



MINISTRY OF
SOCIAL DEVELOPMENT
Te Manatū Whakahiato Ora

**Student Allowance Review Panel
Members' Information Pack**

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Legislation

Part 6, regulation 36 of the *Student Allowances Regulations 1998* allows for a Student Allowances decision to be appealed to an independent authority and Part 25 of the *Education Act 1989* describes this authority in more detail.

Clause 305 of Part 25 of the Education Act lists the decisions that may be appealed and the opportunity for the Secretary (a delegated representative of the Chief Executive of the Ministry of Social Development) to first review a decision being appealed:

305 Appeals

- (1) *This subsection applies to every decision under this Act (being a decision that the person or body making it had power to make in some other way)—*
- (a) *Fixing the amount of any allowance; or*
 - (b) *Declining to award an allowance to any person; or*
 - (c) *Approving as a full-time programme for any person in any year any specified part of a course of study; or*
 - (d) *Refusing to approve as a full-time programme in any year any part of a course of study for any person; or*
 - (e) *Refusing to extend the period in respect of which any person may receive payments under any allowance; or*
 - (f) *Refusing to recognise the amount of work passed in any year by any person as being sufficient to entitle the person to the reinstatement of any allowance; or*
 - (g) *Refusing to recognise any qualification or amount of work gained or passed by any person as being equivalent to any other qualification or amount of work.*
- (2) *Where any person enrolled or intending to enrol at a tertiary institution is aggrieved by a decision to which subsection (1) of this section applies, being a decision the making of which has been delegated to [an employee of the Ministry] by the Secretary, that person may request the Secretary to review that decision; and in that case the Secretary shall review that decision and shall either—*
- (a) *Confirm it; or*
 - (b) *Substitute for it any other decision that the person or body that made it might have made.*
- (2A) *An application for a review under subsection (2) must be brought within 3 months after the person receives notification of the decision, or (if the Secretary considers there is good reason for the delay) within such further period as the Secretary may allow on application made either before or after the expiration of that period of 3 months.*
- (3) *Where any person is aggrieved by—*
- (a) *The decision by the Secretary under subsection (2)(a) of this section to confirm any decision relating to the person; or*
 - (b) *Any decision relating to the person substituted by the Secretary under subsection (2)(b) of this section for any other decision; or*
 - (c) *Any decision relating to the person made by the Secretary [(other than by an employee of the Ministry under delegation)] to which subsection (1) of this section applies—*

the person may appeal against the decision; and in that case the authority shall consider the appeal and, in the light of all the circumstances it considers relevant, shall either—

- (d) Confirm the decision; or*
- (e) Substitute for it any other decision that the Secretary might have made,—*

and the confirmation or decision shall have effect as if it were the decision of the Secretary.

- (4) *Every decision of the authority shall be accompanied by written reasons for it.*
- (5) *When substituting for any decision of the Secretary any other decision that the Secretary might have made, the authority may (if it thinks that in all the circumstances to do so would be appropriate) require the Secretary to pay a sum fixed by the authority, being all or part of the costs incurred by the authority in hearing the appeal; and in that case the Secretary shall cause that sum to be paid to the [[chief executive of the Ministry of Justice.*

The Ministry of Social Development (the Ministry), as a means of making the review and appeal process more consistent across the entire Ministry, allows the applicant to elect that the Secretary be assisted by two advisors – one from the Ministry and the other from the New Zealand Union of Students' Associations (NZUSA). This arrangement is known as the *Student Allowances Review Panel*.

Overview

Reviews are an opportunity for a person to challenge a decision of the Ministry and for the Ministry to take a fresh and independent look at decisions made by the Ministry.

Student Allowances Reviews differ from Benefit Reviews (which are governed by the *Social Security Act 1964*):

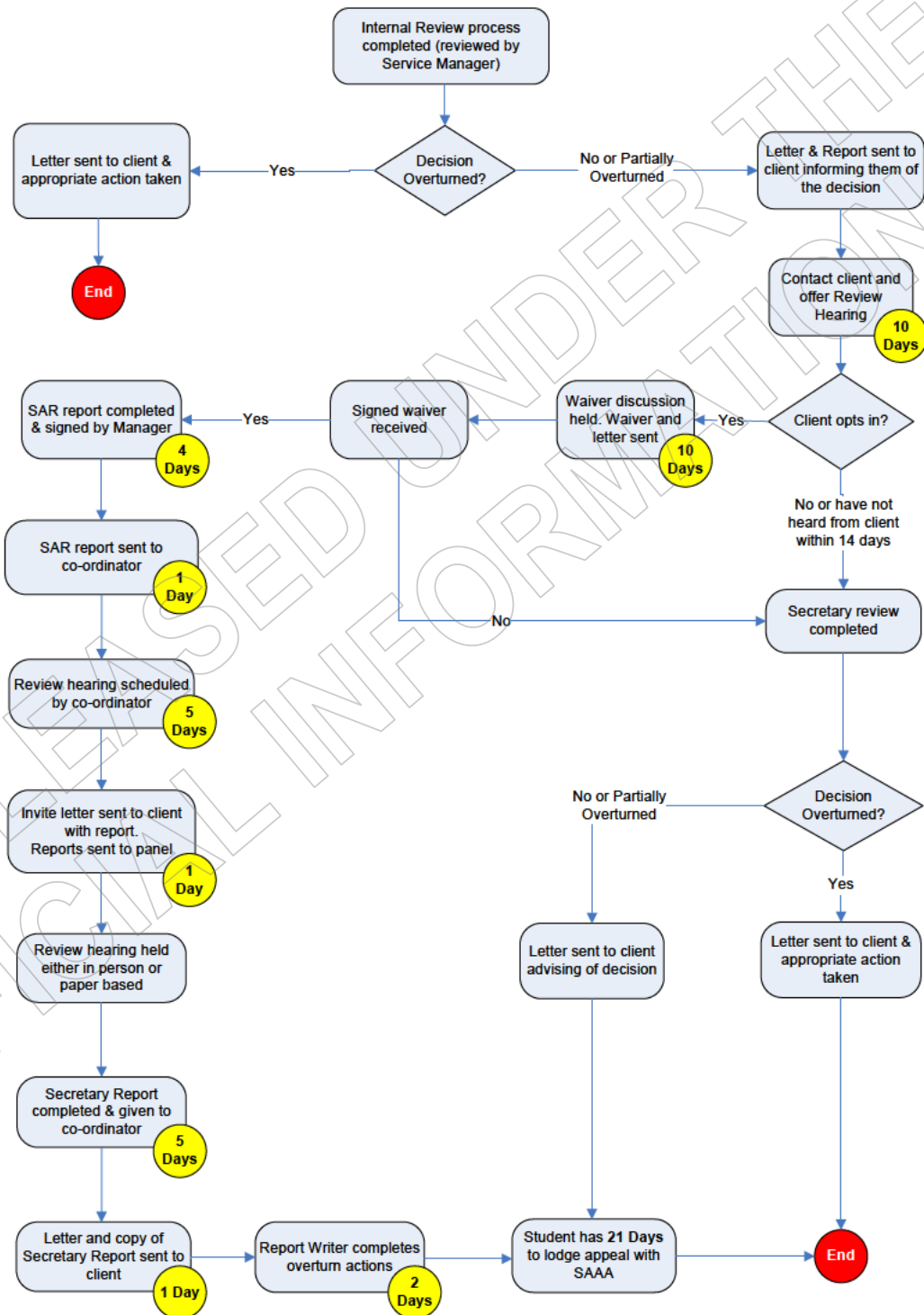
- Whether or not a Review Panel is convened for a Student Allowances review is a decision for the applicant to make. If the applicant does not consent to the inclusion of an NZUSA advisor, the Secretary alone will make the decision
- If, at the hearing, the applicant withdraws consent for the NZUSA advisor to attend, the full panel will not be convened and the standard secretary review process will be followed. If the applicant wishes to meet with the Secretary alone, the Ministry presenter must also be present and have an opportunity to present the Ministry's position
- Decision making power sits with the Secretary alone. The Ministry and the NZUSA advisors have an advisory role only.

These reviews must be in accordance with procedure and the law on a case by case basis. The Review Panel is not established through legislation, but by the Ministry itself in an effort to be comprehensive in reviewing decisions made by the Ministry and ensure that the Ministry's decisions are fair and correct.

This guide is intended to assist you in discharging that responsibility as a Review Panel member.

The following pages set out the processes, timeframes and guidelines for Review Panel members.

Student Allowance Review Process



Student Allowance Review Process

The flow chart above and explanation below are a general overview of the Student Allowance Review process (time frame shown as maximum days).

Student Allowance Review Hearing Process Timeliness

Step in Process	Working days allowed
ROD received and acknowledgement letter sent	1
Internal review submission drafted	10
Internal review submitted for signoff	3
Copy of report sent to client with letter	1
Student Allowance Review Hearing Timeframes	
Follow-up with client regarding report and decision to go to SAR or not	10
Client opts in to hearing -> Yes <ul style="list-style-type: none"> • Waiver discussion held. Waiver and letter sent to client to sign and return to Report Writer. (waiver required for hearing to take place)	10*
Waiver received. <ul style="list-style-type: none"> • Report Writer prepares SAR report 	2
SAR report signed by Manager	2
Original SAR report and waiver given to co-ordinator (copy held by RWT)	1
Co-ordinator arranges hearing	5
Co-ordinator sends the report and hearing invite letter to panel and student	1
Review hearing held (paper or person)	

Secretary completes report and passes to Co-ordinator	5
Co-ordinator sends copy of report and original letter to client. (Original report and copy of letter given to RW)	1
Report Writer receives SAR report and ensures decision is implemented.	2
	54

* up to 15 working days if no waiver received within the 10 days

Out-of -Time Student Allowance Review Hearing Process to decide if Secretary will hear Out-of-Time Review of Decision

Step in process	Days
OOT ROD received and acknowledgement letter sent	1
OOT Internal review submission drafted	10
OOT Internal review submitted for signoff	3
Copy of OOT report sent to client with letter	1
OOT Student Allowance Review Hearing Timeframes	
Follow-up with client regarding OOT report and decision to go to SAR or not	10
Client opts in to hearing -> Yes <ul style="list-style-type: none"> • Waiver discussion held. Waiver and letter sent to client to sign and return to Report Writer. (waiver required for hearing to take place)	10*
Waiver received. <ul style="list-style-type: none"> • Report Writer prepares OOT SAR report 	2
OOT SAR report signed by Manager	2

Original OOT SAR report and waiver given to co-ordinator (copy held by RWT)	1
Co-ordinator arranges OOT hearing	5
Co-ordinator sends the OOT report and hearing invite letter to panel and student	1
OOT Review hearing held (paper or person)	
Secretary completes OOT report and passes to Co-ordinator	5
Co-ordinator sends copy of OOT report and original letter to client. (Original OOT report and copy of letter given to RW)	1
Report Writer receives OOT SAR report and ensures decision is implemented	2
Total	54

If the Secretary agrees to hear Out-of-Time Review of Decision then the following timeliness applies

Step in process	Days
Internal review submission drafted	10
Internal review submitted for signoff	3
Copy of report sent to client with letter	1
Student Allowance Review Hearing Timeframes	
Follow-up with client regarding report and decision to go to SAR or not	10
Client opts in to hearing -> Yes <ul style="list-style-type: none"> • Waiver discussion held. Waiver and letter sent to client to sign and return to Report Writer. 	10*

(waiver only required if different NZUSA advisor)	
Waiver received. <ul style="list-style-type: none"> • Report Writer prepares SAR report 	2
SAR report signed by Manager	2
Original SAR report and waiver given to co-ordinator (copy held by RWT)	1
Co-ordinator arranges hearing	5
Co-ordinator sends the report and hearing invite letter to panel and student	1
Review hearing held (paper or person)	
Secretary completes report and passes to Co-ordinator	5
Co-ordinator sends copy of report and original letter to client. (Original report and copy of letter given to RW)	1
Report Writer receives SAR report and ensures decision is implemented	2
Total timeliness for Out-of-Time	108

* up to 15 working days if no waiver received within the 10 days

Asking for a Review of Decision

A Review of Decision is an opportunity for:

- The applicant to advise that they disagree with a specific decision made.
- The Ministry to ensure that legislation has been applied correctly; this includes the appropriate exercise of discretion.

An applicant can apply in writing for a Review of Decision (this may be in a letter or an application form) where they have received formal notification of (and do not agree with) a decision which has been made. This includes decisions made under *section 305(1) of the Education Act 1989*, and any other decision that the Ministry makes.

Purpose of the Student Allowance review panel

The Student Allowance Review Panel (the Review Panel) has been set up so that an independent review of the Ministry of Social Development's (the Ministry's) decision can be carried out, to ensure that correct and fair decisions have been made in accordance with the law governing Student Allowance entitlement. This is *Section 305 of the Education Act 1989*.

Pre Hearing Procedures

Student Allowance Review Panel

The Review Panel has three members. It includes:

- The Secretary. The Secretary is a person within the Ministry who has authority to review Student Allowance decisions. The Secretary has had no prior involvement with the case.
- Two advisors. One advisor is from the Ministry. The other is from the NZUSA. The two advisors do not take part in the final decision making. They are there to provide advice to the Secretary. The Ministry advisor has had no prior involvement with the case either.

All three members of the Review Panel must be present at the Hearing, but only the Secretary has the authority to make a decision.

Objections to panel member

The applicant can make submissions objecting to the persons selected as the Secretary or Ministry advisor. The submission needs to include reasons for their objection. If grounds are found for disqualification, or there is an issue with a particular panel member that will interfere with the process of natural justice, the panel member objected to, is usually replaced.

If at this point in time the applicant wishes to withdraw their consent to the NZUSA Panel Advisor being included in the review process, then they may do so without having to provide an explanation. The Review Panel will be dissolved and the review will be heard by the Secretary alone. In this instance the Secretary already has the delegated authority so the student should be provided with the option to have their case heard as a Secretary's review at this time. Alternatively they can arrange a separate time to meet. If the student does want to present their case to the Secretary, the Ministry presenter must be present also.

Impartiality

The role of the Review Panel is to independently review the Ministry's decision in accordance with the law. The issue of independence is very important. A Review Panel member is not acting as a representative of the Ministry. Each member of the Review Panel should take great care to ensure that they openly act independently and fairly.

Matter heard previously

An applicant has the right to have their decision reviewed once. If the decision has already been reviewed, it cannot be reviewed again. If the review has been heard by the Review Panel previously and the applicant has not appealed the decision to the Student Allowance Appeal Authority, suggest to them that they should do this if they are still unhappy with the decision. The client has 21 days to lodge an appeal with the Authority, unless the Authority allows a longer period.

Note: In some cases, what may seem to be an application to review a decision again, may, in fact, relate to a different decision.

Exceptions

A second Hearing may not be convened to review a decision of an original Review Panel. The only exceptions to this would be if there had been a fundamental breach of natural justice as defined below or a fundamental error where the Review Panel has not actually carried out its function to review a decision. For example:

Natural Justice

As a member of the Review Panel it is very important that you act in accordance with the principles of natural justice.

Natural justice is a concept that has been around in the law for a long time. At its most simple, it could be described as the duty of judicial and administrative officials to act fairly. It has two parts:

- A person should not be a judge in a case they have been involved with.
- A person must always be given a chance to be heard. There are a number of aspects to this, which you should keep in mind at all stages of the review process; these are discussed below.

Both the applicant and the Ministry must be given the opportunity to explain their view of the case. This means that each party is able to state their case and that you, as the Review Panel, take into account what each party has said. The Secretary will summarise the main points of the case made by each party at the end of their submissions. This lets everyone know that they have been listened to.

Where it seems that the information being given is not directly relevant to the issues, all parties must still get the opportunity to state their case. The Secretary will be responsible for facilitating the proceedings and moving things along.

If new information comes up after one or both parties have already presented their main case, each party will be given the chance to respond.

The right to be heard also includes a person's right to hear the case against them. Each party is given the opportunity to hear the main points of the case of the other party. If someone does not understand the other party's case they won't be able to argue their case properly. Always ask someone to clarify what they have said if you don't understand. This means that both parties should be present throughout the Hearing to ensure they can hear and if required, respond to, any additional points.

The Review Panel should let the parties know about any policy, cases, or legislation which the panel thinks affects the case, but has not been discussed. Again this gives the parties a chance to respond and make the best submissions that they can.

Although it is important to treat both the Ministry and the applicant equally, you should recognise that the Ministry has a natural advantage. The Ministry presenter will have access to the relevant law and policy and legal advice; the applicant may not have this. To minimise this imbalance of power, focus on ensuring that the applicant has a full opportunity to be heard. Assist the applicant by pointing them to relevant legislation and policy and, if necessary, explaining it to them.

If you have sought further information, in particular a legal interpretation relating to a specific point, suggest that the applicant may like to get some advice from an advocacy service and ask the Ministry to provide the applicant with the information available and referral services available in their area.

Examples of Breaches of Natural Justice

- The applicant has not been informed of the Hearing.
- The applicant is not given the opportunity to consent to including a particular NZUSA Panel Advisor in the review process; or
- The applicant has not been given the opportunity to explain their view of the case. This can be in person or by written submission responding to any material or written submissions the Ministry produces.

In these situations:

- The Review Panel would need to reconvene, so that the applicant can either attend the Hearing or have the opportunity to submit material for the same Review Panel to consider; OR
- (if a decision has already been made and sent out to both parties), the first Hearing will be treated as invalid (i.e. treated as never having existed) and a new Hearing arranged.

If the Secretary or any panel member thinks that there may have been a breach of natural justice or an error you should contact the Ministry immediately for advice on how to manage this situation.

Fundamental errors

Description of error	What to do – best remedy of error
The chosen Review Panel does not have the right make up (eg one Secretary and two advisors: one from the Ministry and one from the NZUSA).	New Review Panel to be arranged (original Review Panel treated as invalid).
Any member of the Review Panel has had prior involvement in the decision being reviewed. For more information refer <i>Disqualification</i> Pg 17	New Review Panel to be arranged (original Review Panel treated as invalid).
The Secretary does not make a decision to: <ul style="list-style-type: none"> • uphold / confirm • partially uphold / vary • overturn / revoke the original decision. 	New Review Panel to be arranged (original Review Panel treated as invalid).
The Secretary does not give reasons for their decision.	Reconvene original Review Panel to correct the omission. If the reconvened Review Panel are unable to give reason(s) for its decision a new Review Panel will have to be arranged (original Review Panel treated as invalid).

Out-of-Time Review Hearing

Section 305 of the Education Act 1989, gives applicants three months from the date they were notified of the decision to apply for a Review of Decision. This is considered to be received on the fourth day after it was posted unless there is evidence to the contrary. Evidence may include the fact that the applicant has notified the Ministry that they have moved address (and the Ministry has not noted the information) or that the mail is returned “not known at this address”. Each case will need to be considered individually. However, the legislation gives the Secretary the ability to hear reviews out-of-time if they consider there is good reason for the delay in requesting a review.

The first step is to confirm that the request for a Review of Decision has been filed within three months of the applicant being notified of the decision. If the Review of Decision has not been requested within three months, the applicant needs to have good reason for the delay in requesting a review. The applicant must be given the opportunity to provide reasons for the review if they are not included in their Review of Decision.

If the original request for review does not state the reasons for the delay in submitting the review, attempts need to be made by StudyLink to contact the applicant to give him/her an opportunity to explain why the review was lodged out-of-time.

An *Internal Review Submission* is completed on the out-of-time issue itself. The applicant will then be given the opportunity to provide further information or comment on the submission and then to attend an Out-of-Time Hearing for their case to be decided by the Secretary.

The *Report to the Secretary – Out-of-Time* should be completed on the out-of-time issue only. The Secretary will decide whether there is good reason for the delay. Refer to Appendix 6, *Report to the Secretary – Out-of-Time*.

If the Secretary finds that there were not good reasons for the delay, the Secretary should decline to hear an application for review more than three months after notification of the decision. It should not consider the substantive issue. The applicant does not have the right of appeal to the Student Allowance Appeal Authority if the Secretary determines that there are no grounds for the decision to be reviewed outside of the three month timeframe.

If the Secretary decides that there is a good reason for the delay, the Secretary will decide to allow the review to proceed to the substantive Hearing. The Review Panel will consider the substantive issue at another time after a review submission on the substantive issue has been completed and the standard review process has been followed.

Hearings for clients being prosecuted

At times, an applicant may ask for a Review of Decision for which they are also being prosecuted. In these situations they must be made aware that anything they say or produce as information or evidence during a Hearing can be used as evidence in the court prosecution.

Jurisdiction – can an issue be heard?

If jurisdiction is an issue, the Review Panel will hold a jurisdiction Hearing and make a determination on that matter before considering the substantive decision.

If the application for review is clearly outside the jurisdiction of the Review Panel, the applicant should be advised and given the opportunity to withdraw their application for review. In all other cases, the matter should be forwarded directly to the Review Panel.

Decisions that are outside of jurisdiction of the Student Allowance Review Panel

The Review Panel cannot review a decision (the Review Panel does not have jurisdiction) if:

- it is not subject to *Section 305* of the *Education Act 1989* or
- the matter has been heard previously by the Secretary or Review Panel or by another judicial body or
- the review is outside the three month review period and the Secretary considers there is not a good reason for delay.

What should a SAR report contain?

All reports to the Review Panel are in a standard format. A report to the Review Panel should contain:

- the applicant's details
- an explanation of the decision being reviewed
- initial actions and decision made (Summary of Facts)
- a copy of relevant legislation and policy
- internal review actions and decision made
- the applicant's and their representative's view on the case
- the Ministry's view on the case
- a recommendation from the Ministry
- a list of attachments to the report.

The report and its attachments must be considered along with any information or submissions provided by the applicant and their representative (if they have one).

New Information received

New information provided prior to the Student Allowance Review Hearing

Any new information provided to the Co-ordinator must also be provided to all other parties (e.g. the Ministry or applicant). The other parties must be given time to consider the additional information before the Hearing. (The co-ordinator undertakes the responsibilities of disseminating information to all relevant parties.) Alternatively, the Hearing can be postponed until the other parties have had sufficient time to consider the additional information. If the Hearing is postponed, it is important that a new date is arranged at the time to avoid undue delays if possible.

New information presented at a Student Allowance Review Hearing

The Secretary must ensure that each party has time to consider any new material, and if necessary an adjournment should be granted for later that day or another Hearing date set. It is important that the Secretary gives both parties a reasonable opportunity to respond to any new information before the Secretary takes account of that new information in their decision making process.

Additional information required for the Secretary to make a decision

If the Secretary requires further information, the Review Panel may adjourn and request further information from the Ministry or the applicant (or both). They may also seek submissions on any aspect of the law. If they do this, both parties will be asked to provide submissions. Such an adjournment may occur while the Review Panel is still present at the Hearing or after they have left. If it is after they have left the Hearing, the Secretary will write to both the Ministry and the applicant (via the Co-ordinator) requesting the further information and setting down a date for the information to be provided. The Secretary has discretion on whether the hearing will need to be reconvened. If a hearing is required, the co-ordinator will arrange this to take place after the evidence deadline. The Secretary will decide whether or not the applicant and the Ministry will need to attend if the Hearing is reconvened.

New information provided after the hearing but before the decision has been sent to the applicant and the Ministry

If new information relating to the decision under review is received, the Secretary needs to consider whether the information would change the decision. Both parties need to be given the opportunity to respond in writing regarding the new information and the Review Panel may need to reconvene if the Secretary needs to take further advice. The information must be included in the *Report of the Secretary*. The co-ordinator undertakes the responsibilities of disseminating information to all relevant parties.

New information provided after the decision has been made and the findings have been sent out to the Applicant in the Report of the Secretary

If new information relating to the decision under review is received that could change the decision to the advantage of the applicant it should be sent to the site that made the original decision to consider, under section 305 (1) of the Education Act 1989. If the new information does not change the decision the applicant needs to be advised why and provided information regarding the option of lodging an appeal to the Student Allowance Appeal Authority.

If new information is presented which may change the decision of the Secretary to the detriment of the applicant, it must relate to a material change of circumstances as opposed to information that could or should have been presented to the Review Panel at the time of the Hearing (see High Court case *Hamidi*). The Ministry has no right of appeal from the Secretary.

If you are unsure about whether the information is a change of circumstances or not, please refer to the report writer's manager who will seek legal advice if appropriate. The co-ordinator undertakes the responsibilities of disseminating information to all relevant parties.

Personal Representations

The applicant may appear in person at the Hearing of their review, or have an agent or advocate appear on their behalf.

If the applicant chooses to appear then the Ministry should also appear, along with the 2 panel members advising the Secretary. If the applicant chooses not to appear, and not to have an advocate appear on their behalf at the Hearing then the Ministry cannot appear. The review is decided "on papers" only (i.e. based on the report and attachments from the Ministry and any written submissions from the applicant and information if their involvement is consented to).

However, if the issue is one of credibility and the Secretary does not consider it can properly determine it without seeing the applicant in person, then the Secretary should consider adjourning the Hearing and requesting the applicant to attend the Hearing.

The applicant cannot be made to attend. If the applicant declines the invitation then the Secretary must decide the case on the evidence before them. There should not be any adverse opinion about the case based on the applicant's failure or refusal to attend.

Hearing the review via teleconference/video conference or in person

In the first instance, it is the Ministry's preference for Hearings to occur via video conference. All delegated Secretaries are located in Palmerston North so if the applicant is able to attend there in person, the hearing can easily occur in person. If any parties are located anywhere else, then video-conferencing (or tele-conferencing as a last resort) facilities can accommodate that. In either instance, the Co-ordinator will need to arrange a room for the hearing that has the appropriate facilities available. The Co-ordinator will be responsible for ensuring that technical support is available at sites to ensure smooth commencement of a video-conferenced hearing. It is preferred that one other MSD participant in the Hearing process is present at the same site as any non-MSD participant.

If there is a particular need for an in-person hearing to occur in a location other than Palmerston North, the reasons could be taken into consideration. The Co-ordinator will make appropriate arrangements with all parties in these circumstances.

Hearing the review on papers

If the applicant does not wish to attend the Hearing, or fails to attend, the Review Panel hears a paper-based review only (i.e. no verbal submissions are made to the Review Panel by the applicant, their agent, or the Ministry).

Further written submissions provided by the applicant or the Ministry, in addition to the *Report of the Secretary*, may be given to the Review Panel to consider. A copy of any further information provided must be given to all parties involved in the review.

The Ministry presenter should always be on stand-by, ready to appear and present the Ministry's case should the applicant decide to appear at the last minute.

Resources available to the Student Allowance Review Panel to assist the Secretary making a decision

The Review Panel must not directly contact the Ministry's legal advisors. This is because they act for the Ministry and therefore it would be a conflict of interest for them to provide legal advice directly to the review panel. If the review panel is unsure of a legal point, e.g. the proper interpretation of a section of the Regulations, then they should call for legal submissions on that point from the applicant and/or the Ministry.

The review panel members are not to access the applicant's record. If they do not have sufficient information or need an aspect of the case clarified, they should instead ask the Report Writer or other Ministry staff (this could be the Ministry presenter) to investigate any further information from the applicant's file.

Hearing Procedure

Applicant fails to attend or chooses not to attend

If the applicant chooses not to, or fails to attend, the review is held on papers only. This review on papers will only include the particular NZUSA Panel Advisor if the applicant has given written consent to their inclusion. If written consent has not been given, the review will be considered by the Secretary only. If this occurs, all other panel members and the Ministry presenter do not have any involvement.

NZUSA Panel Advisor – non consent

If the applicant does not provide written consent for a NZUSA Panel Advisor the review will be considered by the Secretary alone either in person or on papers. If the applicant does not consent to a particular NZUSA Panel Advisor being involved then another one should be arranged where possible.

Disqualification of panel member

Neither the Secretary nor the two panel advisors can hear a case if they have:

- a direct financial or personal interest in the outcome
- had any prior involvement in the case
- some personal connection with the applicant, presenter or witness(es) – apart from working relationships
- a personal prejudice for or against a person(s) involved in the case
- pre-decided the case and come to it with a closed mind.

A member must withdraw from the Review Panel Hearing if any of the above criteria apply to them.

It is important that the Review Panel consider any involvement with the case when considering disqualification. This may cause difficulties, however it is important that the integrity of the Review Panel is maintained.

Tone of hearing

The Review Panel can set its own process. The Review Panel must clearly state the process for the Hearing to each person present at the Hearing. The process adopted must be fair and reasonable. The Secretary must also set a process for both the Ministry and the applicant to respond to points raised by either party in their submissions, if they want to.

It is usual practice for the Ministry to present first to the Review Panel as the Ministry has written the report, which everyone should have a copy of, and the Review Panel only need to summarise their understanding of the facts and issues of the case, and question the Ministry on any issues they have.

The Hearing is an informal procedure. There is no “right” of cross-examination.

Where the applicant seeks clarification of the report or aspects of the decision these should be put to the Ministry to answer. Likewise, in some cases it will be appropriate for the Ministry presenter to question the applicant directly or through the Review Panel, particularly if the applicant presents new information at the Hearing.

The Secretary sets the process and if necessary can set rules for such interchanges between the applicant and the Ministry – so long as they comply with the rules of natural justice.

Any questions the Secretary may have that need to be followed up are the responsibility of the Ministry; the Secretary must not seek this information themselves.

Disruption

The Review Panel can impose reasonable rules for the conduct of the Hearing itself.

If a person is unreasonably disrupting the process of the Hearing or behaving inappropriately, the Secretary has the ability to request that the person leave the Hearing. A person behaving in such a manner should initially be warned that they will be invited to leave the Hearing if such behaviour continues.

It is suggested that the Secretary may in the first instance, where a warning has been given, adjourn for 30 minutes to enable the person(s) to regain their composure. If after such a break the person continues to be unreasonable, or behave inappropriately the Secretary should politely request that the individual leave the Hearing.

The Hearing should continue on the material that the review panel has before them.

Record of hearing

Review Panel members are responsible for taking their own notes, although one person may be elected to take more in-depth notes or minutes (see appendix 1). For more complex cases the Secretary may deem that an independent minute taker is required.

At the end of each case heard the minute taker must confirm with the wider review panel what the key consideration/s on each point was. Review panel members should initial each page of the minutes at the end of the hearing in acknowledgement that they are a fair and accurate reflection of what was said at the hearing.

What is evidence?

Evidence is anything the Review Panel chooses to listen to or read whilst considering the case before it. The mere fact that certain "evidence" is provided to the Review Panel does not mean that it is true, relevant or correct in fact or law. It is the Review Panel's role to consider all evidence and then the Secretary alone will make a decision. Some areas to keep in mind when considering evidence are:

- **Credibility**
People making statements to the Review Panel may be telling the truth, part truths, lies or otherwise, and you must decide whether you believe the statements being made are true or not.

There are no strict rules on how to determine that a person's evidence is credible, but the following factors will be relevant:

- *prior inconsistent statements*
This is where a person makes one statement to one person and later contradicts that statement, particularly where the contradictory statement/s appear to have been made to gain monetary benefit.
- *multiple explanations*
This is where someone makes a statement and then subsequently varies the statement to make it more advantageous for them.

- *lies*
Where a person giving evidence is shown to be telling a lie/s, then that person's credibility should be questioned. It is not necessary for the lie/s to be directly related to the specific facts giving rise to the issues before the Review Panel.

- **Inferences**
An inference is a conclusion that can reasonably be drawn from facts previously established.

- **Standard of Proof**
The standard of proof at the Hearing is the “balance of probabilities”. This means that if the Review Panel can say that “we think it’s more probable than not” that something occurred, then that is sufficient to prove a fact. For example if the applicant claims that they telephoned the Ministry to ask that their Allowance be cancelled, then the Review Panel need to be satisfied that it was more probable than not, that this occurred. If that is the case, then it has been established as a fact that the applicant telephoned the Ministry.

This differs from the standard of proof in a criminal trial, where evidence needs to be established beyond reasonable doubt. The beyond reasonable doubt test is a much higher threshold than the balance of probabilities one.

- **Weight of Evidence**
Some evidence will be stronger or more compelling than other evidence. This is called the weight of the evidence and the Review Panel must consider what weight should be given to any particular piece of evidence.

Much of the weighting will turn on the individual piece of evidence and the facts of the case, but there are some categories to watch for:

- *Relevance*
You must consider whether the evidence is relevant to the issue being decided. The legislative provisions you are dealing with will generally prescribe the relevance of evidence.

However, it should also be remembered that whilst evidence may be irrelevant to the decision to be made, that should not preclude you (within the bounds of common-sense and reasonableness) to listening to such evidence because:

- the applicant should be able to put all their concerns to you; and
- whilst evidence might not be relevant to one area of law, it may be relevant to finding eligibility or entitlement under another legislative provision.

For example, whether an applicant's partner has residency or not is irrelevant to the issue of entitlement to a Student Allowance but the residency issue may affect other eligibility or entitlements such as an Accommodation Supplement.

- **Best evidence**
The best evidence should be presented to the Review Panel. In other words, the Review Panel should see and hear the person with personal knowledge of the facts being alleged by that person and not by having an advocate make statements on behalf of people who are absent. If the person with the personal knowledge is not present, then it is likely that there can be less weight given to any evidence presented on behalf of that person in written form.

However, the Review Panel is unable to summons any witness to give evidence before it. For this reason, any appearance by any witness must be with their consent.

Non-appearance may be for some other justified reason, other than the avoidance of cross-examination (eg the refusal of an employer to allow an employee time off work) and this should be considered by the Review Panel in evaluating the evidence. The fact that the person has a good reason not to give evidence does not make their evidence any more or less credible or reliable.

- **Documentary evidence**
This is written evidence such as letters, computer records, dockets, declarations etc. The mere fact that there is something in writing does not automatically mean that the document records a true statement. For instance, when a statement is made in the form of an affidavit or declaration, the statement cannot be accepted as being true merely because it is in writing or by reason that it is sworn.

- *Opinion*

A person's opinion will generally count for little, except where the person giving the opinion is an expert. An expert is someone with recognised practical experience or qualifications in a particular field. Obviously, even where someone is accepted as being expert in a particular field, this does not mean that their evidence should be accepted un-critically, but that more weight should be given to that evidence than evidence given by a non-expert.

- *Corroboration*

This means that the evidence presented about a particular fact is confirmed by other evidence from an alternative, un-related source.

- **Motive**

People giving evidence will always have a motive or reason for giving that evidence, from a law-abiding citizen performing a civic duty to a person driven by malice against the applicant. The motive of the person giving evidence must be acknowledged and evaluated when considering the weight and credibility of that evidence.

Decisions

Making Decisions

The Secretary may adjourn the hearing to allow the Ministry or the applicant to source further information. This may be a brief adjournment during the hearing or may require the panel to reconvene on another day.

If required, the Secretary is able to seek legal advice from the Ministry. This is sought through written request, from the Secretary (or Co-ordinator) to the report writer's manager.

Once the Review Panel is satisfied that it has all relevant information regarding a case the Advisors can give their opinions and basis for those to the Secretary, and the Secretary can make a decision. Neither the applicant nor the Ministry presenter should be present when the Review Panel discusses the case and the Secretary reaches their decision.

Available Decisions

Once a Review of Decision has been heard and all submissions considered, the Secretary will decide the outcome of the review. The Secretary can decide to:

- uphold the decision
- uphold the decision in part
- overturn the decision.

Generally, the Review Panel should discuss the case and the Secretary makes a decision after the conclusion of the Hearing (i.e. after the applicant or presenter(s) have left). The Secretary will then write up their decision.

If the Secretary decides to overturn (revoke), or uphold in part (vary) the original decision, instructions will be given as to what action the Ministry needs to take as a result of the Hearing, with a set time frame. The Secretary will document the expected outcomes and notify the applicant and the Ministry in writing of this decision. It will then be the Ministry's responsibility to ensure that the required actions are taken.

If further matters are raised that the Secretary feels needs to be addressed outside of the decision being reviewed, the Secretary can make a comment and recommend that the Ministry consider the issue(s).

Consideration of Natural Justice and Administrative Law

Administrative law can be summarised as requiring you to make a fair decision in a fair manner. The application of administrative law principles will be determined by the individual circumstances of each case but the principles will apply in all cases.

When making decisions the Secretary needs to consider the following:

- **Illegality**
This refers to a situation where the decision maker got the law wrong, usually regarding the correct interpretation of the legislation and the scope of their

power under that legislation. The Secretary is acting outside the scope of their powers if they (among other things):

- make a decision for a purpose other than that set out in the legislation;
- fail to take account of all relevant matters or take account of irrelevant matters;
- get the facts significantly wrong;
- strictly apply a pre-set policy without taking account of the individual facts of the case (policy should be used as a guideline and not treated as absolute).
- allow someone else to make the decision for the Secretary;
- make a decision for which the Secretary has no proper lawful delegation;
- make a decision for which the Secretary has no lawful power or authority.

- **Unreasonableness**

The Secretary must not make such an unreasonable decision or come to such an unreasonable finding that no reasonable person could have made that finding, having regard to the specific provisions and intention of the legislation and the facts of the case. Unreasonableness will be a question of fact in each case and requires careful consideration.

- **Unfairness**

This relates to a fair procedure. This obligation to be fair will involve:

- giving full and fair notice of the issues to be considered, the evidence for and against the applicant, and the law that will be taken into account in making the decision;
- such notice being given in sufficient time to allow the applicant to adequately prepare for the Hearing (and to ensure they understand any consequences of not appearing at the Hearing);
- giving the applicant an opportunity to make representations to the Review Panel and for those representations to be properly considered;
- avoiding undue and unreasonable delay;
- giving full and detailed reasons for each point raised (eg what was considered and what wasn't) and discussed and how they contributed to the decision made.

- **Consistency**

The decision must be consistent with the law, prior statements, representations, policy etc, although the outcomes may differ by reason of the individual facts.

Roles and Responsibilities

MSD Presenter's role

If the applicant is attending the Hearing, a Ministry representative will attend in the role of Presenter. The presenter will state the Ministry's position in the Hearing. This person is not a member of the Review Panel.

The presenter needs to have reviewed the applicant's file and summarise the decision the Review Panel is about to hear. The presenter will need to know the relevant facts, the application of the relevant legislation, and the Ministry's initial position on the decision under review. It is recommended that the presenter contact the report writer to discuss the case ahead of the Hearing.

It is usual practice for the Ministry to present first to the Review Panel as the Ministry has written the report. The Review Panel may ask questions. If it is necessary for the Presenter to take leave to source this information, the hearing will need to be adjourned while this takes place. The Presenter may need to contact the report writer for this information.

The Hearing is an informal procedure. There is no “right” of cross-examination.

Where the applicant seeks clarification of the report or aspects of the decision, these should be put to the Ministry to answer. Likewise, in some cases it will be appropriate for the Ministry presenter to question the applicant directly or through the Review Panel, particularly if the applicant presents new information at the Hearing.

The Secretary sets the process and if necessary can set rules for such interchanges between the applicant and the Ministry – so long as they comply with the rules of natural justice.

Panel Advisors’ role

The two Panel Advisors are not there to represent the applicant in any capacity, but to use their knowledge and experience to provide perspective, advice, and information relevant to the case being heard.

During the Hearing the Panel Advisors have every right to ask for clarification or more information from the applicant or Ministry presenter.

They will be involved in the deliberations leading to the decision. They will be asked to express their views and these will be noted in the Student Allowance Review report.

The Panel Advisors will not be involved in the actual decision making process. The Secretary alone will make the decision.

Chairperson’s Guide

Chairperson’s Role

The Secretary will assume the role of the Chairperson in a Hearing. It is the Chairperson’s responsibility to take the lead in explaining the Hearing process to all attendees and ensuring the final decision report is completed within the appropriate timeframes.

Please note that this guide is based on a process where the Ministry will present their case first. This does not restrict the way in which the Chairperson may chose to run their Hearing in any way.

- Ensure all of the Review Panel is happy with and clear about the chosen process
- Collect the applicant, Ministry Presenter and any support people from the waiting area if any participants are physically attending. Alternatively, ensure that all VC facilities have connected to the Hearing
- Introduce themselves and advise that they will be fulfilling the role of Chairperson.
- Take the lead in facilitating introductions of all other participants.

Introduction (explain): *The Review Panel:*

- *This Review Panel is made up of the Secretary (yourself) and two advisors. One advisor is from the Ministry of Social Development and the other is a NZUSA Panel Advisor.*
- *The two advisors do not take part in the final decision making. They are there to provide advice to yourself (the Secretary).*
- *The Review Panel will be objective and have had no involvement in any way with the decision being reviewed.*
- *The Review Panel will have a fresh look at the decision and ensure a fair and impartial outcome.*

The process is:

- *Independent and less formal than a court hearing*
- *No one is under oath, but I ask that we all enter into the spirit of the Hearing so that I (the Secretary) am able to make a fair and reasonable decision*
- *The Ministry will present their case first and then the applicant will have an opportunity to explain their reasons for the review*
- *The Review Panel may ask questions of both parties. All questions are to go through me (the Secretary, as chairperson)*

When you begin:

- Ask the Applicant whether the report has been read and understood. If so there will be no need for a verbatim account. An overview of the Summary of Facts and the Case for the Ministry will probably be sufficient
- Invite the Ministry presenter to present first
- If the applicant is not familiar with the content it is suggested the presenter go into more detail and ensures their material is presented in such a way that non-Ministry staff will have a clear understanding
- Invite the applicant to advise the Review Panel (if they are present), why they are reviewing the decision
- The Secretary may wish to fully explain the legal constraints and requirements to the applicant and ask the applicant to comment on how he or she meets each specific requirement during the hearing.

Invite the Review Panel to ask any questions. This is the opportunity to seek clarification of any points that have been raised in the hearing. This may be for the benefit of anyone at the hearing.

When concluding:

- Ask: *Any closing comments?*
- Advise: *No verbal decision will be made. A written decision will be provided as soon as practicable, usually within five working days.*
- Advise: *If you are not satisfied with the outcome of my (the Secretary's) decision you have the right of appeal to the Student Allowance Appeal Authority. If you wish to appeal the decision, you must make this application in writing to the Authority within 21 days of receiving the panel's decision, unless the Authority allows you a longer period. Further details of this will be provided with the written decision.*

Management of the Report to the Secretary

- The Secretary (or Ministry staff member for VC attendees at other sites (to be organised by the Co-ordinator) is responsible for collecting all copies of the *Report to the Secretary* from each Review Panel member, including the presenter, and ensuring all copies are destroyed appropriately.
- When the Secretary makes a decision, all supporting documentation should be stored on the applicant's file and should not be destroyed unless it is a copy. This includes any notes taken during the Hearing.
- Review Panel members should not take documents home with them, as these will contain the client's personal information. The Ministry has an obligation under the *Privacy Act 1993* to store personal information securely.
- It is recognised that Review Panel members, particularly the NZUSA Panel Advisors, may want to keep copies of decisions at home for reference purposes once a decision has been made. If Review Panel members wish to do this, they should ask the Co-ordinator to arrange for a copy to be provided for the Review Panel member which has identifying details of the client removed.

Post presentation Decision Making

The Secretary's decision is taken in confidence, and neither the applicant nor the presenter is present when a decision is reached. It is important that the Secretary only considers the decision in front of them. Should the Hearing raise issues of additional entitlement or ineligibility, these should be referred back to the Ministry.

A Secretary or Ministry Panel Advisor is not acting as a representative of the Ministry. The issue of independence is very important and panel members must act openly and fairly and in accordance with the law.

It is important that Review Panel members understand the difference between law and policy. The function of the Review Panel primarily is to check the law has been correctly applied. Policy is the Ministry's interpretation of the law and how it should be applied.

This means that the Secretary should:

- check to ensure that the applicable legislation from the time of the original decision is being applied,
- identify and understand the requirements of the legislation. For example, considering whether the disputed decision was the result of an error made by the Ministry,
- consider all the options available to the applicant,
- decide whether the applicant meets which if any, of the specific legislative provisions you are dealing with. Avoid concentrating on one issue. Look at the case in a holistic way,
- if necessary, use prior Student Allowance Appeal Authority decisions to assist in deciding a particular case. However, such decisions must be considered carefully. If they are made solely on an applicant's particular circumstances then you must compare the applicant's circumstances with those of the appellant's,
- act within the law.

Who writes the Secretary report

The Secretary has the responsibility to complete the final report (Report of the Secretary) and it is their obligation to provide full written reasons for the decision. It is the Co-ordinator's responsibility to ensure the applicant receives the completed report in a timely manner.

Writing up the Report of the Secretary

The report sets out the deliberations of the Secretary, their reasoning and their decisions on all points raised. It requires that:

- both the applicant's case and the case of the Ministry needs to be fairly represented in the final report (The final report should not be restricted to a "cut and paste" of the *Report to the Secretary*);
- the final report needs to fully explain to the applicant the reasons for the decision made by the Secretary. "Full reasons" does not mean a short bullet point list. The applicant should see that their arguments have been considered and addressed (discounted or weighted heavily), and should be able to understand the basis for the Secretary's decision;
- where the Secretary makes reference to legislation or policy in the final decision, that the legislation or policy is referred to and may also be quoted or attached to the report. Where policy is departed from, reasons for this decision need to be explained.

It is important that the Secretary only makes decisions based on the Review being heard. Should the Hearing raise issues of additional entitlement or ineligibility, these should be referred back to the Ministry as a recommendation within the Secretary's findings.

A guide template of the *Report of the Secretary* is included as Appendix 3.

The *Student Allowance Review Hearing Notes* (Appendix 1) has been developed to assist the Secretary in ensuring that their decision is documented fully and that all arguments presented have been considered and responded to.

The Secretary must sign the final report as being a record of the decision made and provide this to the Co-ordinator. A copy of the report and an outcome letter is then sent to the applicant by the Co-ordinator and a copy of the letter and the original report is given to the Ministry.

If the decision is not in the applicant's favour, (or only partially favourable), the applicant will be informed in writing of their right to appeal to the Student Allowance Appeal Authority.

The completed and signed report must be sent to the applicant (ideally) within five days of the conclusion of the hearing, so it is important to get the report to the Co-ordinator within that five days.

Any follow up required by the Ministry should be time framed by the Secretary.

Appeal rights after a Student Allowance Review Hearing

An applicant can appeal their case to the Student Allowance Appeal Authority if they are not happy with the decision made by the Secretary. If the review has been heard by a Review Panel and the applicant is still unhappy with the decision, they can only appeal the decision to the Student Allowance Appeal Authority.

The applicant must lodge their request for an Appeal in writing and within 21 days (The Authority may accept appeals lodged after this time). This Appeal is heard on papers only.

The Ministry cannot Appeal or review the decision of the Secretary.

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Appendix 1: Student Allowance Review Hearing Notes

<h1 style="margin: 0;">Student Allowance Review Hearing Notes</h1>	
Applicant's Name:	Client number:
Review Panel:	Secretary MSD Advisor NZUSA Advisor
Date:	
Attendees for the Applicant:	
Attendees for the Ministry:	
1. Key Legislation:	
2. Key Facts: <ul style="list-style-type: none"> • Applicant • Ministry 	
3. Feedback to Site (<i>if applicable</i>):	
4. Notes:	
Upheld	Upheld in Part
Overturned	
5. Attached to Report:	

Appendix 2: Secretary's Decision Checklist

Applicant's Details

Applicant Name:

Client Number:

Hearing Date:

Hearing Adjourned: Yes No

Next Hearing Date

Secretary:

Scribe/Note Taker:

Law and Policy <ul style="list-style-type: none">▪ Has the applicable legislation been applied? <input type="checkbox"/>▪ Have you used SAAA decisions to assist you in deciding the case? <input type="checkbox"/>▪ Does the Applicant meet ANY of the specific legislative provisions that are under review? <input type="checkbox"/>▪ Have you considered the case in a holistic way? <input type="checkbox"/>
Options Considered <ul style="list-style-type: none">▪ Have you considered all options available to the Applicant? <input type="checkbox"/>
Case Presented <ul style="list-style-type: none">▪ Have you taken into consideration ALL points raised by the Applicant? <input type="checkbox"/>▪ Have you considered ALL points raised by the Ministry? <input type="checkbox"/>▪ Have these points been documented in the notes of the meeting? <input type="checkbox"/>
Findings <ul style="list-style-type: none">▪ Did you provide clear reasons for your decision? <input type="checkbox"/>▪ Do the facts support your decision? <input type="checkbox"/>▪ Have you responded to all the points raised from both parties? <input type="checkbox"/>▪ Are your findings and any instructions for the implementation of a decision clear? eg If you have instructed that Student Allowance be approved, have you stated what date to approve from? <input type="checkbox"/>▪ Is the decision lawful? <input type="checkbox"/>

Administration

- Has the Secretary signed the report?

Signed

Secretary:

Print

Sign

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Appendix 3: Report of the Secretary

IN THE MATTER of the Education Act 1989
and the Student
Allowances Regulations
1998

AND

IN THE MATTER of an application for
Review by:
("the Applicant")
[Name]
[Address]
[Address]

of a student allowance
decision of
The Ministry of Social
Development ("the
Ministry")

REPORT OF THE SECRETARY
SECTION 305(2) OF THE EDUCATION ACT 1989
(AT A STUDENT ALLOWANCE REVIEW HEARING)

STUDENT ALLOWANCE REVIEW PANEL

The Secretary: [Name]

Advisors to the Secretary:

Ministry of Social Development staff member: [Name]

New Zealand Union of Students' Associations member: [Name]

HEARING CONVENED AT

[MSD site Secretary located at]
[Address]
[Address]

HEARING DATE

[Date] at [Time]

APPEARANCES

Complete the below and delete what is not applicable

No appearances were made at the Hearing

Or

Name and position of person who attended the Hearing eg Applicant, any representative they had attend and from what location. Ministry Presenter: name and position, location from which they are attending

DECISION BEING REVIEWED

Give details of the decision being reviewed

Copy and paste from the report to the Secretary's report if this is accurate and complete (eg application for Student Allowance declined, etc).

SUMMARY OF FACTS

Give the details of all the relevant facts of the case from the application to the decision made.

In this section, please set out the following:

- A description of the applicant's circumstances, e.g. single person with one child, relevant accommodation etc.
- A summary of the events and their dates relating to the decision under review (in chronological order – a timeline may be helpful to illustrate this).
- Any verbal discussions from the Hearing raised by the applicant or the Ministry should be documented in the minutes and included in the summary of facts.

There should not be any opinion based comments included in this section of the report.

The Applicant is a who currently receives a
(delete tables if not relevant to your case).

Payment Type	Amount
Student Allowance	\$
Accommodation Benefit	\$
TOTAL	\$
Weekly offsets	

Date	Summary of Event

--	--

THE RELEVANT LAW AND POLICY

Refer to and summarise relevant legislation and policy, attach legislative provisions if appropriate

CASE FOR THE APPLICANT

Summarise the applicant's case and submissions to the Secretary. Ensure you consider all points raised by the applicant and their representative if they also attended. Refer to all documents and information that the applicant has provided. All documents provided by the applicant should be attached and referred to where appropriate here. Also include the applicant's response to the Ministry's arguments.

CASE FOR THE MINISTRY OF SOCIAL DEVELOPMENT

Summarise the Ministry's position. This may be copied and pasted from the report to the Secretary. Add in any other matters raised by the Ministry at the Hearing, including the Ministry's reply to the applicant's submissions. Also any response from the Ministry Presenter in reply to subsequent submissions made on paper by the applicant

COMMENTS BY ADVISORS TO THE SECRETARY

Detail any comments by the MSD Advisor

Detail any comments by New Zealand Union of Students' Associations Advisor

FINDINGS

The Secretary considered all the information that was presented.

In this section, please set out the following:

- Respond to each point raised by each party*
- Take into account comments made by the Panel Advisors to the Secretary*
- Provide the decision the Secretary came to*
- Provide clear reasons for the decision including any weighting given to why something has been considered or discounted*
- Ensure the facts and relevant legislation support the decision*
- Make any instructions for the implementation of the decision clear*

DECISION

Delete what is not applicable

The Secretary agreed to confirm the original decision.

or

The Secretary agreed to substitute the original decision with a decision to...

The Student Allowance decision is confirmed or substituted.

Name

The Secretary

*(Acting under the delegation of the Chief Executive of
the Ministry of Social Development)*

Date

Appendix 4: Glossary of terms

Legislation

Includes:

- Any law passed by parliament. This is called an Act or statute
- Any law made by a subordinate body, such as a Minister, under delegation from Parliament – such as Regulations, Ministerial Directions and Welfare Programmes.

Note: An Act before it is passed by Parliament is called a Bill.

Policy

Policy has two parts:

- Policy made by governments. In the Ministry we call this sector policy. Governments will introduce legislation to give effect to their policies in law
- Policy made after a law is passed, which provides guidance to employees of a government department on how to apply the law. In the Ministry we call this operational policy. This sort of policy is only a particular government department's view of how the law should be applied. It does not have legal force and should not be applied if it is inconsistent with the law.

As a case manager and as a Student Allowance Review Panel member you will be dealing with operational policy.

MAP

MAP stands for Manuals and Procedures.

MAP contains The Ministry's policies on how to apply legislation – primarily the Student Allowances Regulations 1998

Judiciary

The branch of the state that decides disputes between parties independently and in accordance with the law – e.g. Judges and tribunal members.

Student Allowance Appeal Authority (SAAA)

The Student Allowance Appeal Authority is established by section 304 of the Education Act 1989, and comprises one person, appointed by the Minister of Social Development and Employment. The function of the SAAA is to hear and determine appeals made in accordance with the provisions of the Education Act 1989, which have been through the review process.

Jurisdiction

Relates to the ability of the Review Panel to hear and advise the Secretary who will make a decision on a matter before them. For example, a Secretary may not make a decision on a matter that has already been heard and determined by a previous Secretary. They may also not make a determination that the Ministry complete any action that is outside the scope of their legislated power.

Appendix 5: Relevant Legislation

Education Act 1989

Part 25

305 Appeals

- (1) *This subsection applies to every decision under this Act (being a decision that the person or body making it had power to make in some other way)—*
- (a) *Fixing the amount of any allowance; or*
 - (b) *Declining to award an allowance to any person; or*
 - (c) *Approving as a full-time programme for any person in any year any specified part of a course of study; or*
 - (d) *Refusing to approve as a full-time programme in any year any part of a course of study for any person; or*
 - (e) *Refusing to extend the period in respect of which any person may receive payments under any allowance; or*
 - (f) *Refusing to recognise the amount of work passed in any year by any person as being sufficient to entitle the person to the reinstatement of any allowance; or*
 - (g) *Refusing to recognise any qualification or amount of work gained or passed by any person as being equivalent to any other qualification or amount of work.*
- (2) *Where any person enrolled or intending to enrol at a tertiary institution is aggrieved by a decision to which subsection (1) of this section applies, being a decision the making of which has been delegated to an employee of the Ministry by the Secretary, that person may request the Secretary to review that decision; and in that case the Secretary shall review that decision and shall either—*
- (a) *Confirm it; or*
 - (b) *Substitute for it any other decision that the person or body that made it might have made.*
- (2A) *An application for a review under subsection (2) must be brought within 3 months after the person receives notification of the decision, or (if the Secretary considers there is good reason for the delay) within such further period as the Secretary may allow on application made either before or after the expiration of that period of 3 months.*
- (3) *Where any person is aggrieved by—*
- (a) *The decision by the Secretary under subsection (2)(a) of this section to confirm any decision relating to the person; or*
 - (b) *Any decision relating to the person substituted by the Secretary under subsection (2)(b) of this section for any other decision; or*
 - (c) *Any decision relating to the person made by the Secretary [(other than by an employee of the Ministry under delegation)] to which subsection (1) of this section applies—*

the person may appeal against the decision; and in that case the authority shall consider the appeal and, in the light of all the circumstances it considers relevant, shall either—

- (d) *Confirm the decision; or*
- (e) *Substitute for it any other decision that the Secretary might have made,—*

and the confirmation or decision shall have effect as if it were the decision of the Secretary.

- (4) *Every decision of the authority shall be accompanied by written reasons for it.*
- (5) *When substituting for any decision of the Secretary any other decision that the Secretary might have made, the authority may (if it thinks that in all the circumstances to do so would be appropriate) require the Secretary to pay a sum fixed by the authority, being all or part of the costs incurred by the authority in hearing the appeal; and in that case the Secretary shall cause that sum to be paid to the [[chief executive of the Ministry of Justice.*

Student Allowances Regulations 1998

36 Lodging of appeals

- (1) Every appeal must be by notice in writing lodged with the Authority within 21 days after the decision appealed against, or such longer period as the Authority in any case allows.
- (2) Every such notice must—
- Be signed by the appellant or a person authorised by the appellant to act on his or her behalf; and
 - Specify the decision appealed against; and
 - Provide an address for the sending of communications in connection with the appeal.

37 Relevant chief executive or Minister of Education to be given copies of notices of appeal

- (1) Immediately after the lodgement of a notice of appeal, the Authority must send a copy of that notice to the chief executive of the department of State who made the decision appealed against, or to the Minister of Education, if that Minister made the decision appealed against.
- (2) As soon as possible after receiving a copy of any notice of appeal, the relevant chief executive, or the Minister of Education, as the case may require, must send to the Authority—
- All applications, documents, written submissions, statements, reports, and other papers relating to the decision appealed against, that are in the possession or under the control of the relevant chief executive, or the Minister of Education; and
 - A copy of the decision appealed against; and
 - A report setting out the matters to which the relevant chief executive or the Minister of Education had regard in making the decision appealed against; and
 - A statement of any other matters that the relevant chief executive or the Minister of Education wishes to draw to the attention of the Authority.
- (3) Immediately after receiving a report under subclause (2)(c), the Authority must send a copy of it, and of any statement under subclause (2)(d), to the appellant concerned.
- (4) An appellant may send to the Authority—
- Any comments the appellant has on the report, and on any statement, a copy of which has been sent to the appellant under subclause (3); or

- (b) Notice that the appellant wishes to discontinue the appeal; and, in that case, the appeal will be discontinued.
- (5) The Authority must not determine any appeal until the expiration of 14 days after the date on which a copy of the report under subclause (2)(c) was sent to the appellant.
- (6) Where, before an appeal is decided, the Authority receives from the appellant comments sent to the Authority under subclause (4)(a),—
 - (a) The Authority must immediately send a copy to the relevant chief executive or to the Minister of Education, as the case may require, who, as soon as possible, must send to the Authority either any comments he or she wishes to make on those comments or a new decision; and
 - (b) The Authority must not determine the appeal concerned until the expiration of 14 days after the date on which the copy was sent to the relevant chief executive or to the Minister of Education, as the case may require.
- (7) Where, under subclause (6)(a), the relevant chief executive or the Minister of Education sends the Authority a new decision,—
 - (a) He or she must also send a copy to the appellant; and
 - (b) Without affecting the appellant's right to appeal against the new decision, the appeal against the old decision is considered to have been discontinued.

38 Evidence

- (1) The Authority has full discretionary power to request further written evidence from any appellant on questions of fact, and may require any such evidence to be verified by statutory declaration.
- (2) In the exercise of its powers the Authority may receive as evidence any statement, document, information, or matter that, in its opinion, may assist it to deal with any matter before it, whether or not the same would be admissible in a court of law.

39 Matters to which Authority to have regard

- (1) In reaching any decision, the Authority must have regard to—
 - (a) The notice of appeal concerned; and
 - (b) All documents sent to the authority under regulation 37(2) or (4) or (6); and
 - (c) All evidence received by it—

whether or not that notice, those documents, or that evidence, or any part of it or them, would be admissible in a court of law.

- (2) On the determination of an appeal, the Authority must notify the chief executive and the appellant, in writing, of the Authority's decision and the reasons for it.