



Social Security (Review of Decisions) Act 1988

No. 85 of 1988

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SCHEDULE 1

NEW SCHEDULE 1A TO SOCIAL SECURITY ACT 1947

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS



Social Security (Review of Decisions) Act 1988

No. 85 of 1988

An Act to amend the law relating to social security:
(a) to make provision in relation to review of decisions;
and
(b) to establish the Social Security Appeals Tribunal and
to make provision in relation to its constitution,
powers and procedures;
and for related matters

[Assented to 31 October 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Social Security (Review of Decisions) Act 1988*.

(2) In this Act, "Principal Act" means the *Social Security Act 1947*¹.

Commencement

2. This Act commences on 1 November 1988.

Interpretation

3. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

“‘authorised review officer’ means an officer authorised under section 16 to perform duties as an authorised review officer for the purposes of this Act;”

4. Sections 16, 17 and 18 of the Principal Act are repealed and the following sections are substituted:

Authorised review officers

“16. (1) The Secretary may authorise an officer to perform duties as an authorised review officer for the purposes of this Act.

“(2) An authorisation shall be in writing.

Government policy statements

“17. (1) The Minister may prepare a written statement of a policy of the Commonwealth Government in relation to the administration of this Act and give a copy of the statement to:

- (a) the Secretary; and
- (b) the National Convener of the Social Security Appeals Tribunal.

“(2) Where the Minister gives a copy of a statement to the Secretary or the National Convener under subsection (1), the Minister shall lay a copy of the statement before each House of the Parliament within 15 sitting days of that House after the Minister gives the copy under that subsection.

“(3) An officer shall, in exercising powers under this Act, have regard to any statement a copy of which has been given to the Secretary under subsection (1).

“(4) The National Convener and the Social Security Appeals Tribunal shall, in exercising powers under this Act, have regard to any statement a copy of which has been given to the National Convener under subsection (1).

The Secretary and the National Convener may agree on administrative arrangements

“18. The Secretary and the National Convener of the Social Security Appeals Tribunal may agree on administrative arrangements to further the objectives of Part XIX.”

5. After section 168 of the Principal Act the following section is inserted:

The Secretary may continue payment pending the determination of an application to the Secretary or the Social Security Appeals Tribunal for review of an adverse decision

“168A. (1) Where:

- (a) an adverse decision is made in relation to a pension, benefit or allowance;
- (b) the adverse decision depends on the exercise of a discretion by a person or the holding of an opinion by a person; and
- (c) a person applies to the Secretary under subsection 173 (1) for review of the adverse decision;

the Secretary may declare that payment of the pension, benefit or allowance is to continue, pending determination of the review, as if the adverse decision had not been made.

“(2) Where:

- (a) an adverse decision is made in relation to a pension, benefit or allowance;
- (b) the adverse decision depends on the exercise of a discretion by a person or the holding of an opinion by a person; and
- (c) a person applies to the Social Security Appeals Tribunal for review of the adverse decision;

the Secretary may declare that payment of the pension, benefit or allowance is to continue, pending determination of the review, as if the adverse decision had not been made.

“(3) A declaration under subsection (1) or (2) shall be in writing.

“(4) While a declaration under subsection (1) or (2) is in force in relation to an adverse decision, this Act (other than Part XIX and this section) applies as if the adverse decision had not been made.

“(5) A declaration under subsection (1) in relation to an adverse decision:

- (a) commences to have effect on the day on which the declaration is made or such earlier day as is specified in the declaration; and
- (b) ceases to have effect if:
 - (i) the application to the Secretary for review of the adverse decision is withdrawn;
 - (ii) the review of the adverse decision is determined by the Secretary; or
 - (iii) the declaration is revoked by the Secretary.

“(6) A declaration under subsection (2):

- (a) commences to have effect on the day on which the declaration is made or such earlier day as is specified in the declaration; and
- (b) ceases to have effect if:
 - (i) the application to the Social Security Appeals Tribunal for review of the adverse decision is withdrawn;

- (ii) the review of the adverse decision is determined by the Tribunal; or
- (iii) the declaration is revoked by the Secretary.

“(7) A reference in subsection (1) or (2) to the Secretary’s holding of an opinion is a reference to the Secretary’s holding of that opinion whether or not this Act expressly requires the opinion to be held before making the decision concerned.

“(8) In this section:

‘adverse decision’ means:

- (a) a determination under subsection 168 (1); or
- (b) a decision under subsection 174 (1) the effect of which is that a person’s pension, benefit or allowance is cancelled or suspended or that the rate of a person’s pension, benefit or allowance is decreased.”.

6. After Part XVIII of the Principal Act the following Parts are inserted:

“PART XIX—REVIEW OF DECISIONS

“Division 1—Review by the Secretary

The Secretary may review a decision

“172. (1) The Secretary may review:

- (a) a decision of an officer under this Act; or
- (b) a decision under section 5A, 5B, 5C, 5D or 5E of the *Health Insurance Act 1973*;

if satisfied that there is sufficient reason to review the decision.

“(2) The Secretary may review a decision even if an application has been made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision.

“(3) The Secretary may:

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

“(4) Where:

- (a) the Secretary makes a decision under subsection (3); and
- (b) at the time when the Secretary makes that decision, a person has applied to the Social Security Appeals Tribunal for review of the decision that was reviewed by the Secretary;

the Secretary shall give the National Convener written notice of the Secretary’s decision under subsection (3).

“(5) Where:

- (a) the Secretary makes a decision under subsection (3); and

- (b) at the time when the Secretary makes that decision, a person has applied to the Administrative Appeals Tribunal for review of the decision that was reviewed by the Secretary;

the Secretary shall give the Registrar of the Administrative Appeals Tribunal written notice of the Secretary's decision under subsection (3).

“(6) Where:

- (a) the Secretary sets a decision aside under subsection (3); and
- (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

A person affected by a decision may apply to the Secretary for review of the decision

“173. (1) A person affected by:

- (a) a decision of an officer under this Act; or
- (b) a decision under section 5A, 5B, 5C, 5D or 5E of the *Health Insurance Act 1973*;

may apply to the Secretary for review of the decision.

“(2) Subsection (1) does not apply to a decision made by the Secretary himself or herself.

“(3) A person may apply under subsection (1) for review of a decision, and the Secretary or an authorised review officer may review the decision, even if an application has been made to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal for review of the decision.

“(4) Where a person applies under subsection (1) for review of a decision, the Secretary shall:

- (a) if, at the time when the person applies, an application has been made to the Social Security Appeals Tribunal for review of the decision—give the National Convener written notice of the making of the application under subsection (1);
- (b) if, at the time when the person applies, an application has been made to the Administrative Appeals Tribunal for review of the decision—give the Registrar of the Tribunal written notice of the making of the application under subsection (1);
- (c) if, after the application is made under subsection (1) and before the Secretary or an authorised review officer determines the review, an application is made to the Social Security Appeals Tribunal for review of the decision—give the National Convener written notice of the making of the application under subsection (1); and
- (d) if, after the application is made under subsection (1) and before the Secretary or an authorised review officer determines the review, an application is made to the Administrative Appeals Tribunal for

review of the decision—give the Registrar of the Tribunal written notice of the making of the application under subsection (1).

The Secretary's powers on review

“174. (1) Where a person applies under subsection 173 (1) for review of a decision, the Secretary or an authorised review officer shall:

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set the decision aside and substitute a new decision.

“(2) Where a person makes a decision under subsection (1), the person shall give the applicant written notice of the decision.

“(3) Where:

- (a) a person makes a decision under subsection (1); and
- (b) at the time when the person makes the decision under subsection (1), an application has been made to the Social Security Appeals Tribunal for review of the decision that was reviewed by the person;

the person shall give the National Convener written notice of the person's decision under subsection (1).

“(4) Where:

- (a) a person makes a decision under subsection (1); and
- (b) at the time when the person makes the decision under subsection (1), an application has been made to the Administrative Appeals Tribunal for review of the decision that was reviewed by the person;

the person shall give the Registrar of the Tribunal written notice of the person's decision under subsection (1).

“(5) Where:

- (a) a person sets a decision aside under subsection (1); and
- (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

The Secretary will notify the applicant of the applicant's right to apply to the Social Security Appeals Tribunal and the Administrative Appeals Tribunal

“175. (1) Where a person gives the applicant notice under subsection 174 (2), the notice shall include:

- (a) a statement to the effect that the applicant may, subject to this Act, apply to the Social Security Appeals Tribunal for review of the person's decision;
- (b) a statement to the effect that, if the applicant applies to the Social Security Appeals Tribunal for review of the person's decision, the

applicant will, under section 185, be given a statement about the decision that:

- (i) sets out the reasons for the decision;
 - (ii) sets out the findings by the person on material questions of fact; and
 - (iii) refers to the evidence or other material on which those findings were based; and
- (c) a statement to the effect that, if the person is dissatisfied with the Social Security Appeals Tribunal's decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the Social Security Appeals Tribunal's decision.

“(2) A contravention of subsection (1) in relation to a decision does not affect the validity of the decision.

“Division 2—Review by the Social Security Appeals Tribunal

The Social Security Appeals Tribunal is to provide a fair, just, economical, informal and quick review

“176. The Social Security Appeals Tribunal shall, in carrying out its functions under this Act, pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

A person affected by a decision may apply to the Social Security Appeals Tribunal for review of the decision

“177. (1) Subject to section 178, a person affected by:

- (a) a decision of an officer under this Act; or
- (b) a decision under section 5A, 5B, 5C, 5D or 5E of the *Health Insurance Act 1973*;

may apply to the Social Security Appeals Tribunal for review of the decision.

“(2) A person may apply under subsection (1) for review of a decision, and the Social Security Appeals Tribunal may review the decision, even if an application has been made to the Secretary under subsection 173 (1) for review of the decision.

Some decisions are not reviewable by the Social Security Appeals Tribunal

“178. The Social Security Appeals Tribunal cannot review a decision under:

- (a) subsection 159 (1);
- (b) section 163;
- (c) section 164;
- (d) section 168A; or
- (e) subsection 184 (2).

How should an application be made?

“179. (1) A person may apply to the Social Security Appeals Tribunal for review of a decision by:

- (a) sending or delivering a written application to:
 - (i) an office of the Tribunal; or
 - (ii) an office of the Department;
- (b) going to an office of the Tribunal and making an oral application; or
- (c) ringing an office of the Tribunal by telephone and making an oral application.

“(2) Where a person makes an oral application under paragraph (1) (b) or (c), the person receiving the oral application shall make a written record of the details of the oral application and note on the record the date on which the application is made.

“(3) Where a written record of an oral application is made under subsection (2), the written record shall be taken to be a written application by the applicant and to be delivered to an office of the Tribunal on the day on which the oral application is made.

“(4) An application may include a statement of the reasons for seeking a review of the decision.

What happens if the decision under review is varied while the application for review is still being heard?

“180. (1) Where an officer varies a decision after an application has been made to the Social Security Appeals Tribunal for review of the decision but before determination of the review, the application for review shall be treated as if it were an application for review of the decision as varied.

“(2) Where an officer sets a decision aside and substitutes a new decision after an application has been made to the Social Security Appeals Tribunal for review of the decision set aside but before determination of the review, the application for review shall be treated as if it were an application for review of the new decision.

“(3) Where:

- (a) a person applies to the Social Security Appeals Tribunal for review of a decision; and
- (b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes a new decision;

the person may either:

- (c) proceed with the application for review of the decision as varied or the new decision; or
- (d) withdraw the application under section 197.

Who are the parties to a review of a decision?

“181. (1) The parties to a review by the Social Security Appeals Tribunal of a decision are:

- (a) the applicant;
- (b) the Secretary; and
- (c) any other person who has been made a party to the review under subsection (4).

“(2) Where a person has applied under subsection 177 (1) for review of a decision, any other person whose interests are affected by the decision may apply to the National Convener to be made a party to the review.

“(3) An application under subsection (2) must be in writing.

“(4) The National Convener may order that a person who has applied under subsection (2) be made a party to the review.

The Social Security Appeals Tribunal’s powers on review

“182. (1) Where a person applies to the Social Security Appeals Tribunal for review of a decision, the Tribunal shall:

- (a) affirm the decision;
- (b) vary the decision; or
- (c) set the decision aside and:
 - (i) substitute a new decision; or
 - (ii) send the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the Tribunal.

“(2) Subsection (1) is subject to section 198 (which allows the National Convener to dismiss an application for review in certain circumstances).

“(3) Where the Social Security Appeals Tribunal sets a decision aside and substitutes for it a decision that a person is entitled to a pension, benefit or allowance, the Tribunal shall:

- (a) assess the rate at which the pension, benefit or allowance is to be paid to the person; or
- (b) ask the Secretary to assess the rate at which the pension, benefit or allowance is to be paid to the person.

“(4) Subject to subsection (5), the Social Security Appeals Tribunal may, for the purposes of reviewing a decision under this Act, exercise all the powers and discretions that are conferred by this Act on the Secretary.

“(5) The reference in subsection (4) to powers and discretions conferred by this Act does not include a reference to powers and discretions conferred by:

- (a) subsection 159 (1);
- (b) section 161;
- (c) section 162;

- (d) section 163;
- (e) section 164;
- (f) section 168A;
- (g) section 170; or
- (h) subsection 184 (2).

“(6) The Social Security Appeals Tribunal may, for the purposes of reviewing a decision under the *Health Insurance Act 1973*, exercise all the powers and discretions that are conferred by that Act on the Secretary.

“(7) Where:

- (a) the Social Security Appeals Tribunal sets a decision aside under subsection (1); and
- (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

Date of effect of the Social Security Appeals Tribunal’s decision

“183. (1) Subject to subsections (2), (3) and (4), a decision by the Social Security Appeals Tribunal comes into operation immediately on the giving of the decision.

“(2) The Tribunal may specify in a decision that the decision is not to come into operation until a later day specified in the decision and if it does so the decision comes into operation on that later day.

“(3) Subject to subsections (5) and (6), where the Tribunal varies the decision under review, the decision under review as varied by the Tribunal has effect, or shall be taken to have had effect, on and from the day on which the decision under review has or had effect.

“(4) Subject to subsections (5) and (6), where the Tribunal sets the decision under review aside and substitutes a new decision, the new decision has effect, or shall be taken to have had effect, on and from the day on which the decision under review has or had effect.

“(5) Where:

- (a) a person is given written notice of a decision under this Act;
- (b) the person applies to the Social Security Appeals Tribunal more than 3 months after the notice was given, for review of the decision;
- (c) the Tribunal varies the decision or sets the decision aside and substitutes a new decision; and
- (d) the effect of the Tribunal’s decision is:
 - (i) to grant the person’s claim for a pension, benefit or allowance;
 - (ii) to direct the making of a payment of pension, benefit or allowance to the person; or

(iii) to increase the rate of the person's pension, benefit or allowance;

subsections (3) and (4) apply as if references in those subsections to the day on which the decision under review had effect were references to the day on which the application was made to the Tribunal for review of the decision under review.

“(6) The Tribunal may order that subsection (3) or (4) not apply to a decision by the Tribunal on a review.

“(7) If an order is made under subsection (6), subsection (3) or (4) does not apply to the decision but subsections (1) and (2) apply instead.

**“Division 3—Procedures for review of a decision by the
Social Security Appeals Tribunal**

“Subdivision A—Preliminary procedures

What happens initially when an application for review is received?

“184. (1) If the application is sent or delivered to an office of the Department, the Secretary shall send the application to the National Convener as soon as practicable and in any case not later than 7 days after the application is received at the office of the Department.

“(2) Where:

- (a) the applicant sends or delivers the application to an office of the Social Security Appeals Tribunal; or
- (b) the Secretary sends the application to the National Convener under subsection (1);

the National Convener shall give both the applicant and the Secretary written notice that the application has been received.

“(3) Within 28 days after receiving notice of the making of the application from the National Convener, the Secretary shall send the National Convener:

- (a) a statement about the decision under review that:
 - (i) sets out the findings of fact made by the person who made the decision;
 - (ii) refers to the evidence on which those findings were based; and
 - (iii) gives the reasons for the decision; and
- (b) the original or a copy of every document or part of a document that is in the Secretary's possession or control and is considered by the Secretary to be relevant to the review of the decision.

“(4) If the National Convener asks the Secretary to send the statement and documents by a date earlier than the date provided for in subsection (3), the Secretary shall take reasonable steps to comply with the National Convener's request.

“(5) If:

- (a) after the end of the period referred to in subsection (3) and before the determination of the review, the Secretary obtains possession of a document;
- (b) the Secretary considers that the document or a part of the document is relevant to the review; and
- (c) a copy of the document or the part of the document has not been sent to the National Convener under subsection (3);

the Secretary shall send a copy of the document or the part of the document to an office of the Tribunal as soon as practicable after obtaining possession of the document.

The National Convener will give the other parties a copy of the paragraph 184 (3) (a) statement

“185. The National Convener shall give each party (other than the Secretary) a copy of the statement referred to in paragraph 184 (3) (a).

The National Convener will make arrangements for the hearing of the application

“186. (1) Where an application is made to the Social Security Appeals Tribunal for review of a decision under this Act, the National Convener shall fix the date, time and place for the hearing of the application.

“(2) Where a declaration under section 168A is in force in relation to the decision, the National Convener shall take reasonable steps to ensure that the decision is reviewed as quickly as possible.

Note: If a declaration under section 168A is in force, the person whose pension etc is affected will be continuing to receive pension etc as if the decision under review had not been made.

“(3) The National Convener shall give the applicant written notice of the date, time and place fixed for the hearing of the application.

“(4) The notice under subsection (3) shall be given a reasonable time before the date fixed for the hearing.

The National Convener will give notice of the application to any person whose interests the National Convener believes are affected by the decision under review

“187. (1) Where:

- (a) a person has made an application to the Social Security Appeals Tribunal for a review of a decision; and
- (b) the National Convener believes that another person’s interests may be affected by the decision;

the National Convener shall take reasonable steps to give the other person written notice that an application has been made to the Tribunal for review of the decision.

“(2) The notice under subsection (1) shall include a notice to the person of the person’s right under section 181 to apply to the National Convener to be added as a party to the review.

“(3) The National Convener may give a notice under subsection (1) at any time before the determination of the review.

“(4) If the National Convener gives a person notice under subsection (1) that an application has been made for review of a decision, the National Convener shall give each party to the review a copy of the notice.

“Subdivision B—How the Social Security Appeals Tribunal informs itself about the decision under review

How does a party put material before the Social Security Appeals Tribunal?

“188. (1) A party to a review of a decision may:

- (a) make oral submissions to the Tribunal; and
- (b) make written submissions to the Tribunal.

“(2) The Secretary may make written submissions to the Tribunal.

“(3) A party to a review of a decision may have another person make oral submissions to the Tribunal on behalf of the party.

“(4) The National Convener may determine that the oral submissions to the Social Security Appeals Tribunal by a party or a party’s representative are to be made by telephone.

“(5) Without limiting subsection (4), the National Convener may determine that oral submissions to the Social Security Appeals Tribunal by a party or a party’s representative are to be made by telephone if:

- (a) the application is urgent and unnecessary delay would be caused by not conducting the hearing by telephone;
- (b) the party lives in a remote area and unnecessary expense would be incurred if the party or the party’s representative had to travel to the place at which the hearing is to be held;
- (c) the party has failed to attend the hearing and has not indicated that he or she intends not to attend the hearing; or
- (d) the applicant is unable to attend the hearing because of illness or infirmity.

“(6) Where a party attending the hearing of the review is not proficient in English, the National Convener may direct that communication with the party at the hearing of the review proceed through an interpreter.

“(7) A reference in this section to a party does not include a reference to the Secretary.

When can the Social Security Appeals Tribunal proceed without oral submissions from a party?

“189. (1) Where a party has advised the National Convener that the party does not intend making oral submissions to the Social Security Appeals Tribunal, the Tribunal may proceed to hear the application for review without oral submissions from the party.

“(2) Where:

- (a) the National Convener has determined under subsection 188 (4) that oral submissions to the Social Security Appeals Tribunal by a party or the party’s representative are to be made by telephone; and
- (b) on the day fixed for the hearing the presiding member has been unable to contact the party or the party’s representative after reasonable efforts have been made to do so;

the National Convener may authorise the Tribunal to proceed to hear the application without oral submissions from the party or the party’s representative.

“(3) Where:

- (a) the National Convener has not determined under subsection 188 (4) that oral submissions to the Social Security Appeals Tribunal by a party or the party’s representative are to be made by telephone; and
- (b) the party or the party’s representative does not attend the hearing at the time fixed for the hearing;

the National Convener may authorise the Tribunal to proceed to hear the application without oral submissions from the party or the party’s representative.

“(4) Where the National Convener gives an authorisation under subsection (2) or (3), the Social Security Appeals Tribunal may proceed to hear the application without oral submissions from the party or the party’s representative.

“(5) The National Convener may revoke an authorisation under subsection (2) or (3).

The Social Security Appeals Tribunal may take evidence

“190. The Social Security Appeals Tribunal may take evidence on oath or affirmation for the purposes of a review of a decision.

The Secretary will provide further information on a request from the National Convener

“191. (1) The National Convener may ask the Secretary to provide information or a document the Secretary has and that is relevant to the review of a decision.

“(2) The Secretary shall comply with a request made under subsection (1).

The National Convener may ask the Secretary to exercise powers under section 164

“192. (1) The National Convener may ask the Secretary to exercise the Secretary’s powers under paragraph 164 (1) (a) if the National Convener is satisfied that a person has information, or has custody or control of a document, that is relevant to the review of the decision.

Note: Under paragraph 164 (1) (a), the Secretary can, for the purposes of this Act, require a person to provide information or produce documents.

“(2) The Secretary shall take all reasonable steps to comply with the request and shall, if at all practicable, do so within 7 days after receiving the request.

“Subdivision C—The nature of the hearing

The hearing will be as informal as possible

“193. (1) The Social Security Appeals Tribunal, in reviewing a decision:

- (a) is not bound by technicalities, legal forms or rules of evidence;
- (b) shall act as speedily as a proper consideration of the review allows; and
- (c) shall, in determining what a proper consideration of the review requires, have regard to the objective laid down by section 176.

“(2) The Social Security Appeals Tribunal may inform itself on any matter relevant to a review of a decision in any manner the Tribunal considers appropriate.

The hearing will be in private

“194. (1) The hearing of a review shall be in private.

“(2) The National Convener may give directions as to the persons who may be present at any hearing of a review.

“(3) In exercising powers under subsection (2), the National Convener shall have regard to wishes of the parties and the need to protect their privacy.

“(4) Directions under subsection (2) may be made in writing or otherwise.

The National Convener may make orders restricting the further disclosure of information disclosed at a hearing

“195. (1) The National Convener may make an order directing a person who is present at the hearing of a review:

- (a) not to disclose information disclosed to the person in the course of the hearing of the review; or
- (b) not to disclose information disclosed to the person in the course of the hearing of the review except in the circumstances or for the purposes specified in the order.

“(2) A person shall not contravene an order made under subsection (1).

“Subdivision D—Other procedural matters

The Social Security Appeals Tribunal may adjourn a hearing

“196. (1) The Social Security Appeals Tribunal may adjourn the hearing of a review of the decision from time to time.

“(2) Without limiting subsection (1), the Social Security Appeals Tribunal may refuse to adjourn a hearing of a review of a decision if:

- (a) there have already been a number of adjournments of the hearing;
- (b) the Tribunal is satisfied that the adjournment would be contrary to the objective laid down by section 176; or
- (c) a declaration under section 168A is in force in relation to the decision.

Note: If a declaration under section 168A is in force, the person whose pension etc. is affected will be continuing to receive pension etc. as if the decision under review had not been made.

The applicant may withdraw the application

“197. (1) An applicant for review of a decision may withdraw the application at any time.

“(2) A withdrawal may be made by:

- (a) sending or delivering written notice of withdrawal to:
 - (i) an office of the Social Security Appeals Tribunal; or
 - (ii) an office of the Department;
- (b) going to an office of the Tribunal and orally withdrawing the application; or
- (c) ringing an office of the Tribunal by telephone and orally withdrawing the application.

“(3) Where a person withdraws an application under paragraph (2) (b) or (c), the person receiving the oral withdrawal shall make a written record of the withdrawal and note on the record the date on which the withdrawal was made.

The application may be dismissed if the applicant does not intend to proceed with the application

“198. (1) Where:

- (a) a person makes an application to the Social Security Appeals Tribunal for review of a decision; and
- (b) the National Convener is satisfied, either after having communicated with the person or having made reasonable attempts to contact the person and having failed to do so, that the person does not intend to proceed with the application;

the National Convener may dismiss the application.

“(2) Where the National Convener dismisses an application under subsection (1) the application shall be taken to have been withdrawn at the time when the application is dismissed.

Who presides at the hearing?

“199. (1) If the National Convener is one of the members who constitute the Social Security Appeals Tribunal for the purposes of the review of a decision, the National Convener shall preside at the hearing of the review.

“(2) If:

(a) a senior member is one of the members who constitute the Social Security Appeals Tribunal for the purposes of the review of a decision; and

(b) the National Convener is not one of those members;

the senior member shall preside at the hearing of the review.

“(3) In any other case, the National Convener shall designate one of the members who constitute the Social Security Appeals Tribunal for the purposes of the review of a decision as the member who is to preside at the hearing of the review.

Questions arising on a review will be decided by a majority

“200. A question before the Social Security Appeals Tribunal on a review shall be decided according to the opinion of a majority of the members constituting the Tribunal for the purposes of the review.

What happens if the members are equally divided in opinion?

“201. Where:

(a) an application is made to the Social Security Appeals Tribunal for review of a decision; and

(b) section 200 does not apply to a question before the Tribunal on the review;

the question shall be decided according to the opinion of the member presiding.

The National Convener may give directions as to the procedure to be followed in hearing reviews

“202. (1) The National Convener:

(a) may give general directions as to the procedure to be followed by the Social Security Appeals Tribunal in connection with the review of decisions under this Act; and

(b) may give directions as to the procedure to be followed by the Social Security Appeals Tribunal in connection with a particular review.

“(2) A direction under subsection (1) shall not be inconsistent with the provisions of this Act or the regulations.

“(3) A direction under paragraph (1) (b) may be given either before or after the hearing of the particular review has commenced.

“(4) The presiding member of the Social Security Appeals Tribunal as constituted to hear a particular review may give directions as to the procedure to be followed on the hearing of the review.

- “(5) A direction under subsection (4) shall not be inconsistent with:
- (a) the provisions of this Act or the regulations; or
 - (b) a direction given under subsection (1).

“(6) A direction given under subsection (4) may be given either before or after the hearing of the particular review has commenced.

“(7) Directions under this section shall be given having due regard to the objective laid down by section 176.

Who bears the expenses of the review?

“203. (1) Subject to subsection (4), a party must bear any expenses incurred by the party in connection with the review.

“(2) The Social Security Appeals Tribunal may determine that a party may be reimbursed for reasonable travel and accommodation expenses that are incurred by the party in relation to the review and that are specified in the determination.

“(3) The Social Security Appeals Tribunal may determine that a party may be reimbursed for the expenses incurred by the party in relation to a medical service where the arrangements for the medical service were made by the Tribunal.

“(4) Where a determination is made under subsection (2) or (3) in relation to a party’s expenses, the party may be reimbursed by the Commonwealth for those expenses.

“Subdivision E—Notification of decision

What happens when the Social Security Appeals Tribunal makes its decision on the review?

“204. (1) Where the Social Security Appeals Tribunal makes its decision on a review, the Tribunal shall:

- (a) prepare a written statement that:
 - (i) sets out the decision of the Tribunal on the review;
 - (ii) sets out the reasons for the decision;
 - (iii) sets out the findings on any material questions of fact; and
 - (iv) refers to the evidence or other material on which the findings of fact were based;
- (b) give each party to the review a copy of the statement referred to in paragraph (a) within 14 days after the determination of the review;

- (c) return to the Secretary any document that the Secretary has provided in relation to the review; and
- (d) give the Secretary a copy of any other document that contains evidence or material on which the findings of fact were based.

“(2) Where the Social Security Appeals Tribunal determines a review, the National Convener shall give each party to the review (other than the Secretary) a written notice that includes a statement to the effect that, if the person is dissatisfied with the Social Security Appeals Tribunal’s decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Tribunal for review of the decision.

“(3) A contravention of subsection (2) in relation to a decision does not affect the validity of the decision.

“Division 4—Review by Administrative Appeals Tribunal

“Subdivision A—Right to review by Administrative Appeals Tribunal

A person affected by a decision that has been reviewed by the Social Security Appeals Tribunal may apply to the Administrative Appeals Tribunal for a further review of the decision

“205. (1) Where a decision has been reviewed by the Social Security Appeals Tribunal and has been affirmed, varied or set aside, application may be made to the Administrative Appeals Tribunal for a review of the decision of the Social Security Appeals Tribunal.

“(2) For the purposes of subsection (1), the decision made by the Social Security Appeals Tribunal shall be taken to be:

- (a) where the Tribunal affirms a decision—the decision as affirmed;
- (b) where the Tribunal varies a decision—the decision as varied;
- (c) where the Tribunal sets a decision aside and substitutes a new decision—the new decision; and
- (d) where the Tribunal sets a decision aside and sends the matter back to the Secretary for reconsideration in accordance with any directions or recommendations of the Tribunal—the directions or recommendations of the Tribunal.

“(3) Subsection (1) has effect subject to section 29 of the *Administrative Appeals Tribunal Act 1975*.

Note: Section 29 of the *Administrative Appeals Tribunal Act 1975* lays down the manner in which an application to the AAT for review of a decision must be made.

“(4) Where:

- (a) the Administrative Appeals Tribunal sets a decision aside; and
- (b) the Secretary is satisfied that an event that did not occur would have occurred if the decision had not been made;

the Secretary may, if satisfied that it is reasonable to do so, deem the event to have occurred for the purposes of this Act.

What happens if the decision under review is varied while the application for review is still being heard?

“206. (1) Where an officer varies a decision after an application has been made to the Administrative Appeals Tribunal for review of that decision but before the determination of the application for review, the application shall be treated as if it were an application for review of the decision as varied.

“(2) Where an officer sets a decision aside and substitutes a new decision after an application has been made to the Administrative Appeals Tribunal for review of the decision but before determination of the review, the application shall be treated as if it were an application for review of the new decision.

“(3) Where:

- (a) a person applies to the Administrative Appeals Tribunal for review of a decision; and
- (b) before determination of the review, an officer varies the decision or sets the decision aside and substitutes the new decision;

the person may either:

- (c) proceed with the application for review of the decision as varied or the new decision; or
- (d) withdraw the application.

The Secretary will be able to apply to the Administrative Appeals Tribunal for review of a decision that the Social Security Appeals Tribunal has varied or set aside

“207. Where a decision has been reviewed by the Social Security Appeals Tribunal and has been varied or set aside, the *Administrative Appeals Tribunal Act 1975* applies to a review under section 205 of the Social Security Appeals Tribunal’s decision as if the Secretary were, for the purposes of section 27 of that Act, a person whose interests are affected by the Social Security Appeals Tribunal’s decision.

Note: Section 27 of the *Administrative Appeals Tribunal Act 1975* says that where an Act provides that an application may be made to the AAT for a review of a decision, the application may be made by or on behalf of any person whose interests are affected by the decision.

“Subdivision B—Modification of the Administrative Appeals Tribunal Act 1975

Modification of the Administrative Appeals Tribunal Act

“208. This Subdivision sets out the modifications of the *Administrative Appeals Tribunal Act 1975* that need to be made for applications for review under section 205.

Applicant's right to have a statement of the reasons for the decision under review

“209. The *Administrative Appeals Tribunal Act 1975* applies to an application under section 205 for review of a decision as if references in section 28 of that Act to the person who made the decision were references to the National Convener.

Note: Section 201 of this Act requires the SSAT to give the parties to a review copies of a statement setting out reasons, findings on material questions of fact and a reference to the evidence or other material on which the findings were based. Section 28 of the *Administrative Appeals Tribunal Act 1975* entitles an applicant for review by the AAT to ask the person who made the decision for a statement setting out the same matters. Subsection 28 (4) of the *Administrative Appeals Tribunal Act 1975* says that an applicant for review is not entitled to a statement under that section if the matters referred to in section 201 of this Act are set out in the decision itself or in a written statement given to the applicant.

Notice of application for review

“210. The *Administrative Appeals Tribunal Act 1975* applies to an application under section 205 for review of a decision as if the reference in subsection 29 (11) of that Act to the person who made the decision were a reference to each party to the review by the Social Security Appeals Tribunal (other than a party making the application under section 205).

Note: Subsection 29 (11) of the *Administrative Appeals Tribunal Act 1975* requires notice of an application to the AAT for review of a decision to be given to the person who made the decision. The effect of section 210 is that any person who was a party to the review by the SSAT will be given notice of an application to the AAT for further review.

Who are the parties to a review by the Administrative Appeals Tribunal?

“211. The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 205 as if the reference in paragraph 30 (1) (b) to the person who made the decision were a reference to each person who was a party to the review by the Social Security Appeals Tribunal.

Note: Paragraph 30 (1) (b) of the *Administrative Appeals Tribunal Act 1975* says that the person who made the decision under review is a party to the proceeding before the AAT for review of the decision. The effect of section 211 is that each person who was a party to the review by the SSAT is automatically made a party to an application to the AAT for further review.

Lodging of material documents with the Administrative Appeals Tribunal

“212. (1) The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 205 as if references in section 37 of that Act to the person who has made the decision that is the subject of an application for review by the Administrative Appeals Tribunal were references to the Secretary.

“(2) Where a person applies to the Administrative Appeals Tribunal under section 205 for review of a decision, the Secretary shall be taken to have complied with the Secretary's obligations under paragraph 37 (1) (a) of the *Administrative Appeals Tribunal Act 1975* in relation to the decision

if the Secretary gives the Administrative Appeals Tribunal the prescribed number of copies of the statement prepared by the Social Security Appeals Tribunal under paragraph 204 (1) (a).

“(3) Subsection (2) does not limit the Administrative Appeals Tribunal’s powers under section 38 of the *Administrative Appeals Tribunal Act 1975*.

Note: Subsection 37 (1) of the *Administrative Appeals Tribunal Act 1975* requires a person who has made a decision that is under review by the AAT to give the AAT copies of:

- (a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and
- (b) every other document or part of a document that is in the person’s possession or under the person’s control and is considered by the person to be relevant to the review.

Unless subsection 212 (1) said otherwise, the obligations under section 37 of the *Administrative Appeals Tribunal Act 1975* would fall on the SSAT. Paragraph 204 (1) (a) requires the SSAT to prepare a written statement of reasons, findings and evidence for its decision and paragraph 204 (1) (b) requires the SSAT to give the Secretary a copy of the statement. As the Secretary has possession of the statement and the relevant documents, the Secretary is the appropriate person to give them to the AAT.

Power of the Administrative Appeals Tribunal to obtain additional statements

“213. The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 205 as if references in section 38 of that Act to the person who lodges a statement referred to in paragraph 37 (1) (a) of that Act with the Tribunal were references to the National Convener.

Note: The effect of section 213 is that if the AAT considers that the section 204 statement is not adequate, the AAT may ask the National Convener to provide an additional statement containing further and better details.

Operation and implementation of the decision under review

“214. The *Administrative Appeals Tribunal Act 1975* applies to an application for review under section 205 as if the references in subsection 41 (4) to the person who made the decision were references to each party to the review by the Social Security Appeals Tribunal.

Note: Section 41 of the *Administrative Appeals Tribunal Act 1975* deals with the operation and implementation of a decision under review by the AAT.

Power of the Administrative Appeals Tribunal to strike out a party

“215. The *Administrative Appeals Tribunal Act 1975* applies to a review under section 205 as if the reference in subsection 42A (2) to the person who made the decision were a reference to the Secretary.

Note: Subsection 42A (2) of the *Administrative Appeals Tribunal Act 1975* empowers the AAT to direct that a person who fails to appear (other than the person who made the decision that is under review) shall cease to be a party to the proceedings before the AAT.

“PART XX—SOCIAL SECURITY APPEALS TRIBUNAL

“Division 1—Establishment and membership of the Social Security Appeals Tribunal

Establishment of the Social Security Appeals Tribunal

“216. There is hereby established a Social Security Appeals Tribunal, which shall consist of:

- (a) a National Convener;
- (b) such number of senior members as are appointed in accordance with this Act; and
- (c) such number of other members as are appointed in accordance with this Act.

The National Convener

“217. (1) The National Convener is responsible for the overall operation and administration of the Social Security Appeals Tribunal.

“(2) The National Convener shall:

- (a) monitor the operations of the Social Security Appeals Tribunal;
- (b) take reasonable steps to ensure that decisions of the Social Security Appeals Tribunal are consistent; and
- (c) take reasonable steps to ensure that the Social Security Appeals Tribunal efficiently and effectively performs its functions.

“(3) The National Convener may give directions:

- (a) for the purpose of increasing the efficiency of the operations of the Social Security Appeals Tribunal; and
- (b) as to the arrangements of the business of the Tribunal.

Appointment of members

“218. (1) The National Convener and the Senior members of the Social Security Appeals Tribunal shall be appointed by the Governor-General.

“(2) The other members shall be appointed by the Minister.

“(3) The National Convener shall be appointed as a full-time member.

“(4) Any other member may be appointed either as a full-time member or as a part-time member.

Period of appointment of members

“219. (1) Subject to this Part, a member holds office for such period as is specified in the instrument of appointment, but is eligible for re-appointment.

“(2) The period specified under subsection (1) shall not exceed:

- (a) in the case of the National Convener—5 years; and
- (b) in any other case—3 years.

Acting appointments

“220. (1) The Minister may appoint a person to act as National Convener:

- (a) during a vacancy in the office of National Convener, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the National Convener is absent from duty or from Australia or is, for any reason, unable to perform the duties of the National Convener’s office.

“(2) A person appointed to act during a vacancy in the office of National Convener shall not continue to act for more than 12 months.

“(3) The Minister may appoint a person to act as a full-time senior member during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason, unable to perform the functions of the member’s office.

“(4) The Minister may appoint a person to act as a part-time senior member during any period, or during all periods, when the member is, for any reason, unavailable to perform the duties of the member’s office.

“(5) Where a person has been appointed under subsection (1), (3) or (4), the Minister may direct that the person shall continue to act in the appointment after the normal terminating event occurs.

“(6) A direction under subsection (5) shall specify the period during which the person may continue to act in the appointment.

“(7) The period specified under subsection (6) may be specified by reference to the happening of a particular event or the existence of particular circumstances.

“(8) A direction under subsection (5):

- (a) shall be given only if there is a pending review or other special circumstance justifying the giving of the direction; and
- (b) may only be given before the normal terminating event occurs.

“(9) A person continuing to act under a direction under subsection (5) shall not continue to act for more than 12 months after the normal terminating event occurs.

“(10) Where the Social Security Appeals Tribunal as constituted for the purposes of a review includes a person acting or purporting to act under this section, any decision of, or any direction given or any other act done by, the Tribunal as so constituted is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

“(11) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

“(12) For the purposes of this section the normal terminating event for an appointment under subsection (1), (3) or (4) is:

- (a) if the appointment is made under paragraph (1) (a)—the filling of the vacancy in the office of National Convener;
- (b) if the appointment is made under paragraph (1) (b)—the National Convener ceasing to be absent or ceasing to be unable to perform the duties of the National Convener’s office;
- (c) if the appointment is made under subsection (3)—the senior member ceasing to be absent or ceasing to be unable to perform the duties of the member’s office; or
- (d) if the appointment is made under subsection (4)—the senior member ceasing to be unavailable to perform the duties of the member’s office.

“Division 2—Organisation of the business of the Social Security Appeals Tribunal

The National Convener will direct which members are to constitute the Social Security Appeals Tribunal for the purposes of a review

“221. (1) Subject to section 222, the National Convener may give written directions as to the members who are to constitute the Social Security Appeals Tribunal for the purposes of:

- (a) a particular review; or
- (b) reviews of a particular kind.

“(2) Without limiting subsection (1), the National Convener may give a direction under that subsection as to the members who are to constitute the Social Security Appeals Tribunal for the purposes of all reviews, or reviews of a particular kind, that are listed for hearing at a particular place during a particular period or during particular periods.

“(3) For the purposes of a review, the Social Security Appeals Tribunal shall be constituted by the members ascertained in accordance with the directions given under subsection (1).

Number of members to constitute Social Security Appeals Tribunal for the purposes of a review

“222. (1) The maximum number of members to constitute the Social Security Appeals Tribunal for the purposes of a review is 4.

“(2) Subject to subsection (3) and section 223, the minimum number of members to constitute the Social Security Appeals Tribunal for the purposes of a review is 3.

“(3) A member or 2 members may constitute the Social Security Appeals Tribunal for the purposes of a review if the National Convener is satisfied that there are special circumstances justifying the consideration of the review by fewer than 3 members.

What happens if a member of the Social Security Appeals Tribunal ceases to be available for the review?

“223. (1) Where the hearing of a review of a decision has been commenced or completed by the Social Security Appeals Tribunal constituted by 2 or more members but, before the matter to which the proceeding relates has been determined, one of the members constituting the Tribunal for the purposes of the review has:

- (a) ceased to be a member; or
- (b) has ceased to be available for the purposes of the review;

the following provisions have effect:

- (c) if the National Convener does not give a direction under section 221 reconstituting the Tribunal for the purposes of the review—the hearing and determination, or the determination, of the review may be completed by the Tribunal constituted by the remaining member or members;
- (d) in any other case—the proceeding shall be reheard by the Tribunal as reconstituted in accordance with the directions of the National Convener under section 221.

“(2) Where a review is reheard by the Social Security Appeals Tribunal, the Tribunal may, for the purposes of that review, have regard to any record of the proceedings before the Tribunal as previously constituted.

“(3) The reference in subsection (2) to a record of proceedings includes a reference to a record of any evidence taken in the proceeding.

“Division 3—Administrative matters

Remuneration and allowances of members

“224. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal.

“(2) If no determination of a member’s remuneration by the Remuneration Tribunal is in operation, the member shall be paid such remuneration as is prescribed.

“(3) A member shall be paid such allowances as are prescribed.

“(4) This section has effect subject to the *Remuneration Tribunals Act 1973*.

Leave of absence

“225. (1) The Minister may grant leave of absence to the National Convener on such terms and conditions as to remuneration or otherwise as the Minister determines.

“(2) The National Convener may grant leave of absence to another full-time member.

“(3) The Minister may determine the terms and conditions as to remuneration or otherwise on which leave may be granted under subsection (2).

“(4) A determination under subsection (3) shall be in writing.

Approval to engage in outside employment

“226. (1) The National Convener may approve another full-time member’s engaging in paid employment outside the duties of the member’s office.

“(2) The Minister may give the National Convener directions as to the National Convener’s exercise of powers under subsection (1) and the National Convener shall comply with the directions.

“(3) A direction under subsection (2) shall be in writing.

Resignation

“227. A member may resign office by writing signed by the member and delivered to the Minister.

Removal from office

“228. (1) The Governor-General may remove the National Convener or a senior member from office on the ground of proved misbehaviour or physical or mental incapacity.

“(2) The Minister may remove an ordinary member from office on the ground of proved misbehaviour or physical or mental incapacity.

“(3) The Minister may suspend a member from office on the ground of misbehaviour or physical and mental incapacity.

“(4) Where the Minister suspends the National Convener or a senior member from office, the Governor-General may, on the recommendation of the Minister:

- (a) remove the National Convener or the senior member from office;
- (b) direct that the suspension continue for such further period as the Governor-General specifies; or
- (c) direct that the suspension terminate.

“(5) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

“(6) The Governor-General may remove the National Convener or a senior member from office if disqualifying circumstances exist in relation to the National Convener or the senior member.

“(7) The Minister may remove an ordinary member from office if disqualifying circumstances exist in relation to the member.

“(8) For the purposes of this section disqualifying circumstances exist in relation to a member if:

- (a) the member becomes bankrupt;
- (b) the member applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (c) the member compounds with the member’s creditors;
- (d) the member makes an assignment of the member’s remuneration for the benefit of the member’s creditors;
- (e) the member is a full-time member and:
 - (i) engages, except in accordance with an approval under section 226, in paid employment outside the duties of the member’s office; or
 - (ii) is absent from duty, except on leave of absence granted under section 225, for 14 consecutive days or 28 days in any 12 months; or
- (f) the member fails, without reasonable excuse, to comply with the member’s obligations under section 229.

“(9) If the National Convener or a senior member is an eligible employee for the purposes of the *Superannuation Act 1976*, the Governor-General may, with the consent of the National Convener or the senior member, by signed instrument, retire the National Convener or the senior member from office on the ground of physical or mental incapacity on a date specified in the instrument.

“(10) If an ordinary member is an eligible employee for the purposes of the *Superannuation Act 1976*, the Minister may, with the consent of the ordinary member, by signed instrument, retire the ordinary member from office on the ground of physical or mental incapacity on a date specified in the instrument.

“(11) The date specified under subsection (9) or (10) shall not be earlier than the date on which the instrument is signed.

“(12) A member shall not be suspended, removed or retired from office except as provided by this section.

Disclosure of interests

“229. (1) Where:

- (a) a member who is, or is to be, a member of the Social Security Appeals Tribunal as constituted for the purposes of a review; and
- (b) the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of member’s functions in relation to that review;

the following provisions have effect:

- (c) the member shall disclose the interest to the applicant and to the Secretary;

- (d) except with the consent of the applicant and the Secretary, the member shall not take part in the review or exercise any powers in relation to the review, by the Social Security Appeals Tribunal of the relevant decision.

“(2) Where the National Convener becomes aware that:

- (a) a member is, or is to be, a member of the Social Security Appeals Tribunal as constituted for the purposes of a review; and
- (b) the member has, in relation to that review, an interest of the kind referred to in paragraph (1) (b) of this section;

the following provisions have effect:

- (c) if the National Convener considers that the member should not take part, or should not continue to take part in the review—the National Convener shall give a direction to the member accordingly;
- (d) in any other case—the National Convener shall cause the interest of the member to be disclosed to the applicant and to the Secretary.

Disclosure of confidential information

“230. (1) This section applies to a person who is or has been:

- (a) a member of the Social Security Appeals Tribunal;
- (b) a person acting as a member of the Tribunal;
- (c) a member of the staff of the Tribunal; or
- (d) a person (other than a member of the staff of the Tribunal) providing interpreting services at the hearing of a review by the Tribunal under Part XIX.

“(2) This section applies to information or a document if the information or document concerns a person and is obtained by a person to whom this section applies in the course of performing functions or duties or exercising powers under this Act.

“(3) A person to whom this section applies shall not:

- (a) make a record of any information to which this section applies; or
- (b) divulge or communicate to any person any information to which this section applies;

unless the record is made or the information is divulged or communicated:

- (c) for the purposes of this Act; or
- (d) for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act.

“(4) Subsection (3) applies to the divulging or communicating of information whether directly or indirectly.

“(5) A person to whom this section applies shall not be required:

- (a) to produce in a court any document to which this section applies; or
- (b) to divulge or communicate to any court any information to which this section applies;

except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act.

“(6) For the purposes of this section, a person who is providing interpreting services at the hearing of a review by the Tribunal under Part XIX shall be taken to be performing a function under this Act.

“(7) In this section:

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘produce’ includes permit access to.

Delegation by the National Convener

“231. The National Convener may by signed instrument delegate to a member of the Social Security Appeals Tribunal all or any of the powers and functions of the National Convener under this Act.

Protection of members and witnesses

“232. (1) A member has, in the performance of the member’s duties as a member, the same protection and immunity as a member of the Administrative Appeals Tribunal.

“(2) A person representing a party at a hearing of a review before the Social Security Appeals Tribunal has the same protection and immunity as a barrister has in appearing before the Administrative Appeals Tribunal on behalf of a party.

“(3) A person appearing before the Social Security Appeals Tribunal as a witness has the same protection as a person appearing before the Administrative Appeals Tribunal as a witness.

Fees for witnesses

“233. (1) Where a person appears before the Social Security Appeals Tribunal as a witness at the request of the National Convener, the person is entitled to be paid, in respect of the person’s attendance, fees and allowances ascertained in accordance with a determination under subsection (2).

“(2) The Minister may determine the amounts of fees and allowances to be paid under subsection (1).

“(3) A determination under subsection (2) shall be in writing and is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(4) The fees and allowances referred to in subsection (1) shall be paid by the Commonwealth.

Oath or affirmation of office

“234. (1) A person who is appointed as a member, or to act as a member, shall not discharge the duties of the office unless the person has taken an oath, or made an affirmation, in accordance with the form of oath or affirmation in Schedule 4.

“(2) The oath or affirmation shall be made before a justice of the peace or a commissioner for taking affidavits.

Staff of the Social Security Appeals Tribunal

“235. Any staff required to assist the Social Security Appeals Tribunal shall be persons appointed or employed under the *Public Service Act 1922* and made available for the purpose by the Secretary.

Annual report

“236. (1) The National Convener shall, as soon as practicable after 30 June in each year prepare and give to the Minister a report of the operations of the Social Security Appeals Tribunal during that year.

“(2) The Minister shall cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report after the Minister receives the report.

“(3) The first report shall relate to the period commencing on the day on which this section comes into operation and ending on 30 June 1989.”.

New Schedule 1A to the *Social Security Act 1947*

7. The Principal Act is amended by inserting before Schedule 1 the Schedule set out in Schedule 1 to this Act.

Minor and consequential amendments

8. The Acts specified in Schedule 2 are amended as set out in that Schedule.

Transitional provisions

9. (1) The amendments made by sections 3, 4, 5, 6, 7 and 8 do not apply in relation to a person in relation to a decision under this Act if, before 1 November 1988, the person applies to a Social Security Appeals Tribunal for review of the decision and the Tribunal commences, before that date to hear the application for review.

(2) Where a person applies to a Social Security Appeals Tribunal before 1 November 1988 for review of a decision and the Tribunal does not commence to hear the application before that date, the application may be dealt with as if it had been made to the Social Security Appeals Tribunal under subsection 173 (1) of the amended Act.

(3) Where subsection (2) applies to an application, section 184 of the amended Act applies as if the Secretary had received notice of the making of the application from the National Convener on 1 November 1988.

(4) In this section:

“amended Act” means the Principal Act as in force after this section commences.

Renumbering of the Social Security Act

10. (1) In this section:

“amended Act” means the *Social Security Act 1947* as amended by the provisions of this Act (other than this section);

“provision” includes a Schedule.

(2) The amended Act is further amended as provided by this section.

(3) The several sections of Part XXI of the amended Act are renumbered in a single series so that they bear consecutive Arabic numerals commencing with “237”.

(4) Any provision of the amended Act that refers to a section of that Act that has been renumbered under this section is amended by omitting the reference and substituting a reference to the section as so renumbered.

(5) A reference in a provision of a law of the Commonwealth or of a Territory enacted before the commencement of this section (whether or not that provision has come into operation), or in any instrument or document, to a section of the *Social Security Act 1947* that has been renumbered under this section shall be construed as a reference to that section as so renumbered.

SCHEDULE 1

Section 7

NEW SCHEDULE 1A TO SOCIAL SECURITY ACT 1947

“SCHEDULE 1A

Section 234

OATH

I, _____, swear that I will faithfully and impartially perform the duties of the office of National Convener [*or senior member or member*] of the Social Security Appeals Tribunal without fear or favour, affection or ill-will. So help me, God.

AFFIRMATION

I, _____, solemnly and sincerely promise and declare that I will faithfully and impartially perform the duties of the office of National Convener [*or senior member or member*] of the Social Security Appeals Tribunal without fear or favour, affection or ill-will.”

SCHEDULE 2

Section 8

MINOR AND CONSEQUENTIAL AMENDMENTS

Health Insurance Act 1973

Section 5F:

Repeal the section, substitute the following section:

Review of decisions under sections 5 to 5E (inclusive)

“5F. Provision is made in Part XIX of the *Social Security Act 1947* for review of decisions under sections 5 to 5E (inclusive) of this Act.”.

Social Security Act 1947

Paragraph 168 (4) (a):

Omit “taken action under section 16 to seek a review of, or appeal against,” substitute “applied to the Secretary under subsection 173 (1) for review of”.

Heading to Part XIX:

Omit “XIX”, substitute “XXI”.

Subsection 175 (1):

Insert “, 195 (2) and 230 (3)” after “19 (2)”.

NOTE

1. No. 26, 1947, as amended. For previous amendments, see Nos. 38 and 69, 1948; No. 16, 1949; Nos. 6 and 26, 1950; No. 22, 1951; Nos. 41 and 107, 1952; No. 51, 1953; No. 30, 1954; Nos. 15 and 38, 1955; Nos. 67 and 98, 1956; No. 46, 1957; No. 44, 1958; No. 57, 1959; No. 45, 1961; Nos. 1 and 95, 1962; No. 46, 1963; Nos. 3 and 63, 1964; Nos. 57 and 152, 1965; No. 41, 1966; Nos. 10 and 61, 1967; No. 65, 1968; No. 94, 1969; Nos. 2 and 59, 1970; Nos. 16 and 67, 1971; Nos. 1, 14, 53 and 79, and 110, 1975; Nos. 26, 62 and 111, 1976; No. 159, 1977; No. 128, 1978; No. 121, 1979 (as amended by Nos. 37 and 98, 1982); No. 130, 1980; Nos. 61 and 170, 1981; No. 159, 1981 (as amended by No. 98, 1982); Nos. 37, 38 and 148, 1982; Nos. 4 and 36, 1983; No. 69, 1983 (as amended by No. 78, 1984); Nos. 46, 78, 93, 120, 134 and 165, 1984; Nos. 24, 52, 95, 127 and 169, 1985; Nos. 5, 28, 33, 106, 130 and 152, 1986; Nos. 77, 88 and 130, 1987; and Nos. 13, 35, 58 and 75, 1988.

[*Minister's second reading speech made in—
House of Representatives on 29 September 1988
Senate on 13 October 1988*]