



MINISTRY OF SOCIAL DEVELOPMENT  
*Te Manatū Whakahiato Ora*

**MSD's Working  
Relationships with Client  
Representatives**

# Contents

<b>Contents .....</b>	<b>2</b>
<b>Introduction .....</b>	<b>3</b>
Purpose of this Document.....	3
Context.....	3
<b>Working Relationships: Clients and their representatives, Work and Income/Specialist Services, MSD Legal and the Crown Law Office .....</b>	<b>5</b>
General .....	5
Client Cases .....	5
General benefit administration.....	5
Pre-formal legal process (prior to benefit review and appeal).....	5
Formal legal processes .....	6
Wider Policy or Legal Issues.....	6
<b>Operating Practice - MSD Legal Services.....</b>	<b>7</b>
General principles.....	7
Legal Services Operational Practice .....	7
General.....	7
Appeals to the Social Security Appeal Authority .....	8
High Court Proceedings .....	9
<b>Escalation Processes for Client Representatives.....</b>	<b>10</b>
General .....	10
Escalation at the Regional Level .....	10
Escalation to National Office .....	10
The National Office Contact Point .....	10

## Introduction

1. The Ministry of Social Development is committed to deliver services that support all New Zealanders. A robust and effective review and appeals system is a vital part of the social security system we administer. We are committed to ensuring that in carrying out our part of the BRC and SSAA processes we operate with integrity and professionalism.

### ***Purpose of this Document***

2. The purpose of this document is to provide the staff of the Ministry of Social Development (MSD), beneficiary advocates, and other interested parties with a common understanding of MSD's working relationships with client representatives in relation to individual client cases.
3. To do this we explain and consolidate into one document the following;
  - a description of the process relationships between clients (and their representatives), functional units of MSD and the Crown Law Office
  - a description of the operating practice of MSD Legal Services
  - the escalation processes for beneficiary representatives along with MSD's response commitments.
4. It is intended that this document will be used as a shared resource by staff of MSD, beneficiary representatives and others to guide us in working effectively together.

### **Context**

5. MSD is responsible for delivering income and employment assistance and we do this for hundreds of thousands of New Zealanders on a daily basis.
6. The Social Security Act 1964, the policy that supports it and the operational practices that are necessary to administer it are complex and subject to frequent change. On the other hand the Cabinet and Ministerial Employment Guidelines, while less complex present their own administrative challenges for the Ministry.
7. For these reasons MSD has segmented its services to clients. We support direct service delivery to clients with expert support services from National Office.
8. Within MSD we provide direct services to clients through;
  - Work and Income
    - Case Managers
    - Service Centre Managers
    - Regional Managers
    - Regional Commissioners for Social Development
    - Contact Centres
  - Specialist Services
    - Studylink
    - Senior Services
      - International Services
      - War Pension Services
      - Community Services Card Centre
    - Benefit Integrity
      - Benefit Control
      - Debt Services
9. Work and Income or Specialist Services staff, who work directly with clients, aim to ensure decisions are correct and consistent with the Act and Policy.

10. In addition there are a number of areas within National Office who provide advice and support to Work and Income and Specialist Services staff. These are;

- Helpline
- Work and Income National and Regional Operations
- Social Services Policy
- Corporate and Governance
- Legal Services
- Finance
- Human Resources

11. The advice and support provided by National Office provides a broad Ministry-wide perspective and contributes to the information to be considered by the staff who are delivering income support and employment assistance.

# **Working Relationships: Clients and their representatives, Work and Income/Specialist Services, MSD Legal and the Crown Law Office**

## ***General***

12. In the course of administering income support there are occasions when a client disagrees with a decision which has been made about their entitlement. This can include specific concerns about how the policy or legislation has been applied in a particular case, or there may be issues raised about the interpretation of policy or legislation.
13. At these times clients, or their representatives (beneficiary advocate, an agent or a Solicitor), engages with MSD to discuss the issue. Often this contact and discussion about the issues and the relevant information takes place before any formal review and appeal processes are initiated. The discussion will often include debate about the policy intent and/or interpretation. Case Managers can contact Helpline for clarification who will refer issues through to Operation Policy where necessary.
14. In this section we describe the appropriate working relationships between clients and their representatives, Work and Income /Specialist Services, MSD Legal and the Crown Law Office for the purpose of resolving specific client case issues. The avenues for progressing policy debates are dealt with separately at the end of this section.

## ***Client Cases***

15. It is important that everyone involved in the formal review and appeal processes (and any engagement prior to these) clearly understands the working relationships and the reasons behind them.
16. There are three phases in dealing with individual client cases;

## **General benefit administration**

- Clients and their representatives engage directly with Work and Income or Specialist Services
- Work and Income and Specialist Services staff are supported by other areas within MSD (refer paragraph 9) including Legal Services and Social Services Policy
- from time to time Legal Services, on behalf of Work and Income/Specialist Services will seek advice from the Crown Law Office (refer to paragraph 11)

## **Pre-formal legal process (prior to benefit review and appeal)**

- When a client disagrees with a decision concerning their benefit they, or their representative often engages with MSD prior to applying for a formal review.
- There may be questions about policy or legal interpretation, or the administrative process taken by Work and Income or Specialist Services staff
- It is appropriate for the client or their representative to contact the staff in the Ministry who are involved in the case such as;
  - Regional staff
  - Case managers, investigators etc
  - Service Centre Manager, Senior Investigators etc
  - Regional and Area Managers
- From time to time the client or their representative may also contact MSD National Office. The nature of this contact and the information provided by MSD must be

carefully managed to ensure it is correct and appropriate to the specific client case. For this reason the Chief Executive requires that all such contact (from both parties) is in writing. In order to manage this process well there is a dedicated position in National Office to whom all enquiries should be directed. (Refer to section on "Escalation Processes" paragraph 47).

- From time to time Legal Services will seek advice from the Crown Law Office on individual client's cases at this stage.

## **Formal legal processes**

- Once a client case is in the benefit appeal process, or there is other legal action underway such as District or High Court proceedings or prosecutions for benefit fraud, then MSD has to manage the engagement with the client or their representative more formally
- Once an appeal to the Social Security Appeal Authority has been lodged, MSD Legal Services acts for the Ministry, and consults with relevant Work and Income/Specialist Services staff and policy units
- Legal Services will seek advice and/or representation from the Crown Law Office as necessary.
- If the client or their representative needs to discuss aspects of an appeal case, those discussions should take place with Legal Services who are representing MSD. The Manager of Operational Legal Services and his staff are available to do this at any stage of the process. (refer to paragraph 21 about Legal Services operating practice)

## ***Wider Policy or Legal Issues***

17. From time to time clients' representatives seek to engage with the Ministry about wider policy issues, policy interpretation, legal issues and legal interpretation. This can be in the context of an individual case or from a more general perspective.

- It is very important that this engagement is between the most appropriate people within the Ministry, and that the Ministry's position on policy and legal interpretation is correctly conveyed. For this reason the engagement between client representatives and National Office staff will be facilitated through the designated National Office contact point. (*Refer to section on "Escalation Processes" paragraph 47*).

18. It is also important that National Office is acting in a way that supports the Work and Income/Specialist Services staff to make the right the decision. For this reason the staff involved in a client case will be informed by National Office about any relevant issues that have been raised by client representatives at a national level and the Ministry's response to these issues.

## **Operating Practice - MSD Legal Services**

19. A robust and effective review and appeals system is a vital part of the social security system we administer. We are committed to ensuring that in carrying out our part of the BRC and SSAA processes we operate with integrity and professionalism.
20. The general principles and operational procedures which underpin MSD's actions in reviews and appeals are detailed below.

### ***General principles***

21. The key general principles which guide MSD Legal Services' approaches to specific cases are:
  - MSD is committed to ensuring clients receive all the assistance they are entitled to
  - MSD recognises that as public servants we are committed to fulfilling our responsibilities and duties professionally, honestly, faithfully, efficiently, and respecting the rights of the public.
  - The focus for MSD Legal Services is on ensuring that people receive the benefits to which they are entitled, and our duty to uphold the law.
  - MSD will operate in good faith so that we are a model litigant.

### ***Legal Services Operational Practice***

#### **General**

22. MSD Legal Services has a vital role in ensuring that both BRC's (where Legal Services is involved) and the SSAA have available to them all relevant information when considering reviews or appeals by clients.
23. The role of MSD Legal Services is to provide advice to the Ministry. In the case of appeals, MSD Legal Services act on behalf of the Ministry in consultation with relevant Work and Income/Specialist Services staff.
24. Other activities carried out by Legal Services that contribute to the integrity of the review and appeals system include:
  - providing legal advice to Ministry staff (which is subject to legal professional privilege)
  - providing high quality advocacy services on behalf of the Ministry that fairly and professionally address the factual and legal substance of cases for review and appeal
  - pro-actively advising Ministry staff on the re-consideration of decisions as warranted, including recommending the reversal or modification of decisions where appropriate.
25. In performing these activities, Legal Services will:
  - act consistently, regardless of whether the applicant, beneficiary or appellant is represented or otherwise
  - not use technical defences to defend cases where the decisions are plainly wrong
  - be willing to engage with clients and/or their authorised representatives, whether family, advocates, or solicitors / barristers, at any stage of the review and/or appeal process, as long as is appropriate to do so
  - apply a common-sense approach to all cases

- disclose (where appropriate before any hearing) MSD's general position on the substance of the case.

26. MSD Legal Services will, in their dealings with advocates and other client representatives, use their best endeavours to ensure that;

- any contact, and the substance of the communication regarding a particular case, will be recorded for future reference by the Ministry
- actions that are agreed to, including any follow up action will be progressed within agreed timeframes or within a reasonable time if there has been no other arrangement made

## **Appeals to the Social Security Appeal Authority**

27. The Social Security Appeal Authority has a wide jurisdiction, and has the powers of a Commission of Inquiry in the exercise of its functions (section 12M Social Security Act 1964).

28. In determining an appeal the Authority is **not** reviewing the decision of the Benefits Review Committee. Because Appeal Authority hearings are by way of rehearing, the Authority considers the issues entirely afresh. It has the power to hear any evidence that may assist it to deal with the matters before it. It may take a different view of evidence or make different factual findings from the Chief Executive or the BRC.

29. MSD does not regard the Authority and the hearing process as an adversarial process between two parties overseen by a judge, (in the nature of civil or criminal court.) Rather the Authority is seen as a body focused on taking a fresh look at the issue and making a new determination, with the assistance of the parties.

30. The parties to a review or appeal are required to operate in a way set out in section 10A and section 12J. MSD will fully meet its obligations by supplying the SSAA with relevant information so that the Authority is able to fully consider the matters within its jurisdiction, and to ensure that each party has an opportunity to test and critique the information and arguments put forward by the other.

31. We have a role in providing information, not only as a party to the appeal, but also by virtue of section 12K of the Social Security Act 1964, as it is the original decision by the Chief Executive or his delegate that is the subject of the appeal.

32. In that context, MSD Legal Services has adopted the following set of expectations that are specific for appeals to the Social Security Appeal Authority;

- MSD Legal Services staff will pro-actively and carefully look at the substance of every appeal file, identify issues and seek fresh evidence as appropriate
- in doing this MSD Legal Services will initiate communication with relevant Work and Income/Specialist Services staff within the Ministry and pro-actively advise on the re-consideration of decisions
- where it is appropriate MSD Legal Services will seek further information needed from clients or their representatives
- MSD Legal Services' S.12K reports will generally be filed 3 weeks before the hearing date

## **High Court Proceedings**

### **Appeals to the High Court**

33. Appeals of decisions of the Social Security Appeal Authority are to the High Court on a question of law only. The only grounds for an appeal are, therefore, that the Authority made an error of law.
34. Under the "case stated" process of these appeals to the High Court, the facts, the grounds of the decision, and the question/s of law to be answered are settled by the Chair of the Social Security Appeal Authority. This is done with input from both parties to the appeal.
35. Under the Cabinet Directions for the Conduct of Crown Legal Business 1993, the Crown is represented in High Court Appeals by the Crown Law Office (unless approval is sought and granted by the Solicitor-General for departmental legal staff to appear).
36. A client representative for High Court proceedings wishing to discuss a High Court appeal should therefore contact the Crown Law Office, who will be acting for the Ministry. The Crown Law Office will, of course, consult with and take instructions from the Ministry in the 1<sup>st</sup> instance. Those instructions are given by Legal Services, who will consult within the Ministry.

### **Service of documents relating to High Court Appeals**

37. Under Rule 192 of the High Court Rules parties must be served personally with any document relating to the appeal, unless an Address for Service has been supplied by a party, or the Court directs otherwise.
38. The practical effect of this rule is that where the Ministry files an appeal to the High Court, it must serve the appeal documents personally on the client affected. This can cause concern for representatives who have acted for a client in the Social Security Appeal Authority hearing, but are not themselves served with the appeal documents. The Ministry therefore agrees that wherever possible, as well as serving the appeal documents personally on the client (as it must do under the rules), it will copy all documents to the representative, until the client notifies an alternative address for service or becomes otherwise represented.

### **Other court proceedings e.g. Judicial Review**

39. Under the Cabinet Directions for the Conduct of Crown Legal Business 1993, the Crown is represented in other civil proceedings by the Crown Law Office (unless approval is sought and granted by the Solicitor-General for departmental legal staff to appear).
40. A client representative for the civil proceedings wishing to discuss proceedings involving the Ministry, should therefore contact the Crown Law Office, who will be acting for the Ministry. The Crown Law Office will, of course, consult with and take instructions from the Ministry. Those instructions are given by Legal Services, who will consult within the Ministry.

### **Court Proceedings - expectations**

41. MSD has adopted the following set of expectations for appeals to the High Court and other civil Court proceedings involving the Ministry.
42. The Ministry and its representatives the Crown Law office will:
  - act consistently, regardless of whether the other party is represented or otherwise
  - not use technical defences to defend cases where the decisions are plainly wrong
  - be willing to engage with clients and/or their authorised representatives, whether family, advocates, or solicitors/barristers at any stage of the process, as long as it is appropriate to do so
  - apply a common-sense approach to all cases
  - pro-actively and carefully look at the substance of every case
  - act in good faith so that it is a model litigant.

## Escalation Processes for Client Representatives

### General

43. It is very important that MSD carefully manages how it responds when issues that have arisen through a client case are escalated. It is critical that any comments, information, interpretation of policy or legislation are correct and accurately reflect the Ministry's position, as opposed to the personal view of any particular staff member.
44. The Ministry needs to take all reasonable steps to ensure that clients and their representatives are given correct information. To do this in client cases where there is disagreement between MSD and the client, it is even more important that internal consultation and consideration is properly co-ordinated and managed.

### Escalation at the Regional Level

45. It is appropriate that as a starting point clients and their representative make contact with the staff who are directly involved in managing the clients case.
46. If the issue cannot be resolved at this level it should be raised at management level for example the Service Centre Manager, and from there the Regional Manager.
47. Where necessary the staff within the regions will seek advice from other areas within the Ministry to assist them in ensuring that the client is receiving their full and correct entitlement.

### Escalation to National Office

48. In those cases where a client representative, after progressing their issues through the region, seeks to engage staff at a national level, the Ministry has set up a single point of contact. This will enable the Ministry to properly and efficiently deal with issues that have been escalated, which will benefit both the clients and their representatives.
49. Any escalation of a client case to National Office must be done in writing. A written record will be kept for any communications, meetings or agreements between client representatives and the Ministry.
50. It is important to the success of any escalation process that both parties deliver on any agreements reached, for example agreements to provide more information, agreements to re-consider an issue and provide a response. The Ministry will apply their best endeavours to comply with any agreements reached, and if unable to comply, to notify the other party and provide reasons. Wherever possible timeframes should be re-negotiated, but this must bear in mind the objective of the escalation process, which is to efficiently and effectively deal with matters of disagreement. It should not become a protracted process.

### The National Office Contact Point

51. The designated National Office contact point is Diane Anderson in Corporate and Governance. The contact details are;

<b>Diane Anderson</b>	
Extension:	46352
direct dial:	(04) 916 3352
cell phone:	029 2851 557
e-mail:	<a href="mailto:diane.anderson001@msd.govt.nz">diane.anderson001@msd.govt.nz</a>
address:	Ministry of Social Development P O Box 1556 Wellington