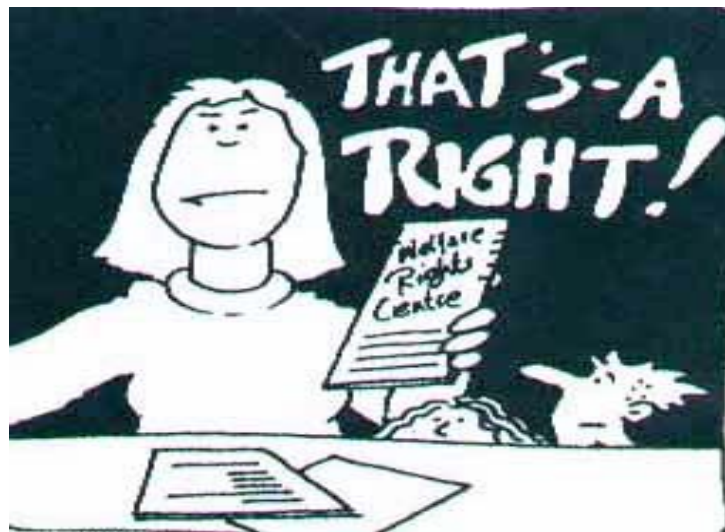


how to appeal to the social security appeals tribunal (ssat)



a self-help guide



1. <i>Things to consider before appealing to the Social Security Appeals Tribunal (SSAT)</i>	3
2. <i>About the SSAT</i>	4
3. <i>How do I prepare for a hearing?</i>	7
4. <i>The day of the hearing</i>	9
5. <i>When do I get a decision?</i>	11
6. <i>What if I'm not happy with the decision?</i>	11
7. <i>Other options</i>	12
8. <i>Legal resources list</i>	13
9. <i>Overview of the appeal system</i>	14



1. Things to consider before appealing to the Social Security Appeals Tribunal (SSAT)

➤ *Have you had your decision reviewed by an Authorised Review Officer?*

The Social Security Appeals Tribunal (SSAT) can hear cases that have been reviewed by an Authorised Review Officer in Centrelink or the Department of Education, Science and Training. Although the Authorised Review Officer is employed by Centrelink and reviews decision about Social Security payments, it is their job to take an independent look at the existing -decision. It is quite common for the Authorised Review Officer to decide in favour of the person who asked for the review and change the decision.

Requesting a review by an Authorised Review Officer is as simple as telling an officer at your local office that you want one. You can request a review by telephone, or you can put your request in writing and drop it off at your local office. Your request for a review will be forwarded to the Authorised Review Officer.

The Authorised Review Officer may telephone you for more information. When a decision has been made, you will be sent a letter setting out the decision, the reasons for the decision and the evidence on which the decision was based.

➤ *Are you receiving payment?*

If your payment has been reduced or stopped because of the decision you are appealing against, you should:

1. check whether your payment can be reinstated. If the Centrelink decision to cancel, suspend or reduce your payment was based on “a discretion” or “the holding of an opinion” you may be able to continue receiving payment. Section 131 of the Social Security Administration Act provides for continuation of payment pending outcome of an appeal.

You should ask for your payment to be continued immediately. Continuation of payment sometimes happens without you requesting it but if it does not happen automatically you will need to request it and give strong reasons why payment should be continued.

2. list your hearing with the SSAT as urgent. If your appeal is urgent, for example, if you have no income or you are experiencing financial problems, you can ask the SSAT to give priority to your appeal.

➤ *Has your situation changed?*

If your situation has changed so that it is now more obvious that you are eligible for a payment, you should lodge a new claim at your local Centrelink office. For example, if you were “separated under one roof” but your partner has now moved out.

If your new claim is accepted you may still need to continue with your appeal to get back-pay that may be owed to you.



➤ ***Appeal as soon as possible!***

A Social Security decision can be appealed at any time, but it is best to appeal as soon as possible if there is a possibility of receiving any back-pay. If you want to receive back-pay to the date you originally claimed a payment or the “original decision”, an appeal must be lodged **within three months** of the date you were advised in writing of the decision. Otherwise, if you are successful, you will receive back-pay only from the date you lodged your appeal.

➤ ***Is it possible you might be prosecuted?***

If you have been overpaid because you told Centrelink something that you knew was untrue at the time, you may have committed an offence. This means that as well as asking you to pay back the money, Centrelink may refer your case to the Director of Public Prosecutions (DPP) to consider whether to take you to a criminal court.

Even if a matter is being considered for prosecution, the SSAT can still look at the questions of:

- **whether there is a debt;**
- **the size of the debt;**
- **how the debt should be paid back.**

Usually, it is advantageous to have the SSAT hear the case before prosecution occurs. This is because the SSAT has expertise in checking whether there really is a debt and the size of the debt. If the SSAT finds that there is no debt or that the amount of the debt is less than was originally calculated, prosecution may be dropped or you may receive a lighter penalty than you would have received for a larger debt. For example, in those instances where Centrelink is prosecuting someone for receiving Parenting Payment (single) while living in a marriage-like relationship, the SSAT may find that there was no marriage-like relationship at all and consequently there is no debt.

In some cases, however, there may be significant disadvantages in proceeding with an SSAT appeal if Centrelink is considering prosecution. If you lose or if you make statements or admissions, these may be used against you in the prosecution case.

If prosecution is a possibility it is important to get independent legal advice before proceeding with an SSAT appeal (contact the Welfare Rights Centre/Advocate in your state/region for assistance) see www.welfarerights.org.au .

2. About the SSAT

➤ ***What is the Social Security Appeals Tribunal (SSAT)?***

The Social Security Appeals Tribunal (SSAT) is independent of Centrelink. SSAT members are appointed by the Governor General in every state and territory.

The SSAT has wide powers under the **Social Security Administration Act** to change decisions made by Centrelink. The SSAT can:

- **affirm the decision, which means that it agrees with Centrelink, and the previous decision still stands;**



- vary the decision, **which means that it decides the decision was partly wrong;**
- set aside the decision **and substitute a new decision which means that it disagrees with Centrelink, and the new decision will operate in the place of the previous decision.**

➤ ***What is a hearing?***

A hearing is 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.

➤ ***Who is at the SSAT hearing?***

The SSAT panel will usually consist of two or three members:

- a lawyer;
- a welfare worker;
- a person with expert knowledge of Centrelink procedures and practices;
- a doctor, if the matter involves a medical problem.

Each member is independent and has an equal say in the decision-making process.

➤ ***Is it like going to court?***

No! The hearing is relaxed and informal.

The hearing takes place around a table in a normal room. There is no witness box or cross-examination. Hearings are conducted in private so only you and the SSAT members are there unless you give authority for someone else to attend. You do not have to prepare “a case”.

➤ ***Will someone from Centrelink be there?***

No. Centrelink does not send an officer to argue against you. The SSAT will have a copy of your file from Centrelink 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, and the SSAT will compare your answers with Centrelink’s file and the relevant laws to see whether or not Centrelink made the correct decision.

The Tribunal will decide which issues are relevant in your appeal and the members will ask you straightforward questions.

As Centrelink is not present you do not need to feel like you will have to ‘defend’ yourself. Instead, the SSAT members will ask you questions and will clarify any issues which are confusing or unclear in any way.

The hearing is an opportunity for **you** to explain the reasons why you believe Centrelink’s decision is wrong.

➤ ***Do I 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 (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. 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. The SSAT would try to get as much information as possible before making a decision.

➤ ***What if it costs too much to get to the hearing?***

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

If you are travelling from the country, you should discuss the cost with someone from the SSAT to check whether or not they will pay your full costs. Similarly, if you cannot 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.

➤ ***Can I bring a friend?***

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

➤ ***Can I bring an advocate?***

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 community legal centre to see whether a worker can advocate for you.

It is usually unnecessary to have a solicitor, or anyone else, to present your case to the SSAT. Often people feel very nervous and go to great lengths (and sometimes cost) to arrange for someone to represent them. Remember, the hearing is quite informal and should give you every chance to explain your situation.

With some types of cases it is important to get independent advice and discuss details with a Welfare Rights worker or a community legal centre worker before the hearing. Such cases include those involving marriage-like relationships, large debts or prosecution. For information about your local Welfare Rights Centre see www.welfarerights.org.au.

➤ ***What about interpreters?***

If you are worried about your use of English, you should request an interpreter. You will not be permitted to use a friend or relative to interpret for you because the SSAT wants to be absolutely certain that it is hearing an exact translation of what you say (without any inaccuracies or interpretation). The SSAT will arrange and pay for a professional interpreter.

➤ ***How much does it cost?***

Appealing is free! Even if you lodge your appeal and then decide not to go ahead, there is no fee or penalty.

Note: This does not include representation. If you get someone to represent you who charges you for the service, you will be responsible for the cost, not the SSAT. Community legal



centres, for example, Welfare Rights Centres, can help you for free.

3. How do I prepare for a hearing?

➤ *How do I lodge an appeal?*

You can lodge your appeal in a number of ways:

- using the SSAT's application form **They are available from Centrelink or from the SSAT itself. The form is already addressed and postage paid. You can either post it yourself or lodge it at a Centrelink office or at the SSAT.**
- writing to the SSAT **Simply 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.**
- telephoning the SSAT **You can telephone the SSAT and tell them you want to appeal.**
- deaf and hearing impaired people **can contact the SSAT on the TTY (Telephone Typewriter). The number is 1800 060 116 and the call is free.**

➤ *Can I get a copy of my Centrelink file?*

The SSAT will send you a photocopy of the relevant papers from your file a few days before the hearing. Sometimes this will be the whole file, but often it will not include things the SSAT does not consider relevant (for example, if your case is about whether or not you have been living in a marriage-like relationship, the SSAT may not provide copies of your payment record of the dates on which you were paid).

➤ *Freedom of Information*

The papers supplied by the SSAT will be all you need in most cases. In complicated cases, for example, those involving a possible debt or marriage-like relationship, it can be particularly helpful to obtain a copy of your file.

If you want to be certain of obtaining your whole file (or at least everything you are legally entitled to see), you can obtain a copy under the **Freedom of Information Act (FOI)** by completing a form at your local office called, "I want to see my file and personal documents".

Preparation of your FOI request will be done before the hearing and it may delay your hearing date so take this into account before deciding whether or not you want to see your whole file.

If you are receiving no income, it would be useful to get advice from a Welfare Rights or community legal centre worker about whether to FOI or not.

You can either be shown your file at your local office or a photocopy can be posted to you. As you may want time to study the documents and make copies to take to the hearing, it is best to request that a copy of your file be posted to you.

Once an FOI request has been made, Centrelink must supply the papers within 30 days.

Centrelink is obliged by law to supply all papers, including those that will go against them in a hearing. Centrelink will not release papers which are about other people or reveal confidential information about someone else. (These are protected under privacy laws and **cannot** be released under any circumstances.)



You may ask to see your entire file or you can select which papers you want, for example, papers from the previous 12 months.

Getting a copy of your file under the **Freedom of Information Act** is free.

➤ ***Do I need to take evidence to the hearing?***

Evidence can be any document, person or thing that helps you to support or prove your case. Evidence is useful if the Department has got a fact wrong. In some cases, there is simply no evidence and it will be fine for you to describe to the SSAT why you think the Department is wrong. If, however, you can get evidence to support your case then you should do so. Providing things in writing at a relevant time during the hearing can be most useful.

The best evidence is usually from people who have records or who knew what was happening at the time. This, however, should not stop you putting forward other evidence.

Evidence does not need to be technical. It could include any of the following:

- **details and proof of income and assets, for example, bank books, letter from employers;**
- **medical reports and doctors' letters;**
- **reports from a social worker or teacher about your family situation;**
- **statements from friends, relatives or employers;**
- **court orders or school reports;**
- **bills, lists of weekly expenses or receipts;**
- **leases, Medicare cards, bank account statements, for example, showing whether activities were undertaken as a couple or not;**
- **information about your cultural background which may be relevant (eg. marriage customs).**

It is a good idea to look at the type of evidence the Authorised Review Officer considered when making their decision.

➤ ***Do I need to refer to the law at the hearing?***

No, you do not need to refer to the law. It is the responsibility of the SSAT to have considered all relevant law at your hearing. In most cases it will be quite unnecessary and you should not be concerned about not having done so.

If you would like to do legal research in preparation for your hearing, there is a reference list of relevant resources in section 8 of this booklet.

➤ ***How do I prepare my 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.

You should:

- **check the decision by the Authorised Review Officer, making a note of any mistakes or**



details that are not included;

- check through your copy of Centrelink's file to see whether all relevant information about you and your circumstances is true;
- obtain new information or proof to challenge the evidence in the Authorised Review Officer's letter;
- compare any new information you have with information on your file, for example, a doctor's report or proof of income;
- consider preparing a written summary of your case or a check list to help you cover all of the points you wish to raise at the SSAT.

You may also want to:

- see what the relevant sections of the Social Security law say.
- compare the section of the Social Security law **against the section of** The Guide to the Social Security law (Centrelink's policy guide) to see whether they are the same. An Act, which is law, will always have authority over a policy guide.
- find any previous cases which support your case (see resource list, page 18).

➤ *If I write a summary, what should I put in it?*

You might include:

- the decision you are appealing against;
- an outline of the relevant facts;
- personal details about yourself, for example, your background, education, family situation, or health problems; etc.
- whether you think any of the information Centrelink has is wrong;
- any questions of law or policy you think the Centrelink has interpreted wrongly;
- how the Centrelink decision has affected yourself and your family, for example, causing severe financial hardship, stress, or breakdown in a relationship; etc.
- what you think is the right decision.

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

4. The day of the hearing

If you are being assisted by a friend or an adviser you may want to meet an hour or so before the hearing to make sure you are fully prepared and quite comfortable with your case. You should check which documents you want to show the SSAT and what particular arguments you want to make.

If you have written material to present to the SSAT, you should tell the SSAT's receptionist as soon as you arrive so that she or he can make copies and give the material to the SSAT members.

When the SSAT is ready, one of its members will invite you into the hearing room and show



you where to sit at the table. You can take your friend or adviser but no one else will be allowed into the room unless you agree.

➤ ***What happens during the hearing?***

The Presiding Member will introduce all the SSAT members 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.

If you would prefer to start by presenting a summary of your case, you should ask the SSAT if you may do so. They 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 can obtain other evidence about your case to help it make a decision. For example, it might ask a former partner to attend to explain their view of your relationship or it may write to your solicitor about a compensation case.

➤ ***Using the interpreter***

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

Remember, you need to convince the Tribunal members, **not** the interpreter, of your point.

If you have any trouble understanding the interpreter or if you think the interpreter is not accurate you should tell the SSAT members immediately.

➤ ***How should I answer the SSAT's questions?***

If the SSAT asks questions you should

- **speak in a normal and polite way. There is no need to use technical or difficult language;**
- **collect your thoughts before answering;**
- **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 and ask for the question to be repeated if you don't understand it;**
- **tell them if you don't know the answer, instead of guessing or making something up;**
- **refer to notes, or make notes on a piece of paper if it helps you;**



It is unwise to jump to the conclusion that the SSAT is biased against you or does not believe your story. Do not panic! Answer questions as calmly as you can. The SSAT is entitled to test your answers against the information they have in your Centrelink file and may not immediately accept that everything you say is correct. They will want to give you the opportunity to explain anything that seems inconsistent between the file and your story. SSAT members know that some people get very nervous or upset but if you are rude, aggressive or seem suspicious you may harm your chances of convincing the SSAT that you are right.

➤ ***What happens at the end of the hearing?***

The Presiding Member will ask you whether you would like to add anything else. If you feel anything has not been covered you may wish to add something, or you may wish to sum up with a few short sentences. It is not necessary to repeat at length the points you have already made.

5. When do I get a decision?

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 place emphasis on fairness given all the circumstances of the case but cannot make a decision that is contrary to the law.

- **Usually it takes about 14 days for the SSAT to send you its decision. The decision is written up, including full reasons why that decision was reached, and is posted to both you and Centrelink.**
- **Sometimes the SSAT will reach its decision on the day of the hearing and they may ask you to wait outside for a short time to see whether they can tell you the decision while you are still there.**
- **Sometimes the SSAT will adjourn a matter while they find out more information. If this happens, you should be given the opportunity to comment on any new information not referred to during your hearing.**

It can then take up to another four weeks for the Administrative Law Section of Centrelink to send the decision back to your local office so it can be implemented (see next section for details).

6. What if I'm not happy with the decision?

➤ ***Can I appeal again?***

If you are not happy with the SSAT's decision, you can appeal to the Administrative Appeals Tribunal (AAT) which is the next stage in the review process. You **must** appeal to the AAT within 28 days of receiving the SSAT's decision. You can phone the AAT and ask for the appeal form to be sent to you.

➤ ***Can Centrelink appeal?***

If you are successful at the SSAT but Centrelink disagrees with the decision, it can also appeal to the Administrative Appeals Tribunal. If the Department is going to appeal it must do so within 28 days of receiving the SSAT decision, so you should know within 28 days of receiving



your written decision whether or not Centrelink is going to appeal.

Centrelink appeals less than 10% of cases, and they tend to be cases where either there is a dispute about the interpretation of the law, or where a large number of people may be affected by the 'precedent' your case may set.

It is unusual for Centrelink to appeal a case where the issue is about a discretion, for example, whether a doctor believes a person has a 15% or a 20% impairment rating, or whether the Tribunal believes a person is fit to work or not.

➤ ***What is the Administrative Appeals Tribunal?***

The Administrative Appeals Tribunal (AAT) is more formal than the SSAT and 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. For more information on the AAT see the Welfare Rights booklet, 'AAT Social Security Self Advocacy Kit'.

If you feel confident, you can represent yourself. The AAT is usually very helpful to people who are representing themselves. You can also seek advice from a Welfare Rights worker or community legal centre about your chances of success and ways you can prepare your case.

If your case involves a complex legal argument it may be useful to be represented by a solicitor. You can get advice from Welfare Rights worker or from the Legal Aid Commission.

7. **Other options**

➤ ***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 office. For example, if you are unhappy or angry about the way you have been treated by a Centrelink, or if you feel it took too long for a decision to be made, the Commonwealth Ombudsman is more appropriate 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 (02) 9218 3000 or 1300 362 072 (country callers).

➤ ***Privacy Commissioner***

The Privacy Commissioner is a senior, independent person appointed to investigate complaints about breaches of the **Commonwealth Privacy Act**. Usually, it is most effective to make a complaint to the Privacy Section of Centrelink first, then, if you are not satisfied with the response, the Privacy Commissioner's office is the appropriate place.

➤ ***Local Member of Parliament and the Minister for Social Security***

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 either your local Federal Member of Parliament or the Minister for Social Security.

The SSAT can only make decisions under **Social Security law**. It is Parliament that changes the laws in the **Social Security legislation**. 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.

8. Legal resources list

➤ *Social Security law*

The legislation which details Social Security law can be found at the Department of Family and Community Services website (www.facs.gov.au). The legislation may be available for you to look at, at your local Centrelink office or at your State or local library.

➤ *the Guide to Social Security law*

The Guide is the policy manual that Centrelink officers use to interpret the **Social Security legislation** because it is far easier to read and understand than the law. It is not, however, the law. It is only the Department's interpretation of the law. A copy of the Guide is available on the Department of Family and Community Services website and is also available at your local Centrelink office. You may want to find out which sections are relevant and ask for a photocopy.

➤ *previous cases*

During the SSAT hearing you are able to refer to previous decisions made by the Administrative Appeals Tribunal (AAT) and the Federal Court. Previous decisions can be found in:

- **The Annotated Social Security Act**

published by Welfare Rights and Legal Centre, Canberra, and Federation Press.

- **The Social Security Reporter**

published with each edition of Legal Services Bulletin (available at your local library or Community Legal Centre).

- **The Australian Social Security Guide**

published by CCH Australia.

➤ *other resource material*

- **The Independent Social Security Handbook, 4th Ed.**

published by Welfare Rights Centre, Sydney.

9. Overview of the appeal system



The Social Security appeal system has a number of stages. The SSAT represents only one of those stages.

Decision by the **Original Decision Maker**
(at your local Centrelink office)

Decision by **Authorised Review Officer**
(at Centrelink's Area office)

Decision by Social Security Appeals Tribunal

Decision by the Administrative Appeals Tribunal

Federal Court