standard allocation of role to process step. There's also variation in how the process is completed by each Service Delivery group resulting in an inconsistent process.</li> </ul>
--	---	--

Business Process Management are applying the Lean framework to make improvements to the Reviews of Decision process. Lean operates on five base principles and has five key stages:

Specify value	Specify value:	Focus on steps which deliver value to clients.
58.	Eliminate waste:	Eliminate any process, activity or practice that does not deliver value to the client.
Brun Pure	Deliver efficiently:	Manage the flow of work to reduce bot lenecks.
Restored The State	Respond to demand:	Structure your workforce for optimal responsiveness.
	Build in quality:	Automate or standardise steps which are repetitive or prone to human error.
32 0 Dencien	Discover	Analyse Design Deliver Handover

The discover and analyse phases have already been completed for this work. This resulted in the problem definition and root causes stated above, which were approved by BOLT earlier this year. Included in this pack is the A3 outlining the full findings from the discover and analyse phases.

Also included in this pack is the A3 outlining the high level design for a **Future State RoD Process**. The Future State RoD Process proposes a streamlined **National Standard Process**, **Triage Model**, **National Work Queue** and varying **Timeliness Standards** based on complexity. The Future State RoD Process has been designed to mitigate the problems and root causes identified, enable improved process efficiency and support continual improvement to the RoD process and up-front decision making by staff.

Three options for future state operating models have also been developed, with the approved operating model to be implemented alongside the Future State RoD Process. Consistent across all three of operating model options are:

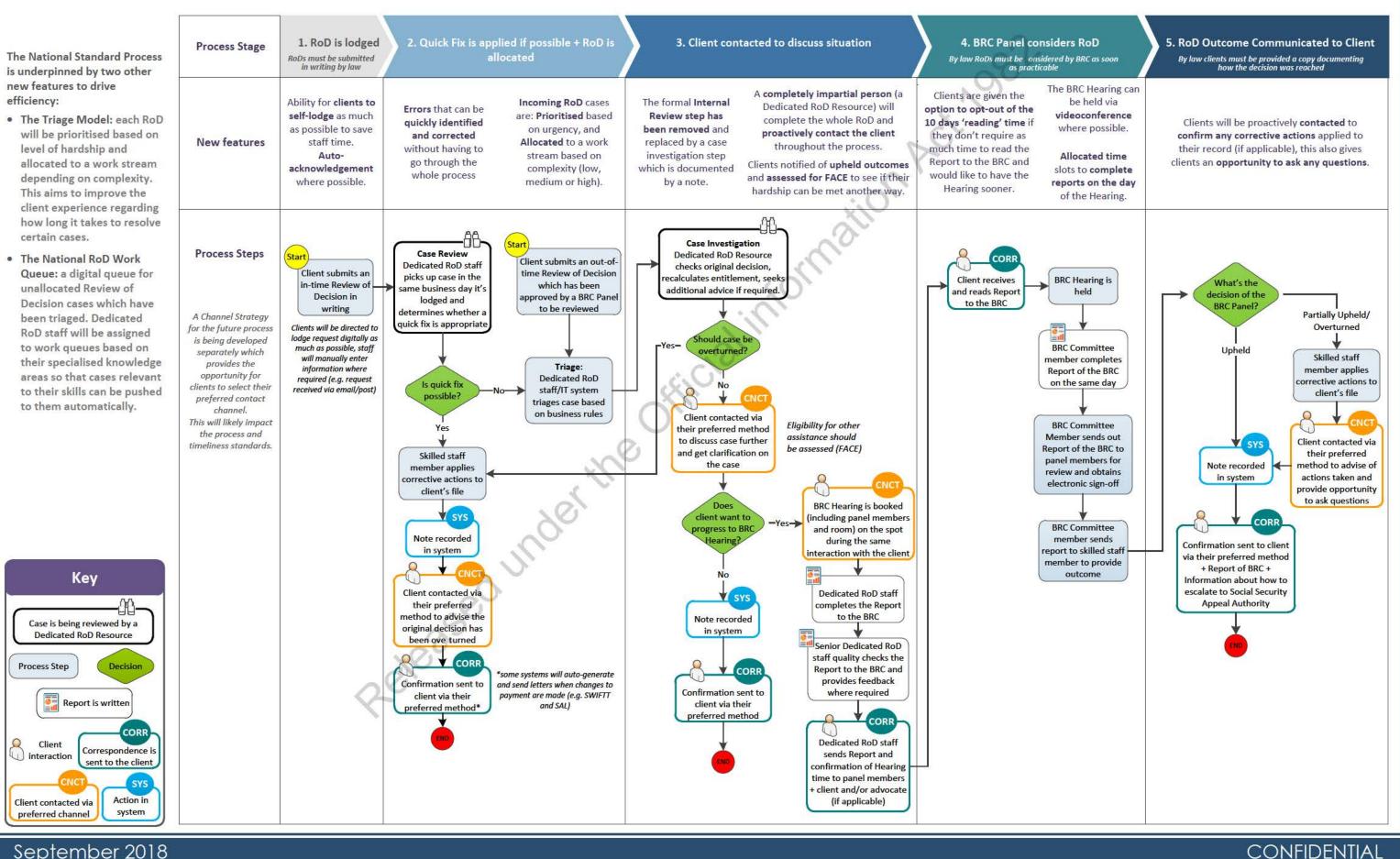
- a national process owner, and
- dedicated RoD resources.

Decision sought	S • Note that the Timeliness Star	Future State RoD P ndards. Details of	mended Future State RoD A Process includes a Triage M these will be worked throu d work with to implement	odel, National Wor gh in the detailed o	k Queue and revised design stage.
The National Standard Process	consistent process. The va been incorporated into on The key considerations for client experience. simplifying the process v	rious processes curr le standardised prod developing the Nat within legislative par	ional Standard Process have	n analysed and bes e been:	
The Site Focused Model	Sites are responsible for RoDs relating to decisions made at their site. Site-based RoD Resources will focus on completing RoDs for their site(s) and draw cases from the National Work Queue as they have capacity.	The Region Focused Model	Regions are responsible for RoDs lodged by clients in their Region. Regionally-based RoD Resources will focus on completing RoDs for their Region and draw cases from the National Work Queue as they have capacity.	The National Model	RoDs are managed nationally and completed by Dedicated RoD Resources. Sites will no longer complete this function. Work allocation will be skills- based. Dedicated RoD Resources could be based anywhere.
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### Future State Reviews of Decision Process

The Review of Decision business process has been redeveloped into a streamlined future state National Standard Process with varying timeliness standards based on the complexity of the case.

Having a standard process across the country improves the ability to identify any inefficiencies and better supports continual improvement efforts.



September 2018



MINISTRY OF SOCIAL MANATÚ V

#### **Summary of Future State Options**

Three options for the future state operating model have been designed to manage Reviews of Decision in the future. These have been developed based on the agreed problem definition which highlighted a need for clarity around which roles complete which steps in the process.

The options vary in terms of the range of roles involved and how the defined roles align with parts of the National Standard Process.

Each of the three options have been assessed to determine:

- the most significant benefits (pros) and cons of each option,
- the most significant risks of each option,
- · the costs associated with each option, and
- how the operating models meet the assessment standards.

#### The Dedicated RoD Staff

- RoDs will be completed by dedicated staff who are solely focused on RoDrelated tasks and will complete each RoD end-to-end. They will also participate in Benefits Review Committee panels when required.
- A case management model will be applied where each dedicated resource will maintain a caseload of RoDs in various stages through the process and will receive new cases from the National RoD Work Queue as they have capacity.
- They will also be responsible for redirecting RoD cases to the correct owner (e.g. site, Region, work queue), as required.
- They may not have security access or the right skills to apply corrective actions when required so will be reliant on other skilled staff for this action.
- It is not possible for each dedicated RoD resource to cover all assistance types, so they may be differently skilled to cover the full array of reviewable assistance.

A National Process Owner will be appointed to oversee national performance and support continual improvement for both the RoD process and upfront decision-making.

**Reviews of Decision Future State Options** 

The following assumptions have been applied to the Costings modelling:

- A management ratio of 1 manager:10 staff has been applied,
- 100% of the relevant salary bands have been used to calculate cost of remuneration (incl. leave accrual, superannuation contributions and ACC levies),

Caveats

- Property costs have not been included in the costings calculation because focus has been limited to the resource cost to support workflow,
- Dedicated RoD Resources will participate in Benefits Review Committee Hearings via videoconference and teleconference therefore no travel costs have been included.
- The following costs have not been included:
- The cost of Community Representatives as these will not be impacted by our improvement efforts.
- The cost of the RoD Taskforce currently working to clear the backlog of RoDs.

A future reduction in the demand of RoDs is expected due to the continual improvement efforts to support better upfront decision making of this new process as well as the previously identified non-business process improvements.

Option	Workflow Demand Specialist Knowledge Areas	Option 1A: Site-Focused Approach Accountability for sites to manage their RoDs and visibility for decision-making staff of how many of their decisions are reviewed Sites are responsible for RoDs for decisions made at their site. Site-based Dedicated RoD Resources prioritise completing RoDs for their site(s) and draw cases from the National Work Queue as they have capacity. Ratio of Dedicated RoD Resources is aligned with RoD demand for the site, one resource could support multiple sites. Resources will be skilled in the assistance types their site grants.	Option 1B: Region-Focused Approach           A localised approach which provides an impartial team, focused on managing all RoDs for clients in the Region.           Dedicated RoD Resources will prioritise completing RoDs for clients in their Region and draw cases from the National Work Queue as they have capacity.           The ratio of Dedicated RoD Resources is aligned with the RoD demand in their Region.           The Dedicated RoD Resources are responsible for completing RoDs for all assistance types and will consult with staff with specialised knowledge (e.g. Fraud, Students, Seniors) when further expertise is required.	Best addresses to Reviews of Decision of will no longer be required the country and will knowledge area. The ratio of Dedicate meet the demand for Teams will be focuse Fraud) but could be to Work Queue.
	Corrective Actions	Corrective actions will be applied by the co-located original decision-makers on site.	Any corrective actions required will sent back to the original decision-makers to apply.	Corrective actions ar
Pros		<ul> <li>Continual Improvement: Decision-making staff will be responsible for putting their decisions right which supports their learning and development.</li> <li>Client Commitments: Clients will have decisions reviewed at the same site as it was originally made which provides a sense of ownership and accountability.</li> </ul>	<ul> <li>Client Commitments: The Regional Dedicated RoD Resources will be able to provide a local, personalised service as they will have knowledge of products and services available for their clients through MSD s partnerships with local agencies/businesses.</li> <li>Performance: Regionally-focused staff will have a vested interest in their performance and will likely take pride in out-performing other Regions. The level of reallocation will also reduce as ownership of incoming RoD cases will be clear.</li> </ul>	Client Commitm absences, which Performance: In focused on man they will likely b
Cons		<ul> <li>Performance: The breadth of knowledge required for a Dedicated RoD Resource to manage all RoDs for a site may not be realistic, negatively impacting timeliness and quality.</li> <li>Continual Improvement: Due to the dispersion of dedicated staff, the ability to moderate RoD outcomes and disseminate good practice would be negatively impacted.</li> </ul>	Continual Improvement: Regional separation makes the sharing of knowledge particularly challenging and any additional training to support national enhancements to the process will be more labour-intensive to deliver. Performance: Delays may be experienced when applying corrective actions as this model relies on the existing skilled staff in the sites to complete actions amongst other competing priorities.	Continual Impro actions for their mistakes. Continual Impro training may be
Risks	5	<ul> <li>Dedicated RoD resources may get pulled in to complete other work which is deemed more urgent for their site (especially if there is no KPI to keep their focus on RoDs)</li> <li>Sites will not be able to easily share continuous improvement ideas because they will be working in isolation which may promote sites creating their own workarounds which deviate from the national standards set.</li> </ul>	<ul> <li>Regions will be working in isolation which may result in inconsistent practice and workarounds which deviate from the national standards set.</li> <li>There are risks associated with Dedicated RoD Resources relying on specialised staff to complete RoDs regarding specialised products/services: the specialised staff may not provide all the information required; they may provide more information than is required due to a sense of ownership of these products/services; or they may be delayed in their response due to competing priorities.</li> </ul>	<ul> <li>Removing the Reimpair the abilit</li> <li>The purpose and because the funnegative perception</li> </ul>
SS Cos Indicative sala based on FTE e	iry costs	Cost 100 FTEs for Dedicated RoD Staff, 1:10 Management ratio 130 Sites Investment Cost: \$7,180,877 (SCMs providing oversight)	SS Cost 91 FTEs for Dedicated RoD Staff, 9 Team Managers 11 Regions Investment Cost: \$6,523,095	SS Cost
Assessment St	tandards	Client Commitments High	Client Commitments High	Client Com Continual Im
Weighted S	coring	3	2	

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	A set of mea	Assessment sures to compare key q by clients,	ualitative success f	factors specified
	SS Cost	business-as-usual after	ting model will cost to implementation, inclu onal Standard Process	iding the costs of the
	Client	How much each mode Commitment	l supports MSD staff t is for the service we p Medium: 5 to 8	
	Commitments	commitments are met	commitments are met	commitments are met
	Continual	the second s	rt ongoing improvem nd upfront decision-m	ents to both the RoD naking.
	Improvement	Low: 1 to 2 criteria are met	Medium: 3 criteria are met	High: 4 to 5 criteria are met
		How much the operating m met, mitigates against t producing reports to a high an	he most significant time	e delays, as well as
	Performance	Low: 2 or fewer criteria are met	Medium: 3 to 4 criteria are met	High: 5 or more criteria are met
	F	lecommended Option	12	
		Option 1C:		
		National Approach		
v Ju	ill be completed	kills-based workflow at a national level by D this function. The reso the National RoD Work	edicated RoD Reso urces complete cas	es from around
		is aligned with the national states in the states of the s	onal demand and v	vill be split to
		RoDs for specialist know		
Ь	ased anywhere a	is work will be assigned	digitally from the I	National RoD
re	completed by s	killed staff who comple	te these tasks as a	priority.
h na be	improves efficien proved quality a ging RoD cases of a efficient in com vement: Limited decisions that ar vement: Feedbac	e ensure effective workl ney and reduces delays. Ind timeliness as the Dec on specialised products/ pleting these cases to a accountability for decis re overturned, limiting o ck to individual sites and cause the relationship is	dicated RoD Resour services they have high standard. ion-making staff to pportunities to lea d staff on trends ar	rces will be expertise in and apply corrective irn from their
20	D function from	frontline staff may redu	ice their sense of a	ccountability and
ty	for decision-ma	kers to learn from revie	W5.	Â.
10		nay be diminished in the moved from their envir		
		Dedicated RoD Staff, 11 Specialist Knowle	dge Hubs	rs
		Investment Cost: \$6,	000,247	
n	nitments	High		
η	rovement	Medium		
m	ance	High		
		<u></u>		
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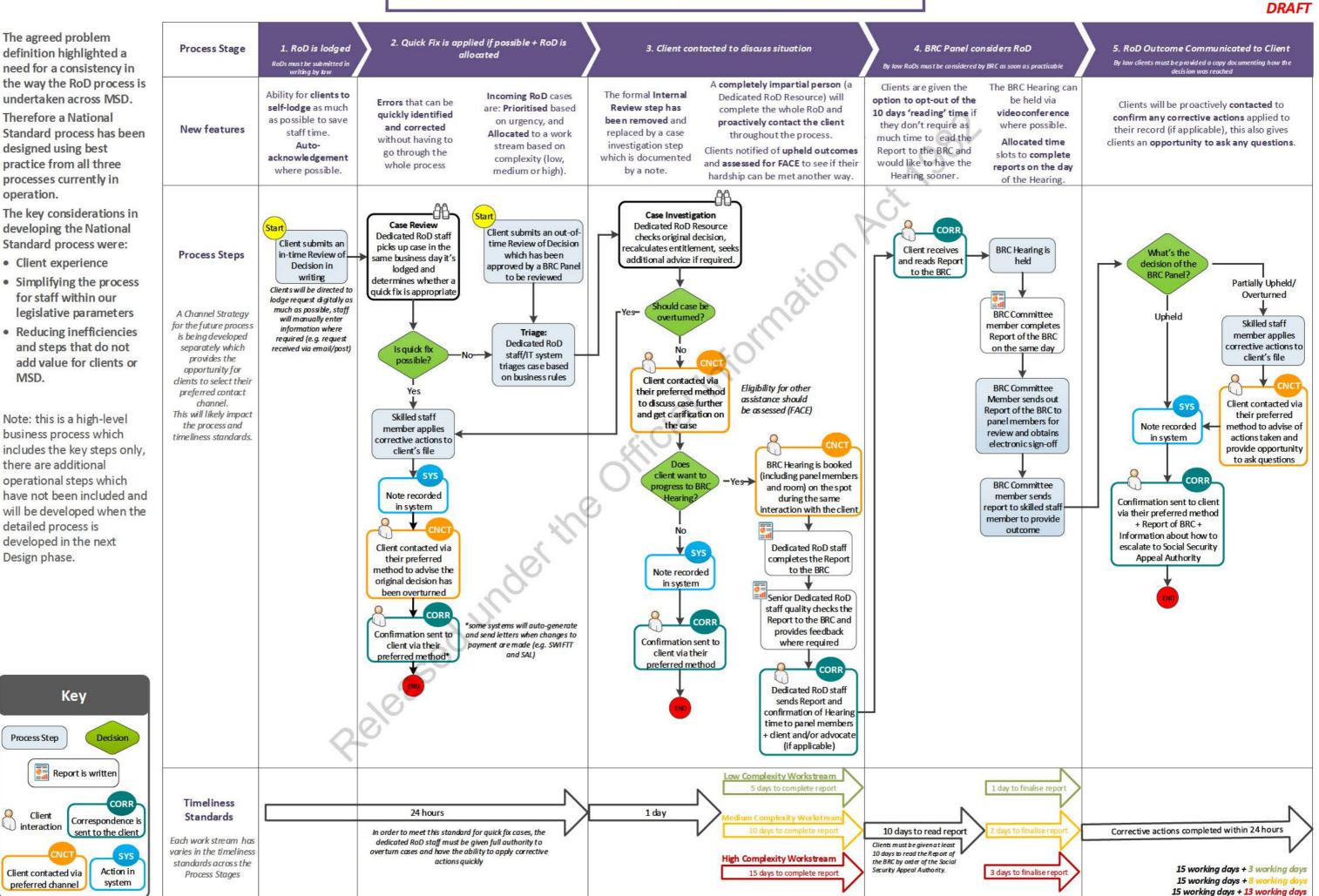
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# MINISTRY OF SOCIAL DEVELOPMENT TE MANATŨ WHAKAHIATO GRA **BUSINESS PROCESS IMPROVEMENT: Reviews of Decision Future State Options**

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Background	<ul> <li>The future state Reviews of Decision both:</li> <li>the standard process, and</li> <li>the operating model.</li> <li>This document describes the properties options for a future operating been developed to rectify issues id</li> </ul>	osed standard   model. The red	process for RoDs and commendations have	<ul> <li>The standard process includes the steps every case will go through towards completion and will be consistent across any operating model.</li> <li>The operating model includes the staff involved and the responsibilities of each role.</li> </ul>
Agreed Problem Definition:	• Over half of all RoDs have a delay rea	lting in delays a ason entered into ich roles perform e	nd inappropriate workflow a the system, resulting in signific each step because there is no sta	ant time delays andard allocation of role to processstep. There
The Options Operating Mo	on the agreed problem definit			uture. These have been developed based nd which resources complete which parts of
	Assessment Criteria		Future Stat	e Operating Model Content
model: cultivates Contir supports meetin creates a better ensures a Qualit supports staff to will Cost to run a	lel has been assessed to determine how mu nual Improvement, og Timeliness standards, Client Experience, oy and Accurate Outcome, o apply the Client Commitments, as business-as-usual after implementation, taff to implement and on-going as business		There are five Future State Ope range of roles involved and hov National Standard Process. Opt within MSD, and options 2 and contracted service provider. Each of the five opt ons have be	rating Models in total, and vary in terms of the variable of the defined roles align with parts of the ions 1A, 1B and 1C are models for managing RoDs 3 are models to operate alongside a third party een assessed to determine: (pros) and cons of each option, each option, ch option, and
2 2			10	
allocated to a work dient experien The National Stan through; timelines allocated to. Having The National RoD Wo cases which have queues based on the sk A National Proce		various processe tate RoD process of hardship and s to improve the ertain cases. oD case will go eam the case is any inefficiencies Review of Decision ssigned to work s relevant to their	<ul> <li>s currently in operation have behind any operating model to behind any operating model to the behind any operating model to the behind any operating model to the behind any operation be completed tasks and we participate in Benefits R</li> <li>Applying a case manage maintain a caseload of F will receive new cases for capacity.</li> <li>They will also be respond to where (e.g. site, Region).</li> <li>They may not have securactions when required station.</li> <li>It is not possible for eactions when the behind any operation.</li> </ul>	appropriate workflow allocation and a been analysed to inform key features. These that is implemented. a Dedicated RoD Staff by dedicated staff who are 100% focused on <i>v</i> ill complete each RoD end-to-end. They will also teview Committee panels when required. ment model, each dedicated resource will RoDs in various stages through the process and rom the National RoD Work Queue as they have as ible for redirecting RoD cases to the correct , work queue), as required. mity access or the right skills to apply corrective to will be reliant on other skilled staff for this h dedicated RoD resource to cover all benefit ybe differently skilled to cover the full array of
0	improvement.		reviewable assistance.	be an elentry stated to obter the funding of
0	A	fimplement	a dedicated PoD	
0.0	Assessment	oj implementin	ng dedicated RoD resource	
~~~ <del>•</del>	Pros		Cons	Risks
a clear business o level who will ens are in place to sup Quality: the time improve with hav supported by on- Impact on Staff: I their core role.	rement: dedicated RoD resources establishes wner for the process at a National Office sure the appropriate feedback mechanisms pop ort continual improvement. liness and accuracy of reports will likely ring 100% dedicated RoD resources going training and development. Frontline staff will be freed up to focus on SCTs and ASCMs will be more available to making staff.	on current r managed w Impact on S descriptions longer be re RoD actions Cost: The Do new role wi	edicated RoD resources will be a hich funding will need to be for. How this is to be funded is	<ul> <li>We may not be able to identify training needs and/or trends for specific sites and staff if the relevant data isn't captured for reporting.</li> <li>RoDs may not be appropriately allocated to the dedicated RoD resource based on their specialist knowledge and ratio of low, medium and high complexity cases.</li> <li>Dedicated RoD staff may not have all of the specialist knowledge required to manage the appropriate ratio of low, medium and high complexity cases.</li> </ul>
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# Future State National Standard Reviews of Decision Process



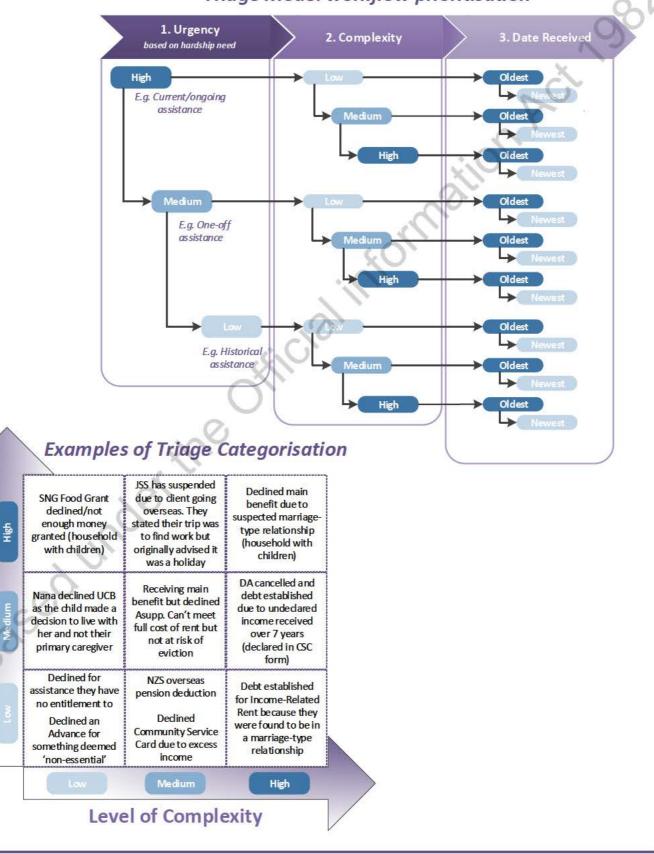
# Future State Triage Model to manage incoming Reviews of Decisions

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The current process has a "one-size fits all" approach which has led to RoDs on urgent assistance taking 2-3 months to be heard. Conversely, some more complex cases, such as section 70A reviews over several decades or fraud cases require a longer time frame to ensure the case is fully reviewed and all relevant information is provided in the Report to the BRC.

The Triage Model workflow prioritisation diagram below shows how each RoD will be allocated to ensure that the client's needs are met in a more timely manner. The Examples of Triage Categorisation provides some examples of how the RoD cases would be considered in relation to urgency and complexity. (Caveat about having to have clear guidelines that will be ok if released via OIA request)



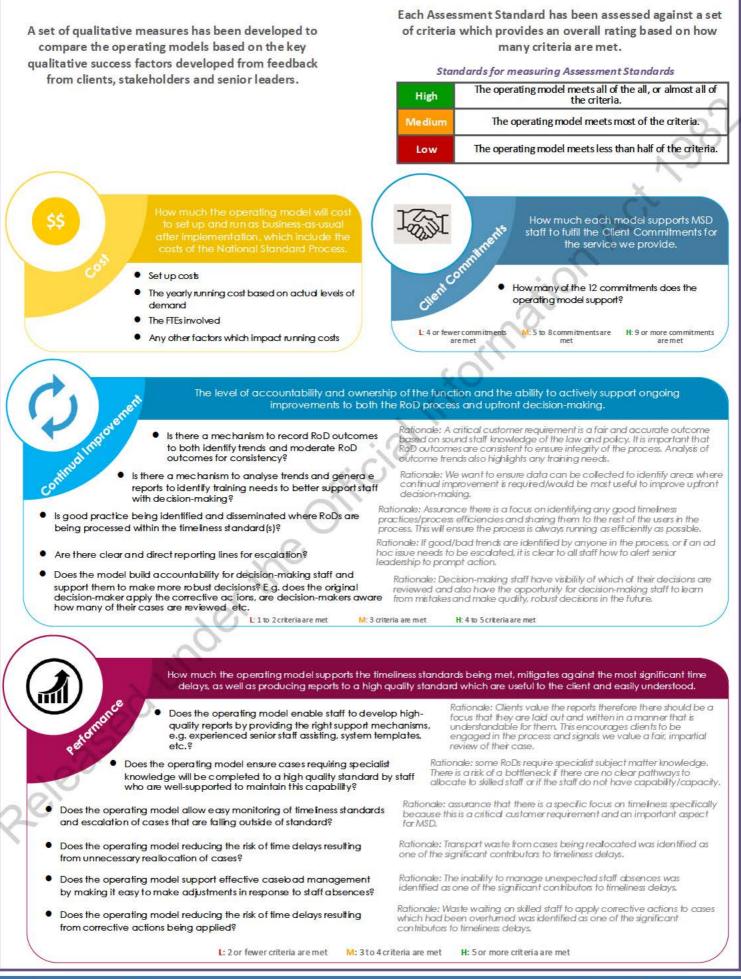
# Triage Model workflow prioritisation

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vel of Urgency

# Assessment Standards for Operating Model Future State Options

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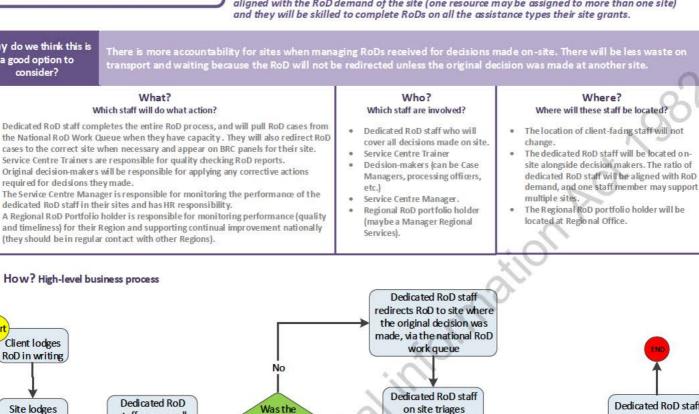
# **Reviews of Decision Future State Options**

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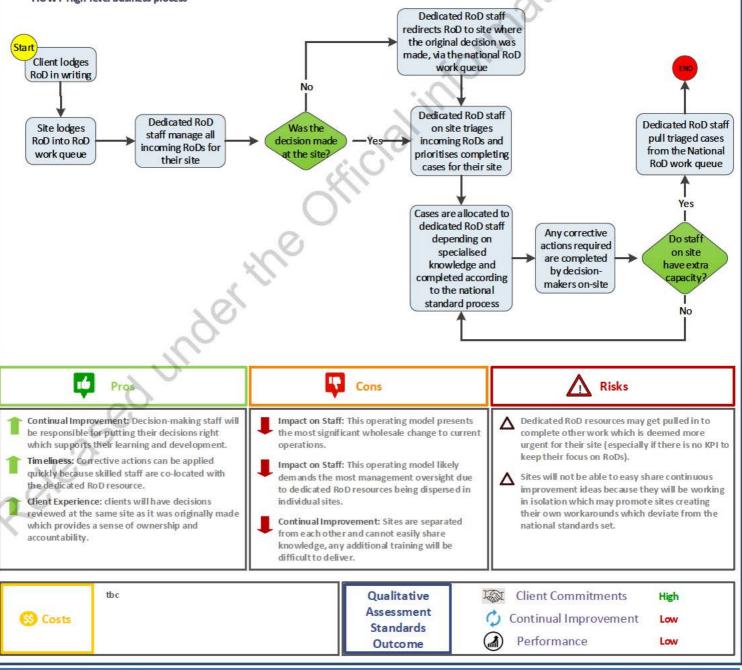


Sites are responsible for reviews for decisions made at their site. Site-based Dedicated RoD Resources complete Reviews of Decisions (RoDs) for their site(s) as their priority and draw cases from the National Work Queue as they have capacity. The ratio of Dedicated RoD Resources is aligned with the RoD demand of the site (one resource may be assigned to more than one site)

Why do we think this is a good option to consider?



How? High-level business process



# August 2018

Option 1A: Site-Focused Approach Assessment	DRAFT
S Cost	
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Client Commitments How much each model supports MSD staff to fulfil the Client Commitments for the service we provide.	High
• We will get to know you, your situation and needs The site-based Dedicated RoD Resource will likely have a closer relationship with clients in their network and will therefore likely k now them more personal	ly.
We will use your feedback to improve our service Yes The service at the site/unit/service centre will likely improve as the decision-makers are receiving feedback on reviews of their decisions from their co-locat.	ed Dedicated RoD resource.
We will make sure you understand everything you need to know Yes The site-based Dedicated RoD Resource will likely have a closer relationship with clients in their network and will be available to engage with clients more re	
We will respect your privacy and be clear about how we use your information and who we share it with The whole RoD process is completed by MSD staff who are tightly bound by this standard.	
We will let you know everything you may be eligible for Yes Site-based Dedicated RoD Resources will be more likely to engage closely with clients in their network because they will likely have a doser relationship.	
The information we give you will be accessible and consistent no matter how you contact us     No The SCTs review RoD outcomes for their site only with no ability to moderate nationally, therefore clients may receive different outcomes, and different ser	vice across the sites.
We will help you however we can, as soon as we can     No     Timeliness may be impacted because it is highly likely the site-based Dedicated RoD Resource will get pulled in to suppor the sites to deliver other non-RoD	
We will be honest about our mistakes and put them right Performance is monitored by the site's Service Manager??	
We will respect you and what is important to you Yes The site-based Dedicated RoD Resource will likely have a closer relationship with clients in their network and therefore have more emp at hetic interactions.	
We will let you know your options, rights and obligations     Yes     The site-based Dedicated RoD Resource will likely have a closer relationship with clients in their network and will be available to engage with clients more re-	adily
We will work together to achieve shared goals     Yes     The site-based Dedicated RoD Resource will likely have a closer relationship with clients in their network and will be available to engage with clients more re-	
Our actions will follow our words     Yes     The site-based Dedicated RoD Resource will be more approachable to clients and are more likely to be held accountable for any expectations not met.	
Continual Improvement The level of accountability and ownership of the function and the ability to actively support ongoin improvements to both the RoD process and upfront decision-making.	g Low
Is there a mechanism to record RoD outcomes to identify trends and moderate for consistency?     No     It is likely that there will be variability in outcomes because Service Centre Trainers quality check reports for their own site(s) and do not have a mechanism	to share outcomes wider.
Is there a mechanism to analyse trends and generate reports to support better upfront decision -making? Yes Trends and training needs of the site will be more visible because RoDs are being completed at the same site as the decision -making staff are based, and the Manager who is responsible for the performance of both roles.	ey have the same Service
Is good practice being identified and disseminated where RoDs are being processed within timeliness standards?     No     Sites will not be directly linked to each other for RoD purposes and will therefore not easily share best practice habits.	
Are there clear and direct reporting lines for escalation?     No Reporting lines are not as direct because individual Service Managers at the sites will be responsible for escalation on top of other competing priorities.	
Does the model build a countability for decision-making staff and support more robust decisions in the future? Yes Decision makers have visibility of their decisions that are reviewed as they are ∞-located with Dedicated RoD Resources and they are responsible for applyin	ng corrective actions.
How much the operating model supports the timeliness standards being met, mitigates against the most significant time delays, as well as producing reports to a high quality standard which are useful to the dient and easily understood.	Low
Are staff enabled to develop high-quality reports by providing the right support systems?     No     Th quality cannot be guaranteed since non-dedicated SCTs will be proving quality oversight, and they are not likely to build expertise in RoDs to since they likely	have competing priorities
<ul> <li>Does the model ensure cases requiring specialist knowledge will be completed to a high quality standard by staff who are well-supported?</li> <li>Some staff must maintain detailed expertise knowledge in the range of services their site provides (e.g. all working age as well as seniors assistance). It is no staff member, especially given that they may only occasionally get to use their expertise.</li> </ul>	No
Is there easy monitoring of timeliness standards and escalation of cases that are falling outside standards?     No Service Managers monitor the performance of the Dedicated RoD Resource alongside other responsibilities, therefore they are not fully focused on improvi	ng RoD efficiencies.
<ul> <li>Is there a reduced risk of time delays resulting from unnecessary reallocation of cases?</li> <li>Yes</li> <li>Sites are responsible for RoDs lodged about decisions made at their site, it is clear where the decision was made therefore there should be minimal confusion</li> </ul>	
Is effective caseload management supported by making it easy to adjust for staff absences?     No Sites only have access to their Dedicated RoD Resource(s) and do not have the ability to draw on staff capacity wider.	

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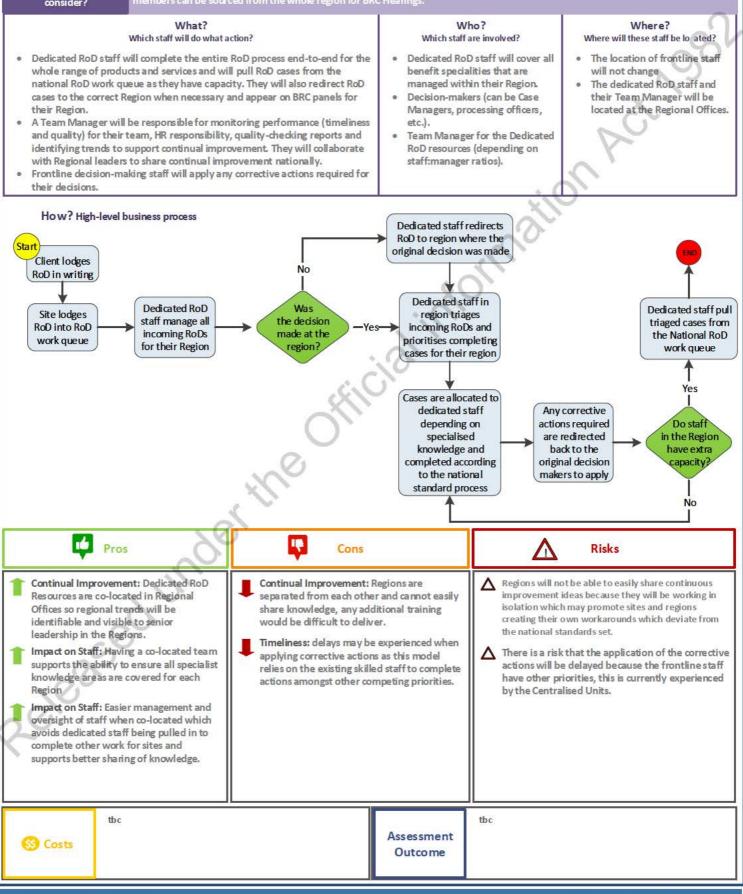
# **Reviews of Decision Future State Options**

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### **Option 1B: Region-Focused Approach**

Regions are responsible for reviews for decisions made in their Region. Regionally-based Dedicated RoD Resources complete Reviews of Decisions (RoDs) for their Region as their priority and draw new cases from the National Work Queue as they have capacity. The ratio of Dedicated RoD Resources is aligned with the RoD demand of their Region (this will determine the size of the team) and they will be skilled to complete RoDs on all the assistance types their Region grants.

Why do we think this is a good option to consider? A presence in Regional Offices will make the function more visible to Regional senior leadership. The Regional Office leaders will oversee performance, identify trends across their region and enact remedial action, or provide support, as required. Rooms and panel members can be sourced from the whole region for BRC Hearings.



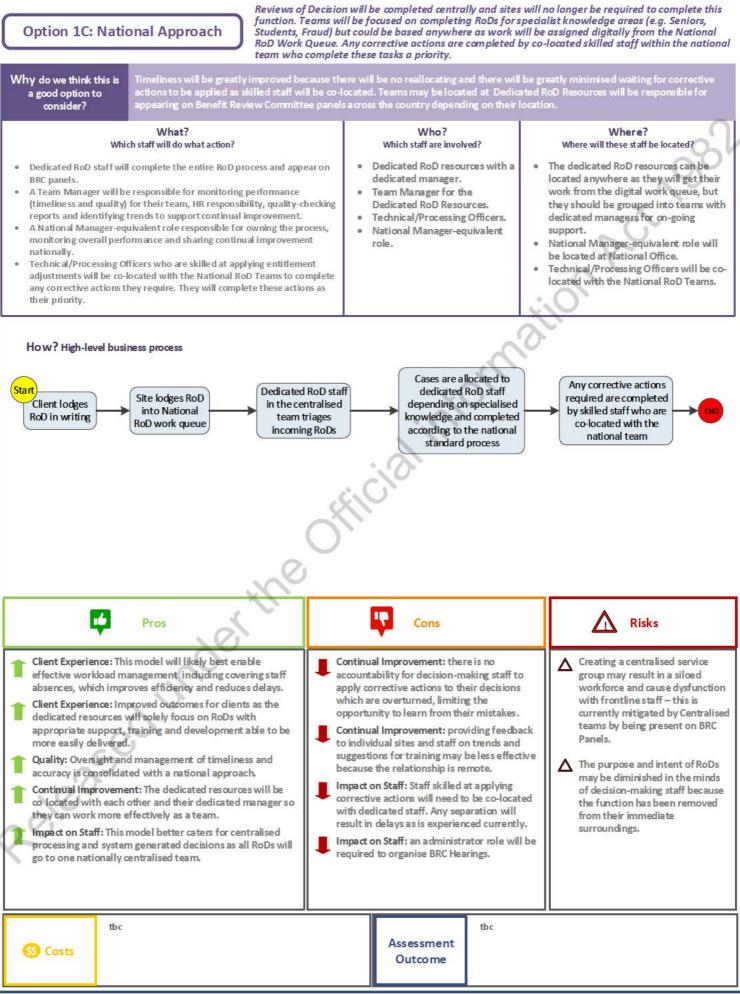
August 2018

Option 1B: Region-Focused A	pproach Assessment DRAFT
S Cost	
	C
Client Commitments How much each model supports MSD staff to fulfil the C	Client Commitments for the service we provide.
<ul> <li>We will get to know you, your situation and needs</li> <li>xx</li> </ul>	× C
<ul> <li>We will use your feedback to improve our service</li> <li>The Regional Team Managers will be responsible for driving continual improvement for the RoD proc</li> </ul>	Yes ess and the decision-makers will learn by applying corrective actions.
We will make sure you understand everything you need to know <b>x</b>	XX
<ul> <li>We will respect your privacy and be clear about how we use your information and who v</li> <li>x</li> </ul>	ve share it with
<ul> <li>We will let you know everything you may be eligible for</li> </ul>	~~`×
<ul> <li>The information we give you will be accessible and consistent no matter how you contac</li> <li>x</li> </ul>	t us x
<ul> <li>We will help you however we can, as soon as we can</li> <li>x</li> </ul>	×
<ul> <li>We will be honest about our mistakes and put them right</li> </ul>	· · · ·
We will respect you and what is important to you	x
We will let you know your options, rights and obligations     X	x
We will work together to achieve shared goals     X	×
Our actions will follow our words     X	x
Continual Improvement The level of accountability and ownership of the fu improvements to both the RoD process and upfron	nction and the ability to actively support ongoing High
<ul> <li>Is there a mechanism to record RoD outcomes to identify trends and moderate for consis</li> <li>Regional Team Managers are expected to collaborate to drive continuous improvement of the RoD p</li> </ul>	
<ul> <li>Is there a mechanism to analyse trends and generate reports to support better upfront d Regional Team Managers are expected to collaborate to drive continuous improvement of the RoD p</li> </ul>	ecision -making? Yes
<ul> <li>Is good practice being identified and disseminated where RoDs are being processed with Regional Team Managers are expected to collaborate to drive continuous improvement of the RoD p</li> </ul>	in timeliness standards? Yes
Are there clear and direct reporting lines for escalation?	Yes
Regional Team Managers will oversee their own teams of Dedicated RoD staff and report directly to t Does the model build accountability for decision-making staff and support more robust decisio	ns in the future? Yes
Decision-making staff are responsible for applying corrective actions for their decisions which are ove will have visibility of how many o their decisions are reviewed.	rturned, therefore they will have the opportunity to learn from any mistakes and
How much the operating model supports the timeliness standard	s being met mitigates against the most
Performance How much the operating model supports the timeiness standard significant time delays, as well as producing reports to a high qui easily understood.	
<ul> <li>Are staff enabled to develop high-quality reports by providing the right support systems The top priority of the Regional Team Managers is to support their team which they are co-located we</li> </ul>	
<ul> <li>Does the model ensure cases requiring specialist knowledge will be completed to a high Each Regional RoD Team will have staff skilled in the assistance types their region grants. Because the areas and no one person will be expected to?</li> </ul>	quality standard by staff who are well-supported? Yes
<ul> <li>Is there easy monitoring of timeliness standards and escalation of cases that are falling of The Regional Team Managers are responsible for monitoring the performance of their team and will</li> </ul>	
<ul> <li>Is there a reduced risk of time delays resulting from unnecessary reallocation of cases</li> <li>The Regional RoD Teams are responsible for the decisions made in their regions and therefore there the response of the respo</li></ul>	Yes
<ul> <li>Is effective caseload management supported by making it easy to adjust for staff absence Each Region will have a team to draw from when staff absences occur.</li> </ul>	

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# **Reviews of Decision Future State Options**

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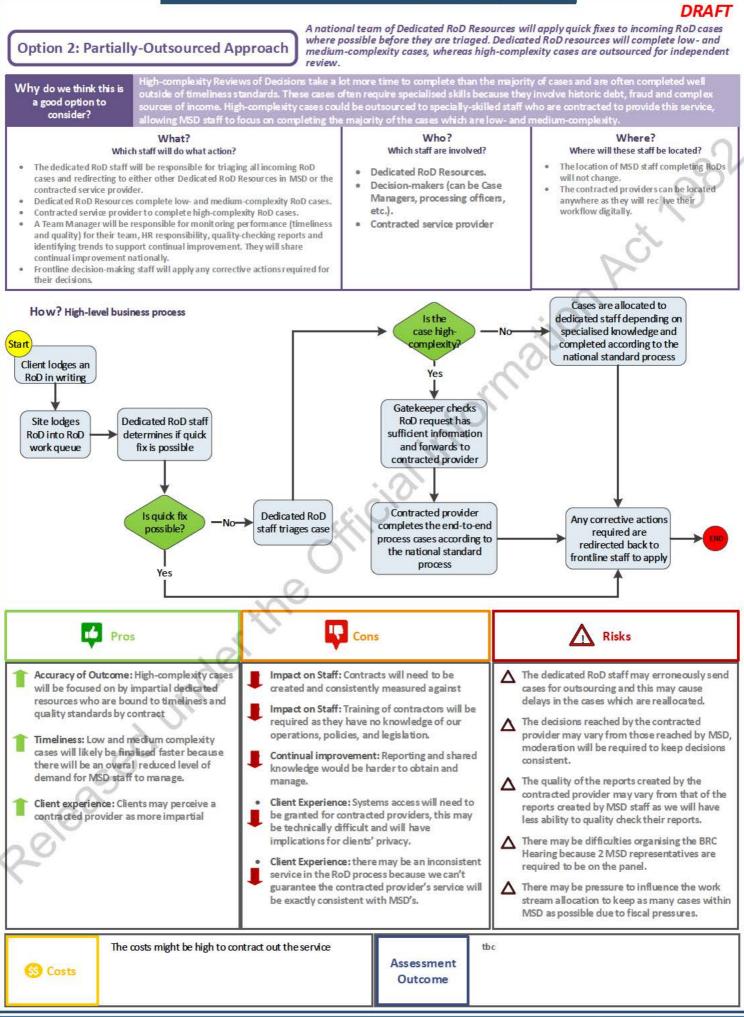


August 2018

Option 1C: Nationally-Focused Approach As	sessment DF	AF
Cost		
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	0	20
Client Commitments How much each model supports MSD staff to fulfil the Client Commitments for the	service we provide.	1
We will get to know you, your situation and needs	×	
x We will use your feedback to improve our service	× 20	
We will make sure you understand everything you need to know	xx	
We will respect your privacy and be clear about how we use your information and who we share it with		
We will let you know everything you may be eligible for	<u> </u>	
The information we give you will be accessible and consistent no matter how you contact us	X	
We will help you however we can, as soon as we can	x	
We will be honest about our mistakes and put them right	x	
We will respect you and what is important to you	x	
We will let you know your options, rights and obligations	x	
We will work together to achieve shared goals	x	
Our actions will follow our words	x	
O`	12	
<b>Continual Improvement</b> The level of accountability and ownership of the function and the ability to ac improvements to both the RoD process and upfront decision-making.	tively support ongoing	
Is there a mechanism to record RoD outcomes to identify trends and moderate for consistency?	х	
Is there a mechanism to analyse trends and generate reports to support better upfront decision-making?	x	
Is good practice being identified and disseminated where RoDs are being processed within timeliness standards?	x	
Are there clear and direct reporting lines for escalation?		
Does the model build a countability for decision-making staff and support more robust decisions in the future?	x	
Performance How much the operating model supports the timeliness standards being met, mitigates aga significant time delays, as well as producing reports to a high quality standard which are use easily understood.	inst the most eful to the dient and Low	9
Are staff enabled to develop high-quality reports by providing the right support systems?	x	
Does the model ensure cases requiring specialist knowledge will be completed to a high quality standard by staff whe	o are well-supported? X	
Is there easy monitoring of timeliness standards and escalation of cases that are falling outside standards?	x	
Is there a reduced risk of time delays resulting from unnecessary reallocation of cases	x	
Is effective caseload management supported by making it easy to adjust for staff absences?	x	
Is there a reduced risk of time delays as a result of waiting for corrective actions to be applied?	x	

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# **Reviews of Decision Future State Options**



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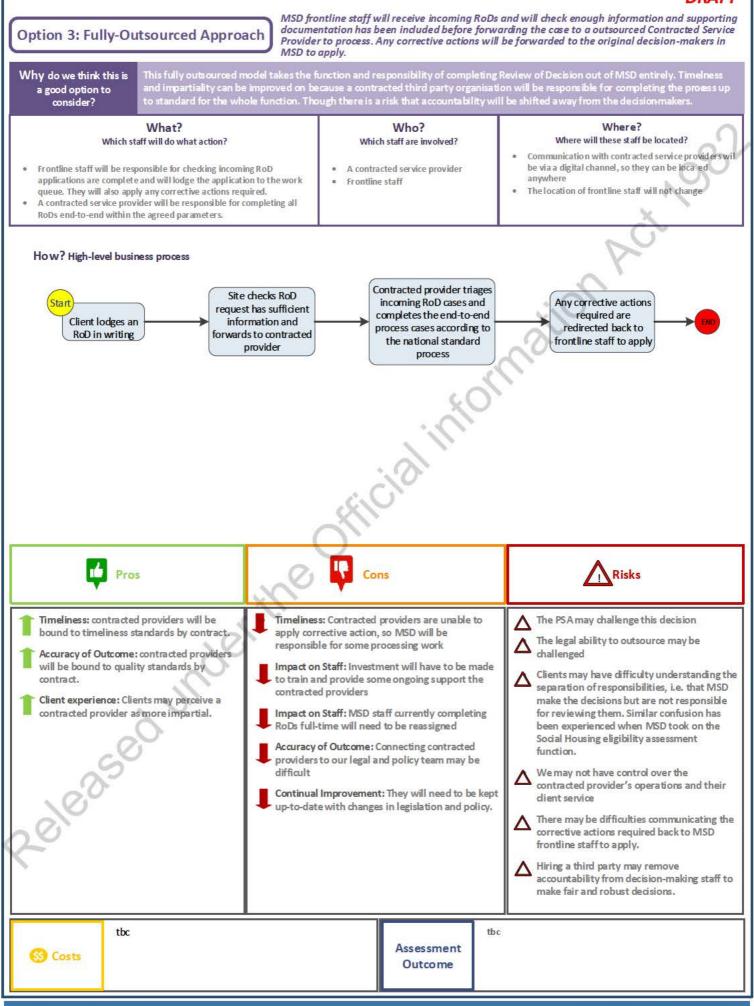
Option 2: Partially-Outsourced Approach As	ssessment	DRAFT
Cost		
		0
		o'
		00
Client Commitments How much each model supports MSD staff to fulfil the Client Commitments for the	service we provide.	High
We will get to know you, your situation and needs	×	~
We will use your feedback to improve our service	×	
We will make sure you understand everything you need to know	xx	
We will respect your privacy and be clear about how we use your information and who we share it with	<u>.</u>	
We will let you know everything you may be eligible for	<u>~</u> ×	
The information we give you will be accessible and consistent no matter how you contact us	×	
We will help you however we can, as soon as we can	x	
We will be honest about our mistakes and put them right	x	
We will respect you and what is important to you	x	
We will let you know your options, rights and obligations	x	
We will work together to achieve shared goals	x	
Our actions will follow our words	×	
Continual Improvement The level of accountability and ownership of the function and the ability to act improvements to both the RoD process and upfront decision-making.	ively support ongoing	Low
Is there a mechanism to record RoD outcomes to identify trends and moderate for consistency?	x	
Is there a mechanism to analyse trends and generate reports to support better upfront decision -making?	x	
Is good practice being identified and disseminated where RoDs are being processed within timeliness standards?	x	
Are there clear and direct reporting lines for escalation?		
Does the model build a countability for decision-making staff and support more robust decisions in the future?	x	
Performance How much the operating model supports the timeliness standards being met, mitigates again significant time delays, as well as producing reports to a high quality standard which are use easily understood.		Low
Are staff enabled to develop high-quality reports by providing the right support systems?	x	
Does the model ensure cases requiring specialist knowledge will be completed to a high quality standard by staff who	are well-supported? x	
Is there easy monitoring of timeliness standards and escalation of cases that are falling outside standards?	x	
Is there a reduced risk of time delays resulting from unnecessary reallocation of cases	x	
Is effective caseload management supported by making it easy to adjust for staff absences?	x	
Is there a reduced risk of time delays as a result of waiting for corrective actions to be applied?	x	

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# **Reviews of Decision Future State Options**

# DRAFT



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Option 3: Fully-Outsourced Ap	proach Assessment DRAFT
S Cost	
	00
Client Commitments How much each model supports MSD staff to fulfil the Clie	nt Commitments for the service we provide. High
<ul> <li>We will get to know you, your situation and needs</li> </ul>	×
We will use your feedback to improve our service     X	×
We will make sure you understand everything you need to know     X	xx
<ul> <li>We will respect your privacy and be clear about how we use your information and who we s</li> </ul>	share it with
<ul> <li>We will let you know everything you may be eligible for</li> </ul>	~~ ×
<ul> <li>The information we give you will be accessible and consistent no matter how you contact us</li> </ul>	
<ul> <li>We will help you however we can, as soon as we can</li> </ul>	x
<ul> <li>We will be honest about our mistakes and put them right</li> </ul>	
We will respect you and what is important to you	×
We will let you know your options, rights and obligations     X	x
We will work together to achieve shared goals	x
Our actions will follow our words     X	x
0	
Continual Improvement The level of accountability and ownership of the function improvements to both the RoD process and upfront d	tion and the ability to actively support ongoing Low
<ul> <li>Is there a mechanism to record RoD outcomes to identify trends and moderate for consister</li> <li>x</li> </ul>	ncy? x
<ul> <li>Is there a mechanism to analyse trends and generate reports to support better upfront decix</li> </ul>	sion-making? x
<ul> <li>Is good practice being identified and disseminated where RoDs are being processed within</li> </ul>	imeliness standards? x
Are there clear and direct reporting lines for escalation?     X	
<ul> <li>Does the model build a countability for decision-making staff and support more robust decisions i</li> </ul>	n the future? x
x	
Performance How much the operating model supports the timeliness standards l significant time delays, as well as producing reports to a high qualit easily understood.	
• Are staff enabled to develop high-quality reports by providing the right support systems?	×
<ul> <li>Does the model ensure cases requiring specialist knowledge will be completed to a high quait</li> <li>x</li> </ul>	ality standard by staff who are well-supported? x
<ul> <li>Is there easy monitoring of timeliness standards and escalation of cases that are falling outs</li> </ul>	ide standards? x
<ul> <li>Is there a reduced risk of time delays resulting from unnecessary reallocation of cases</li> </ul>	x
<ul> <li>Is effective caseload management supported by making it easy to adjust for staff absences?</li> </ul>	x
<ul> <li>Is there a reduced risk of time delays as a result of waiting for corrective actions to be appli</li> </ul>	ed? x

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C	There is a lac • Over half of • There is a si	ck of process f all RoDs have ignificant varie	re State Options Agreed Problem D ownership and clarity around the dedicated resources of resulting in delays and inappropriate workflow all a delay reason entered into the system, resulting in significan ation in which roles perform each step because there is no star be process step is completed by each Service Delivery group res	efinition: required to complete each process step, location. at time delays adard allocation of role to process step. There	ecision Future State Options The preferred option of a National Approach (Option 1C) makes the best use of the resources and skills to ensure that all RoDs can be managed in a timely professional manner from end to end, including any corrective action that needs to be taken.	<ul> <li>The five options below have</li> <li>Optimise the whole – deliver</li> <li>Eliminate the waste – eliminavalue for the client</li> <li>Build quality in – Automate oprone to human error</li> <li>Deliver fast – by managing th</li> <li>Create knowledge – by docum</li> <li>Respect people – make decised</li> </ul>
			Option 1A: Site-Focused Approach	Option 1B: Region-Focused Approach	Option 1C: National Approach	Option 2: Partially-Outsourced Approa
	~	Workflow	Sites are responsible for RoDs for decisions made at their site. Site-based Dedicated RoD Resources prioritise completing RoDs for their site(s) and draw cases from the National Work Queue as they have capacity.	Regions are responsible for RoDs for decisions made in their Region. Regionally-based Dedicated RoD Resources prioritise completing RoDs for their Region and draw cases from the National Work Queue as they have capacity.	Reviews of Decision will be completed centrally and sites will no longer be required to complete this function.	A national team of Dedicated RoD Resource quick fixes to incoming RoD cases where pe before they are triaged.
	Option	Demand	Ratio of Dedicated RoD Resources is aligned with RoD demand for the site, one resource could multiple sites.	The ratio of Dedicated RoD Resources is aligned with the RoD demand in their Region.	The ratio of Dedicated RoD Resources is aligned with the national demand.	The ratio of Dedicated RoD Resources and Co Service Provider processors is aligned with th demand.
		Skills	Resources will be skilled in the assistance types their site grants.	Each Region will have staffskilled in all assistance types.	Teams will be focused on completing RoDs for specialist knowledge areas (e.g. Seniors, Students, Fraud) but could be based anywhere as work will be assigned digitally from the National RoD Work Queue.	Dedicated RoD resources will complete low- complexity cases for all specialist knowledge whereas all high-complexity cases are outs or independent review.
		Corrective Actions	Corrective actions will be applied by the co-located original decision-makers on site.	Any corrective actions required will sent back to the original decision-makers to apply.	Corrective actions are completed by co-located skilled staff within the national team who complete these tasks a priority.	Any corrective actions required will be applie original decision-makers at MSD.
	Pros	5	<ul> <li>Continual Improvement: Decision-making staff will be responsible for putting their decisions right which supports their learning and development.</li> <li>Client Experience: Clients will have decisions reviewed at the same site as it was originally made which provides a sense of ownership and accountability.</li> <li>Impact on Staff: This operating model presents the most significant whole sale change to current operations.</li> <li>Impact on Staff: This operating model likely demands the most management oversight due to dedicated RoD resources being dispersed in individual sites.</li> </ul>	<ul> <li>Continual Improvement: Dedicated RoD Resources are in Regional Offices so regional trends will be identifiable and visible to senior regional leadership.</li> <li>Impact on Staff: Easier management and oversight of staff when co-located which avoids dedicated staff being pulled in to complete other work for sites and supports better sharing of knowledge.</li> <li>Continual Improvement: Regions are separated from each other and cannot easily share knowledge, any additional training would be difficult to deliver.</li> <li>Timeliness: Delays may be experienced when applying corrective actions as this model relies on the existing skilled staff to complete actions amongst other</li> </ul>	<ul> <li>Client Experience: Best ability to enable effective workload management, incl. staff absences, which improves efficiency and reduces delays.</li> <li>Client Experience: Improved outcomes for clients as the Dedicated RoD Resources will have more readily-available and focused support, training and development.</li> <li>Impact on Staff: RoDs for centralised processing and system generated decisions will go to one nationally centralised team.</li> <li>Continual Improvement: No accountability for decision-making staff to apply corrective actions for their decisions that are overturmed, limiting opportunities to learn from their mistakes.</li> <li>Continual Improvement: Feedback to individual sites and staff on trends and suggestions for training may be less</li> </ul>	Client Experience: there may be an incom service in the RoD process because we ca guarantee the contracted provider's serv
	Risks		<ul> <li>Dedicated RoD resources may get pulled in to complete other work which is deemed more urgent for their site (especially if there is no KPI to keep their focus on RoDs).</li> <li>Sites will not be able to easy share continuous improvement ideas because they will be working in isolation which may promote sites creating their own workarounds which deviate from the national standards set.</li> </ul>	<ul> <li>competing priorities.</li> <li>▲ Regions cannot easily share continuous improvement ideas because they will be working in isolation, this may promote sites and regions creating their own workarounds which deviate from the national standards set.</li> <li>▲ The application of the corrective actions may be delayed because frontline staff have other priorities, this is currently experienced by the Centralised Units.</li> </ul>	<ul> <li>effective because the relationship is remote.</li> <li>Creating a centralised service group may result in a siloed workforce and cause dysfunction with frontline staff – this is currently mitigated by Centralised teams by being present on BRC Panels.</li> <li>The purpose and intent of RoDs may be diminished in the minds of decision-making staff because the function has been removed from their immediate surroundings.</li> </ul>	<ul> <li>exactly consistent with MSD's.</li> <li>The dedicated RoD staff may erroneously senoutsourcing and this may cause delays in the reallocated. There may also be pressure to infusor work stream allocation to keep as many cases possible due to fiscal pressures.</li> <li>The RoD outcomes reached and quality of the contracted provider may vary from that of MS will be required to keep decisions and quality</li> </ul>

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**Assessment Criteria** 

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🖒 Continual Improvement

Weighted Scoring

Client Commitments

Performance

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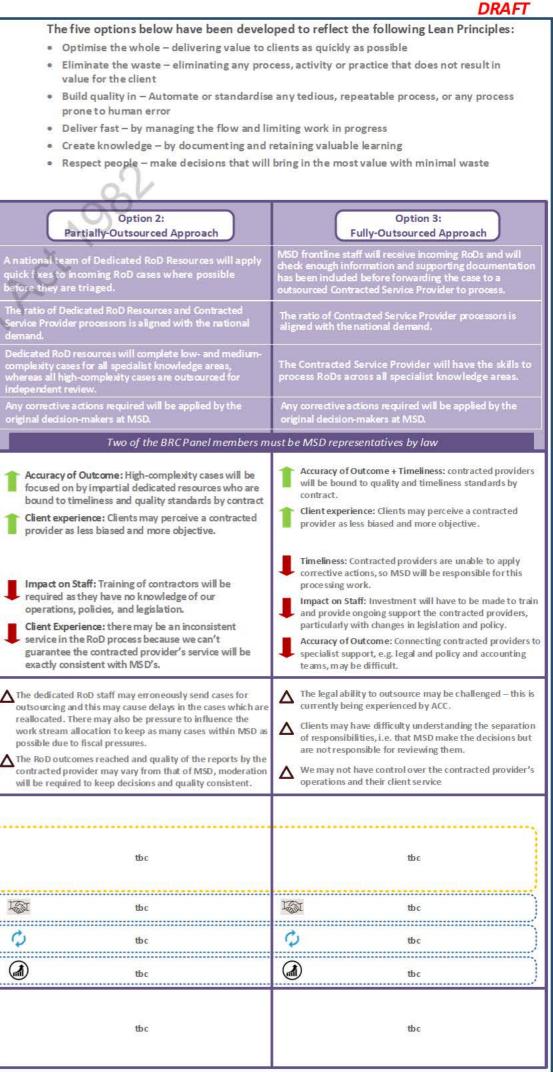
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# **REVIEW OF THE BENEFIT REVIEW AND APPEAL SYSTEM**

## **REPORT OF THE WORKING GROUP**

## **EXECUTIVE SUMMARY**

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1. A working group comprising representatives of the Ministry of Social Policy (MSP), the Department of Work and Income (DWI) and the Beneficiary Advocates Consultation Group (BACG) undertook a review of the benefit review and appeal process with the purpose of recommending changes to improve its effectiveness. This review originated from proposals for improvements to the current process identified by the BACG. This report is intended as an input into the policy development process for Budget 2001 and consultation with relevant departments will need to occur as part of this process.

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- 2. Problems identified in the current review process included timeliness, lack of staff expertise, and a perceived lack of confidence by BACG and their clients in the current process. The review focused on the review component of the process as the appeal component was generally agreed to be effective.
- 3. The following three options were identified which range from minimal to extensive change to the current system:
  - (i) **Option One: Operational Enhancement** -essentially maintains the status quo with operational enhancements currently being implemented by DWI;
  - (ii) **Option Two: Internal Model** -setting up a specialised unit within DWI to handle reviews; and
  - (iii) **Option Three: External Model** -an externally contracted body completely separate from DWI would be responsible for carrying out reviews.
- 4. The working group did not reach consensus but preferred the following options :
  - BACG prefer **option three** (external model) because of its independence from DWI's delivery function which is considered essential to achieve a fair, impartial and accessible review process;
  - (ii) DWI prefer **option two** (internal model) because it effectively addresses problems within the current system, consistency with other public service review systems and will also build capability and assist towards restoring public confidence in DWI;
  - (iii) MSP prefer **option two** (internal model) because it is in line with general principles for a review system, it will retain a strong feedback loop between review and delivery functions and will maintain a core function within the public service

# **INTRODUCTION**

- 5. The Ministry of Social Policy (MSP) and the Department of Work and Income (DWI), in conjunction with representatives from the Beneficiary Advocates Consultation Group (BACG) have reviewed the policies, legislation and operational procedures relating to the current system. This report summarises the conclusions of this review and outlines options to improve the effectiveness of the current system. The working group will also be reporting separately on the medical appeal procedures by 30 October 2000.
- 6. With the exception of information and advice requested from ACC and the Legislative Advisory Committee, consultation with other relevant Government agencies has not yet been undertaken on this report. This report is intended to provide input into the policy development process for the 2001 Budget, during which wider consultation will be necessary.

# BACKGROUND

## The Current System

- 7. The review and appeal system provides a process for addressing disagreements over decisions made by DWI relating to individual client's eligibility for income support. The system is multi-tiered:
  - the initial decision is first quality checked by the service manager of the office concerned. Unless the decision is overturned in its entirety, the matter is automatically referred to the Benefits Review Committee (BRC);
  - the BRC may, in accordance with the Social Security Act 1964, confirm, vary or revoke the decision [*see section 10A of the Social Security Act 1964*]. The BRC consists of:
    - a community representative appointed by the Minister who is closely connected with the DWI office where the decision was made; and
    - two DWI officers appointed by the chief executive, who were not involved in the initial decision.
    - the applicant, but not DWI, has a right of appeal from the decision of the BRC to the Social Security Appeal Authority (SSAA) which is an independent judicial body [*see sections 12A to 12P of the Social Security Act 1964*]; and

there is a right of appeal for both parties by way of a case stated appeal on a question of law to the High Court, and then on to the Court of Appeal [see sections 12Q to 12R of the Social Security Act 1964].

Earlier this year the DWI introduced a number of operational modifications designed to improve the current system. These modifications form the basis of option one below.

## Problem Analysis

9. The working group agreed that concerns about the effectiveness of the present benefit review and appeal system are primarily focused on the review component. There was general agreement that the appeal component was effective and not requiring major

modification. However, any proposed changes to the review part of the system may have a flow on effect to the appeal component and this will need to be taken into account when considering options for change to the review process

- 10. The main problems which have been identified with the review process are:
  - timeliness of BRC hearings;
  - expertise of DWI personnel involved in review hearings, compounded by lack of information, the increasing complexity of the relevant legislation and, until recently, the lack of centralised training and ongoing support;
  - a perceived lack of confidence on the part of beneficiary advocates and their clients in DWI to fairly consider the review, because of a perceived lack of impartiality of DWI personnel involved in review hearings;
  - the present composition of BRCs, including the process for selection of community and DWI representatives, training and ongoing support to assist BRCs to cope with the increasing complexity of relevant legislation;
  - lack of comprehensive monitoring information re volume and distribution of review cases, client satisfaction with process, costs, etc; and
  - accessibility to the review process when reviews are carried out by specialist units.

# Objectives and Key Characteristics for a Benefit Review and Appeal Process

11. A set of objectives and key characteristics were identified by the working group to assess options. These are attached as Appendix One.

# **OPTIONS FOR CHANGE**

12. Three options were identified which ranged from minimal to more extensive changes to the current system. A full description of the three options is attached as Appendices Two, Three and Four.

# General Discussion of Options

- 13. The three options vary in terms of the degree of change proposed from the current system. Option one outlines the operational enhancements that are currently being implemented by DWI and would not require legislative change. Options two and three propose specialised units as a way of improving the quality, accuracy and timeliness of reviews. Both would require legislative changes and have fiscal implications. Option two retains the review function within DWI whereas option three locates this function outside the Department.
  - Options two and three remove community representation and the BRC structure from the process. It was generally agreed by the working group that while community representatives had a historically useful function, they were not an effective mechanism to ensure a fairer process, mainly because of problems with the selection process, training, accountability and lack of ongoing support for these positions. While option one retains community representatives and the BRC structure, it would include improvements to the current selection process.

- 15. The project team has considered the issue of regionalisation. While strong functional relationships with regional staff are key to ensuring an effective feedback loop, the project team concluded that the review process should remain centrally driven. The reasons for this are:
  - the review process is separate from the front line processes that are subject to regionalisation. It is linked to decision making on benefit issues, which is governed by legislation so is not subject to regionalisation;
  - the importance of keeping the review process separate from regional influence to improve the perception of impartiality; and
  - the review process is the start of a formal judicial process laid down in statute. It would be inappropriate to have regional variations on review models.

## **ASSESSMENT OF THE OPTIONS**

#### Summary of Assessment

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16. The working group generally agreed that more fundamental change was required to improve the effectiveness of the review process than would be provided by Option 1 (status quo with operational enhancements). However, the working group differed in its assessment of options two (internal model) and option three (external model) as summarised below.

## Beneficiary Advocates Representatives

- 17. The BACG strongly prefers **option three** above option two because it clearly establishes the independence of the review procedure from the delivery functions of DWI. BACG prefers a more independent model for the following reasons:
  - the independence of the reviewer from the delivery agency is considered to be critical in establishing a fair and impartial review process. Option two raises the issue of how an officer of the DWI can be fully independent in reviewing a decision when they are employed by and work within the organisational culture of DWI, whereas option three clearly emphasises the importance of the independence of the review role by contracting the role to an external agency;
  - BACG's experience with the ACC/private insurers model is that an externally contracted model provides strong incentives for delivery staff to be more careful in their decision making procedures because it is open to external review, resulting in stronger accountability and behaviour change than option two;

BACG is concerned that option two would not resolve the fundamental problems with the current system and these would resurface, resulting in a return to the current situation of having an ineffective review process;

- in their experience with the ACC/private insurers model, BACG comments that option three is more likely than option two to be more accessible to beneficiaries because reviews would be conducted by a third, independent party not the delivery agency who makes decisions on benefits. BACG experience with the ACC model is that people are a lot less apprehensive than with the previous model and with current BRC hearings;
- while option three looks more costly from the initial costings prepared for this report, it has the benefit of clearly identifying all costs up front for reviews (costs are transparent). There may also be a flow on effect in terms of cost

savings in appeals if the review process can effectively change delivery agency behaviour;

- BACG notes that there is a least one existing organisation which can be contracted to carry out reviews. BACG is not advocating setting up a new body with additional capital and set up costs;
- BACG also dispute that option three would be contracting out a core public service function their view is that the review function is supplementary to DWI's core function of administration and payment of benefits;
- BACG considers that option three would be capable of undertaking all types of review including those currently undertaken by specialist units within DWI such as by the International Affairs Unit; and
- Finally, it is BACG's view that the welfare system and the type of decisions that therefore come to review and appeal are significantly different from other types of review undertaken in NZ (for example, in the tax system). The complexity of Social Security legislation, the degree of discretion in the legislation and the fact that beneficiaries are seeking assistance for basic and immediate needs highlights the importance of having a fair, independent and speedy process for reviews.

#### Department of Work and Income

- 18. DWI considers that **option two** meets the assessment criteria above option three for the following reasons:
  - specialising the review function will promote greater accuracy and consistency of decision-making as the review officer's sole role will be undertaking reviews unlike the current model where the review function is a small part of a much wider role;
  - this option effectively addresses the issues with the current model without the need to outsource the review function to a private sector contractor. In particular, making the review function independent from the front line operating units who made the original decision will promote greater efficiency and a better perception of impartiality;
- having the first review stage internal is consistent with other public sector review systems in New Zealand and overseas. As a general rule a review is an administrative reconsideration done internally by the department who made the decision. The current ACC external review model was adopted due to the movement in that sector towards privatisation of accident insurance. DWI does not believe outsourcing of the first review function is appropriate for the welfare sector. The drivers that existed to outsource accident insurance reviews do not exist in the welfare sector. In addition, there is already an external independent check on the department's decision making by the Social Security Appeal Authority (a specialist tribunal). There would seem little advantage in having a system with two levels of external adjudication of DWI decisions;
  - decision making on income support matters is a core function of DWI. Therefore, staff within DWI would be best positioned to undertake a review in the first instance, particularly given the complexity, amount of discretion involved and the policy and legislative change usually experienced in the welfare sector. Specialised review staff would have the advantage of up to date information concerning such changes. Also, retaining the first formal review

step within DWI enables a more immediate and direct feedback loop to front line management and staff to better effect organisational learning; and

• having a specialist review unit will build capability and assist towards restoring public confidence in DWI. Public confidence and perception may be further damaged if this core function is privatised. Further, retaining the review function within DWI enables a greater degree of accountability. DWI can be held directly accountable to the Minister through a variety of mechanisms such as the purchase agreement and purchase agency monitoring, rather than relying solely on a contracting mechanism with a third party external to the public sector.

## Ministry of Social Policy

- 19. The Ministry of Social Policy also prefers **option two** above option three for the following reasons:
  - an internal specialised unit is preferred because this is more consistent with generally accepted public sector notions of review;
  - MSP considers that an internal specialised review function within DWI is more in line with the direction of the Government's response to the Hunn report and rebuilding confidence in the Department;
  - MSP would be concerned to see what they consider a core public service function contracted outside of the public service;
  - a more direct feedback loop to front line staff from an internal specialised unit is considered to be more likely to improve DWI's responsiveness to the issues that result in reviews.
- 20. The Ministry considers that the following aspects of option two require particular emphasis to ensure effectiveness:
  - the role of the Chief Review Officer (this is seen as a key role in option two). The appointee would need to have the skills, experience and confidence of key stakeholders including community and advocacy groups to effectively fulfil this role. The Ministry would recommend that the leadership aspect of this role is critical (for example, the Chief Review Officer would ideally take the lead in complex reviews or reviews where there are significant legal issues);
  - strong accountability mechanisms are essential to the success of all three options. The Ministry considers that effective and clear accountability mechanisms are a key element for option two given the concerns expressed by the Beneficiary Advocate Groups about lack of confidence and impartiality of DWI in carrying out the review function.

## **ISSUES REQUIRING FURTHER CONSIDERATION**

- 21. Several issues were identified which will require further work in developing option(s). These are outlined in more detail in Appendix Five and include:
  - the need for more detail to be specified on procedural aspects of the review process;
  - improvements to accountability processes;
  - mechanisms for dealing with specialised reviews such as Internal Affairs Unit reviews;
  - costs of participating in the review process;

- timeliness of reviews;
- specialist appeal rights in regard to medical appeals;
- complaints in relation to delivery issues; and
- transitional arrangements for an implementation strategy.

# LEGISLATIVE IMPLICATIONS

22. Implementation of options two or three would require legislative change and could be considered as part of the legislative bids for 2001.

# FISCAL IMPLICATIONS

- 23. Full explanations of the indicative costs for the three options are attached as Appendix Six. These are summarised in the table below. For the following reasons the costs must be regarded as indicative only:
  - lack of data to accurately assess volumes of cases (DWI has only recently started to collect monitoring information on reviews); and
  - commercial sensitivity of costing information for the private insurers model (the costings for option three are based on costing scenarios provided by Dispute Resolution Services).

## Summary of the Estimated Cost of the Options

	Option One (Operational Enhancements)	Option Two (Internal Option)	Option Three (External Option)	
Total one-off costs	\$102,000	\$575,000	\$224,000	
Total annual costs	\$1,075,000	\$2,174,000	\$5,318,000	

# CONSULTATION

- 24. The working group comprised of representatives from MSP, DWI, and representatives from the BACG. The Legislative Advisory Committee was consulted during the review and their comments were taken into account in formulating MSP views. ACC and Dispute Resolution Services Limited were consulted for information on their current review process.
- 25. As noted at the beginning of this report, consultation with other relevant agencies such as Justice and Courts is intended to be undertaken as the next stage of policy development for the 2001 Budget. Implications of the review for Maori and Pacific Peoples will also need to be sought as part of this consultation.

# RECOMMENDATIONS

- 26. The working group makes the following recommendations:
- a) **note** that this report summarises the conclusions of a review into the benefit review and appeal process by a working group comprising Beneficiary Advocates representatives, DWI and MSP officials;

- b) **note** that this report is intended as an input into the policy development process for Budget 2001 and will require consultation with relevant departments as part of this process;
- note that three options were identified by the working group to increase effectiveness: One. Operational Enhancement: essentially maintains the status quo with operational enhancements currently being implemented by DWI Two. Internal Model: setting up a specialised unit within DWI to handle reviews Three. External Model: an externally contracted body completely separate from DWI would be responsible for carrying out reviews.
- d) **note** that options two and three would require legislative change;
- e) **note** the indicative costs for each option are attached as Appendix Six;
- f) **note** that the working group did not reach a consensus on a preferred option, with members making the following assessments:
  - i) BACG prefer **option three** (external model) because of its independence from DWI's delivery function which is considered essential to achieve a fair, impartial and accessible review process;
  - ii) DWI prefer **option two** (internal model) because it effectively addresses problems within the current system, consistency with other public service review systems and will also build capability and assist towards restoring public confidence in DWI;
  - iii) MSP prefers **option two** (internal model) because it is in line with general principles for a review system, it will retain a strong feedback loop between review and delivery functions and will maintain a core function within the public service.
- g) **note** that a separate report on issues relating to medical appeals will be completed by 30 October 2000.

Louise Mason Convenor Working Group

# **APPENDIX 1**

# OBJECTIVES AND KEY CHARACTERISTICS TO ASSESS A REVIEW AND APPEAL PROCESS

In identifying the following objectives and key characteristics, the working group was aware that generally speaking a review process tends to be an internal<sup>1</sup> administrative reconsideration of a decision,<sup>2</sup> and be less formal. In contrast, the appeal process by nature involves a judicial determination, and is generally more formal and independent.

#### **Fundamental objectives**

- a) To ensure that the correct result is achieved in individual cases using a fair and timely process;
- b) To modify the decision maker's behaviour in the wider context, so as to make better decisions

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in the first instance, and to better engage in the Review and Appeal process.

# Key characteristics

- Accuracy / quality
  - Interpretation of the relevant law
  - Application of law to facts
  - Appropriate exercise of discretion
- Consistency
- Outcome
- Process
- Efficient
  - Time
  - Resources
  - Cost (to both the Crown and the applicant)
- Accessible
  - Informal vs. formality (time / cost trade offs)
  - Geographically (centralised / de-centralised)
  - Cost (to both the Crown and the applicant)
  - Transparent and user friendly
- Timely
  - Dealt with in appropriate timeframes
  - Incorporates flexibility to deal with emergency cases
  - Fair procedure (i.e. complies with the rules of Natural Justice)
  - Appropriate degree of formality reflecting whether administrative re-consideration vs. adjudication / judicial determ nation
  - Minimum requirement that decision-maker on review has no prior involvement leading to issues of independence
- Finality
- Enable greater accountability and incentives for behavioural change
  - Individual cases
  - Wider decision making in the first instance
  - Compliance with and management of process
- Consistent with state sector operating requirements, structures etc, particularly as they relate to DWI
- Workability ease of operationalising process

<sup>&</sup>lt;sup>1</sup> One significant exception is the Accident Insurance Act 1998 that provides for an external review.

<sup>&</sup>lt;sup>2</sup> This is reflected in the composition of the BRC which includes two officers of the Department of Work and Income

# **ISSUES REQUIRING FURTHER WORK IN DEVELOPMENT OF OPTION(S)**

# 1) More detail specified on procedural aspects

The legislation currently provides a basic framework for the review process in section 10A, but does not address many procedural aspects of the review process. The working party agrees that whatever option is adopted, there is a need to specify the more detailed aspects of the review process by way of Regulations. This could be done under the existing section 132 of the Social Security Act 1964.

## 2) Accountability mechanisms

The working party agrees that there is a need to improve the accountability mechanisms applying to DWI in relation to the review and appeal process. There is a variety of means to address this - for example through the Purchase Agreement or by way of an annual report. It is recommended that further work is undertaken to identify and develop effective accountability mechanisms for the option(s) which are progressed.

## 3) <u>Specialised reviews</u>

The current review process is built around de-centralised local offices in the community. However, there are a number of centralised units, generally dealing with the more complex and specialist areas<sup>3</sup>, operating within DWI such as the Community Services Card centre and the International Affairs Units. DWI indicated that there are a number of issues that would need to be considered given which option(s) are progressed such as

- should a specialist review officer deal with the review?
- Where should the review be held, given that the decision-maker, the person bringing the review, and the review officer may be geographically distant from each other; in the case of the International Affairs Units, the person bringing the review is often living overseas.

## 4) Costs of reviews

The Beneficiaries Advocates Group has raised concern around the costs of attending the review hearing, and payment of the costs of obtaining advocacy and legal services in the context of the review process. BACG has suggested a Ministerial welfare programme to allow a contribution to costs of a claimant. DWI and MSP also identified a number of issues which need further consideration in relation to costs including an examination of the effect of any cost proposals on existing notions of accessibility in the review process and possible flow on effects.

# 5) <u>Timeliness</u>

There is a need to ensure the review decisions are given as soon as practicable. The working party agrees that review process should involve mechanisms to ensure timeliness but notes that the mechanisms to be considered would depend on the option chosen. The working party notes that there are 'deeming' provisions in the Accident Insurance Act 1998 that attempt to

<sup>&</sup>lt;sup>3</sup> Reviews in relation to student allowances are handled by a centralised unit, but are dealt with under separate legislation that applies a different review process.

address this issue. There is a need to consider the range of methods to address timeliness issues and it is recommended that this occur as part of the policy development process.

#### 6) <u>Specialist appeal rights</u>

The Social Security Act 1964 also provides a specialist appeal right in relation to certain kinds of decisions based on medical matters which are excluded from the more general rights of review and appeal [see section 53A of the Social Security Act 1964 set out in Appendix 1]. There is no formal right to a review, but only a right of appeal to a Medical Appeal Board. Issues include whether this separate right of appeal should remain and whether the make-up of the Board is correct what financial help, if any, should be made available to clients to take a review or appeal.

## 7) Complaints

There is a grey area about how complaints in relation to delivery issues are addressed. The review and appeal system only applies to decisions or determinations of the chief executive where there is actual or potential economic impact on a beneficiary. There is a need to consider how best to delineate between those issues which may be the subject of reviews and appeals and those that may not. How delivery complaints are best dealt with are beyond the scope of this working party's terms of reference but it the view of the working group that it would be useful for DWI to pursue further work to identify a clear and effective complaints procedure.

## 8) <u>Transitional arrangements</u>

Given the need for legislative changes required for either Options 2 or 3, further work will need to be undertaken to develop an implementation strategy and transitional arrangements in the short term until legislative changes can be effected.

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Option One – Operational	Main features	APPENDIX 2
<ul> <li>Based on operational enhancement of current model</li> <li>Based on operational enhancements being made by DWI within existing legislation to improve existing system</li> </ul>	<ul> <li>Retention of the BRC structure, including the Community Representatives;</li> <li>Establishment of a co-ordinator in each region;</li> <li>Centralised monitoring and evaluation system;</li> <li>Regular reporting structure and statistical analysis;</li> <li>Provision of standardised templates and guidelines via intranet;</li> <li>Development of a comprehensive BRC training programme;</li> <li>Regularly scheduled Benefit Review Hearings;</li> <li>Increase in the pool of Community Representatives;</li> <li>Development of role description, training and performance standards for community representatives</li> <li>Each unit would be responsible for setting up its own BRC to hear decisions of that unit</li> </ul>	<ul> <li>The <i>Regional Co-ordinator</i> will be responsible for:</li> <li>Maintaining the regional schedule of Benefit Review Hearings;</li> <li>Co-ordinating the Benefit Review Hearings, including the involvement of the Community Representative;</li> <li>Reporting to National Office.</li> </ul>
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## **APPENDIX 3**

		APPENDIX 3
Option Two – internal review model	Main features	Additional points
Review function retained by DWI but separated from the delivery units that make the decision in the first instance. <sup>4</sup>	<ul> <li>The establishment of a specialised review unit within DWI;</li> <li>The establishment of a specialised "review</li> </ul>	The <i>Review Officers</i> would: • Be geographically spread throughout the country and travel, if necessary, to ensure greater accessibility
	<ul> <li>officer" role – either full or part time based on review volumes in the area of responsibility;</li> <li>Greater monitoring, evaluation and reporting of the review process and outcomes;</li> </ul>	<ul> <li>Be selected on the basis of skill, experience and aptitude. Positions would be advertised internally and externally and may be fixed term or permanent;</li> </ul>
	<ul> <li>A clear line of accountability for the review process;</li> <li>The establishment of a review process that:</li> </ul>	• Maintain strong functional relationships with regional staff, providing feedback on review issues and outcomes;
	• Is given priority over other tasks;	• Liaise with advocacy groups at regional level;
	<ul> <li>Is nationally consistent with regional accountability;</li> <li>Builds review capability within the Department;</li> <li>Where necessary, acts as a driver for changes to front line decision making.</li> </ul>	• Report to a Chief Review Officer situated in a non-operational unit in National Office. The <i>Chief Review Officer</i> would provide leadership to the review officers and be responsible for overseeing and co-ordinating:
	non me decision making.	• The quality of the review process including legally complex or difficult cases;
		• Staff management including training;
	200	• Liaising with advocacy groups at a national level regarding the review process;
		<ul> <li>Analysis &amp; feedback to DWI management and external stakeholders</li> </ul>

<sup>&</sup>lt;sup>4</sup> This model is broadly consistent with review structure adopted by ACC prior to privatisation. It is also broadly consistent with the review structures of other departments such as Inland Revenue where it is the Chief Executive's delegate who reviews the Department's decision and the Chief Executive who retains responsibility for that decision.

#### **APPENDIX 4**

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Option Three – External review model	Main features	Additional points
<ul> <li>This model broadly follows the provisions of the private insurers' dispute resolution model (see ss. 135 – 151 of the Accident Insurance Act 1998). The main features of the insurers' dispute resolution model include:</li> <li>a re-consideration by the insurer</li> <li>an independent 'review' by a contracted private sector review body</li> <li>an appeal to the District Court, and on a question of law to the High Court and Court of Appeal.</li> </ul>	<ul> <li>Based on the private insurers' dispute resolution model, Option 3 as proposed by the working group is an external review with the following features:</li> <li>DWI continue to do an initial quality check internally;</li> <li>The review would then pass to a contracted private sector review body, completely external to DWI, to carry out the review (in a similar manner to the way in which Dispute Resolution Services provides review services for ACC)<sup>5</sup>;</li> <li>The review would be undertaken by a regionally based review officer who would hear the review in the same location as it was made (as far as this is practicable). The role of the review officer is to review and make decisions on cases which are put forward for review;</li> <li>DWI would continue to provide a report on the case, and attend the hearing. DWI would also need to have a Review coordinator to coordinate reports from DWI to the review officer;</li> <li>All administration including the setting up of the review hearing and notification to the client would be done by the review officer once the review was filed.</li> </ul>	<ul> <li>This model would include a right of review for both the client and DWI to the SSA. This would contrast with the current system, and Option 2, where only the individual client has a right of appeal from the BRC to the Appeal Authority<sup>6</sup>;</li> <li>While the insurers model provides for a right of appeal to the District Court, it is proposed that the right of appeal would continue to be to the SSAA given the specialised knowledge within this body.</li> </ul>

<sup>5</sup> The working group notes that there is at least one existing body that could be contracted to carry out this function.

<sup>6</sup> The Beneficiaries Advocates Group representatives did not agree that there should be a right of appeal for the DWI. However, the MiOSP's legal advice is that it would be entirely inappropriate for DWI not to have a right of appeal and would be inconsistent with the Appeal process.

# **ESTIMATED COSTS OF OPTIONS**

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