



Appealing to the Social Security Appeals Tribunal

A self-help
guide for
people who
want to appeal
against a
Centrelink
decision

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About this guide

This guide is for people who disagree with a Centrelink decision and want to do something about it. It will also be useful for community workers and advocates who want to help clients who have problems with Centrelink and who are appealing to the Social Security Appeals Tribunal.

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Free copies are available from the Welfare Rights Centre. You can order it via the website www.welfarerights.org.au

An electronic copy of this publication is available online at the same website. This guide was last updated: July 2010

ISBN 978-0-9807517-0-3



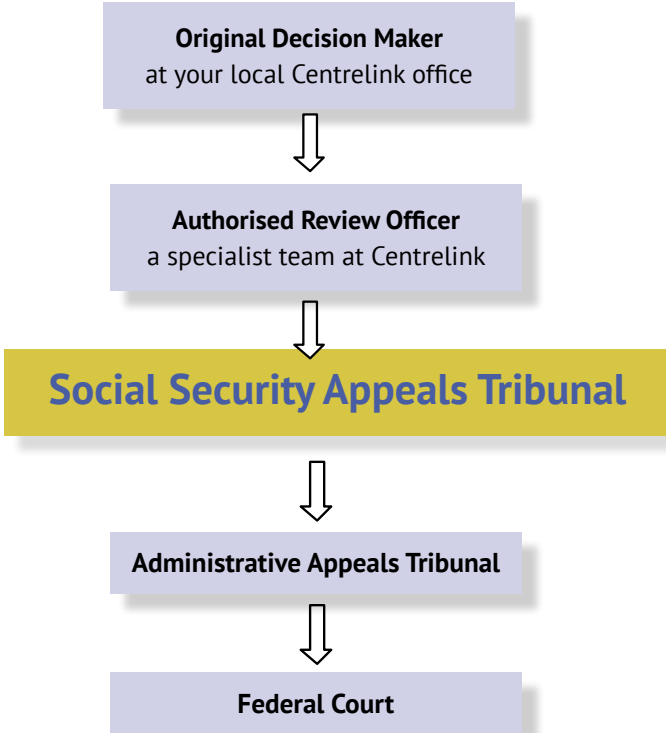
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What is the Social Security Appeals Tribunal (SSAT)?

The **Social Security Appeals Tribunal (SSAT)** is one stage in the **Social Security appeals process**. The SSAT is independent of Centrelink.



The SSAT has wide powers to change decisions made by Centrelink. The SSAT can:

- **Disagree with Centrelink and put its own decision in place of Centrelink's decision** – “set aside the decision and substitute a new decision”;
- **Decide that Centrelink's decision was partly wrong** – “vary the decision”; or
- **Agree with Centrelink** – “affirm the decision”.

Making an appeal

Who should appeal to the SSAT?

You should appeal to the SSAT if you:

- think Centrelink has made a mistake; and
- have appealed to an Authorised Review Officer at Centrelink; and
- have received a letter from an Authorised Review Officer rejecting your appeal.

Appealing to an Authorised Review Officer

If you haven't appealed to an Authorised Review Officer you can do it over the phone. Simply tell a Centrelink officer "I want to appeal." Call Centrelink if you're not sure if you already have appealed to an Authorised Review Officer. The SSAT can only hear cases that have been reviewed by an Authorised Review Officer.

Get advice first, especially if there is a prosecution risk.

Social Security law is complex, so it helps to get advice from people who know about the law.

It is especially important to get advice before you appeal to the SSAT if it is possible that you could be prosecuted for a criminal offence. You may be prosecuted if you were overpaid because you told Centrelink something you knew was untrue. In this situation, Centrelink may refer your case to the Director of Public Prosecutions to consider whether to take you to a criminal court, as well as requiring you to repay the money.

Losing your case at the SSAT or anything that you say during your SSAT appeal could be used against you in a prosecution case. On the other hand, prosecution might be dropped if the SSAT makes a decision in your favour, especially if the SSAT finds that there is no debt, or that the amount of the debt is less than was first calculated.

Case study

Fatima was being prosecuted for receiving Parenting Payment (single) because Centrelink thought she was living in a de facto relationship. She appealed to the SSAT. The SSAT decided there was no de facto relationship and therefore no debt because she was entitled to Parenting Payment at the single rate. The prosecution was dropped as a result of the SSAT decision.

HOT TIPS!

Filling out the SSAT appeal form

- Don't forget to sign and date the form
- Be clear about what payment you are appealing about – if you are on Newstart Allowance but your application for Disability Support Pension was rejected, the appeal is about Disability Support Pension
- Briefly explain why you think the decision is wrong, for example “because I was not in a de facto relationship during the time that Centrelink raised the debt” or “because there are special circumstances in my case as to why my debt should be waived”

Put in your appeal to the SSAT

You can put in your appeal in a number of ways:

- **Use the SSAT's application form**
Forms are available from Centrelink or the SSAT. The form is already addressed and postage paid. Either post it yourself or take it to a Centrelink office or the SSAT. You can also get a copy of the form from the SSAT website: www.ssat.gov.au.
- **Write to the SSAT**
Write a brief letter saying you want to appeal. Include your address and telephone number so it is easy for the SSAT to contact you.
- **Call the SSAT** on 1800 011 140 (free call) and tell them you want to appeal.
- **Deaf and hearing impaired people**
Contact the SSAT on the TTY (Telephone Typewriter). The number is 1800 060 116 and the call is free.

Appealing to the SSAT is free

There is no fee to put in your appeal and there is no penalty if you decide not to go ahead.

The SSAT will not pay for you to have a lawyer or other representative. If you get someone to represent you, who charges you for their services, you will be responsible for the cost.

You may be able to get free legal help from a Welfare Rights Centre/Advocate, see www.welfarerights.org.au

Urgent appeals

If your appeal is urgent ask the SSAT to give priority to your appeal. For example, if you have no income or you are experiencing financial problems.

When to appeal

A Centrelink decision can be appealed at any time to the SSAT. However you **must appeal within 13 weeks** of receiving the Authorised Review Officer's written decision if you want back-pay to the date of the original decision or the date you originally claimed a payment.

If you appeal **after 13 weeks** and you are successful, you will only receive back-pay from the date you put in your appeal.

Ask whether you can be paid while you appeal

If your payment has been reduced or stopped because of the Centrelink decision, you should check with Centrelink whether your payment can be re-instated until your appeal is heard. This is called "payment pending review".

Case study

7 January

Fay makes a claim for Newstart Allowance.



11 January

Fay receives a letter from Centrelink. It says her claim for Newstart Allowance has been rejected. She calls Centrelink that day and puts in an appeal.



15 February

Authorised Review sends Fay a written decision rejecting her appeal.

13 week time limit to lodge appeals

WHAT HAPPENS IF FAY APPEALS WITHIN 13 WEEKS

Fay puts in an appeal at the SSAT on 1 March. This is within 13 weeks of receiving the ARO's written decision. If Fay's appeal is successful, **she will get backpay** of Newstart Allowance from the date she made the claim, which is 7 January.

WHAT HAPPENS IF FAY APPEALS AFTER 13 WEEKS

Fay puts in appeal at the SSAT appeals on 1 July which is **more than 13 weeks** after she received the Authorised Review Officer's decision. If Fay's appeal is successful, she will be paid Newstart Allowance from the date she appealed on 1 July, but **will not get any backpay**.

Case study

Mark's claim for Disability Support Payment was rejected on the grounds that his physical impairment was not sufficient. He put in an appeal with the SSAT about this decision. After his claim was rejected, but before his hearing with the SSAT, Mark's health deteriorated. He put in a new claim for Disability Support Pension which was then granted. He still attended his SSAT hearing and was successful in having backpayment made from the time of his first claim until the time his second claim was granted.

HOT TIP!

Ask for an interpreter

If you need an interpreter – just ask. The SSAT will arrange and pay for a professional interpreter.

You will not be permitted to use a friend or relative to interpret for you because the SSAT wants to be certain that it is hearing an exact translation of what you say.

If your circumstances have changed put in a fresh claim for a payment

Your circumstances may have changed since Centrelink made its original decision. It may be more obvious that you are eligible for a payment. You should put in a new claim for payment at your local Centrelink office at the same time as pursuing your appeal. You may be able to get a payment on the basis of your changed circumstances while you are going through the appeal process.

What happens after you put in your SSAT appeal?

The following steps will happen after you put in an appeal:

- **Within 2 weeks** - You should get a letter saying that the SSAT has received your application for review. If you don't hear anything for a month, contact the SSAT to find out what is happening.
- **Within 2 months** - After the SSAT has received your application, a hearing will be scheduled, usually within 2 months. It is possible that the SSAT might want to have a pre-hearing conference in your case, but these are very rare and would only be held if your case was particularly complex. After the pre-hearing conference your case would then go to a normal SSAT hearing.
- **At least a week before the hearing** - The SSAT will send you a photocopy of relevant papers from your Centrelink file.

Preparing for a hearing

Have a look at the SSAT papers

The SSAT will send you a photocopy of relevant papers and computer records from your Centrelink file at least a week before the hearing. Generally you will not get your whole file, only the papers the SSAT thinks relevant.

Get your whole Centrelink file using Freedom of Information laws

In complicated cases, for example, those involving a possible debt or de facto relationship, it can be helpful to obtain a copy of your whole Centrelink file.

You can get a copy of your whole file under the Freedom of Information Act (FOI). Complete a form at your local Centrelink office called “*Freedom of Information—I want to access or change document(s)*”. Centrelink must supply a copy of your file within 30 days of your request. Getting a copy of your file under FOI is free.

Work out what information and evidence will help your case

Evidence can be any document, person or thing that helps you to prove Centrelink made an incorrect decision. Evidence could include:

- Details and proof of income and assets, for example, bank statements or loan statements;
- Medical reports and doctors’ letters;
- Reports from a social worker, counsellor or teacher;
- Statements from friends, relatives or employers;
- Court orders or school reports;
- Bills, lists of weekly expenses or receipts;
- Leases, Medicare cards or loan applications; and
- Information about your cultural background which may be relevant, for example, marriage customs.

A good starting point is to look at the type of evidence the Authorised Review Officer considered when making their decision and see what’s missing.

HOT TIPS!

Preparing your case

- Check the Authorised Review Officer's decision. Make a note of any mistakes or details that are missing
- Check through your Centrelink file to see whether all relevant information about you and your circumstances is accurate
- Obtain new information to challenge the evidence in the Authorised Review Officer's letter
- Compare any new information you have with information on your file and
- Consider preparing a written summary of your case or a check list of the points you wish to raise at the SSAT

If you don't have any evidence don't worry. It will be fine for you to describe to the SSAT why you think Centrelink is wrong. In some cases there simply isn't any evidence.

Don't worry if you don't know about the law

You don't need to refer to the law. It is the SSAT's responsibility to consider all relevant law at your hearing.

If you would like to do legal research in preparation for your hearing, there is a reference list of relevant resources at the end of this guide.

Prepare your case

Once you have gathered all your information together you should read it carefully and begin to prepare your case. Remember, you are showing the SSAT that Centrelink made the **wrong** decision.

Write a summary

You can give your written summary to the SSAT before the hearing or you can present it on the day of the hearing.

Things you might include in your summary are:

- The decision you are appealing against;
- An outline of the facts;
- Personal details about yourself, for example, your education, family situation, or health problems;
- Whether you think any of the information Centrelink has is wrong;
- Any questions of law or policy you think Centrelink has interpreted wrongly;
- How the Centrelink decision has affected you and your family, for example, causing severe financial hardship, stress, or breakdown in a relationship; and
- What you think is the right decision.

Pre-hearing conference

What is a pre-hearing conference?

A pre-hearing conference is an informal meeting between you, the SSAT and Centrelink. It is usually a three-way telephone meeting. Pre-hearing conferences are rare. It will only be held if the SSAT thinks your case is particularly complicated and needs to clarify the issues in your case, or it thinks more evidence is needed, or that Centrelink should explain more clearly what it has done, and why.

What will happen at the conference?

The conference will be attended by an SSAT member, a representative from Centrelink and you. You will probably discuss:

- the date for your hearing;
- the issues in your case;
- the evidence you or Centrelink need to collect; and
- when you or Centrelink need to provide the SSAT with more evidence.

If you think that another person or organisation has documents or information that would help with your appeal you can ask the SSAT to use its powers to get a copy for your appeal.

You may reach an agreement at the conference for how your case should be resolved. If so, you can sign a written agreement. This means your appeal will be finished and will not need to go to a hearing.

Attending a hearing

What is a hearing?

A “hearing” is just the formal name for a meeting between you and the SSAT members. It is their opportunity to ask you questions and your opportunity to explain information you think has been misunderstood.

Do you have to attend the hearing?

You should attend the hearing in person. This will give you the best opportunity to present your case. It is usually very important in medical appeals or if your case involves a question of credibility (that is, whether Centrelink does or does not believe you).

The SSAT regularly holds hearings in outer-metropolitan and country centres to assist people who have difficulty travelling to capital cities.

Hearings can also be conducted by telephone or video conferencing. Occasionally, a hearing is conducted “on the papers” which means that the SSAT decides the matter without talking to you. This is very unusual and would only occur, for example, if you were overseas or if you ask for it to occur.

Getting to the hearing

The SSAT pays your reasonable travel expenses to the hearing. This means that they will pay the cost of public transport to and from the SSAT.

If you can't use public transport (for example, if you need to travel in a taxi) you should contact the SSAT before your hearing and ask whether they can pay some or all of your fare.

Bring a friend or advocate

You can bring a friend or relative for support and many people do.

If you are concerned about going to the hearing by yourself, particularly if you think your case is quite complicated, you may wish to contact a Welfare Rights Centre/Advocate to see whether a worker can advocate for you.

It is usually unnecessary and costly to have a private solicitor to present your case to the SSAT. The hearing is quite informal and you should have every chance to explain your situation.

What happens if you can't make your hearing?

If you can't make your hearing call the SSAT as soon as possible and ask for it to be rescheduled.

At the SSAT hearing

Who is at the SSAT hearing?

Usually two SSAT members will be at the hearing. Members have different areas of expertise, including expertise in law, social welfare, medicine, accounting and government.

There is a “presiding member” who runs the hearing on the day, but each member is independent and has an equal say in the decision-making process.

A Centrelink officer may be at the hearing

Generally nobody from Centrelink will be at the hearing. The hearing is an opportunity for you to explain the reasons why you believe Centrelink's decision is wrong.

The SSAT will have a copy of your Centrelink file including a copy of the decision by the Authorised Review Officer. Your file will contain all the facts and reasons which Centrelink used to reach its decision. The SSAT will consider your answers, the information on your Centrelink file and the relevant laws to see whether or not Centrelink made the correct decision. The SSAT will decide which issues are relevant in your appeal and the members will ask you straightforward questions.

In rare cases a Centrelink officer may attend the hearing. They will only be at the hearing if the SSAT thinks it needs to hear submissions from Centrelink. They will not be allowed to ask you questions.

The SSAT is not like going to court

SSAT hearings are informal. The hearing takes place around a table in a normal room. There is no witness box and you will not be cross-examined. It is a discussion between you and the SSAT members. Hearings are conducted in private so only you and the SSAT members are there unless you give permission for someone else to attend, or a Centrelink officer is asked to attend. You do not have to prepare "a case".

What happens during the hearing

Introductions. The Presiding Member (the person running the hearing for your case) will introduce the SSAT members hearing your case and explain the role of the SSAT. Often the Presiding Member will then ask you questions. Other members of the SSAT will also ask you questions in turn.

Ask the SSAT if you can start off by presenting your case. If you would prefer to start by presenting a summary of your case, you should ask the SSAT if you may do so. The Presiding Member will usually agree, and you may feel more confident that all points in your case are being covered.

If you have provided written material to the SSAT before the hearing, you should check that the members have received it and you can then refer to it.

If you have brought someone with you to make a statement to the SSAT, you should tell the SSAT at the beginning of the hearing. Sometimes the SSAT will prefer that the person does not hear what you have to say. The SSAT will decide when they would like to hear the person's statement.

The SSAT might ask for other evidence. The SSAT can obtain other evidence about your case to help it make a decision. For example, if the question is whether you are in a de facto relationship it might ask your alleged partner to attend to explain their view of your relationship. In a case involving compensation it may write to your compensation solicitor.

If you are using an interpreter

Use short sentences. It is the interpreter's job to translate exactly what you and the SSAT say to each other, without any explanation. You should also try to speak in short sentences or the interpreter will not be able to remember exactly what you have said.

Talk to the SSAT, not the interpreter. Remember, you need to convince the SSAT members, not the interpreter, of your point. If you have any trouble understanding the interpreter (eg if their dialect is different to yours) or if you think the interpreting is not accurate you should tell the SSAT members immediately.

HOT TIPS!

Handling yourself when you're answering the SSAT's questions

- Speak in a normal and polite way. There is no need to use technical or difficult language;
- Answer as honestly as you can;
- Stick to the point and do not go off onto other issues;
- Only answer the question if you understand it. Ask for the question to be repeated if you don't understand it;
- If you don't know the answer, say so, instead of guessing or making something up;
- Refer to notes, or make notes on a piece of paper if it helps you;
- Be respectful to the SSAT members no matter how much you disagree with what they are saying. Don't speak rudely or sarcastically, or argue with the member. Doing these things might affect their opinion of you; and
- Tell the SSAT if you feel overwhelmed or distressed.

After a hearing

Getting a decision from the SSAT

After you have left the hearing the SSAT members will discuss your case and will come to a decision based on the relevant facts and the law. The SSAT will try to come to a fair decision in the circumstances of the case but cannot make a decision that is contrary to the law.

How long does it take to get a decision?

It usually takes about 14 days for the SSAT to send you its decision. The SSAT will post its written decision to both you and Centrelink. The written decision includes the full reasons why that decision was reached.

If the SSAT agrees with Centrelink's decision it may tell you its decision on the day of the hearing. If this happens in your case, you will be sent a letter telling you that you can ask the SSAT for full written reasons for its decision. You will need to ask for written reasons within 14 days of getting the SSAT's letter.

Sometimes the SSAT will adjourn a matter to find out more information. If this happens, you should be given the opportunity to comment on any new information that wasn't referred to during your hearing.

If the decision is in your favour, when does Centrelink put the decision into action?

After a decision is made by the SSAT, it can then take up to another four weeks for Centrelink to put the decision into action. If you have no income or are experiencing financial problems you can ask that the decision be implemented urgently.

If the SSAT decision is in your favour, but Centrelink disagrees with it, Centrelink can appeal against the decision (see the section on page 14, "If Centrelink is not happy with the SSAT decision: Centrelink can appeal to the AAT too").

Even if Centrelink decides to appeal the SSAT decision, Centrelink should implement the SSAT decision while the appeal process is ongoing (unless Centrelink gets an order from the Administrative Appeals Tribunal (AAT) to stop the decision being implemented until the AAT appeal process is finished).

ALERT!

You must put in an appeal to the AAT **within 28 days** of receiving the SSAT's decision. In limited circumstances the AAT may give you an extension of time to put in an appeal.

If you're not happy with the SSAT decision, you can put in an appeal to the Administrative Appeals Tribunal (AAT)

This is the next stage in the review process. You can phone the AAT and ask for the appeal form to be sent to you or get a copy from the AAT's website www.aat.gov.au

If Centrelink is not happy with the SSAT decision, Centrelink can appeal to the AAT too

If you are successful at the SSAT but Centrelink disagrees with the decision, it can also appeal to the AAT. If Centrelink is going to appeal it must do so within 28 days of receiving the SSAT decision. Therefore you should know within 28 days of receiving your written decision whether or not Centrelink is going to appeal.

What is the AAT?

The AAT has the power to change SSAT decisions. The AAT is more formal than the SSAT. Centrelink sends a representative to argue its case. An AAT appeal will usually involve at least one preliminary conference (which can be over the phone) as well as the actual hearing. The hearing is held in a hearing room which is like a court room.

There are a few places where you can get free legal advice about your chances of success at the AAT and ways you can prepare your case. These services are listed in the **Getting help** section of this guide (see next page).

Getting help

More information about the SSAT or dealing with Centrelink problems:

Welfare Rights Centres/Advocates: Welfare Rights Centres are community legal centres which provide free legal advice and assistance with Centrelink problems. They specialise in Social Security law. They are independent of Centrelink. Contact the Welfare Rights Centre/ Advocate in your state/region for assistance with your SSAT appeal or any other problem with Centrelink, see www.welfarerights.org.au

Community Legal Centres: Community legal centres are non-government community based organisations that provide free legal services, especially for people who are disadvantaged. To find the community legal centre nearest you, see www.naclc.org.au

Legal Aid NSW: Legal Aid NSW offices are government funded agencies which provide legal aid and representation to disadvantaged people, see www.legalaid.nsw.gov.au or contact LawAccess on 1300 888 529.

SSAT website: For more details about the role of the SSAT in reviewing Centrelink decisions and the hearing process, see the SSAT's website at www.ssat.gov.au

Other options for complaining about a Centrelink decision

Ombudsman: In some situations a complaint to the Commonwealth Ombudsman will be more appropriate than an appeal to the SSAT. The Commonwealth Ombudsman is a senior, independent person appointed to investigate complaints about decisions or actions of a Commonwealth Government officer. For example, if you are unhappy about the way you have been treated by a Centrelink officer, or if you feel it took too long for a decision to be made, it is more appropriate to complain to the Commonwealth Ombudsman than the SSAT.

The Office of the Commonwealth Ombudsman can investigate a complaint and can recommend that Centrelink does something to put the matter right. You can contact the Commonwealth Ombudsman's office on Telephone 1300 362 072 or go to www.ombudsman.gov.au

Local Member of Parliament: If you believe that you are being treated unfairly because a law relating to Social Security is unjust, the appropriate place to complain to is your local Federal Member of Parliament.

The SSAT can only make decisions under Social Security law. It is Parliament that has the power to change laws. Although a complaint to a Member of Parliament may not have a short term gain for yourself, it could result in an eventual change to an unjust law.

Legal resources list

Social Security law: The legislation which covers Social Security law can be found at the Department of Families, Housing, Community Services and Indigenous Affairs website, see www.fahcsia.gov.au

Guide to Social Security law: The Guide is the policy manual that Centrelink officers use to interpret Social Security law. It is far easier to read and understand than the law. However it is important to remember it is only the government's interpretation of the law. A copy of the Guide is available on the Department of Families, Housing, Community Services and Indigenous Affairs website, see www.fahcsia.gov.au

The Independent Social Security Handbook: The Independent Social Security Handbook provides a simple, yet comprehensive guide to the main aspects of the Social Security system. It is available online at the Welfare Rights website www.welfarerights.org.au

Previous cases: There may be previous cases that have considered circumstances similar to yours that will help you make your case at the SSAT. Previous decisions made by the AAT and the Federal Court can be found in:

- *Social Security and Family Assistance Law*, Sutherland P. (2nd ed, Federation Press and Welfare Rights and Legal Centre, 2005);
- *Social Security Reporter* (Socio-Legal Research Centre, Griffith University, Old) www.ssr.org.au;
- *Australian Social Security Guide* (CCH Australia Ltd) published by CCH Australia.

