# THE MEDICAL APPEAL BOARD - HOW MSD AND WINZ HAVE DISCRETELY CHANGED THE PROCESS, FURTHER DISADVANTAGING SICK AND DISABLED ON BENEFITS

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## A) INTRODUCTION

Persons claiming a social security benefit on the grounds of sickness, injury and/or disability, and who have only limited or no capability to work, have according to provisions in the Social Security Act 1964 (the Act) a right to appeal a decision by Work and Income (WINZ), that was made on medical grounds, or based on the assessed capacity to work.

Apart from separate cases relating to the refusal or cancellation of a "child disability allowance", such decisions (made by a WINZ case manager) will in most cases affect persons that have applied for, or are already on the Supported Living Payment, or the Jobseeker Support benefit. The latter that may be affected are those who applied for, or are claiming the Jobseeker Support benefit with deferred work test obligations, due to sickness, injury and/or disability.

The appeal right is provided for under section 10B in the Act, which was inserted after the Act was amended following the passing of the 'Social Security (Benefit Categories and Work Focus) Amendment Act'. The new amendments came into effect from mid July 2013. Prior to that, the same right of appeal was provided under section 53A of the old version of the Social Security Act 1964. The now applicable section 10B is roughly three times as long and complex, as the previous one was, mainly due to the introduction of new benefit types, and additional, new expectations and obligations for the affected beneficiaries. In the newly amended Act section 10B reaches from page 70 to the bottom of page 73, in the former Act the relevant section 53A filled just over one page.

Persons that may see a reason and need to appeal a decision by a WINZ case manager, who again usually relies on "recommendations" or "advice" from employed special "Advisors", are often those who were asked to be examined by a so-called "Designated Doctor". Others may have been assessed for their "work ability" by the newly introduced "Work Ability Assessors" that the Ministry of Social Development (MSD) and WINZ now contract with (since early 2014). Given the particular contractual arrangements between MSD and those service providers, and due to certain expectations that MSD places in them, and also due to common practices that are followed, it is not uncommon that decisions are made, which appear questionable, unfounded and even plainly biased.

When being informed of their right to appeal, the affected WINZ "clients" may think they have at least a legally granted chance to access and get "justice" by appealing the disputed,

unacceptable decision, and by asking for a "Medical Appeals Board" (MAB) hearing under section 10B.

But the "justice" that may at first sight appear to be ensured, is in reality not quite what it seems. Too many only find out the true value of what the statute and other legal provisions offer them, once they have been through the often very complex, difficult, stressful and at times painful process. Disappointment is what many had already experienced with appeals made under the old Social Security Act before its recent changes, where the process was a fair bit simpler and also handled in a bit more flexible manner. But even then there was often the impression that the Board hearing an appeal was not acting as "independently" as it was supposed to be.

There were certainly a good number of reasons for criticism of the former process of hearing medical appeals under the Act, but with the "reforms" over the last couple of years, the process and activities related to it have now become even more worrisome.

Without any knowledge of the wider public, the Ministry of Social Development has in 2013 made further changes to the Medical Appeal Board hearing process, which are partly not even covered by the Act. They have basically "re-jigged" the whole process in ways, which do in effect make it even harder for appellants to be heard fairly and equitably, yet MSD talk so much more about "natural justice" and the need for it, than they ever did before. This can only be described as a misguided way to offer "justice", while the affected are in fact hardly given fair and reasonable access to justice.

This publication reveals, explains and covers what the current MAB process really means, what changes have discretely been made without public consultation, and how this will adversely affect the appellants in various ways. It is largely based on information in a recently obtained copy of the so-called '**Medical Appeals Board – Board Members Information Pack**' (released July 2013, in time for the new "welfare regime"). That is the official "guide" or "manual" MAB Members use for "training" and for their guidance in hearing appeals. It has replaced an older version, of which we have a copy also (obtained in 2012). Also used as valuable information sources have been a number of responses from MSD to Official Information Act 1982 (OIA) requests, which contain little known information about the "Advisors" who MSD use, about how they use "Designated Doctors" and how the MABs are operating. Additional to that some reports and other relevant information found via certain media and other sources on the internet have been analysed and referred to.

To first of all get an understanding of the law about appeals on medical grounds, here is the actual section 10B as it is valid now:

## Extract from the Act:

***10B Right of appeal on medical grounds***

***(1)*** *Any applicant or beneficiary affected may appeal to the Board against a decision of the chief executive that is —*

> ***(a)*** *a decision that a claim for a child disability allowance is declined, or that any such allowance is cancelled, in either case on the ground that the child is not a child with a serious disability (within the meaning of section 39A(1) and (2)); or*
> ***(b)*** *a decision that a claim for a* ***supported living payment*** *on the ground of sickness, injury, disability, or total blindness is declined, or that any such benefit is cancelled, in case* ***on medical grounds****; or*
> ***(c)*** *a decision under section 60Q(1)(bb) that a person in receipt of a* ***supported living payment*** *on the ground of sickness, injury, disability, or total blindness* ***has the capacity to comply with obligations*** *under section 60Q(3); or*
> ***(d)*** *a decision under section 60Q(1)(bc) that a person in receipt of a* ***supported living payment*** *on the ground of* ***caring for a patient*** *requiring care has the capacity to comply with obligations under section 60Q(3); or*

***(e)*** *a decision that a claim for* ***jobseeker support*** *on the ground of sickness, injury, or disability is declined on medical grounds or on grounds relating to a person's capacity for work, or that a person's jobseeker support on the ground of sickness, injury, or disability is cancelled* ***on medical grounds*** *or on* ***grounds*** *relating to the person's* ***capacity for work****; or*

***(f)*** *a determination under section 88F(2) that a* ***jobseeker support*** *beneficiary on the ground of sickness, injury, or disability has, while receiving that benefit, the* ***capacity to seek, undertake, and be available for part-time work****, and so is required to* ***comply with the work test*** *on and after a date specified in a notice under section 88F(4); or*

***(g)*** *a confirmation, amendment, revocation, or replacement under section 88F(6) of a determination, and that results in a determination of the kind specified in paragraph (f) of this subsection; or*

***(h)*** *a decision* ***on medical grounds*** *under section 88I(2) to decline an application under section 88H(2) by a beneficiary granted* ***jobseeker support*** *(other than* ***jobseeker support granted on the ground of sickness, injury, or disability****) for deferral of all or any of the beneficiary's work test obligations; or*

***(i)*** *a decision* ***on medical grounds*** *under section 88I(7) to revoke* ***a deferral granted*** *under section 88I of all or any work test obligations of a beneficiary granted—*

***(i)*** *jobseeker support (other than jobseeker support granted on the ground of sickness, injury, or disability); or*

***(ii)*** *jobseeker support granted on the ground of sickness, injury, or disability; or*

***(j)*** *any of the following made in reliance on any* ***work ability assessment by a health practitioner*** *under section 100B:*

***(i)*** *a determination whether the person assessed is entitled to a benefit and, if so, what kind of benefit:*

***(ii)*** *a determination whether the person assessed, being* ***a person in receipt of jobseeker support*** *(other than jobseeker support granted on the ground of sickness, injury, or disability), is entitled on an application under section 88H, or under section 88I(4), to* ***deferral of work test obligations*** *under section 88I:*

***(iii)*** *a determination whether the person assessed, being a person in receipt of jobseeker support on the ground of sickness, injury, or disability, has for the purposes of section 88F(2) the capacity to seek, undertake, and be available for part-time work:*

***(iv)*** *a determination whether the person assessed, being a person who is* ***subject to work test obligations*** *or* ***work preparation obligations*** *under section 60Q, has the* ***capacity to meet those obligations****; or*

***(k)*** *a decision under section 116C(2)(a) to the effect that a beneficiary does not have a* ***good sufficient reason****, on the ground* ***that the beneficiary is addicted to, or dependent on, controlled drugs, for either or both****:*

***(i)*** *not complying with a drug testing obligation under section 102B(1):*

***(ii)*** *failing to apply for suitable employment that requires candidates to undertake drug tests; or*

***(l)*** *a decision to decline a claim for a veteran's pension under section 70 of the War Pensions Act 1954, or to cancel any such pension, in either case on the ground of the applicant's or beneficiary's mental or physical infirmity.*

***(2)*** *An appeal under this section must be made within—*

***(a)*** *3 months after the decision has been communicated to that person; or*

***(b)*** *any further period the Board may (if it considers there is good reason for the delay) allow on application made before or after the end of that 3-month period.*

***(3)*** *The chief executive is bound by the Board's decision on an appeal under this section.*

***(4) The Board*** *is to comprise* ***3 members to be appointed by the chief executive for the particular purpose****, being* ***medical practitioners****,* ***rehabilitation professionals*** *(as defined in subsection (5)), or* ***other persons having appropriate expertise in the fields of vocational training or vocational support for persons with sickness, injury, or disability****.*

***(5) Rehabilitation professional****, in subsection (4), means a person who is—*

***(a)*** *a person professionally engaged in the rehabilitation of persons from sickness or accident or with disabilities; or*

***(b)*** *a* ***nurse****; or*

***(c)*** *an* ***occupational therapist****; or*

***(d)*** *a* ***physiotherapist****; or*

***(e)*** *a* ***psychologist****.*

## B) MEDICAL APPEAL BOARD – MEMBERS SELECTED, ENDORSED, APPROVED AND APPOINTED BY MSD ADVISORS AND COORDINATORS

### 1. The Ministry itself appoints the MAB Members

A Medical Appeal Board consists of 3 panel members, being **mostly medical practitioners** (usually GPs, who are mostly also Designated Doctors) **and some rehabilitation professionals**, such as occupational therapists, physiotherapists, nurses and psychologists. But even *"others with appropriate expertise in the fields of vocational training or vocational support"* appear to be considered suitable for being appointed to such a Board. See section 10B (4) and (5) for details on this. The newly obtained '**Medical Appeals Board – Board Members Information Pack**' and information on the WINZ website state, that at least one member of the panel is supposed to be a medical practitioner. One member should also be appointed as chairperson. Officially no more than one panel member is supposed to be a "**Designated Doctor**" (DD), but as we will see, that limitation is not adhered to in practice.

The Medical Appeal Board is according to section 10B (4) of the Act **appointed by the Chief Executive** (of the Ministry of Social Development)! This is the first fact that should alert any person who is appealing a decision by a WINZ case manager, and applying to have her/his case heard by such a Board. This is NOT a judicial kind of body that is appointed as independently in the same way as judges and other adjudicators of other hearing panels are.

It is indeed the very Ministry itself (MSD with their department WINZ), that is responsible for the decision that is being challenged (which is to be reviewed), that appoints the Board hearing the case. To make it appear more "independent", the Ministry employs a so-called "**Appeals Coordinator**" in each of its administrative regions, who is a staff member of MSD that appoints the 3 panel members from a pool of medical practitioners and other health- or rehabilitation professionals that they have pre-selected for that purpose. Most of the medical practitioners that they may ask to appear on a MAB panel are also "**Designated Doctors**"*****, who they frequently use for examining clients with health conditions, injury and disability, where "second opinions" may be necessary.

*** Re "Designated Doctors" read this interesting post:**
**http://nzsocialjusticeblog2013.wordpress.com/2013/12/28/designated-doctors-used-by-work-and-income-some-also-used-by-acc-the-truth-about-them/**

Information on the appointment of members to a MAB is presented on page 13 of the '**Medical Appeals Board - Board Members Information Pack**'. We will occasionally and for simplicity refer to it as the **"Info Pack"**. On that page it clearly states: *"**The Ministry will identify suitable members** to participate on the MAB."* Furthermore the information says: "*To assist with the process MAB members are trained and provided with the Medical Appeals Board: Board Members Information Pack, copies of the relevant guides for medical practitioners and the relevant legislation."* Upon reading that, one must ask him-/herself, what criteria will the Ministry use to "identify" a "suitable" member?

### 2. The Chief Executive's appointment of the MAB is in conflict with "natural justice"

In view of the above, it appears somewhat peculiar for MSD to start in their ***'Medical Appeals Board: Board Members Information Pack'*** (from July 2013) with rather comprehensively explaining the meaning and importance of "natural justice" (see pages 5 and 6, and also pages 32 and 33).

One major principle of natural justice is ***"nemo iudex in causa sua"***, which means **"no-one should be a judge in his own cause"**, and Wikipedia rightly states: *"It is a principle of natural justice that no person can judge a case in which they have an interest."* See this link to the more comprehensive explanation of that legal term:
**http://en.wikipedia.org/wiki/Nemo_iudex_in_causa_sua**

Now MSD may claim, that they are not themselves sitting as a "judge" on the MAB, and technically that is correct, but there are other important factors to consider, proving that they have other mechanisms in place, that ensure the appointments the Chief Executive makes give significant consideration to the interests of MSD. And in view of that, who would dare to claim that MSD have "no interest" in the outcome of the hearing, given the fact they are potentially liable to pay benefits dependent on the outcome?

Uninformed readers of the "Info Pack" may feel more reassured when reading on page 14 under *"**Impartiality and disqualification**"*: *"A MAB is an independent Board for reviewing appeals and they must act accordingly. **They need to take great care to make sure they openly act independently and fairly. A Board member is not on the MAB as a representative of the Ministry**."* The "Info Pack" also states: *"The role of the MAB is to independently review the Ministry's decision in accordance with the law. The Board must review the client's eligibility for benefit on medical grounds, capacity for part-time work, or for capacity to undertake work independently. **In addition they should be seen to be impartial**."*

That relevant section then lists a range of scenarios to consider, where lack of impartiality may be of concern, but it omits some other very important information.

Also worth to consider is the following comment at the bottom of page 14, under *"**Member availability**"*: *"Each region has a pool of available MAB members."* And especially this should be noted: *"**There is no limit to the number of times someone can be a member of the Board**."*

Under *"**Payment**"* (bottom, page 14) it becomes clear, that MSD themselves pay the Board members, via their 'National Accounting Centre'.

All the comments about "**natural justice**" may seem honest and appear to make sense. But what is not mentioned in the 'MAB Members Information Pack', nor in the so-called 'Guide for Designated Doctors' and in the legislation, is the important role the very influential "**Advisors**" behind the scenes have in finding, endorsing and preparing medical practitioners and rehabilitation professionals for acting as "Designated Doctors" and MAB panel members.

## 3. The involvement of "Advisors" and "Coordinators" in finding, selecting and approving "Designated Doctors" and also MAB Members

There is no direct mention in the MAB "Information Pack" about the **other key players that MSD employs**, who are doing a lot of background-work, liaising and consulting with medical practitioners, especially general practitioners (GPs), yes who even "train" and "mentor" them. These so-called "**Advisors**" and "**Coordinators**" are also involved in finding and recommending GPs that MSD wishes to engage as "Designated Doctors" - and also as potential MAB panel members. The "Advisors" are the "**Regional Health Advisors**" (RHAs) and "**Regional Disability Advisors**" (RDAs), and the "Coordinators" are the "**Health and Disability Coordinators**" (HDCs), who are based in each Regional Office of the Ministry. They do actually **endorse** "candidates" that appear suitable, interested and motivated in working for MSD. They all receive on-going "training", not just through the formal, official guides, such as the "Information Pack" for MAB members here, or the 'Guide for Designated Doctors', they also receive other "guidance" and "mentoring", directly from "**Principal Health Advisor**" **Dr David Bratt**, who has in many of his past "presentations" likened benefit

dependence to "**drug dependence**". That must raise serious questions about his professional objectivity, or lack thereof. He has a very firm if not extreme view on "work ability", and he relies heavily on selectively chosen research, mostly from the "**Centre for Psychosocial and Disability Research**" in Cardiff, Wales, which was once "sponsored" by the UK subsidiary of controversial US health and disability insurance giant UNUM.

**Dr Bratt has worked closely with UK Professor Mansel Aylward** (head of the mentioned "Centre" in Cardiff), who has very actively been lobbying for a very "relentless" approach using his own interpretation of the so-called "**bio-psycho-social model**" for diagnosis, assessment and treatment of sickness and various disabling disorders or conditions. He has claimed that many "illnesses" are rather based on *"illness belief"*, attitude and social factors, and that many *"common mental health problems"* and other *"common health problems"* are not such serious conditions, that should stop people from working.

To get an idea of Dr Bratt and his position on ***"work ability"***, it pays to look at some of his bizarre "presentations" that he gave at GP conferences and also for medical professional trainers. The information presented in them is a collection of hand-picked statistical and supposedly also "medical scientific" information, as well as some "quotes" from hand selected "experts", all meant to prove the great harm caused by *"worklessness"*, and contrary to that the presumed *"health benefits of work"*. In past presentations he made frequent comparisons between supposedly "harmful" benefit dependence and "drug dependence".

**Here are links to three examples of these presentations that have been and are available via the internet**:

***'Ready, Steady, Crook – Are we killing our patients with kindness?'*** (see pages 13, 20 ,21 and 35):
**http://www.gpcme.co.nz/pdf/GP%20CME/Friday/C1%201515%20Bratt-Hawker.pdf**

***'Medical Certificates are Clinical Instruments Too!'*** (see pages 16, 19, 20 and 33):
**http://www.gpcme.co.nz/pdf/2012/Fri_DaVinci_1400_Bratt_Medical%20Certificates%20are%20Clinical%20Instruments%20too%20-%20June%202012.pdf**

***'Pressure / No Pressure – Strategies for Pushy Patients'*** (see slide 27!):
**http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0CDMQFjAE&url=http%3A%2F%2Fwww.rgpn.org.nz%2FNetwork%2Fmedia%2Fdocuments%2FConference2011%2FD-Bratt.ppt&ei=TgQIVdLLH4qP8QWxnYBQ&usg=AFQjCNFEdYN_dDW9BAZvZo_cQpC2rFyelg**
'D-Bratt.ppt'

**Here are links to PDF files with evidence that MSD have trained Designated Doctors and their "Advisors", much of this being done by Dr David Bratt as PHA himself:**

**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-des-dr-training-comm-requiremts-j-russell-m-mortensen-memo-hi-lit-23-01-2008.pdf**
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-design-dr-training-workshop-and-hd-coordntr-info-sheet-rankin-bratt-12-08-2008.pdf**

The already mentioned Regional Health and Disability Advisors do "**endorse**" practitioners who may be prepared to work as "**Designated Doctors**" and/or serve as **MAB Panel members**, but it is Dr Bratt, who has usually the last say as to who is accepted as a "designated doctor". His colleague, Principal Disability Advisor Ann Hawker, is largely very silent, and appears to stay in the background, on all these matters.

As the **MAB hearing panel members are often also "Designated Doctors"**, and as these doctors do in many hearings represent more than one member of the 3-member panel, it becomes evident, that the so much proclaimed *"independence"* may get a whole new

meaning, once these facts are also considered. It is also the "**Health and Disability Coordinator**" for the relevant region, who has the last say about who ends up in **the pool of MAB hearing panel members**. The "**Medical Appeals Coordinator**" is then simply picking panel members from that maintained pool, and as mentioned in the "Info Pack", some members can be called upon again and again. So members that may turn out to deliver the outcomes that WINZ and MSD prefer, can in that case simply be picked to do more hearings, potentially serving the very interests of MSD.

**See the following links to position descriptions for 'Regional Health Advisor', 'Regional Disability Advisor', 'Health and Disability Coordinator' and 'Principal Health Advisor', containing relevant information showing their wider responsibilities**:

**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-o-i-a-request-reg-health-advisor-position-description-highlighted-points-feb-2007.pdf**
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-o-i-a-request-regional-disability-advisor-position-description-feb-2007.pdf**
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-o-i-a-request-health-disab-coordinator-pos-descrptn-highlighted-points-feb-2007.pdf**
**https://nzsocialjusticeblog2013.files.wordpress.com/2013/09/msd-o-i-a-request-princ-health-advisor-position-description-highlighted-points-jan-2007.pdf**

See this **OIA response** from MSD's then **Deputy Chief Executive Debbie Power dated 12 July 2013**, revealing the **names of the mostly long serving RHAs and RDAs**, and what **actual qualifications they have**. At the end there is also a table showing that **MAB appeals from 01 July 2012 to 30 April 2013** led to **74 percent of WINZ decisions being upheld**, and only 26 percent being overturned:
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-o-i-a-request-dds-mabs-training-ltr-fr-d-power-c-e-w-mab-table-anon-12-07-13.pdf**

**See the questions put to MSD, by way of an OIA request letter from 11 June 2013:**
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/m-s-d-o-i-a-request-anonymous-re-ddrs-mabs-pha-pda-training-draft-11-06-13.pdf**

See also a link to a PDF file with the **application form for "Designated Doctors"**, showing on the last page the boxes to tick and spaces to fill in, **where RHAs and RDAs "endorse" them**, and **where the Principal Health Advisor or Principal Disability Advisor can then "approve" them** (under "Office use only"):
**http://www.workandincome.govt.nz/documents/forms/designated-doctor-application.pdf**

Offering further insight into the workings of "Designated Doctors", the mentioned "Advisors" and how MAB panels are appointed, read this **interesting OIA response from former Chief Executive of MSD, Peter Huges**, from **March 2011**:
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-o-i-a-request-design-drs-mab-appeals-rhas-rdas-c-e-s-response-march-2011-re-anonymous.pdf**
Read especially his answers to questions 14, 15, 16, 17 and 18!!!

The special roles of Principal Health Advisor, Principal Disability Advisor, Regional Health Advisor, Regional Disability Advisor and Health and Disability Coordinator were created and appointed by MSD in 2007 under the last Labour led government. They are roles fulfilling **functions that the Chief Executive can delegate** according to provisions in the **State Sector Act 1988**. I refer you to former **Chief Executive Peter Hughes response to request point 12 on page 3 of his letter from March 2011**. The "Advisors" are therefore not "ordinary" staff, but still work for MSD.

At the top of **page 5 of that OIA** response **Peter Hughes** also makes clear: ***"I can advise that it is normal practice for more than one Designated Doctor to sit on the Medical Appeal Board."***

## 4. Qualifications of MAB hearing members

The MAB "Members Information Pack" lists the kinds of qualifications that panel members are expected to have. A list of designated doctors obtained in August 2012 shows that **the vast majority of them are simply general practitioners (GPs)**. It must be presumed that most members on MABs are also general practitioners.

See this link to a PDF with relevant information:
**https://nzsocialjusticeblog2013.files.wordpress.com/2014/10/msd-designated-doctor-list-complete-as-in-august-2012.pdf**

**This is much in line with the figures previously supplied by Peter Hughes in the OIA response received in March 2011** (see again his answer to question 14, on page 4 in the document referred to above). Under the answer to question 18 in that same OIA response Peter Hughes also revealed that **of the 10 medical practitioners on the MAB in Auckland 6 were "Designated Doctors"**.

See again this link to a PDF document with that info:
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-o-i-a-request-design-drs-mab-appeals-rhas-rdas-c-e-s-response-march-2011-re-anonymous.pdf**

Of the other qualifications listed in section 10B of the Act, and in the "Info Pack", MSD will pick the Members possessing such, who were also consulted with by RHAs, RDAs and HDCs. It can be reasonably presumed, which is confirmed by anecdotal evidence, that only a small number of "Rehabilitation Professionals" will sit on a MAB panel, like for instance specialist nurses, occupational therapists, physiotherapists or psychologists. As for the latter, there has in Peter Hughes' letter and other information been little or no evidence of psychologists being part of such hearing panels.

There is no information we have on persons with appropriate expertise in vocational training or vocational support for persons with sickness, injury or disability, sitting on MABs, but given recent developments as a result of the major reforms in 2013, there may well be some increased involvement of such professionals in hearing some cases now.

## 5. MAB Members are guided by the AFOEM's questionable position statements on the "health benefits of work" (influenced by Mansel Aylward)

The '**Australasian Faculty of Occupational and Environmental Medicine**' (AFOEM) has since 2010 progressively adopted the new approaches propagated by Professor Aylward and some like-minded "experts" based in the UK, primarily at the '**Centre for Psychosocial and Disability Research**' (formerly "sponsored" by **UNUM Provident**) in Cardiff, Wales. The AFOEM has formulated a number of documents on the supposed ***"health benefits of work"***. This was facilitated **under the Presidency of former Atos Healthcare employee Dr David Beaumont**. As the '**Royal Australasian College of Physicians**' (**RACP**) and the AFOEM set the agenda or direction for what new healthcare approaches are promoted and followed in medical science and treatment in New Zealand and Australia, and as even the '**Royal New Zealand College of General Practitioners**' (**RNZCGP**) and other organisations have signed up to support the same "position statements", it must sadly be concluded, that the whole medical profession in both countries is now loyally applying Aylward's recommended approaches.

The MSD has enthusiastically welcomed this and included a reference to the AFOEM's position statement on the *"health benefits of work"* on their '**Work Capacity Medical Certificate**' that doctors are now expected to complete for WINZ clients. All this appears to be part of a well planned strategy, to gradually reset medical criteria and to reformulate the

meaning of sickness and the capacity for work, all done with the sole major aim, to reduce welfare numbers and costs!

**See these links to the AFOEM** (as part of the RACP) **website with info on their "position statements" and Mansel Aylward's crucial involvement**:
**http://www.racp.edu.au/docs/default-source/default-document-library/australian-and-new-zealand-consensus-statement-on-the-health-benefits-of-work.pdf?sfvrsn=2**
**http://www.racp.edu.au/docs/default-source/default-document-library/read-realising-the-health-benefits-of-work-position-statement-october-2011-%28pdf-654kb%29.pdf?sfvrsn=0**
**https://www.racp.edu.au/**
**https://www.racp.edu.au/advocacy/division-faculty-and-chapter-priorities/faculty-of-occupational-environmental-medicine**
**https://www.racp.edu.au/advocacy/division-faculty-and-chapter-priorities/faculty-of-rehabilitation-medicine**

**UPDATE from 20 Sept. 2016: The RACP / AFOEM website has recently been restructured and redesigned, and a number of former documents, and even videos, on their *'Position Statement'* on the supposed *'Health Benefits of Work'*, have since disappeared. It seems that this is at least partly due to concerns about initially made bold claims, which have been found to be incorrect and lacking evidence. This also coincided with the departure of former AFOEM President Dr David Beaumont (former ATOS Origin consultant from the UK), who was instrumental in getting the controversial UK Prof. Aylward involved in launching their Statement. Readers should also take note of a *'Viewpoint'* article by researcher Gordon Purdie, in the New Zealand Medical Journal from 20 Nov. 2015, under the following link:**
**https://www.nzma.org.nz/journal/read-the-journal/all-issues/2010-2019/2015/vol-128-no-1425-20-november-2015/6729**
**https://www.nzma.org.nz/__data/assets/pdf_file/0005/45905/Purdie-1874FINAL1425.pdf**

## C) THE MEDICAL APPEAL PROCESS AND APPROACH IN DETAIL

### 1. The MAB process has changed with the introduction of a new welfare regime

The process followed for Medical Appeal Board hearings has changed a fair bit since the reforms changed much of the **Social Security Act** in 2013. The new process appears to be adjusted to be more in line with the general, now more draconian approach in assessing sick, injured and disabled for their capacity to work. The '**Medical Appeals Board – Board Members Information Pack**', released in July 2013, reveals what changes have been made. There was until a couple of years ago another guide in use, called the '**Medical Appeals Board – A resource for Board Members**'. A copy obtained from a trusted source in 2012 shows a somewhat different process being followed then, which was less complex, not as detailed, less clear, and probably applied in a more flexible manner.

But like already then, the process is now usually started by the affected WINZ benefit applicant or recipient making **a written request for a review**, or actually right away an **application for an appeal**, against a decision made by WINZ based on medical grounds or on a client's assessed work ability, usually by one of their case managers.

As the newly amended Social Security Act now contains many **new OBLIGATIONS** for beneficiaries, the current process does not only review decisions made on simple health grounds, but also those where the imposition of certain obligations, like for instance work preparation, or work test obligations, were part of the decision. There are a few fundamental changes that were made to the former process that will be explained in the following.

Here are first of all 2 PDF files with copies of the *'Medical Appeals Board Board Members Information Pact'* (released July 2013) and of the older *'Medical Appeals Board – A resource for Board Members'* (as it was in 2012), obtained from trusted, confidential sources:
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/medical-appeals-board-board-members-information-pack-for-release-july-2013.pdf**

https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-medical-appeal-board-resource-for-bd-members-manual-undated-recd-jan-2012.pdf

Of some interest may also be an older '**Guide for Designated Doctors**', that was available for download in 2011, but seems to be out of date now:
https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-work-income-guide-for-designated-doctors-current-downloaded-18-04-2011.pdf

## 2. The new MAB process is outlined in the 'MAB Members Information Pack'

The jurisdiction of the MAB is explained on **page 15** of the 'MAB Members Information Pack', and it does reflect the provisions in the Social Security Act. At the top of **page 17** the "Info Pack" also states that an appeal can only be heard once. That means an appeal can only be heard once for the particular decision it relates to. An appeal must usually be made within three months, but a MAB can in some cases allow exceptions to that rule, if an appealing client can give good reasons for this to be granted. This is in line with previous provisions.

As for the pre hearing process, a client can appeal in writing to the MAB if she/he disagrees with a decision made by WINZ (MSD) on eligibility or obligations based on medical grounds, or on grounds relating to capacity for work. The decision and appeal must fall under the provisions of **section10B** of the Act. Before a hearing is set, the client will be asked to meet with the case manager who made the decision, or if the client insists on seeing another staff member, meet with that person, to discuss the appeal and certain other relevant details.

If the WINZ case manager and client cannot resolve matters leading to a review of the decision, the matter will then be forwarded to the "**Appeals Coordinator**", who will conduct a formal internal review of the matter. Any new information the client presents will be considered during this review. Prior to changes in 2013 the Coordinator only performed an "administrative check" of the challenged original decision, not a proper, formal internal review of it. So this pre hearing review must be welcomed as a positive change. If that (further) internal review finds that the initial decision was in part or fully "correct", then the Coordinator will contact Board Members to set up a MAB hearing. A **Process Flowchart on page 10** of the "Info Pack" shows the steps that WINZ, the Coordinator and then the MAB follow. The client and appointed MAB members will be contacted, and all will be sent a prepared '**Report for the Medical Appeals Board**' (see also **page 19** of the "Info Pack"). This Report summarises and presents the case to the appellant and MAB Members in a slightly different, apparently more "standardised" way than it used to be done.

## 3. The Report for the MAB

The "Report" is meant to be kept in a "**standard format**", and according to the guide it *"will accurately and concisely summarise what the appeal is about".* **Appendix 19 shows a draft 'Report'** format, which appears to limit what a client may be able to have as any input here. It is clear that this 'Report' is actually **prepared by the MSD employed Coordinator**, possibly in cooperation with a WINZ case manager. Therefore it will inevitably rather represent the case from MSD's point of view, and will be kept very short and succinct, so as to not allow much discussion or interpretation of stated details.

Under *'**Section 2 – Summary of facts**'*, which is supposed to represent crucial facts, at least relevant information like medical certificates and reports, from host and designated doctors, specialists, work ability assessors and so will be attached, which must be expected. But then there is a mention of *"**list any advice sought and received from other parties and any relevant information that supports the decision made**".* **And there we have it, the 'Regional Health or Regional Disability Advisor' are mentioned, also the "Principal Advisors"!** As already mentioned above, these "Advisors" can hardly be seen as

independent ones, given the kind of training, mentoring and guidance they get, all based on the "new approaches" recommended by Mansel Aylward and like minded UK "experts". And of course, they are employed, trained and paid by MSD!

Under *'**Section 3 – Case for the client**'*, it appears the client's case is summarised. This can only be done with client input, and it depends on how much of that will be encouraged and allowed, by the case manager who advises the client on appeals, whether this can be considered as "fair" or not so. It would appear that this information is primarily, possibly almost exclusively, **based on the appeal application made by the client**. Without good, independent advice (certainly not from a WINZ case manager) a client is likely to be poorly advised to prepare for an appeal. As it is limited what a client can present to be included in this kind of 'Report', it is of utmost importance, that an application for an appeal is as precise, detailed and comprehensive as possible, and is also accompanied by relevant, important documentation that is essential to be considered. It appears absolutely essential for a client to start preparing any submissions right from the start, and present them in writing, after consultation with a good, experienced, competent advocate, or better a legal advisor. All relevant medical and other important information must be included and documented.

Under *'**Section 4 – Case for the Ministry of Social Development**'*, the Coordinator is meant to present evidence and other relevant information the Ministry deems essential. Here it becomes totally clear, that **the Ministry (WINZ) have a clear advantage in the process**, as they will have all the resources to their avail, to present strong legal arguments, to refer to legislation, to present relevant documentation they have, and to point out policy and procedural matters that they wish to be considered. We must bear in mind also, that the reforms based on completely new policy and new approaches have led to **significant changes to the Social Security Act**, which now imposes more expectations, obligations and also sanctions on clients claiming benefits. The reforms have brought in **a totally new approach, where "work ability" is considered** under different kinds of criteria, similar to the approach that has been used in the UK. The involvement of the mentioned "Advisors" providing their "recommendations" comes into play, and **even the medical profession now appears to be compromised**, as it is expected to work within the new legal and policy framework, and to rather look at what a person "can do" than what they "cannot do".

Traditional, objective medical scientific diagnosis, assessment and treatment is no longer accepted without a challenge, and hence the very MAB Members, same as the "Advisors" MSD employ, will all be bound to adhere to the above, and review appeals accordingly.

And as if the Ministry has with this not already got enough "clout" to use in the process, *'**Section 5 – Conclusion**'* does offer it another chance to state its expectations, to ensure it has the last word in appeal hearings. One should expect a NEUTRAL 'Conclusion', given the fact that the MAB is supposed to be appointed by a "neutral" Coordinator, acting without taking sides, despite of being a MSD staff member her-/himself, but that is not what we get.

**No, it says the following**:
*"In this section:*

- ***state that the Ministry considers the decision under appeal to have been made correctly***
- *provide a brief and concise statement which outlines the reason for the decision."*

Therefore this 'Report' already presents a start to the process that is at least slightly favouring the MSD before the appellant, given the type, quality and weight of information allowed to be included, and the fact that **it is a report prepared by a person working as an official employee of MSD**. Without any legal advice any appellant will have a significant disadvantage from the outset of this process.

## 4. Further information presented for the appeal

On the bottom of **page 19** of the "Info Pack" it mentions that **further information and submissions can be presented by the client and their representative**, which I think is an **absolute must**, in order to be heard and given due consideration by the MAB. Indeed both the appellant and the Ministry can produce "**new information**" during the hearing process, as it states at the top of **page 20**. Such information can be presented before or during the hearing, and in the latter case a hearing may need to be adjourned. The client must ensure that any submission is also presented to the Ministry, which can and will usually happen via the Coordinator. Sufficient time must be given to the other party to consider the information.

What some MAB Members have in the past not sufficiently understood is the fact, that a MAB must NOT examine the client / appellant! This has happened on some occasions, but by doing so, the MAB panel would automatically disqualify themselves, and the hearing would be legally invalid, and an appeal would need to be heard anew. A further medical examination of the appellant can only be done by another examiner who is not part of the hearing process, and a hearing can be adjourned pending the result of such examination. If the client does not agree to a further medical examination, then a hearing may be conducted on paper and on evidence already before the MAB. New medical and other relevant information can still be presented after a hearing, and before a decision is made and sent to the appellant. Then it must again be considered by the other party and the panel. If new information is available and presented after the MAB decision, it cannot be considered and will not change the decision, and can instead only be considered by the responsible WINZ branch through reviewing a situation according to section 81 of the Act. That may though also involve a further re-examination by a "Designated Doctor" or so. A new decision made after that is then open for another appeal, if the client sees a need for that (see page 21).

## 5. The newly introduced Ministry's "presenter" upsets the power balance in MAB hearings

Probably **the major new change to the MAB process** is the now common involvement of a "**presenter**" before a hearing panel, **to present the case of the Ministry**. This was not part of appeals heard before the changes, as far as we can establish, and creates something of a further imbalance that does clearly favour the Ministry of Social Development.

Under ***"Personal representations"*** on **page 22** of the "**Info Pack**" it says: *"The client may attend in person at the appeal hearing.* ***If the client chooses to attend then the Ministry presenter should also attend. If the client chooses not to attend the hearing then the Ministry presenter does not attend either."***

Already at the bottom of page 5 of the "MAB Members Information Pack" do we read under the heading "***Natural Justice***":
***"Although it is important to treat both the Ministry and the client equally, Board members should recognise that the Ministry has a natural advantage. The Ministry presenter will have access to the relevant law, policy and legal advice; the client may not have this."***

The following comments that the Board should minimise this imbalance by *"ensuring the client has a full opportunity to be heard"*, are unconvincing, as it will solve little.

Although **there is NO provision in the Social Security Act for the attendance of such a presenter**, and although this was apparently never practice, the Ministry appears to have thought, that this is what "natural justice" allows them to do, as it allows them "to be heard".

But given the fact, that the whole process does already give the Ministry a significant advantage, due to its access to expert legal and other advice that can already be included in

the ‘Report for the Medical Appeals Board’, due to its generous financial resources (paid by the taxpayers), and its inside knowledge of procedures, processes and policy, **this development must be treated with greatest concern and deserves strongest criticism**.

The Ministry does already appoint the MAB Members, provides them with their training and guidance, pays the MAB, insists on the MAB to adhere to new medical and work ability assessment criteria and approaches, and sets the policy framework they must follow when reviewing appeals. The Ministry’s Advisors and Coordinators play an additional role in communicating certain expectations, in finding, selecting, endorsing and approving MAB members, and **the whole process is thus already stacked against the appellant**, usually equipped with very few resources, with limited knowledge and often no legal advice.

Also do the mentioned RHAs, and RDAs, often upon consultation with one of the Principal Advisors at Head Office, make their own recommendations on clients’ health and ability to work to the decision-making case managers. They will therefore - as special consultants employed by MSD - contribute to disputed decisions, while they are at least indirectly also involved in the appointment of MAB Members (often “Designated Doctors”).

The presenter will have ready access to (internally available) legal advice, which the appellant is likely to not have. The presenter is not medically qualified, so will have little competence in commenting on relevant medical information. Such information will already be available, as it will already have been provided to WINZ and the panel by a client’s own doctor, perhaps by a “Designated Doctor”, by another specialist or a Work Ability Assessor. The presenter may simply justify her/his decision, while the layperson WINZ client will have to argue her/his case without similar professional insight. Apart from simply stating or confirming facts that should already have been presented to the MAB with the ‘Report’, the presenter is likely to only contribute by arguing legally to justify the decision she/he made.

In the past the MAB was almost purely focused on establishing the true, relevant health conditions or disability, and how this would impact on a person’s ability to work. That would then determine whether an appellant was entitled to certain benefits granted on health grounds, medical conditions and disability. There was only marginal consideration of legal provisions and complexities. That is why the MAB consisted only of medical and rehabilitation professionals. Now the usually layperson client, struggling already with poor health and with disability, is confronted with hearings that do more and more resemble court or tribunal hearings, where legal terminology may play a much greater role, and where she/he will not only be facing questions by MAB panel members, but also face arguments presented by the “Ministry presenter”, who is an expert insider of MSD’s system.

**This is hardly a positive, constructive contribution to a fair and reasonable hearing by such a MAB panel**. If a presenter is allowed to be heard, then the whole MAB process should be changed from being more of a “medical review” process, to **a proper judicial type tribunal**, where a panel would also include legal experts, experienced with hearing proper legal cases. **Medical and rehabilitation professionals will despite of some training hardly have the needed legal knowledge and experience to conduct proper judicial hearings where questions of law will be discussed**. A separate **Tribunal** should be established, also allowing further appeals to the courts system, and it would certainly need to be appointed by a special board that is totally independent from the MSD!

## 6. Legal representation for the client results in legal representation by the already advantaged Ministry

To complicate things further it says on page 22 in the “Info Pack” under ***“Resources available to the MAB to help them make its decision”***: ***“If the Board is unsure of a legal point, such as interpreting case law or legislation, then it should ask for legal submissions on that point from the client and the Ministry presenter.”***

And then the 'MAB Members Information Pack' also states: ***"If the client does not have legal representation, the Ministry can provide a list of free legal advice providers such as Community Law Centres or Citizen's Advice Bureaux."***

This is really an audacity for the Ministry and any appointed MAB to deal with raised legal issues in this way. Community Law Centres have due to cuts in government funding been forced to close or reduce their services in some areas, and they don't usually have the resources or even permission to provide professional legal advice for judicial hearings, which would include MAB hearings as well. They only give general legal advice to citizens, that is limited in scope and depth, and it can seldom be used to form proper, good legal opinions on specific cases. Also are Citizen Advice Bureaus (CABs) only offering rather general legal information, and they usually have little or NO expertise with such MAB hearings. The legal advisors they employ for giving low level advice to citizens can hardly be very useful for specific cases being heard by a judicial kind of body. And to our knowledge NO CAB legal advisor would serve as a representative for a client before any court, tribunal or a MAB.

To make things worse, the "Info Pack" informs on **page 23** that clients or appellants bringing a case before a MAB may bring their own representatives or support persons to a hearing. A client may also (formally in writing) appoint an agent, who may be a friend, advocate or legal representative. That sounds good for a start, but if a client comes with a "solicitor" then the Ministry must be informed, so it can then consider whether it wishes to bring their own "solicitor" to the hearing.

It is already difficult for a person dependent on a benefit to cover the day to day living costs, so it is hard to imagine, how a client would be able to afford a legal representative such as a solicitor. As MAB hearings would be considered as being "civil" legal matters, a client would most likely have to apply for legal aid, which is then only granted if a lawyer or solicitor is found, who can also present a case as being likely to succeed. Without that no aid may be paid. Also are there few legal representatives that are experts in social security legislation. It is close to striking a lotto win, to find a lawyer working on pro bono basis.

In short, a client would have a dim chance to get such representation, and if she/he does, then they face the Ministry presenter bringing their own legal representative. And further to this the question arises, how are ordinary doctors and rehab professionals going to cope with legal experts presenting their cases? The MAB would be overwhelmed with legalistic arguments from both sides, and struggle to come to a competent assessment of their own.

This shows how completely unfair the process is, despite of all attempts to stress the importance of "natural justice", and to assure participants that justice would be done through such a hearing. The "presenter" will in most cases be the very case manager who made the decision that is challenged, and have substantially more information and knowledge about the case, the process, legal provisions and policy than any client may have. And should a client then bring their own solicitor, they get "trumped" by one paid for by the taxpayer, from the pool of experts working for Crown Law, who represent MSD.

The few Advocates that are still active supporting people on benefits are often in such high demand; they will in many cases also not be available to represent a client. Again government funding cuts and caps, and lack of alternative funding, have forced many out of action, and few are available to assist free of charge as volunteers. Apart from that, few if any advocates would have the legal knowledge and expertise to cope with a professional legal representative hired by Crown Law, who is acting for the Ministry.

The process as it is now has never been stacked more in favour of the Ministry as before.

## D) MEDICAL APPEAL PROCESS - SOME SPECIAL ASPECTS TO CONSIDER

### 1. Pre-hearing procedures, a client's objections, and requests for recordings

From **page 24** in the "Info Pack" the whole MAB hearing process is explained in a bit more detail, covering also the more practical steps that must be taken by the MAB Members.

Under ***"Pre-hearing procedures"*** and ***"Objections"*** the "Info Pack" states that **a client can object to certain persons being Member on a panel**, but in this case reference is primarily made to questions that may arise around issues under "natural justice", where appointed members should be disqualified for reasons already stated on page 14.

There is no mention of the fact, that **the composition of such a MAB may not match the health conditions an appellant may suffer from, or the disability that affects an ability to work**. **Where a person may suffer from psychiatric or psychological conditions, and there is no psychiatrist or psychologist on the MAB, a client should have every reason to challenge the "Coordinator" and MSD, and demand that a health or rehabilitation professional with the appropriate qualifications, expertise and competence sits on the Board.** Otherwise there is too great a risk that she/he may not be given fair and reasonable consideration.

The other matters covered are common sense and should be expected practical steps to arrange before a hearing, but special attention must be given to the topic ***"Requests for taping a hearing"***. The "Info Pack" states that a client may ask that the hearing be tape recorded. It also states that the MAB can set its own hearing procedure and that this is an "issue" it must consider itself.

I**f the MAB decides that a recording of the hearing should be allowed, then the "Info Pack" strangely advises that it may (only) be recorded by using the National Fraud Investigation Unit (a Unit within MSD) equipment that would make three tapes**. One would be for the client, one for the MAB and one for the Ministry. There is talk about this being arranged before a hearing, which would then enable the "Co-ordinator" to arrange this to be in the room for the Board to then decide upon agreeing to recordings or not. But the MAB can refuse recordings, as long as it provides reasons and explains this to the client.

A client who is for instance a very isolated, sick or disabled person, who has no friends, relatives or not even an advocate she/he may be able to "network" with, may only be able to obtain reliable evidence of how a hearing progresses by recording it on audio or video equipment. If this is denied, the client would be seriously disadvantaged, and would have nothing to fall back on, should the hearing have an outcome she/he finds unacceptable. Such a client would under the circumstances also hardly have any resources and ability to apply for a judicial review at the High Court, which would be the only way to challenge a MAB decision, given there is no further appeal right. **Hence a Board could shut down any potential challenges to its decision by simply denying a recording, even if this may breach natural justice.**

On the other hand, relying only on equipment provided by one party, like in the case of the '**National Fraud Investigation Unit**', would also be unfair and unreasonable. If the one already significantly advantaged party MSD is allowed to have its equipment used, and the other not, then this creates yet another imbalance that is unacceptable. Also should equipment be used that comes from a truly independent, uninvolved source and NOT from a source that is party to the proceedings.

And in any case, a client MUST be allowed to make their own recordings with her/his own equipment also, should a recording be allowed using MSD's equipment. This present

provision and proposed arrangement is certainly not satisfactory and unacceptable. It again potentially disadvantages the appellant and client.

## 2. The Hearing – procedure and further aspects of concern

**It is common practice that a hearing panel can to some degree set its own "process"**, as long as it is not in conflict with the statute or other law governing it, and is not in conflict with natural justice. Of course the hearing must be fair and reasonable, and the process must be explained to the participants.

As already mentioned, the "**Ministry presenter**" does represent a new player in the process, who is in effect creating a further significant imbalance. When the client attends, the "presenter" will also attend, as we already learned. On **page 27** of the "Info Pack" it states that the "presenter" is usually the WINZ case manager responsible for the decision. If the original decision maker is unavailable to attend the hearing, another *"appropriate member"* will attend on the Ministry's behalf. It says: ***"This may include another case manager or a service centre manager."*** So the Ministry may actually even send a senior staff member such as a service centre manager to attend the hearing, which does tilt the whole process yet further towards an advantage for the Ministry.

Under "***Presentations***" (**page 27**) we read that the Ministry often presents its case first to the MAB. There it reads: "This may be **because the Ministry has compiled the *Report of the Medical Appeals Board***." What actually appears to be meant is that the Ministry (with the "Co-ordinator") **does compile the** '***Report <u>for</u> the Medical Appeals Board'***. That means the Ministry also seems to often be given a head start in the hearing. This naturally leaves the client in a somewhat defensive position.

Appellants choosing not to appear before a hearing should be mindful of the fact that their appeal will in that case only **be heard on paper**. That means, it would be even more important to present proper, good and convincing submissions in writing, should this happen. The panel will only be able to consider evidence put before them, and if that consists only of the 'Report' by the "Coordinator", then the client runs a high risk of important information not being considered, and the hearing leading to an unfavourable, potentially unfair decision.

Important to note from the "Info Pack" is the important guidance provided on "***Evidence***", especially in regards to *"Standard of Proof"* and *"Weight of Evidence"*. The MAB will decide on the ***"balance of probabilities"***, which has a lower threshold as a standard of proof. It will depend on the capabilities, experience and integrity of MAB members, how well they will apply the stated principles on the use of evidence. The best of intentions may not always suffice to meet the high standards for judicial types of hearings, and to some degree every person will tend to be subjective.

Guidelines set for *"**Adjournments**"* and for how to deal with *"**Disruptions**"* appear to be set fairly and are in line with usual standards.

On **page 32** of the "Info Pack" for MAB Members we can read what guidelines they have to follow when making their ***"Decisions"***. Apart from another section explaining the importance and meaning of ***"Administrative Law and Natural Justice"*** it is perhaps very important to note the comments at the top of page 32, which make abundantly clear, **that the MAB is instructed to strictly follow applicable LAW.** It states:

*"It is essential that the Board's decision reflects the relevant law, and is reached in a fair way. This means that the Board 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***
- *consider all the options available to the client*
- ***fully explain the legal constraints and requirements to the client** and ask the client to comment on how he or she meets each specific requirement*
- *decide **whether the client meets which, if any, of the specific legislative provisions** the MAB are dealing with*
- *consider seeking legal submissions if unsure of the extent of the application of the ruling to the specific appeal*
- ***act within the law**."*

As the Social Security Act has now been substantially amended to enable MSD and WINZ to apply new, in part draconian measures, in the form of numerous new work preparation and work test expectations and obligations, this means, that the MAB will be expected to make decisions that are in line with these! Even where principles of "natural justice" will be followed, **there are likely to be many cases, where the client will feel that the decision made is actually harsh, unfair and unreasonable, given the legal constraints that exist**. This is of course intended, and hence MAB hearings will in a fair number of cases offer little in the way of legal remedies for the appellant. This will be aggravated by circumstances where the clients lack legal and administrative understandings, are poorly prepared, have failed to document everything they need to present for consideration, and where they have no advocacy or legal representation.

The MAB Members must apply the law as it stands, and base their decisions on the legislation and on assessed and presented medical or work capacity criteria. As both have now been redrawn and reformulated, given the social security reforms that came into force in mid July 2013, and given the adoption of "new approaches" for assessing "work capacity", propagated by such "experts" as Mansel Aylward and some of his colleagues, the MAB Members will feel obligated to make decisions giving substantial consideration to all this.

On **page 33** of the "Info Pack" under "***Available decisions***" it is correctly mentioned that the MAB may uphold, partly uphold or overturn the decision by the Ministry. Only two out of the three MAB Members need to agree on a decision for it to be FINAL!

**Appendix 21** to the "Info Pack" shows a draft form of the then completed "**Report of the Medical Appeals Board**". It does now look more like a proper, formal legal document, meeting official standards, which was (mostly) not the case with such 'Reports' prior to 2013.

## 3. 'Post-hearing Procedures' – how the decision must be documented and presented

On **page 34** in the "MAB Members Information Pack" we read how the Board members are expected to document and explain their decision. It is made clear that they can and should represent the case and arguments of both parties, of the client and the Ministry. The reasons for the decision must be explained. The Members are expected to make references to relevant legislation and policy, and refer to quotes or provisions, should they justify the decision on relevant law.

The report, generally prepared by the chairperson, must state if not all members agreed, and it must be checked off with each panel member. Only the chairperson needs to sign it. The final report of the decision is sent to the "Coordinator", who will send a copy to the client. If the Board considers it necessary to send a copy of the report to the client's practitioner, it must seek the written consent of the client to do so. If the client refuses, then the Board can only recommend that she/he share it with the regular practitioner.

### 4. The 'Chairperson's Guide' – leaving it up to the MAB "to run the hearing in any way"

After presenting about 35 pages of the '**Medical Appeals Board – Board Members Information Pack**' with stated guidelines to follow, we then read with great astonishment on **page 36**:
***"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 a Board may choose to run a hearing in any way."***

So the document is apparently nothing more than a "suggested" guide to follow, and not strictly binding! **This leaves a lot of discretion to a MAB and especially the chosen chairperson, to organise and conduct such an important hearing**. As non legal professionals make up the MAB, this leaves the whole process up to being interpreted and followed in ways that may not be appropriate, despite of the repeated comments and references made about legislation and "natural justice".

At least a range of bullet points with basic facts and principles to follow is offered after that, even if it may just be a final, brief summary of the whole contents. One bullet point does then suggest again, that ***"the Ministry will present their case first and then the client will have an opportunity to explain his or her reasons for the appeal".***

**That really says enough, for the general direction and approach that is recommended!**

## E) WITHHELD MAB STATISTICS AND EXPENDITURE DATA

At least some statistical information used to be published on MAB hearings, the number of the appeals heard or reviews conducted, and the total costs they incurred for a financial year. It used to be included in Appendices for fees and expenses paid to members of statutory and other bodies serviced by the Ministry. These details used to be published with '**Annual Reports**' that MSD used to publish until 2009/10. **Since then the reporting on MABs has stopped!** Annual Reports now rather focus on balance sheet type accounting data, presented by Audit New Zealand and the Ministry. In the last Annual Report that contained information on MAB hearings, there was a cost blow-out, which was "explained" with an increase of applications for the Child Disability Allowance, of which more were also declined, then leading to more appeals. This was supposed to have led to the increase in total appeals, but there appears to have been an increase of medical appeals in other areas also.

**'NZ Doctor' magazine online wrote about this on 24 April 2013**:
*'Medical Appeal Board costs treble then drop back'*, by Lucy Ratcliffe:
**http://www.nzdoctor.co.nz/in-print/2013/april-2013/24-april-2013/medical-appeal-board-costs-treble-then-drop-back.aspx**

**Search the Web (under the given title) per 'Google', 'Bing' or so, or see this other link to a PDF copy of that, in case the link above does not work:**
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/nz-doctor-mab-costs-treble-then-drop-back-article-l-ratcliffe-24-04-2013.pdf**

**Here are links to PDF copies of the earlier Annual Reports that still show the data:**
**https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/corporate/annual-report/**
Individual ones (still current on 20.09.16):
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report/annual-report-2009-2010.pdf (see page 120)**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report/annual-report-2008-2009.pdf (see pages 121-122)**

**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/msd-annual-report-2007-08.pdf (see page 132)**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report-2006-2007-part-1.pdf**

**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report-2006-2007-financials.pdf**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report-2006-2007-appendices.pdf (see page 129)**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report-2005-2006.pdf (see page 137)**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report-2005-2006-1.pdf**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report-2005-2006-2.pdf (see page 137)**

**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-annual-report-2004-2005-mab-costs-and-cases-p-172-173-d-load-01-09-2012.pdf**

**And the following link shows that the report 2010-11 does no longer include MAB data:**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report/2011/annual-report-2010-11.pdf**
**https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/annual-report/2011/annual-report-2010-2011-erratum.pdf**

So it appears that the Ministry has since 2011 intentionally withheld information on MAB hearings and their costs, which should be of major concern, as the reasons given, e.g. a change in financial reporting methods across the public service sector, appear a little unconvincing, to put it mildly.

**In view of the above, it was perhaps a bit surprising, to get at least some one off information on MAB hearing numbers and outcomes by way of an OIA response from Deputy Chief Executive Debbie Power on 12 July 2013:**
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-o-i-a-request-dds-mabs-training-ltr-fr-d-power-c-e-w-mab-table-anon-12-07-13.pdf**

With the minimal "transparency" we get from MSD on MAB hearings and outcomes, how can the public assess and form an opinion, on how "fair" hearings and decisions are, and how they do actually measure up to meet standards of "natural justice"?

## F) MEDICAL APPEAL BOARD MEMBER PAYMENT

As it states under ***"Payment"*** at the bottom of **page 14 in the "Info Pack"**, the MAB members are paid by the Ministry of Social Development.

Although payments to Members hearing medical appeals by WINZ beneficiaries may vary due to time and other costs involved, and are apparently not publicly available, there is some reliable historic information available from a MAB hearing conducted in late October 2010. Invoiced were on 29 October 2010 by the Chairperson $ 2,234 for 3 hours preparation, 1 hour pre-meeting and hearing time, 0.83 hours "post meeting" activity and 4 hours for "report writing". A total of 8.83 hours were invoiced! Another panel member attending the same hearing invoiced $ 1,460.50 for 3.75 hours **at $ 195 per hour (plus GST)**, plus costs for 45 minutes at the hearing, 45 minutes for planning the report and discussing it, 45 minutes for editing and compiling the report. That member also invoiced for **100 km travel at $ 1.15 per km, being $ 115**. A third panel member invoiced only $ 840 for unspecified activities. It appears that a base charge for 3.75 hours is paid, plus additional expenses. **For the given example this gives a total of $ 4,534.50 for just one hearing**, which admittedly involved a fair amount of documentation to be read and assessed.

It must be expected that payments will have increased since then, so medical practitioners and other health or rehabilitation professionals attending such Board meetings and to any related activities appear to be earning a good "pay" for their "services".

**By the way, here is some evidence of Dr Bratt's efforts to seek an increase of fees paid to Designated Doctors, already in 2008:**
**https://nzsocialjusticeblog2013.files.wordpress.com/2015/03/msd-design-dr-fee-adjustment-proposal-dr-d-bratt-memo-copy-hi-lit-19-11-2008.pdf**

## G) OTHER ASPECTS TO CONSIDER RE THE MAB AND THE LEGISLATION

Also important to consider in relation to the MAB, the legislation and processes they follow, is the fact that **the Chief Executive of MSD has a huge, unreasonable amount of discretion to make decisions** under provisions of the Social Security Act 1964. This degree of power is extremely worrying, as it is the Chief Executive who decides under the provisions of the Act, who should face certain obligations, and if they are not met, what sanctions will be imposed. **It is also at the Chief Executive's discretion to determine whether someone has the capacity to seek, undertake and be available to work! As we know now, this is no longer only determined based on information of a medical nature!**

What this means, and how **this is in conflict with modern day lawmaking, and with New Zealand's basic principles for its legal and constitutional system**, can be read in a very critical submission made by the '**Legislation Advisory Committee**' on the Bill that led to the change of the Social Security Act in 2013.

**Legislation Advisory Committee submission on the 'Social Security (Benefit Categories and Work Focus) Amendment Bill 2012', 01 Nov. 2012:**
**http://www.parliament.nz/en-nz/pb/sc/documents/evidence/50SCSS_EVI_00DBHOH_BILL11634_1_A298367/legislation-advisory-committee**

**http://www.parliament.nz/resource/en-nz/50SCSS_EVI_00DBHOH_BILL11634_1_A298367/d1ded83fdb6208368b4de86523053350b0d01ee3**

**Extracts:**
***"Understandable and accessible legislation"***

*"**9.** As an amendment Bill to the Social Security Act 1964, **this Bill does not create understandable and accessible legislation**. The Social Security Act must be one of the most, if not the most, amended Act on New Zealand's statute books. Since enactment the Act has been subject to amendment 131 times. Of the Act's current 457 sections and 32 schedules, 174 sections and 14 schedule have been previously repealed. **This Bill repeals 35 sections and one schedule. It introduces 54 new sections and 2 new schedules, and amends 51 current sections and 8 current schedules**. As an example, one of the new sections will be called "60GAG". Reading through both this Bill and the Social Security Act as it will be when amended require much skipping between different sections and parts in order to understand an issue. Some of the new sections and current sections amended to include further subsections will be very long. For instance section 77 of the Act will become 14 subsections long and subsection 82 will become 18 subsections long."*

*"**10. All of this past and proposed amendment of the Social Security Act has left it in messy and confusing state**. The Act is in need of a complete rewrite in order to create coherent, comprehensible, straightforward framework. Because of the nature of this type of legislation as a system of entitlements for New Zealanders in difficult, and potentially*

*vulnerable, circumstances, there is even greater need for this legislation to be clear and accessible."*

***"Basic principles of New Zealand's legal and constitutional system"***

*"**13. The Bill raises a Rule of Law issue**. In a number of instances, **the Bill gives the Chief Executive of the Ministry of Social Development discretion about matters that affect an individual's entitlement for social support**. For example, cl9 introduces new s 11E, which gives the Chief Executive discretion to determine whether someone has the capacity to seek, undertake and be available to work. Cl 11 introduces new s 20B, under which the Chief Executive has the discretion to regard a child as being the child of a benefit applicant if the child's parents are unwilling to support the child because of circumstances the Chief Executive considers exceptional. Sch 1 introduces new sch 3A, which gives the Chief Executive the discretion to disregard up to $20 per week of a beneficiary's personal earnings to meet the cost of childcare.*

*"**14.** This approach is consistent with the Social Security Act in its present state as **it does leave more than 50 decisions to the Chief Executive's discretion**, and to some extent this type of legislation does require the decision makers to have some flexibility in how they apply rules. However, **the reliance on the discretion of a decision-maker is something that is being used less frequently in modern legislation. The principle that the law should be clear and should apply consistently to all is central to our legal and constitutional system**. This legislation is about essential practical assistance affecting individual's everyday lives. It should generally be possible to determine the criteria for entitlements by looking at the legislation, rather than relying on decision-making discretion on a case-by-case basis."*

***"Appeal and review"***

*"**15.** The Bill re-enacts (ie repeals and replaces with a new section) s 56A of the Social Security Act which establishes the right of appeal on medical grounds to a medical appeal board in sch 2, which inserts new section 10B. **This right of appeal applies to certain types of decision related to sickness, injury, disability and capacity of sickness beneficiaries to work. There is no further right of appeal from decisions of the medical board and its decision bind the Chief Executive**. The board comprises three members appointed by the Chief Executive who are medical or rehabilitation practitioners or persons with expertise in vocational training or support."*

*"**16.** This is a **more limited and less independent right of appeal than applies to other decisions under the Social Security Act**, which may be appealed to a benefits review committee and then to the Social Security Appeal Authority. A further appeal may be made to the High Court on questions of law."*

The Legislation Advisory Committee continued with other points of criticism in their submission on the above mentioned Bill, which upon passing by Parliament later amended the Social Security Act - with only minor changes being made to the draft Bill. The issues raised by the Committee appear to not have been addressed at all!

## H) LACK OF MEDIA COVERAGE AND TRANSPARENCY OF MAB HEARINGS

It may be due to a lack of understanding of the perhaps too complex subject matter, the legal framework and medical aspects that are often involved or otherwise perhaps a total lack of interest in the fate of persons with sickness, injury and disability dependent on benefit support. In any case there appears to be extremely little reporting on what Medical Appeal Boards and their Members do, and what decisions they make.

At the same time we get damned little, virtually NO official information on outcomes of MAB hearings, as MSD's Annual Reports no longer provide any basic, general data, and as other reports do simply not get created and published. Even Official Information Act (OIA) requests do often lead to no or only very limited information being made available, which does certainly not improve public perception of how MSD and how MABs deal with appeals.

And the only one article we found, that is somewhat "current", and that delivers information on a case heard by a MAB, does present a more positive case and outcome, which though does not represent the rule, rather the exception. **No wonder then, that the affected describe it like winning a lotto draw** that MSD's decision was overturned. That shows how abysmally appeals seem to generally be treated now, and it reinforces the need to call for substantial changes in the process we have. The changes made since 2012 do only make things harder for sick and disabled, and offer the Ministry yet more of an advantage, and this is certainly not acceptable, as it does not deliver fair justice, if it does offer justice at all!

## Read this one media report, from the 'Wairarapa Times Age', by Cherie Taylor, from 15 August 2013:

http://www.nzherald.co.nz/wairarapa-times-age/news/article.cfm?c_id=1503414&objectid=11107582

**Text Extract:**

***"Featherston 'suicide' pair win appeal"***, by Cherie Taylor, 15 August 2013

*"A severely-ill South Wairarapa couple who considered committing suicide fearing they wouldn't survive once their benefit changed have won an appeal which will ensure their income isn't cut. The couple, who featured in the Times-Age last month, and want to only be identified as Marie and Anthony, were told by Work and Income under the new welfare system Marie would be transferred from the invalid's benefit to a benefit which required her to work a minimum of 15 hours a week.*

*She had been on ACC after severely injuring herself while working at a mill about 19 years ago. During the overhaul of ACC she was moved on to the invalid's benefit. She is unable to walk or stand for long periods and experiences pain daily, requiring medication, including sleeping pills along with drugs for anxiety. Anthony has emphysema and is also unable to work.*

*With the changes, the pair said they were concerned they would lose about $100 weekly which would place them under severe financial hardship so contacted the Wairarapa Advocate Service for help and applied for a review of decision, which they originally lost.*
*Applying for a medical appeal their case was heard by three Medical Appeal Board members, Ian St George, Kathleen Williams and Kathy Stone, who overturned the ministry's decision. In the decisions the board states Marie had tried to work in paid employment but had to stop because of exacerbations of her pain and specialists could do nothing to relieve her daily pain. The board said Marie was permanently disabled from the work accident and incapable of working 15 or more hours weekly and overturned the original decision to move her on to a job seeker benefit.*

*Marie told the Times-Age the final decision was a relief.*

***"It's like winning Lotto only without the money. It's really taken the stress off us both.***
*They have no idea how much pain I was because of the stress ... at least it's over now."*
*The three reviewers saw her on a better day but realised her anguish, she said. "They saw me on a good day but I think they saw my true colours ... We can carry on with life now without the worry of how we will cope. Life can carry on as normal now we don't have that hanging over us."*

*However, she said she couldn't have done it without the help and support of Wairarapa Advocate Service advocate Trevor MacKiewicz and encouraged people unsure about their entitlements to contact him. "Don't give up. Find an advocate and keep battling. We are so humbled by Trevor's support. He guided us."*

*Mr MacKiewicz said the service's client list had more than doubled from 100 to 250 since the couple's story was highlighted. "People are struggling and they are worried about the changes and their obligations especially around drug testing. There are people on medications who think they won't pass the drug test," he said.*

*Meanwhile, he said he was pleased to get a successful result for Marie and Anthony. "She can relax now and not worry about being pressured to go to work when she can't work. She'd rather be working but she can't."*

***But, he said, Work and Income needs to look at the review system and provide adjudicators with all the information to avoid the expense and trauma of appealing decisions.*** *"How can they make a fair decision if they haven't got all the information laid out in front of them? Work and Income had all the medical information but didn't provide it to the reviewer. This needs to change."*

*If you need help Mr MacKiewicz or an advocate can be contacted by calling (06) 377-2525.*
- **Wairarapa Times-Age**

## I) SUMMARY COMMENTS AND CONCLUSION

We can summarise the questionable particular changes to, and also the continued, unchanged practices that form part of the MAB process and that can only be seen as being totally unfair and unreasonable, if not illegal:

1. The MAB has been and is still being appointed by the Ministry of Social Development through their 'Appeals Coordinator', which is a practice that raises serious issues with the proper application of natural justice. To have a truly independent hearing panel and hearing process, this practice must be stopped, and a separate, independent appointment board should be established, that appoints such Members for MAB hearings. Indeed it should be overdue to establish a totally different hearing process, where appeals would be heard by a truly independently appointed Tribunal.

2. The present legal provisions in the Social Security Act 1964 continue to not offer any further rights of appeal from decisions made by a MAB. This is not in line with handling of other decisions made under the Act, where cases can go to Tribunal and even to the courts. A MAB decision is final, and only the very restricted right to apply for a judicial review is available only on questions of law, that may come with a MAB decision that's been made. Hence a solution to this would be to abolish the present MAB hearing system, and instead establish an independently appointed Tribunal hearing such cases, where medical and also legal experts hear cases, that may also leave the option to further appeal hearings before a court.

3. The introduction of a proper, further internal review of original decisions by the 'Appeals Coordinator' is a welcome improvement to the past hearing process, as this makes it possible for dealing with not earlier detected flaws and mistakes in such MSD decisions before a proper appeal hearing may need to be set up and conducted. Questions remain though how "neutral" and "independent" such an internal reviewer in the form of the 'Coordinator' can be, given the position is one within the Ministry itself.

4. The introduction of a “Ministry presenter” may appear justified under natural justice principles, as it allows the Ministry “to be heard” before a MAB hearing panel. But in effect, this new part of the process does actually create a further imbalance that significantly favours the Ministry and their position. The MAB Members are already appointed by the Chief Executive of MSD (through the ‘Coordinator’), the MAB Members are trained and guided by MSD, they get paid by MSD, and they apply rules and law governed by legislation and policy for/of MSD. This already gives MSD too much influence on the whole hearing process as it was and still is. There appeared to be no significant issues with the hearings as they used to be conducted without the use of such a “presenter” in the past. Now the Ministry has this professional, inside expert to their avail to present and defend their case and the made decision, while the appellant will usually be a total layperson, unfamiliar with much policy and with little legal knowledge. As a sick and disabled person the client does usually not have the means to afford expert advice and representation. The “presenter” is indeed an unacceptable new player, and this practice to involve such should be stopped. It is of additional worry that according to information on page 27 of the new “guide” in use for MAB Members that “presenter” may not only be a case manager, but even a Service Centre Manager.

5. The ‘Report for the Medical Appeals Board’ raises questions about its quality and it being “neutral”, as it is prepared by the ‘Coordinator’, appears to allow the Ministry to present more information and more arguments to defend their decision, than the appellant and WINZ client. It does in the present form give the Ministry a head start in the proceedings, as it appears to be covered at the start of hearings, allowing the “Ministry presenter” to present and comment on it. This puts the appellant in a “defensive”, disadvantageous situation, which is not sufficiently in line with the fairness approach that should be applied, and is thus unacceptable. The Report needs to be revisited and changed to present relevant details more equally. As the appellant will usually be a sick, disabled layperson, she/he will even with the help of a support person struggle to present an equally well argued case, even if further submissions may be allowed.

6. The practice to also enable the Ministry to bring in their legal representative, usually an expert hired by Crown Law, when the client and appellant should bring in a solicitor, may appear justified, and strictly speaking must be allowed. But as the whole process is already significantly favouring the Ministry and the “presenter”, this will only add to this clear imbalance before a MAB hearing. It is insulting to inform a client and appellant to seek “legal advice” from the under-resourced, not always easily accessible and available “advisors” working for Community Law Centres and the Citizen Advice Bureaux. The advisors there only offer rather general legal advice and offer no equal quality and expert advice as Crown Law solicitors have, who often are hard to find experts on social security legislation. The appellant is with the recommended handling of legal representations also severely disadvantaged.

7. It is unacceptable to refuse appellants to make their own audio or video recordings of MAB hearings, in light of the fact that the Ministry seems to insist that their “Fraud Unit” equipment is used, should a MAB allow any recording of proceedings. In any case, where one party is allowed to use the equipment they offer to make recordings, the same right should be given to the other party, i.e. the appellant. Also it should be made clear to MAB Members hearing cases, that it is more appropriate to allow recordings, as this ensures transparency and a greater likelihood of fairness and reasonableness being applied in hearings and in making decisions. Denying recordings risks being seen as attempting to deny transparency and fairness.

8. The practice must be stopped to allow “Designated Doctors” and certain other health and rehabilitation professionals to sit and hear MAB appeals, if they have been

consulted with, have in many cases been selected, endorsed and approved for the purpose of delivering services to the Ministry in the form of “second opinions” and work ability assessment services. The apparent practice of allowing “Advisors” and “Coordinators” employed by MSD to have any role whatsoever in helping “identify” and “recruit” such professionals, who mostly are general practitioners, and to even train and “mentor” them, raises questions as to the true independence and objectivity of such health professionals. Only medical practitioners and rehabilitation professionals that do otherwise NOT offer any services to the Ministry should be allowed to be Members on MAB panels. Designated Doctors and/or Work Ability Assessors contracted by MSD must generally not be allowed to hear appeals.

And here is one other matter that deserves to be seriously considered by all persons who may face a MAB hearing. **Representation** may be hard to get for most on benefits, but without any support, be this at least from an experienced advocate with sufficient knowledge and experience, or better even with professional legal representation, you may be left in a situation where your chances may be limited and low to succeed with an appeal. The importance of beneficiaries having representation is also highlighted and discussed in a report published by ‘**Community Law**’, called *‘ACCESS TO JUSTICE’*, from October 2014:
***“A COMMUNITY LAW CANTERBURY ACCESS TO JUSTICE RESEARCH PROJECT”***
**http://www.bas.org.nz/wp-content/uploads/2015/03/Access-to-Justice-online-edition-11-Dec.pdf**

**That link is provided by the ‘Beneficiary Advisory Service’: http://www.bas.org.nz/?p=526**

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**P.S.:**
As there are further changes due to be made to the social security legislation, presently before Parliament in the form of the ‘Social Security Legislation Rewrite Bill’, we can expect that the Social Security Act 1964 will be rewritten and re-enacted soon. But as most provisions will only be “rewritten”, the sections and some wording re Medical Appeal Boards and hearings before them may change, not the way the law and processes will be applied!