

Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal and to the Administrative Appeals Tribunal

Centrelink

**Department of Education, Employment and Workplace
Relations**

**Department of Families, Housing, Community Services
and Indigenous Affairs**

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of Australia 2010

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Canberra ACT
25 November 2010

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit in *Centrelink, the Department of Education, Employment and Workplace Relations and the Department of Families, Housing, Community Services and Indigenous Affairs* in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal and to the Administrative Appeals Tribunal*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



Steve Chapman
Acting Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

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Abbreviations and Acronyms

AAA	Administrative Arrangements Agreement
AAT	Administrative Appeals Tribunal
AAT Act	<i>Administrative Appeals Tribunal Act 1975</i>
ARO	Authorised Review Officer
ATSI	Aboriginal and Torres Strait Islander
BMA	Bilateral Management Arrangement
CSC	Customer Service Centre
DCAL	Diverse Cultural and Linguistic
DEEWR	Department of Education, Employment and Workplace Relations
DHS	Department of Human Services
FAA Act	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
ODM	Original Decision Maker
QA	Quality Assurance
SSAT	Social Security Appeals Tribunal
SSA Act	<i>Social Security (Administration) Act 1999</i>

Glossary

Advocates	Advocates work in Centrelink's Legal Services and Procurement Branch and are responsible for scrutinising decisions of the Social Security Appeals Tribunal and handling matters that are before the Administrative Appeals Tribunal and the Federal Courts.
To affirm (a decision)	To confirm the original decision under review.
Authorised Review Officer (ARO)	A Centrelink officer responsible for conducting an internal review of a decision at the request of the customer.
Bilateral Management Arrangement	An agreement made under the <i>Commonwealth Services Delivery Agency Act 1997</i> which outlines the business operations between DHS/Centrelink and DEEWR, and DHS/Centrelink and FaHCSIA in the achievement of Government outcomes.
Litigation Principles	A set of principles to guide the decisions of DEEWR and FaHCSIA when determining whether to appeal decisions made under social security and family assistance law.
Merits review	Merits or administrative reviews, up to and including the AAT, are conducted <i>de novo</i> or totally new. The reviewing body is to make the decision as if for the first time, taking into account any additional information that is available. Judicial reviews, from the Federal Court upward, are concerned wholly with the validity of the correct decision, and are based only on the correct application of the law.
Original Decision Maker (ODM)	The Customer Service Advisor who made the original decision regarding a customer's payment or circumstance.
To set aside (a decision)	To replace the original decision with a new decision.

Scrutiny	A scrutiny is a written examination of a Tribunal decision undertaken by Centrelink advocates. Scrutinies are undertaken mostly in order to identify cases that should be considered for further appeal. Scrutinies can also identify cases that have a level of significance in relation to the administration of the social security and family assistance law.
Stay	An order given by the AAT (or a court in the case of appealed AAT decisions) which partially or totally stays (suspends) the operation or implementation of the SSAT (or the AAT) decision until the AAT (or a court) finalises the review. A stay can be requested by Centrelink or the customer.
To vary (a decision)	To change the original decision to some degree (which may be to the customers full or partial advantage, or disadvantage).
Vulnerable customers	Include those customers presenting one or more of the following characteristics: psychiatric or mental illness; cognitive or neurological impairment; illness or injury requiring frequent treatment; drug or alcohol dependency; homelessness; traumatic relationship breakdown; language and literacy issues; imprisonment or recent release from prison; and significant caring responsibilities.

Summary and Recommendations

Summary

Introduction

1. Centrelink has more than 6.8 million customers and each year makes millions of decisions about their entitlements. An incorrect decision can have economic or other impacts on a customer, especially those who are the most vulnerable in the community. Therefore, it is important that customers have access to a process for having decisions reviewed that they believe are incorrect. Having in place an effective review and appeal system aligns with Centrelink's Customer Service Charter¹ and Statement of Commitment.² Such a system is an essential mechanism for providing customers with an assurance that the right decision is made about their entitlements.

2. In 2009–10, customers requested reviews of, or appealed, 194 000 decisions. These appeals represent a minority of the decisions made by Centrelink, nonetheless, they are an important indicator to help Centrelink improve service delivery and detect systemic issues, and alert both Centrelink and the responsible policy departments to problems with the interpretation and implementation of legislation.

Internal and external review and appeal system

3. Customers have a legal right to have an entitlement decision made by Centrelink reviewed if they believe that the decision is incorrect.³ The internal review and appeal system has two steps:

- The Original Decision Maker reconsideration: this is where the customer service officer who first made the decision reviews the case. This reconsideration is not a legal requirement and customers can

¹ Centrelink, *What you can expect from Centrelink – Centrelink's Customer Service Charter*, 2010, [internet] <[http://www.centrelink.gov.au/internet/internet.nsf/filestores/co301a_1003/\\$file/co301a_1003_en.pdf](http://www.centrelink.gov.au/internet/internet.nsf/filestores/co301a_1003/$file/co301a_1003_en.pdf)>, [accessed 12 November 2010].

² Centrelink, *Centrelink's Statement of Commitment to Listening and Responding to Customer Feedback*, (no date), [internet] <http://www.centrelink.gov.au/internet/internet.nsf/publications/statement_commitment.htm>, [accessed 12 November 2010].

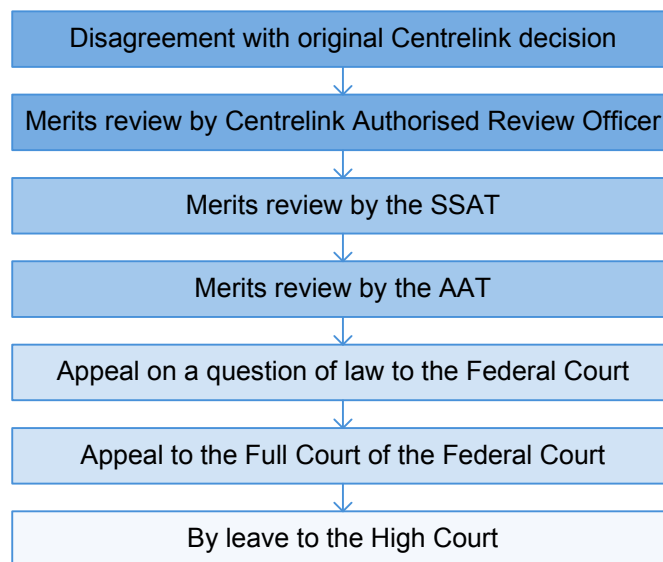
³ Part 4 (Divisions 3 and 4) of the *Social Security (Administration) Act 1999* prescribes internal review processes, and the processes for external reviews by the SSAT and the AAT. The *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Administrative Appeals Tribunal Act 1975* also have provisions for the review of decisions.

choose to bypass this step and go directly to the next level of internal review.

- The Authorised Review Officer review: Authorised Review Officers are Centrelink officers who provide the first statutory level of review by re-examining the Original Decision Maker decision.
4. If customers disagree with the outcome of the Authorised Review Officer review, they have rights of independent review. Customers can consecutively seek merits review by the Social Security Appeals Tribunal (SSAT) and by the Administrative Appeals Tribunal (AAT); then appeal to the Federal Court⁴ on a question of law; and ultimately appeal by leave to the High Court. Figure S 1 illustrates the rights of review and appeal available to customers.

Figure S 1

Social Security Review and Appeal Structure



Source: SSAT, *Annual Report 2009–10*, p. 13.

⁴ An appeal can be transferred by the Federal Court to the Federal Magistrates Court.

Social Security Appeals Tribunal and Administrative Appeals Tribunal

5. The SSAT is a statutory body within the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) portfolio. It is the first level of external review of decisions made by Centrelink (and since 1 January 2007, the Child Support Agency), regarding social security, family assistance, education and training, and child support payments.

6. The AAT is a statutory agency in the Attorney-General's portfolio which reviews a wide range of administrative decisions made by Australian Government ministers, departments, agencies, authorities and other Tribunals.⁵ Appeals related to family assistance and social security decisions are the most common type of appeals lodged with the AAT and constituted 36 per cent of all lodgements in 2009–10.⁶

7. In considering an appeal, the SSAT and the AAT can:

- set aside a decision: replace Centrelink's original decision with either a new decision or send the matter back to Centrelink for reconsideration;
- vary a decision: change the original decision to some degree (which may be to the applicant's full or partial advantage or disadvantage); or
- affirm a decision: confirm the original decision.

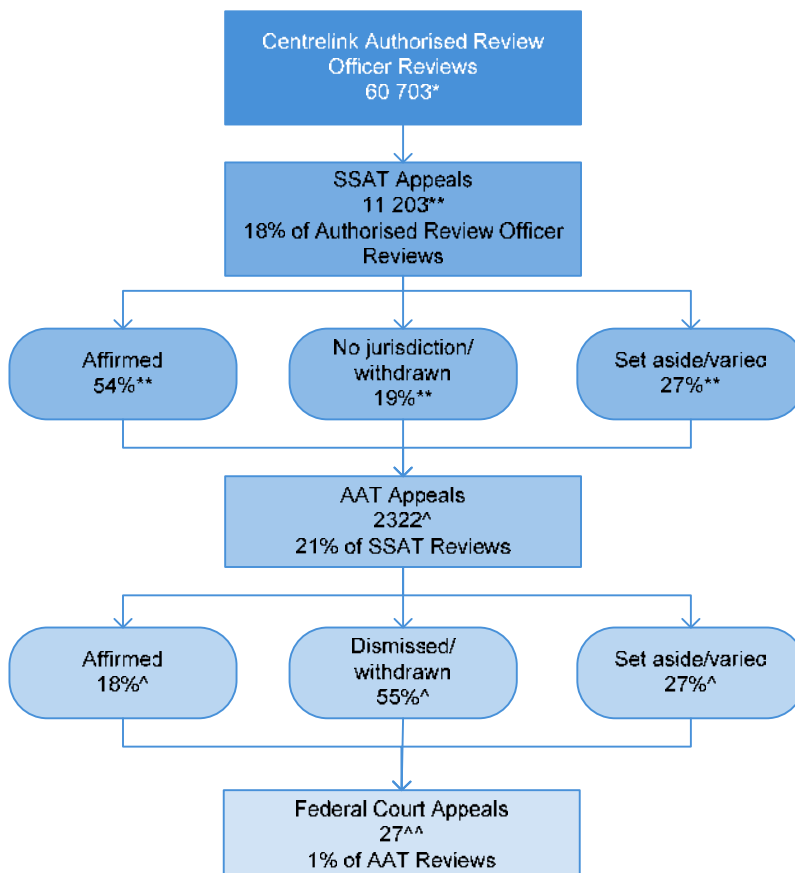
8. Figure S 2 describes the review and appeal system, outlining the volume of appeals to each Tribunal in 2009–10 and the type of decision.

⁵ The AAT can also review administrative decisions made by state government and non-government bodies in limited circumstances.

⁶ Administrative Appeals Tribunal, *Annual Report 2009–10*, AAT, Canberra, 2009, p. 20.

Figure S 2

Appeals to the SSAT and the AAT, 2009–10



Source: ANAO analysis.

Notes: * Centrelink advice.

** SSAT, *Annual Report 2009–10*. Outcome percentages based on 14 226 decisions reviewed (an application may include appeals against multiple decisions). 'No jurisdiction/withdrawn' include cases returned to Centrelink for an initial review by an Authorised Review Officer, applications withdrawn by the applicant and cases where one of the parties fails to comply with the Tribunal's proceedings.

^ AAT, *Annual Report 2009–10*. AAT appeals that were dismissed/withdrawn (55%) include appeals which were settled between parties.

^^ SSAT, *Annual Report 2009–10*.

Centrelink's relationship with the Department of Education, Employment and Workplace Relations (DEEWR) and FaHCSIA

9. Centrelink, as a service delivery agency, is responsible for the administration of a range of Commonwealth payments that in 2009–10 totalled over \$85 billion. DEEWR and FaHCSIA are the departments responsible for the development of policy relating to the three payment types that generate the largest number of appeals to the SSAT and the AAT (Newstart Allowance, Disability Support Pension and Age Pension). Centrelink acts as the delegate of the Secretaries of DEEWR and FaHCSIA in managing appeal cases arising from decisions made by Centrelink under the social security and family assistance laws. The two departments, however, retain a decision-making and oversight role in relation to Centrelink's activities in conducting these appeals.

Audit objective, criteria and scope

10. The objective of the audit was to assess whether, in relation to appeals to the SSAT and the AAT, Centrelink undertakes its role effectively, so as to support the timely implementation of the Tribunals' decisions about customers' entitlements. In assessing Centrelink's performance, the ANAO examined whether:

- the information provided by Centrelink, in relation to appeals to the SSAT and the AAT, effectively supported customers' and Tribunals' decision-making;
- the relationships and administrative arrangements between Centrelink, DEEWR and FaHCSIA supported the effective management of the appeal process and the capture of issues that may have broader implications for legislation, policy and service delivery; and
- Centrelink implemented SSAT and AAT decisions in an effective and timely manner.

11. The audit focused on the external review and appeal mechanisms and completes the cycle of audits on Centrelink's review and appeal system.⁷ The audit examined those appeals where an implementation action was required

⁷ Centrelink's internal processes have been the subject of separate ANAO audit coverage in recent years: Audit Report No. 22 2008–09, *Centrelink's Complaints Handling System*; Audit Report No. 40 2006–07, *Centrelink's Review and Appeals System Follow-up Audit*; and Audit Report No. 35 2004–05, *Centrelink's Review and Appeals System*.

and did not consider SSAT and AAT appeals that were dismissed, withdrawn or were not within the Tribunals' jurisdiction.

Overall conclusion

12. In making over \$85 billion in payments, Centrelink makes millions of decisions on an annual basis relating to customer entitlements. Only a small number of these decisions are appealed. In 2009–10, 11 203 and 2322 cases were appealed to the SSAT and AAT respectively. Nonetheless, the effective operation of the review and appeal process is an important feature of the Australian social security system and Centrelink customers are entitled to expect that decisions about their entitlements are correct and, in cases where they believe incorrect decisions have been made, have access to appropriate review and appeal mechanisms.

13. As part of the review and appeal process, Centrelink is required to: inform customers of their rights; provide information to customers and the Tribunals during the process; work with DEEWR and FaHCSIA in representing the Commonwealth's interest; and implement Tribunal decisions in a timely manner. In undertaking these roles, Centrelink and the policy departments have a duty to behave ethically, fairly and honestly.⁸

14. Centrelink has an established framework for managing its role in the review and appeal process. The framework supports Centrelink to meet external requirements and achieve organisational goals such as those outlined in the Customer Service Charter and Statement of Commitment. As part of the approach to the review and appeal process, Centrelink provides customers with access to information about their appeal rights; has professional working relationships with the SSAT and AAT; provides information to the Tribunals in a timely manner; and has developed processes, in conjunction with DEEWR and FaHCSIA, to manage appeals and capture many of the implications for legislation, policy and service delivery from Tribunals' decisions. These arrangements have helped facilitate an improvement in the time taken to implement the Tribunals' decisions—with the average time taken to implement SSAT and AAT decisions during the period 1 July 2008 to 30 June 2010 being 26.6 days and 20.7 days respectively.

⁸ These concepts are established in the *Model Litigant Obligations*, which form part of the *Legal Services Directions* issued by the Attorney-General and with which agencies subject to the *Financial Management and Accountability Act 1997*, such as Centrelink, DEEWR and FaHCSIA, must comply.

15. Notwithstanding Centrelink's work in building and utilising this framework, there remain areas where it could improve its practices so as to better meet the needs of stakeholders, particularly customers. Opportunities for improvement exist in relation to the clarity, relevance and completeness of information provided to customers and the Tribunals; and the capture of insights from Tribunal decisions that affirm Centrelink decisions. Most importantly for customers, opportunities also exist to amend current business practices so as to bring about a timelier implementation of Tribunal decisions.

16. To assist Centrelink in its role in the process of appeal to the SSAT and the AAT, the ANAO has made three recommendations aimed at improving:

- the clarity and relevance of information provided by Centrelink so as to better meet the needs of its customers and the Tribunals; and
- the timeliness of Centrelink's implementation of the Tribunals' decisions by reviewing the approach to implementing different decision types and establishing a time standard for the implementation of decisions.

Key findings

Communicating with customers (Chapter 2)

17. Centrelink has a legislative obligation to provide adequate information on its system of review and appeal.⁹ Overall, the information provided by Centrelink, including those materials prepared for customers from diverse cultural and linguistic backgrounds and from Aboriginal and Torres Strait Islander backgrounds, meets this obligation. The information provided in letters of notification, however, which are Centrelink's key communication tool for advising customers of their entitlements, could be improved to better describe the internal review mechanisms and the respective roles of the Original Decision Maker and the Authorised Review Officer.

18. Centrelink uses Authorised Review Officer decision letters to advise customers who have sought an internal review of the outcome. These letters also provide information to assist a customer when deciding whether to appeal to the SSAT. Centrelink has an internal quality assurance process that indicates

⁹ Section 8 and Section 138(1)(a) of the *Social Security (Administration) Act 1999*.

a high level of positive ratings in relation to the quality and clarity of Authorised Review Officer decision letters. These results, however, contrast with the views of stakeholders consulted during the audit. A number of stakeholders reported that the reasons provided in support of the Authorised Review Officer decision were often insufficient or lacking in clarity, which generated some adverse affects on the operation of the Tribunals and potentially on customers.

19. Undertaking research to better understand the information needs from a customer perspective, vis-à-vis the views of an experienced Centrelink officer gained through the internal quality assurance process, could help address stakeholder concerns and allow existing processes to be refined accordingly.

Providing information to the Tribunals (Chapter 3)

20. In conducting merits reviews, the SSAT and the AAT make new decisions. To assist in this process and help outline the details of a case under review, Centrelink is required to provide the Tribunals, in a timely manner, with supporting documents that are clear and relevant. There are legislative and administrative mechanisms (such as task cards for SSAT requirements) in place to support the process and define the requirements that Centrelink must meet to provide timely, quality documents. Overall, Centrelink provides documents to the Tribunals in a timely manner and continues to improve its performance in this respect.

21. A majority of the SSAT offices and AAT registries consulted during the audit reported that Centrelink did not always meet their expectations in relation to the provision of clear and relevant documents, and this impacted on workflow and decision-making processes. This issue has been identified by the quality assurance process (task card compliance audits) undertaken to assess the documents provided to the SSAT, which shows a highly variable performance across Centrelink's network. Currently, no such quality assurance process is in place for documents provided to the AAT, with feedback on quality relying on ongoing communication between the agencies.

22. Centrelink has recently implemented measures designed to improve its performance in this area. Upcoming task card compliance audits and ongoing consultations with the Tribunals will help assess the success of these measures and allow the development of strategies to improve the clarity and relevance of documents provided.

Agencies' administration of Tribunal decisions (Chapter 4)

23. A suite of integrated legal and administrative arrangements between Centrelink and the policy departments exists to support the management of the appeals process. These arrangements also provide for, in most cases, the identification and analysis of issues that may have a broader impact on service delivery, legislative interpretation and policy development.

24. Decisions that are affirmed by the SSAT, however, are not systematically reviewed in the same manner as other SSAT and AAT decisions. While these decisions are less likely than changed decisions to contain critical information, they may still include important insights for agencies, such as if the SSAT has used a different legal basis to reach a similar position.

Managing the decision implementation process (Chapter 5)

25. In most cases, customers who have appealed a decision to the SSAT or the AAT have been in the appeal process for many weeks or months. For the most vulnerable, this may create a situation of financial insecurity, and it is important that the implementation of a decision, particularly one in their favour, is not unduly delayed. In that respect, based on an analysis of Tribunal decisions made between 1 July 2008 and 30 June 2010, 30 per cent of SSAT customers and 18 per cent of AAT customers waited more than 30 days to have their decision implemented. During the implementation process, customers are not informed of the status of their case unless they initiate contact with Centrelink.

26. The time taken to implement a decision can be divided into two parts: consideration of whether to appeal a decision to the next stage in the process (Centrelink has 28 days from a decision to lodge an appeal to the next level of review); and a Centrelink officer, the Original Decision Maker, giving effect to decisions in those cases where an appeal is not pursued.

Appeal consideration

27. In determining the most appropriate course of action, there are a range of considerations for Centrelink to assess, including the facts of the individual case and the financial circumstances of the customer. The appeal consideration process has been developed to enable Centrelink, DEEWR and FaHCSIA to have assurance that the decisions they may want to appeal are identified and reviewed. This approach is supported by legal advice obtained by the agencies which indicates that the implementation of a decision can be delayed while

genuine consideration is given on whether to appeal or seek a stay of the operation of a decision.

28. Only a minority of SSAT and AAT decisions are ultimately appealed by Centrelink—in 2009–10, two per cent of SSAT decisions and 0.2 per cent of AAT decisions—with the time taken to consider appeal varying considerably between SSAT and AAT decisions. The majority of AAT decisions (61 per cent) were sent for implementation by the Original Decision Maker (following a decision not to appeal) within one to five days. Appeal considerations for SSAT decisions were more evenly spread over time, with 50 per cent of decisions sent for implementation within 15 days. The variability in the time taken to determine whether to appeal a case, combined with the fact that only a minority of cases will ultimately be appealed, indicates that processes relating to the consideration of appeal could be streamlined.

29. From Centrelink's perspective, the approach adopted provides time to consider each case and determine whether to appeal a decision. However, it also has the potential to adversely affect the majority of customers who have had a decision made in their favour by the Tribunals. Given the majority of SSAT and AAT decisions will not be appealed, greater emphasis on the early identification of decisions with characteristics which may lead to them being considered for further appeal would allow the remaining majority of SSAT and AAT decisions to be progressed to the implementation phase in a timelier manner, and minimise the financial impact on customers.

Implementing Tribunal decisions

30. Original Decision Makers do not have a set timeframe to implement Tribunal decisions. An analysis of the Original Decision Makers' implementation of decisions shows that 57 per cent of SSAT decisions and 51 per cent of AAT decisions were implemented within five days of receiving the decision. However, a significant proportion of decisions, 23 per cent of SSAT decisions and 30 per cent of AAT decisions, had not been implemented after ten days. Some cases are more complex to implement than others and this can impact on the time taken to complete the process. In certain circumstances, complex calculations or additional information is required to be provided by customers or third parties (for instance a valuation office or a medical practitioner). While Centrelink needs to take account of the circumstances and information required to implement a Tribunal decision, the absence of a clear time standard for implementation of Tribunal decisions creates a risk that some of the decisions take a longer period of time to implement, with adverse financial consequences for the customer.

Summary of agency responses

Centrelink

31. Centrelink welcomes this report and considers that implementation of its recommendations will build on and enhance our ongoing work to improve the internal review process.
32. Centrelink agrees with the recommendations in the report.

Department of Education, Employment and Workplace Relations

33. The Department of Education, Employment and Workplace Relations (DEEWR) welcomes the ANAO's finding that Centrelink has established a framework for managing its role in the review and appeal process which supports Centrelink to meet external requirements and achieve organisational goals. The department notes that the ANAO has identified areas where Centrelink could improve its practices so as to better meet the needs of stakeholders.
34. DEEWR accepts all of the ANAO's recommendations and notes those directed to other agencies, and is of the view that these will strengthen procedures in relation to Centrelink's role in the process of appeal to the Social Security Appeals Tribunal (SSAT) and to the Administrative Appeal Tribunal (AAT). The department will work with Centrelink, as appropriate, to implement the recommendations.
35. DEEWR agrees with all of the recommendations in the report.
36. DEEWR's full response appears in Appendix 1 of the report.

Department of Families, Housing, Community Services and Indigenous Affairs

37. FaHCSIA appreciates the opportunity to respond to the ANAO proposed report: *Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal and the Administrative Appeals Tribunal*.
38. By identifying the type of decisions likely to be appealed, the prompt implementation of decisions that are unlikely to be appealed will reduce the potential for impact on customers in receipt of FaHCSIA payments.
39. FaHCSIA will support Centrelink to improve the timely implementation of tribunal decisions and will support them in monitoring performance against an agreed standard.

Recommendations

Recommendation No. 1

Para 2.52

To improve ARO decision letters and enhance customers' and Tribunals' understanding of Centrelink's decision-making process, the ANAO recommends that Centrelink undertake research into the information required to meet stakeholders needs.

Centrelink response: Agreed

Recommendation No. 2

Para 3.30

The ANAO recommends that Centrelink improve the clarity and relevance of the documents provided to the Tribunals by:

- assessing the effectiveness of the measures developed to improve performance (increase AROs' compliance with the task cards), particularly in those states and territories where the performance has been below expectations; and
- consulting with the AAT and introducing a quality assurance approach for the documents provided to the AAT (Section 37 Documents).

Centrelink response: Agreed

**Recommendation
No. 3
Para 5.46**

To reduce the time taken to implement SSAT and AAT decisions, the ANAO recommends that Centrelink, in consultation with DEEWR and FaHCSIA:

- undertake analysis to allow the earlier identification of those types of SSAT and AAT decisions that are more likely to be considered for further appeal, with a view to improving the implementation timeliness for the majority of decisions; and
- establish a time standard for implementing Tribunal decisions and monitor performance against this standard.

Centrelink response: Agreed

DEEWR response: Agreed

FaHCSIA response: Agreed

Audit Findings

1. Introduction

This chapter provides background information on the role of Centrelink, the Department of Education, Employment, and Workplace Relations (DEEWR) and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) in the process of appeal to the Social Security Appeals Tribunal (SSAT) and the Administrative Appeals Tribunal (AAT). It also outlines the audit approach including the objective, scope and methodology.

Background

1.1 Each year Centrelink makes millions of decisions about its customers' entitlements. Incorrect decisions can have economic and other impacts on Centrelink customers, especially the most vulnerable. Therefore, it is important that customers have access to a process for having decisions reviewed which they believe are incorrect. An effective review and appeal system is an essential mechanism for providing customers with an assurance that the right decision is made about their entitlements.

1.2 In 2009–10, customers requested reviews of, or appealed, 194 000 decisions. These reviews represent a relatively small proportion of the decisions made by Centrelink, nonetheless, they are a critical indicator to help improve Centrelink's service delivery, to detect systemic issues, and to alert both Centrelink and the responsible policy departments to problems with the interpretation and implementation of legislation.

1.3 Centrelink's review and appeal process is enshrined in the social security law. Part 4 (Divisions 3 and 4) of the *Social Security (Administration) Act 1999* (SSA Act) prescribes internal review processes, and the processes for external reviews by the SSAT and the AAT. The *A New Tax System (Family Assistance) (Administration) Act 1999* (FAA Act) and the *Administrative Appeals Tribunal Act 1975* (AAT Act) also have provisions for the review of decisions.

Centrelink appeal process

1.4 Centrelink customers can appeal against any decision made by Centrelink in relation to their entitlements. The internal appeal system has two steps:

- The Original Decision Maker (ODM) reconsideration: this is where the customer service officer who first made the decision reviews the case.

The ODM reconsideration is not a legal requirement and customers can choose that their decision not be reviewed by the ODM, and go directly to the next level of review.

- The Authorised Review Officer (ARO) review: AROs are Centrelink officers who provide the first statutory level of review by re-examining the ODM decision.

1.5 If customers disagree with the outcome of the ARO review, they have rights of independent review. Customers can consecutively seek merits review by the SSAT and the AAT; then appeal to the Federal Court¹⁰ on a question of law; and ultimately appeal by leave to the High Court.

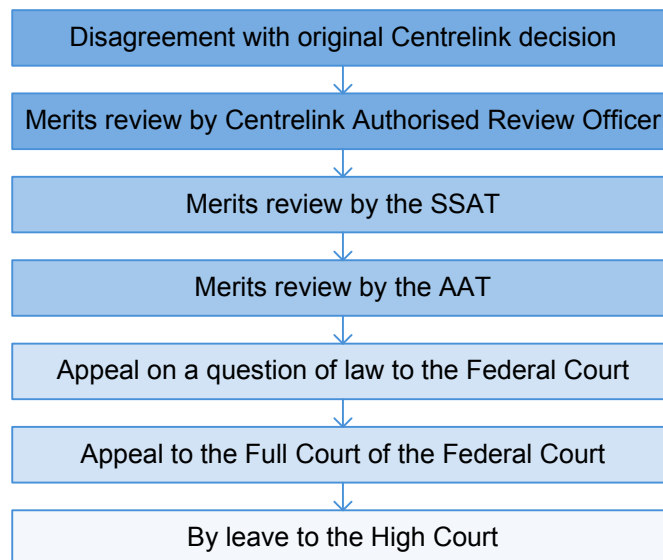
1.6 The SSAT and the AAT are required to make the correct and preferable decision (if more than one decision would be legally correct). The courts are concerned only with the legal correctness of the decision of the AAT.

1.7 The SSAT and the AAT can:

- set aside a decision: replace Centrelink's original decision with either a new decision or send the matter back to Centrelink for reconsideration;
- vary a decision: change the original decision to some degree (which may be to the applicant's full or partial advantage or disadvantage); or
- affirm a decision: confirm the original decision.

1.8 Figure 1.1 illustrates the rights of review and appeal.

¹⁰ An appeal can be transferred by the Federal Court to the Federal Magistrates Court.

Figure 1.1**Social Security Review and Appeal Structure**

Source: SSAT, *Annual Report 2009–10*, p. 13.

Centrelink's relationship with DEEWR and FaHCSIA in relation to the appeal process

1.9 DEEWR and FaHCSIA are the departments responsible for the payment types that generate the largest number of appeals to the SSAT and the AAT.¹¹ The *Commonwealth Services Delivery Agency Act 1997* defines the conditions under which Centrelink delivers services to eligible customers on behalf of Commonwealth authorities, including DEEWR and FaHCSIA. Bilateral Management Agreements between Centrelink and each of DEEWR and FaHCSIA¹² further specify the business operations between the agencies.

1.10 Each Bilateral Management Agreement includes a Legal Services Protocol. These protocols establish that, as delegate of the Secretaries of DEEWR and FaHCSIA, Centrelink manages appeal cases arising from

¹¹ The three payment types that generated the largest number of appeals in 2009–10 were Disability Support Pension, Newstart Allowance, and Age Pension. Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 17; Administrative Appeals Tribunal, *Annual Report 2009–10*, AAT, Canberra, 2010, p. 127.

¹² *Bilateral Management Arrangement between Centrelink, DHS and DEEWR*, November 2009; *Bilateral Management Arrangement between Centrelink, DHS and FaHCSIA*, November 2009.

decisions made by Centrelink under the social security and family assistance laws. The two departments, however, retain a decision-making and oversight role in relation to Centrelink's activities in conducting these appeals.¹³

The Social Security Appeals Tribunal

1.11 The SSAT is a statutory body within the FaHCSIA portfolio. It is the first level of external review of decisions made by Centrelink and, since 1 January 2007, the only level of external review for the Child Support Agency. The SSAT jurisdiction covers social security, family assistance, education and training, and child support payments.¹⁴

1.12 Customers are able to appeal any decisions made by Centrelink to the SSAT, once these decisions have been reviewed internally by an ARO. There is no time limit to appeal a Centrelink decision to the SSAT; however, if the SSAT review is decided in the customer's favour, back payment can only be made if the request was lodged within 13 weeks of receiving advice of the ARO decision.¹⁵

1.13 The SSAT statutory objective is to provide a review mechanism that is 'fair, just, economical, informal and quick'.¹⁶ After an application for appeal of a Centrelink decision is received by the SSAT, Centrelink has 28 days to provide the SSAT with a written explanation of its decision. When that document is received, a copy is sent to the applicant, along with any other relevant papers from Centrelink's file, and an appointment time for a hearing is made, for approximately 40 days later.¹⁷ The hearing includes the customer (sometimes with their representative), and generally two members of the Tribunal.

1.14 Until April 2010, Centrelink was not permitted by law to be present at SSAT hearings. On 13 April 2010, the *Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures)*

¹³ DEEWR and Centrelink Legal Service Protocol, 24 November 2009, and FaHCSIA and Centrelink Legal Service Protocol, 24 November 2009.

¹⁴ In 2009–10, 81 per cent of appeals to the SSAT originated from Centrelink customers. Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 14.

¹⁵ This does not apply to debt cases and some decisions about Family Tax Benefit.

¹⁶ *Social Security (Administration) Act 1999 (Cth)*, s. 141.

¹⁷ In 2009–10, 79 per cent of cases were heard within 42 days. Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 22.

Act 2010 amended the SSA Act. Centrelink is now able to make oral submissions in limited circumstances, namely at the direction of the SSAT or if Centrelink makes a request to do so and it is granted by the SSAT.

1.15 Once the SSAT has heard and decided on a review, its decision is communicated to the parties involved. In those cases where the SSAT has either set aside or varied a decision, the Tribunal has 14 days to provide Centrelink and the customer with a written statement that sets out the decision and reasons for the decision. Under the 2010 amendments to the SSA Act, where the SSAT affirms a Centrelink decision, the Tribunal can choose to only give its decision orally. However, in these cases, if Centrelink or the customer requests a written statement of decision within 14 days of the SSAT oral decision, the Tribunal must provide such a statement.¹⁸

1.16 Given the timing of these amendments, an examination of their impact was not included in the audit scope.

The Administrative Appeals Tribunal

1.17 The AAT is a statutory agency in the Attorney-General's portfolio, which reviews a wide range of administrative decisions made by Australian Government ministers, departments, agencies, authorities and other Tribunals. The AAT can also review administrative decisions made by state government and non-government bodies in limited circumstances. Appeals related to family assistance and social security decisions are the most common type of appeals lodged with the AAT, constituting 36 per cent of all lodgements in 2009–10.¹⁹

1.18 Centrelink, on behalf of DEEWR and FaHCSIA, or Centrelink's customers can appeal SSAT decisions to the AAT. The AAT, however, cannot review a Centrelink decision until an intermediate review has been conducted by the SSAT. Appeals to the AAT relating to a Centrelink decision must be made within 28 days of the SSAT decision.²⁰

1.19 As with the SSAT, Centrelink must provide the AAT with a statement of reasons and relevant documents within 28 days of an appeal being lodged. Whereas all valid SSAT applications are heard by the SSAT, AAT applications

¹⁸ *Social Security (Administration) Act 1999 (Cth)*, s. 177 (1A).

¹⁹ Administrative Appeals Tribunal, *Annual Report 2009–10*, AAT, Canberra, 2010, p. 20.

²⁰ Customers can apply for an extension of time beyond 28 days to appeal to the AAT.

can be resolved at several stages of the review process, including before the hearing. In most cases, the first step in an AAT review is a conference²¹, usually held within 13 weeks after the appeal was accepted.²² A second conference or another type of meeting, such as a conciliation or mediation, may subsequently take place. In 2009–10, 77 per cent of all AAT applications were finalised without a hearing.²³ If agreement cannot be reached, the AAT holds a hearing. The procedures and the amount of time needed to complete the review vary from case to case and may take up to 18 months.²⁴ As the representative of the policy departments' Secretaries, Centrelink makes written and oral submissions throughout the AAT review process.

1.20 Centrelink or a customer can appeal to the Federal Court from a decision of the AAT but the appeal is limited to a question of law (Figure 1.1). Given the relatively small number of appeals relating to social security and family assistance law, Centrelink's role in this process of appeal was not included in the audit scope.

Volume and nature of the appeals to the SSAT and the AAT

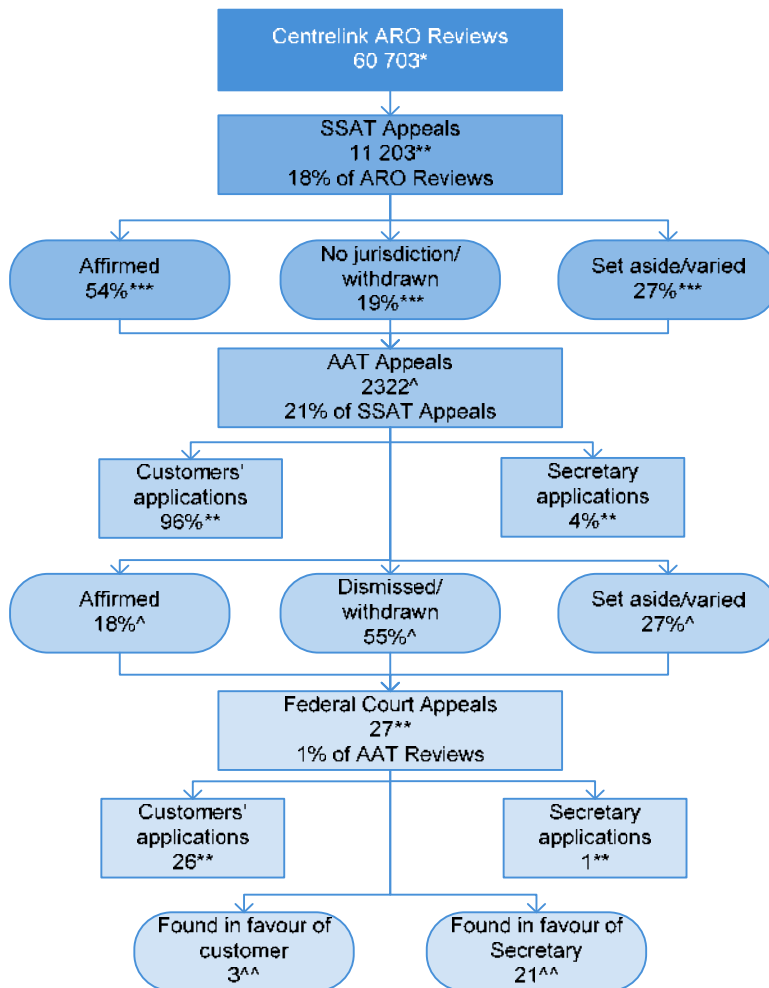
1.21 Figure 1.2 describes the SSAT and the AAT appeal process, outlining the volume of appeals to each Tribunal and to the Federal Court, and the type of decision.

²¹ A conference is an 'informal meeting' conducted by the AAT with the customer and a Centrelink representative. Administrative Appeals Tribunal, *Applying to the AAT*, [Internet]. AAT, Australia, 2010, available from <<http://www.aat.gov.au/ApplyingToTheAAT/WhenCanTheAATHelp.htm>> [accessed 10 June 2010].

²² In 2009–10, eighty-seven per cent of AAT first conferences were held within 13 weeks of appeal lodgement. Administrative Appeals Tribunal, *Annual Report 2009–10*, AAT, Canberra, 2010, p. 24.

²³ Administrative Appeals Tribunal, *Annual Report 2009–10*, AAT, Canberra, 2010, p. 133.

²⁴ Sixty-three per cent of social security applications were finalised within six months of lodgement, 90 per cent within 12 months and 97 per cent within 18 months. Administrative Appeals Tribunal, *Annual Report 2009–10*, AAT, Canberra, 2010, p. 26.

Figure 1.2**Appeals to the SSAT, the AAT and the Federal Court, 2009–10**

Source: ANAO analysis.

Notes: * Centrelink advice.

** SSAT, *Annual Report 2009–10*.

***SSAT, *Annual Report 2009–10*. Outcome percentages based on 14 226 decisions reviewed (an application may include appeals against multiple decisions). No jurisdiction/withdrawn include cases returned to Centrelink for an initial review by an ARO, applications withdrawn by the applicant and cases where one of the parties fails to comply with the Tribunal's proceedings.

^ AAT, *Annual Report 2009–10*. AAT appeals that were dismissed/withdrawn (55%) include appeals which were settled between parties.

^^ SSAT, *Annual Report 2009–10*. The outcomes of the three remaining cases were: two applicants were given leave to amend their appeal and the court made no order on the appeal of the last case.

1.22 In 2009–10, 18 per cent of 60 703 ARO reviews were appealed to the SSAT by customers. As a result of these appeals, the SSAT affirmed half of Centrelink's decisions (54 per cent) and changed 27 per cent. Nineteen per cent of all appeals were either withdrawn (eight per cent), dismissed (three per cent) or related to matters in which the SSAT had no jurisdiction (eight per cent).²⁵

1.23 In the same year, 21 per cent of SSAT decisions were appealed to the AAT. Almost all the appeals to the AAT (96 per cent) were generated by the customers. The AAT affirmed 18 per cent of SSAT decisions and changed 27 per cent. The remaining 55 per cent resulted in the appeal being either withdrawn by the applicant, dismissed or related to other matters.²⁶

1.24 For the last three financial years, payments relating to Disability Support Pension, Newstart Allowance and Age Pension have generated the largest number of appeals to the SSAT (between 54 and 58 per cent of all appeals) and the AAT (between 50 and 52 per cent of all social security appeals).²⁷

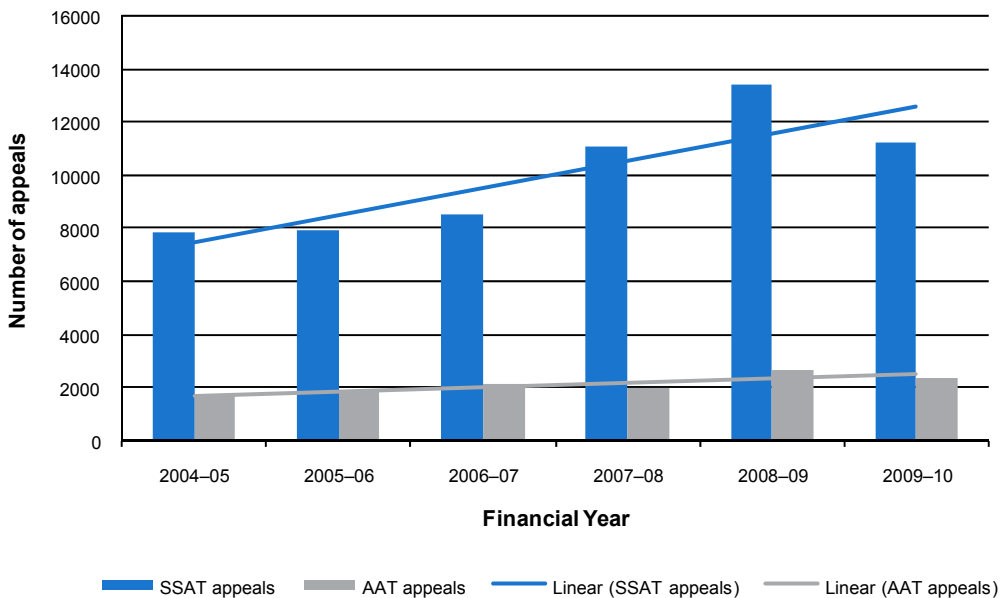
Evolution of the number of appeals to the SSAT and to the AAT

1.25 The number of appeals to the SSAT has followed an upward trend in recent years, as shown in Figure 1.3. Appeals to the AAT have also increased over the same period, although not as markedly.

²⁵ The majority of cases that were found to be outside the SSAT jurisdiction were applications for review lodged with the SSAT before the decision had first been reviewed by an ARO. Withdrawn matters are those in which the applicant decides not to continue with the application or where Centrelink changes the decision prior to the SSAT hearing. Matters that are dismissed are those cases where the applicant fails to attend one of the Tribunal's proceedings. Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 15.

²⁶ Twenty-six per cent of all AAT applications were withdrawn by the applicant. The majority of dismissals (66 per cent) were by operations of law where the parties agreed to settle the proceedings. Other matters include those in which the AAT determined that it had no jurisdiction and appeals that were lodged out of time. Administrative Appeals Tribunal, *Annual Report 2000–10*, AAT, Canberra, 2010, p. 135.

²⁷ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 83; Administrative Appeals Tribunal, *Annual Report 2007–08*, AAT, Canberra, 2008, p. 120; id., *Annual Report 2008–09*, AAT, Canberra, 2009, p. 122; and id., *Annual Report 2009–10*, AAT, Canberra, 2010, p. 127.

Figure 1.3**Number of appeals to the SSAT and the AAT, 2004–10**

Source: *Centrelink Annual Reports 2004–05 to 2009–10*, SSAT, *Annual Report 2009–10*, AAT, *Annual Report 2009–10*.

Notes: 'Linear' represents the linear line of best fit (trendline) for the number of appeals to the SSAT and the AAT.

1.26 For both the SSAT and the AAT, the major increase in the number of appeals in 2007–08 and 2008–09 predominately related to Newstart Allowance²⁸, and to beneficiaries of these payment types appealing against the application of an eight-week non-payment period imposed in the case of participation failures. In 2009–10, appeals related to this payment type decreased by 47 per cent for the SSAT and 40 per cent for the AAT.²⁹ Centrelink advised that this reduction was likely due to policy changes, introduced in July 2009, applied to the compliance model for Newstart Allowance.

²⁸ In 2007–08 and 2008–09, Newstart Allowance appeals to the SSAT increased by 143 per cent and 22 per cent respectively. For the same periods appeals to the AAT increased by 42 per cent and 90 per cent respectively. Social Security Appeals Tribunal, *Annual Report 2008–09*, SSAT, Canberra, 2009, p. 108; Administrative Appeals Tribunal, *Annual Report 2006–07*, AAT, Canberra, 2007, p. 119; id., *Annual Report 2007–08*, AAT, Canberra, 2008, p. 120; id., *Annual Report 2008–09*, AAT, Canberra, 2009, p. 122.

²⁹ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 83; Administrative Appeals Tribunal, *Annual Report 2000–10*, AAT, Canberra, 2010, p. 127.

Centrelink's internal management of the process of appeal to the SSAT and AAT

1.27 Within Centrelink, the management of the appeal process covers three business lines that are decentralised and spread across Centrelink's national network:

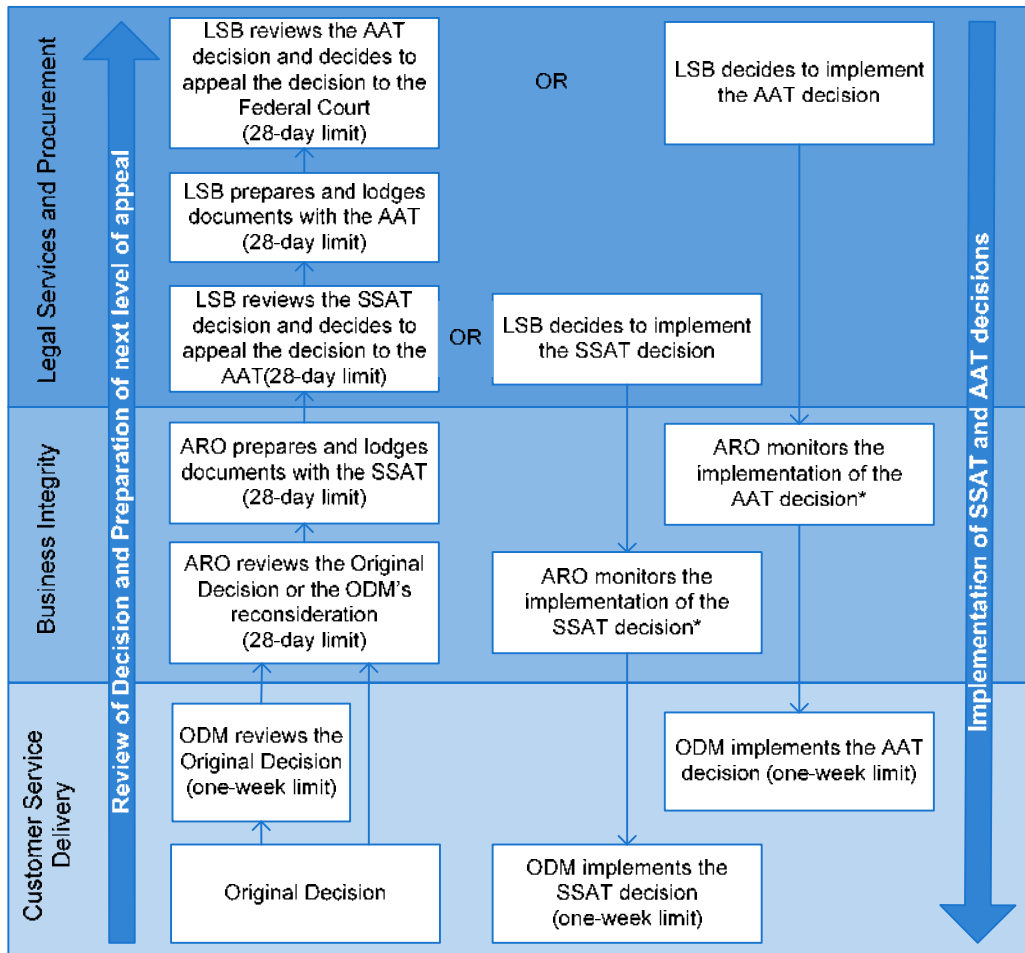
- Customer Service Delivery, where the ODMs make and reconsider their initial decisions and implement the decisions made subsequently by the SSAT or the AAT.
- Business Integrity, where AROs review the ODM decision, and prepare the file to be sent to the SSAT in case of appeals.
- Legal Services and Procurement, where the Legal Services Branch³⁰ (LSB) scrutinises SSAT and AAT decisions; decides on whether to implement the decisions or refer them to the policy departments for consideration of appeal to the next level of appeal; and prepares and manages AAT appeals.

1.28 Figure 1.4 provides an outline of Centrelink's key activities to manage SSAT and AAT appeals and decisions.

³⁰ As part of the Service Delivery Reform agenda announced in December 2009, the Australian Government has decided to merge the Department of Human Service (DHS), Centrelink and Medicare Australia. This merger is expected to take effect from 1 July 2011. Prior to this date some functions within the Human Services portfolio have been centralised. As a result the Legal Services Branch now forms part of the DHS Legal Services Division.

Figure 1.4

Centrelink's management of SSAT and AAT appeals and decisions



Source: ANAO analysis.

Notes: * In April 2010, Centrelink issued an instruction indicating the implementation of SSAT and AAT decisions would no longer be the responsibility of an ARO. However, at the time of the audit fieldwork, this instruction had not yet been promulgated across the network.

Related ANAO audits

1.29 ANAO has conducted several recent audits examining Centrelink's internal review and appeal mechanisms:

- Audit Report No. 22 2008–09, *Centrelink's Complaints Handling System*;
- Audit Report No. 40 2006–07, *Centrelink's Review and Appeals System Follow-up Audit*; and

- Audit Report No. 35 2004–05, *Centrelink's Review and Appeals System*.

1.30 This audit, looking at Centrelink's external review and appeal mechanisms, completes the cycle of audits of Centrelink's review and appeal system.

Audit objective and criteria

1.31 The objective of the audit was to assess whether, in relation to appeals to the SSAT and the AAT, Centrelink undertakes its role effectively, so as to support the timely implementation of the Tribunals' decisions about customers' entitlements.

1.32 The three main criteria for the audit were:

- the information provided by Centrelink in relation to appeals to the SSAT and the AAT effectively supports customers' and Tribunals' decision-making;
- the relationships and administrative arrangements between Centrelink, DEEWR and FaHCSIA support an effective management of the appeal process and the capture of issues that may have broader implications for legislation, policy and service delivery; and
- Centrelink implements SSAT and AAT decisions in an effective and timely manner.

1.33 The audit did not assess the SSAT's and AAT's decision-making processes nor did it consider appeals that were dismissed, withdrawn or were not within the Tribunals' jurisdiction.

Audit approach

1.34 Audit fieldwork was conducted in five states and territories and in Centrelink, DEEWR and FaHCSIA central offices in Canberra, and included:

- interviews with 85 staff from Centrelink's national support office and regional offices, and with DEEWR and FaHCSIA personnel responsible for dealing with appeals to the SSAT and AAT;
- reviews of files and records kept by Centrelink, DEEWR and FaHCSIA;
- stakeholder consultations, including SSAT offices, AAT registries, the Commonwealth Ombudsman and Welfare Rights Centres; and

- analysis of Centrelink's IT data and case management systems relating to appeals, including 8694 records of appeals to the SSAT and the AAT.

1.35 The audit was conducted in accordance with ANAO Auditing Standards at a cost of approximately \$370 000.

Structure of the report

1.36 The remainder of the report is divided into four chapters:

- Centrelink's Communication with Customers (Chapter 2);
- Provision of Information to the SSAT and the AAT (Chapter 3);
- Centrelink's, DEEWR's and FaHCSIA's Administration of SSAT and AAT Decisions (Chapter 4); and
- Centrelink's Management of the Implementation Process (Chapter 5).

2. Centrelink's Communication with Customers

This chapter examines the quality of the information Centrelink provides to its customers about their review and appeal rights and about their decisions, in particular the quality of the ARO letters.

Introduction

2.1 Centrelink has recognised the importance of customers being aware of their rights in the *Customer Service Charter* and the *Statement of Commitment: Listening and Responding to Customer Feedback*³¹ (the 'Statement of Commitment'). These are public expressions of Centrelink's commitment to providing excellence in service delivery. The Statement of Commitment advises that:

We will ensure customers are informed of their rights to access the review and appeal system.³²

2.2 Under the SSA Act, decisions made under social security law can be subject to review and customers have a legal right to access information about all relevant internal and external review mechanisms. Further, the Secretary, represented by Centrelink:

... is to have regard to the need to ensure that social security recipients have adequate information regarding the system of review of decisions under the social security law.³³

2.3 The SSA Act specifies that the decision-maker must include in their notice to the customer:

... a statement to the effect that the other person may, subject to the social security law, apply to the Social Security Appeals Tribunal for review of the decision maker's decision.³⁴

³¹ Centrelink, *What you can expect from Centrelink – Centrelink's Customer Service Charter*, 2010, [internet] <[http://www.centrelink.gov.au/internet/internet.nsf/filestores/co301a_1003/\\$file/co301a_1003_en.pdf](http://www.centrelink.gov.au/internet/internet.nsf/filestores/co301a_1003/$file/co301a_1003_en.pdf)>, [accessed 12 November 2010]. Centrelink, *Centrelink's Statement of Commitment to Listening and Responding to Customer Feedback*, (no date) [internet] <http://www.centrelink.gov.au/internet/internet.nsf/publications/statement_commitment.htm>, [accessed 12 November 2010].

³² Centrelink, *Statement of Commitment: Listening and Responding to Customer Feedback*, p. 7.

³³ *Social Security (Administration) Act 1999 (Cth)*, s. 8.

2.4 In order to assess how Centrelink is meeting its obligations to inform customers of their review and appeal rights, the ANAO examined the sources of information available to customers, including resources aimed at customers from diverse cultural and linguistic (DCAL) backgrounds and from Aboriginal and Torres Strait Islander (ATSI) backgrounds. The ANAO also examined the information provided to customers about their reviewed decisions, to assess whether it is clear, comprehensive and sufficient enough to inform their choice on whether to appeal to the SSAT.³⁵

Information to customers about review and appeal rights

2.5 Centrelink informs its customers of their rights of review and appeal in writing, through a suite of letters, forms and web pages, and verbally, through its network of call centres and Customer Service Centres (CSCs).

Information provided in writing

Letters of notification

2.6 With almost 114 million letters to customers in 2009–10³⁶, letters of notification are Centrelink's most important mechanism to advise customers of their entitlements, and to outline any changes to their rates or circumstances. The letters of notification are legal documents that are defined by the SSA Act.³⁷

2.7 Several types of letters of notification exist, depending on the nature of Centrelink's correspondence with customers. However, all types are based on a template that incorporates standard information including a section on customers' review and appeal rights. In the sample of Centrelink letters of notification reviewed by the ANAO, this section stated:

If you do not agree with a decision that Centrelink has made, contact us so we can explain the decision and change it if appropriate (this step is optional). Contact us and ask for an independent Authorised Review Officer to look at your case. Go to the Social Security Appeals Tribunal if you disagree with the

³⁴ *Social Security (Administration) Act 1999 (Cth)*, s. 138(1)(a).

³⁵ The information provided by Centrelink to customers who have appealed to the SSAT and the AAT and are waiting for the implementation of their decision is examined in Chapter 5, paragraphs 5.11 and 5.12.

³⁶ Centrelink, *Annual Report 2009–10*, Centrelink, Canberra, 2010, p. 8.

³⁷ *Social Security (Administration) Act 1999 (Cth)*, ss. 236–237.

Authorised Review Officer's decision. Go to the Administrative Appeals Tribunal if you disagree with the Social Security Appeals Tribunal decision. All of the above are free of charge.

2.8 The letters, through the inclusion of this paragraph, provide customers with information about their review and appeal rights. The phrasing of the standard paragraph used in letters of notification, however, does not state clearly that the first (optional) step refers to a written reconsideration by the same officer who made the original decision, and that the ARO is not independent from Centrelink. Previous reports³⁸ have found that a proportion of Centrelink's customers do not always understand the distinction between the ODM reconsideration and the ARO review, or are not always aware that the ODM reconsideration is optional. In this context, it is important that the standard paragraph in the notification letter allows customers to understand the nature of their options.

2.9 Standard paragraphs in letters of notifications are subject to a number of constraints, including space. However, the ANAO suggests that Centrelink modifies the text so that it clearly outlines that the first level of review is undertaken by the ODM; that customers can request a review by an ARO without going through the ODM reconsideration process first; and that the ARO is independent from the ODM, but is still a Centrelink officer.

Centrelink's website

2.10 In 2009, sixty-six per cent of Centrelink customers had access to the Internet, and over half of these customers reported visiting the Centrelink website in the previous twelve months.³⁹ In 2008–09, online activity on the Centrelink website increased by 56.4 per cent.⁴⁰

2.11 The information available online⁴¹ identifies the customers' review and appeal rights to the SSAT and AAT and details the review steps, both internal and external, a customer can take if they disagree with a Centrelink decision.

³⁸ ANAO Report No. 40 2006–07, *Centrelink's Review and Appeal System Follow-up Audit*, p. 48; and Centrelink, *Report into the current administrative review and debt collection functions in Centrelink (Tongue Report)*, 2005, p. 24.

³⁹ *Centrelink National Customer Survey 2009*, p. 9.

⁴⁰ Centrelink, *Annual Report 2008–09*, Centrelink, Canberra, 2009, p. 98.

⁴¹ Centrelink, *Reviews and Appeals*, [Internet]. Centrelink, Australia, 2010, available from <http://www.centrelink.gov.au/internet/internet.nsf/legal/review_appeal.htm> [accessed 10 May 2010].

This information is easily accessible via a direct link on the homepage or via the search function.⁴²

The Reviews and Appeals factsheet and the Review of a Centrelink Decision form

2.12 The *Reviews and Appeals* factsheet is a three-page document providing customers with an overview of the review and appeal system. The *Review of a Centrelink Decision* form⁴³ may be used by customers who wish to have their decision reviewed by an ODM or an ARO. It includes information about the customers' appeal rights within Centrelink and with the SSAT and the AAT. These two documents are accessible online from Centrelink's website⁴⁴, in hardcopy from CSCs, or customers can request to have a copy sent to them.

2.13 The information presented in the factsheet and in the review form clearly communicates the customers' appeal rights. They are easily accessible and provide advice to customers on their appeal rights and an overview of the review and appeal process.

ODM reconsideration letter and ARO decision letter

2.14 ODM reconsideration letters and ARO decision letters provide the outcome of the review, explain the reasons behind the decision and include information about further appeal rights. ODM and ARO letters are part of Centrelink's compliance with their legislative requirement⁴⁵ to provide information to customers about their review and appeal rights.

2.15 The ANAO examined the standard paragraphs on review and appeal rights in a sample of ODM and ARO letters. The paragraphs clearly identify that customers can access further review mechanisms if they disagree with ODM and/or ARO decisions. Centrelink is also required to include an SSAT appeal form with the ARO letters.⁴⁶ ANAO consultations with AROs and SSAT offices suggested that the forms are included.

⁴² The ANAO conducted a search of the words 'appeal' and 'review' and was directed to the 'Reviews and Appeals' webpage.

⁴³ Form available online at the Centrelink website or in hardcopy at CSCs.

⁴⁴ Centrelink, *Reviews and Appeals*, [Internet]. Centrelink, Australia, 2010, available from <http://www.centrelink.gov.au/internet/internet.nsf/legal/review_appeal.htm> [accessed 23 May 2010].

⁴⁵ *Social Security (Administration) Act 1999 (Cth)*, s. 138(1)(a).

⁴⁶ Centrelink and Social Security Appeals Tribunal, *Administrative Arrangements Agreement 2009–2011*, February 2009, Schedule 2, p. 3.

Information provided verbally in call centres and in Customer Service Centres

2.16 In 2009, the preferred method of contacting Centrelink to request a review of a decision was either via the telephone (59 per cent) or in person at a CSC (50 per cent).⁴⁷ In 2009–10 Centrelink handled 32.7 million calls in 25 call centres and provided services to customers in 313 CSCs.⁴⁸

2.17 Centrelink advised that all call centre and CSC staff must attend induction training, which includes subjects on reviews and appeals. Additional training occurs on a site-by-site basis, and Centrelink staff have access to an online Learning Library, which contains courses on decision-making, social security law, administrative law and reviews and appeals.

2.18 Centrelink's Intranet provides access for all employees to a knowledge database, e-Reference. The Intranet indicates that, 'e-Reference is Centrelink's endorsed customer service reference tool and must be complied with by all Centrelink employees', including when asked a question about reviews and appeals.⁴⁹ A range of topics in e-Reference relate to the review and appeal process and can be accessed by all call centre and CSC staff to assist them in dealing with customers.

2.19 The topics relating to review and appeal in the online Learning Library and in e-Reference are accessible, detailed and contain relevant and comprehensive information.

2.20 Since early 2010, Centrelink has mandated the use of a learning management system that records staff training attendance. As the system does not collect retrospective data, limited information on training attendance levels is currently available. However, this information should build up over time.

2.21 Centrelink operates a widespread network, comprising over 27 000 staff.⁵⁰ In these circumstances, a degree of variation in the information provided by individual staff to customers can occur. To address this risk,

⁴⁷ *Centrelink National Customer Survey 2009*, p. 134. This question allowed for multiple responses and therefore percentages sum to more than 100 per cent.

⁴⁸ Centrelink, *Annual Report 2009–10*, Centrelink, Canberra, 2010, p. 8.

⁴⁹ Staff can also access a learning module, which provides instructions on how to use the Centrelink e-Reference.

⁵⁰ Centrelink, *Annual Report 2009–10*, Centrelink, Canberra, 2010, p. 8.

Centrelink has taken steps to assist staff in communicating with customers by making available clear and accessible resources about appeal rights. Customer feedback provided via Centrelink's annual National Customer Satisfaction Survey indicates that customers' satisfaction with the explanation received about their rights and obligations has remained high over the last five years. In 2009, eighty-eight per cent of respondents agreed or agreed strongly with the statement: 'Centrelink staff have clearly explained to you your rights and obligations with regards to your payment'.⁵¹

Information to customers from diverse cultural and linguistic and Aboriginal and Torres Strait Islander backgrounds

2.22 As at June 2010, six per cent of Centrelink's customers identified themselves as being from DCAL backgrounds and requiring interpreter assistance. Three and a half per cent identified themselves as from ATSI backgrounds.⁵² The SSA Act states that the Secretary, represented by Centrelink, is to have regard to:

... the need to be responsive to the interests of the Aboriginal and Torres Strait Islander communities and to cultural and linguistic diversity.⁵³

2.23 Centrelink has developed a range of specific services to address the needs of customers from DCAL and ATSI backgrounds, including:

- A network of 70 Multicultural Service Officers across Australia. Centrelink reported that having these officers helps to 'ensure customers from diverse cultural and linguistic backgrounds receive the same level of service as other Centrelink customers'.⁵⁴
- A network of approximately 130 Indigenous Specialist Officers and Indigenous Customer Service Advisors to help provide Indigenous people with information about and access to Centrelink services and programs.
- Four Indigenous call centres.

⁵¹ *Centrelink National Customer Satisfaction Survey*, 2009, p. 118.

⁵² Centrelink internal statistics, provided to ANAO in June 2010.

⁵³ *Social Security (Administration) Act 1999 (Cth)*, s. 8(c).

⁵⁴ Centrelink, *Annual Report 2009–10*, Centrelink, Canberra, 2010, p. 120.

- The Multilingual Call and Language Services Unit, which provides translation and interpreting services in over 220 languages.⁵⁵

2.24 Centrelink forms include questions about whether customers are from DCAL or ATSI backgrounds and whether they require translation services. Centrelink puts an indicator on the electronic files of customers who have answered positively to these questions. The ANAO examined a small sample of the letters sent to these customers and found that they included the telephone numbers allowing them to access translation services.

2.25 Many of Centrelink's information brochures have been translated and are available from the Centrelink website. Sixty-five languages are represented.⁵⁶ The two key brochures relating to reviews and appeals, the *Centrelink Customer Service Charter* and the *Reviews and Appeals* factsheet are available in 30 of these languages.⁵⁷ The booklet *Are you an Aboriginal or Torres Strait Islander?*⁵⁸, also available from the website or in hardcopy from CSCs, contains a section on appealing a decision. This section outlines the review and appeal steps that are available if a customer disagrees with a Centrelink decision.

2.26 When compared to the total population of customers who had lodged an appeal to the SSAT or the AAT between July 2008 and June 2010, customers from DCAL and ATSI backgrounds were relatively evenly represented (Table 2.1).

⁵⁵ *ibid.*, p. 119.

⁵⁶ The '*We speak your language*' webpage contains links to interpreter and translation services, multilingual publications, community resources, multilingual audio screen show and other services. [Internet] <<http://www.centrelink.gov.au/internet/internet.nsf/languages/index.htm>> [accessed 24 May 2010].

⁵⁷ Centrelink advised that the languages selected for translating information products are based on a range of factors including funds available, group demographics, group linguistic needs and literacy levels and the expected migration intake in the next two to five years.

⁵⁸ Centrelink, *Are You an Aboriginal or Torres Strait Islander?*, p. 3-4.

Table 2.1**DCAL and ATSI customers who lodged an appeal to the SSAT and the AAT, July 2008–June 2010**

Customer Category	Total number customers (4 June 2010)	Appeals lodged to SSAT		Appeals lodged to AAT	
		Number of appeals	% of total population	Number of appeals	% of total population
DCAL	404 071	1854	0.46%	469	0.12%
ATSI	241 000	1316	0.55%	138	0.06%
Other customers	6 821 645	29 025	0.43%	5267	0.08%

Source: ANAO analysis based on Centrelink data.

Notes: DCAL customers are defined as those customers indicating that they require translation services. ATSI customers are defined as those customers indicating that they are from ATSI backgrounds. Centrelink advised that the identification of ATSI and DCAL customers relies on self-identification.

Information to customers about their decisions

2.27 The ARO decision letters provide key information to assist customers when deciding whether or not to appeal to the SSAT. These letters should be sufficiently clear and comprehensive to allow customers to understand the decision and make an informed choice:

Statements of reasons provide the person affected by a decision with an opportunity to have the decision properly explained. That person can then decide whether to exercise their rights of review or appeal and, if they do, they can do so in an informed manner.⁵⁹

2.28 In cases where customers decide to appeal, the ARO decision letters are also a primary document for the SSAT. Although the Tribunal makes a new decision, based on the original evidence and documentation provided by Centrelink and customers, the ARO decision letters are an important source of information documenting the decision-making process used by Centrelink.

2.29 Centrelink has a statutory obligation to include, in the ARO decision letters, a statement that:

- sets out the reasons for the decision; and
- sets out the findings by the decision maker on material questions of fact; and

⁵⁹ Administrative Review Council, *Practical Guidelines for Preparing a Statement of Reasons*, 2002, p. 1.

- refers to the evidence or other material on which those findings were based.⁶⁰

2.30 The ARO decision letters are made up of several parts, including a detailed document called the Decision Statement. The Statement provides, in a set format: the issues to be decided, the evidence, the finding of facts, the reasons for the decision, and the decision itself. The ANAO sought to determine whether the ARO decision letters effectively inform customers and the SSAT on Centrelink decisions.

Quality of ARO decision letters

2.31 The ANAO consulted with SSAT offices, AAT registries and Welfare Rights Centres in five states and territories. While many stakeholders commented positively on most aspects of ARO letters, they also consistently expressed concern about deficiencies in explaining how decisions were reached. The stakeholders, in particular SSAT offices, cited frequent instances, often in cases relating to debts, where the reasons given in the letters were insufficient to understand how the conclusions had been reached, or how the debt amounts had been calculated.

2.32 The following case study provides examples of these shortcomings as described in the text of a sample of ARO decision letters.

Case Study Examples of ARO Decision Letter Shortcomings

Example 1 – Lack of explanation about how the amount of a debt due to an administrative error was calculated

‘The facts as set out above, in relation to the reconciliation of your FTB entitlement for the 2008/09 financial year, are not in dispute. What is now known is that a computer system problem resulted in an incorrect amount of child support income being applied in arriving at the decision made on XX July 2009. When your FTB entitlement was reassessed in line with the correct child support income, you were found to have been overpaid. In such cases, section 71 of the *A new Tax System (Family Assistance) (Administration) Act* requires me to find that you have incurred a debt equal to the overpaid amount. I decided that you have a debt of \$XXX.XX.’ (January 2010)

Example 2 – Lack of explanation about the nature of the new information, investigation and changed circumstances that led to a new decision

‘From what you have told me and further investigation, I have been able to confirm that a change of circumstances occurred on XX August 2009 which allow you to be assessed as principal carer of XXX from this date, as per s. 5(19) of the *Social Security Act 1991*’ [s. 5(19) was explained previously]. (January 2010)

⁶⁰ *Social Security (Administration) Act 1999 (Cth)*, s. 138(1).

Example 3 – Lack of explanation about how a debt raised for overpayment of Disability Support Pension was calculated

'In the calculation of the overpayment, the available \$1,000 Working Credit balance was applied (hence the reason why the overpayment does not start until XX December 2004). Furthermore, the calculation does take into account correct DSP (Disability Support Pension) rate (+ Supplement + Rent Assistance + Pharmaceutical Allowance). In addition to this, the debt calculation was extended to XX September 2006 as the incorrect Working Credit balance was applied when you commenced work later at XXX.' (October 2008)

2.33 These deficiencies, according to the stakeholders consulted, could in some cases lead customers to appeal to the SSAT because they do not have the information that would allow them to understand how the decision was reached and/or they do not trust Centrelink to have made the correct assessment of their entitlements or debts.

2.34 For the SSAT, the impact of Centrelink not providing a full and clear explanation of the decision is that additional work may be generated by customers who appeal to have the decision explained (rather than reconsidered). Further, incomplete explanations may result in the SSAT not being able to use the decision to understand how Centrelink reached its conclusion.

Training provided to AROs

2.35 The ANAO examined Centrelink's ARO training framework and in particular, the training activities designed to help the AROs make and document their decisions.

2.36 A one-day course targeting writing skills was provided in 2009 to 65 of the 210 AROs. Centrelink advised that it intends to extend this course, in 2010–11, to all AROs 'identified as requiring improvement'.

2.37 Additionally, a wide range of training material is available in the form of writing guides, templates and training material. This material includes:

- resources from e-Reference, including guidelines on policy and legislation to guide the AROs when making decisions;
- internal, online learning modules, including modules on *Decision-making: Making a Decision* and *Decision-making: Legal Background*; and
- the Administrative Review Council *Best Practice Guide* which provides guidelines for decision-makers on how to document and prepare a quality statement of reasons.

2.38 Centrelink advised that all new AROs must complete the online training program within the first 12 months in their position. However, a survey of 175 AROs conducted by Centrelink in July 2010 indicated that only 43 per cent had completed the eight training modules, while a further 23 per cent had ‘partially completed’ them.

2.39 While the audit was being conducted, Centrelink was undertaking two projects that are relevant to ARO training needs and ARO Decision Statements. The *ARO Training Project* aims to identify a training model and a method of recording training across the ARO network. In August 2010, it assessed that:

Currently the training is undertaken in an ad-hoc basis, and varies widely across the ARO network. The same [applies to] the recording of training achieved.⁶¹

2.40 The objective of the *ARO Decision Statement Project* is:

... to identify any issues or concerns for AROs in relation to the decision statements, i.e. consistency and appropriateness as well as overall quality of statements...⁶²

2.41 The two projects were endorsed by management in September 2010 and are now at implementation stage. The projects should position Centrelink to better identify and measure training needs, including in relation to writing skills, across the ARO network. These, in turn, are important factors for influencing quality work and the preparation of clear and comprehensive correspondence to customers.

ARO quality assurance

2.42 A national quality assurance process for AROs (ARO QA) has been in place since 2006–07. The ARO QA process is designed to assess:

- the quality of the interactions with the customer;
- whether the decisions were open and reasonable, having regard to client agency policy and the evidence available to AROs; and
- whether AROs complied with all procedural requirements.⁶³

⁶¹ Centrelink, *ARO Training Project*, August 2010, p. 4.

⁶² Centrelink, *ARO Decision Statement Project*, July 2010, p. 4.

⁶³ Centrelink, *ARO QA Procedures* (no date), p.1.

2.43 Under this process, one decision made by an ARO each month is checked during the following month.⁶⁴ The ARO decision is selected randomly and reviewed by a checker who assesses its quality against a standard checklist. The checker is an experienced ARO who works in a different geographical area from that of the ARO whose decision is being checked. The checker signs his/her assessments, which are then sent to the individual AROs. The results are taken into consideration during the ARO performance reviews. Reports analysing ARO performance nationally are also produced quarterly, presenting national and individual team results to management.⁶⁵

2.44 The ANAO examined a sample of individual reports and the national quarterly reports available for 2008 and 2009.⁶⁶ A series of questions assess ARO performance in relation to five criteria:

- customer interaction;
- decision quality;
- letter quality;
- feedback quality; and
- documentation quality.

2.45 On average, the results presented in the national reports demonstrated a high level of positive ratings in relation to all criteria (95 per cent).⁶⁷

2.46 The ANAO identified four questions that aim to measure specifically the quality of the reasons and clarity of the letter. Table 2.2 outlines these questions and shows that, according to the three examined quarterly national reports, AROs performed highly in relation to these questions.

⁶⁴ Centrelink advised that the number selected is based on the fact that full-time AROs complete about 20 decisions a month. Selecting one decision per month represents five per cent of decisions made. Adjustments are made for part-time AROs and for AROs who completed a low number of cases in the month for other reasons. These AROs may be excluded from the QA for that month.

⁶⁵ Centrelink, *National Consolidated Quarterly Reports for ARO decisions*, ARO QA Program.

⁶⁶ Available reports were: all quarters for 2008, first quarter 2009 and second semester 2009. The second quarter 2009 report was not produced. No reports for 2010 were available at 18 August 2010.

⁶⁷ This average does not include the result for the second semester of 2009, as Centrelink did not calculate it for that period.

Table 2.2

Performance of AROs in relation to quality of reasons given in decisions, as reported by ARO QA program

Questions	Positive answers (average)
'Did the reasons explain the connections between the evidence and the facts found?'	98%
'Did the reasons explain the connections between the facts and the law?'	96%
'Was the decision under review adequately described?'	98.5%
'Was the letter appropriate and understandable?'	98.5%
Total average	98%

Source: Centrelink, *National Consolidated Quarterly Reports for ARO decisions*, ARO QA Program, All quarters 2008, first quarter 2009 and second semester 2009.

2.47 In line with results obtained for other questions, the ARO QA program established that AROs performed highly in relation to the quality of the reasons provided to customers and the clarity of the decision letter. These results contrast with the feedback provided by stakeholders consulted by the ANAO which indicated that the reasons provided in the ARO letters often lacked sufficient clarity.

2.48 Given the difference between the QA results and stakeholder feedback, the ANAO suggests that Centrelink review the ARO QA process, in order to assess its reliability and its effectiveness in identifying potential issues. As a result of this assessment, Centrelink may decide to keep the identity of the checker and of the ARO whose decision is being checked anonymous, so as to encourage the provision of critical feedback. Additionally, developing a better understanding as to the characteristics of a clear decision letter from a customer perspective will assist in addressing the disjuncture between QA results and stakeholder feedback.

Conclusion

2.49 Consistent with the Statement of Commitment and requirements of the SSA Act, Centrelink provides customers (including customers from DCAL and ATSI backgrounds), with information on their review and appeal rights. This information is provided in various forms including customer correspondence, the website, call centres and CSCs. To assist customers receiving letters of notification to better understand the internal review mechanisms, the

information provided in the letters could be improved to describe the role of the ODM and ARO reviews.

2.50 The ARO decision letters are the key document produced at the outcome of an ARO review and follow a set format that aligns with Centrelink's statutory requirements. With 210 AROs working throughout a geographically dispersed network and making decisions on a day-to-day basis, a level of subjectivity and a degree of variance in the quality of ARO decision letters can occur. To help mitigate this risk, Centrelink has in place a training framework that consists of guidelines and learning modules. Expected participation levels have not been achieved, however, two recent projects and the introduction of a system to track training attendance should assist Centrelink to better identify and measure training needs.

2.51 Centrelink has in place a quality assurance process for assessing ARO decision letters. Results from this process indicate a high level of positive ratings in relation to the quality and clarity of ARO decision letters. These results contrast with the views of stakeholders consulted during the audit. A number of stakeholders reported that the reasons provided in support of the ARO decision were often insufficient or lacking in clarity, and this generated some adverse effects on the operation of the Tribunals and potentially on the customers.

Recommendation No.1

2.52 To improve ARO decision letters and enhance customers' and the Tribunals' understanding of Centrelink's decision-making process, the ANAO recommends that Centrelink undertake research into the information required to meet stakeholders' needs.

Centrelink response

2.53 Agreed.

3. Provision of Information to the SSAT and the AAT

This chapter examines the clarity, relevance and timeliness of information provided by Centrelink to the SSAT and the AAT.

Introduction

3.1 The SSAT and the AAT conduct merits reviews, which means that they make a ‘completely new decision in each case, determining what the correct or preferable decision is’⁶⁸, and consider ‘afresh the facts, law and policy relating to that decision’.⁶⁹ In making these new decisions, the Tribunals use the Centrelink documents which formed the basis of the original decision and any new documents that may become relevant during the appeal process.

3.2 The powers and functions of the SSAT and the AAT are set out in the SSA Act, in the AAT Act and in the FAA Act. In order to ensure that the Tribunals have in their possession all the documents necessary to reach their decision, the SSA Act and the AAT Act determine the timeframe under which the documents must be provided, and the nature of these documents.

3.3 The SSA Act prescribes that, within 28 days after receiving notice of the appeal lodgement, Centrelink, acting on behalf of the Secretary, must send to the SSAT:

... the original or a copy of every document or part of a document that:

- (i) is in the possession, or under the control, of the Secretary; and
- (ii) relates to the applicant; and
- (iii) is relevant to the review of the decision.⁷⁰

3.4 The AAT Act contains similar provisions, and requires that Centrelink, within 28 days, lodge with the Tribunal:

⁶⁸ Social Security Appeals Tribunal, *Role of the SSAT in Centrelink matters* [Internet]. SSAT, Australia, available from <<http://www.ssat.gov.au/iNet/ssat.nsf/pubh/role.4.0>> [accessed 2 June 2010].

⁶⁹ Administrative Appeals Tribunal, *Introduction to the AAT* [Internet]. AAT, Australia, available from <<http://www.aat.gov.au/AboutTheAAT/IntroductionToTheAAT.htm>> [accessed 2 June 2010].

⁷⁰ *Social Security (Administration) Act 1999 (Cth)*, s. 157(3).

... every other document or part of a document that is in the person's possession or under the person's control and is relevant to the review of the decision by the Tribunal.⁷¹

3.5 Although the SSAT and the AAT differ in their scope, both have similar requirements with regard to the information that must be provided to them; this information must be timely, clear and relevant.⁷² The fulfilment, by Centrelink, of this requirement is essential to support the Tribunals' decision-making process.

3.6 The ANAO assessed Centrelink's processes for providing the Tribunals with clear and relevant information in a timely manner.

Administrative and legal framework for the provision of information

Provision of information to the SSAT

3.7 In order to formalise Centrelink's relationship with the SSAT, Centrelink and the SSAT have entered into an agreement. The Administrative Arrangements Agreement (AAA) was originally signed in June 2003, and a revised version was signed in February 2009, and remains effective until 31 December 2011.⁷³

3.8 The AAA aims to 'enhance service delivery outcomes for applicants and improve liaison across a broad range of administrative matters'⁷⁴, and plays a critical role in ensuring that the relevant information is provided by Centrelink to the SSAT:

Adherence to the AAA is important for both the SSAT and Centrelink; for the former it guarantees provision of all documents relevant to the making of the decision(s)...⁷⁵

⁷¹ *Administrative Appeals Tribunal Act 1975 (Cth)*, s. 37(1).

⁷² The clarity (or legibility) of the documents is referred to, for the SSAT, in Centrelink and Social Security Appeals Tribunal, *Administrative Arrangements Agreement 2009–2011*, February 2009, p. 8, and for the AAT in *Administrative Appeals Tribunal, Practice Direction relating to Section 37 of the Administrative Appeals Tribunal Act 1975*, AAT, Canberra, 2007, p. 2.

⁷³ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 6.

⁷⁴ *ibid.*

⁷⁵ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 32.

3.9 The AAA comprises six schedules, which outline the statutory and non-statutory requirements in respect of service delivery between Centrelink and the SSAT; associated actions to be undertaken by Centrelink and/or the SSAT; and the performance measures and indicators. Schedule 4 of the AAA, relating to the exchange of information between Centrelink and the SSAT covers issues relating to the timeliness, content and quality of the documents provided by Centrelink. It also requires that Centrelink provide the SSAT with access to electronic documents relevant to the appeal. The importance of this schedule is stressed in its preamble, which states:

To enable the SSAT to meet its statutory objective to provide a mechanism of review that is fair, just, economical, informal and quick the SSAT requires access to customer information relevant to appeals.⁷⁶

3.10 One of the items for Schedule 4 refers to the 'task cards'. The task cards were developed by Centrelink and the SSAT to assist Centrelink officers to comply with the requirements relating to the quality of information. Task cards are checklists of all the documents that support the decision under review and that are to be included in the file sent to the SSAT.⁷⁷ Examples of these documents include system and paper-based documentation such as screen print-outs, letters sent to customers and claim forms. There are separate task cards for the more common types of appeal cases.

3.11 Within Centrelink, the ARO who was responsible for the decision that is being appealed must prepare the 'referral file' to the SSAT. The SSA Act, the AAA and the task cards are the key guides used by AROs to prepare the file.

Provision of information to the AAT

3.12 The AAT, in contrast with the SSAT, reviews a wide range of administrative decisions, made by a large number of stakeholders, including Centrelink. The Tribunal has issued a series of documents that define, further to the AAT Act's prescriptions, the AAT's policy and procedures in relation to the different aspects of the review process. Two of these documents relate in part or in totality to the provision of documents to the Tribunal:

⁷⁶ Centrelink and Social Security Appeals Tribunal, *Administrative Arrangements Agreement 2009–2011*, February 2009, p. 7.

⁷⁷ Social Security Appeals Tribunal and Centrelink, *Preparing Files for SSAT – Task Cards*, February 2010, p.1.

- The *Practice Direction relating to Section 37 of the Administrative Appeals Tribunal Act 1975* (the Practice Direction):⁷⁸ this Practice Direction is one of five Practice Directions setting out the range of requirements that parties must comply with when appealing to the Tribunal.
- The *Guide to the Social Security Jurisdiction* (the Guide):⁷⁹ the Guide sets out the procedural requirements that Centrelink, as a user of the AAT in the social security jurisdiction, is expected to comply with.

3.13 Within Centrelink, the task of preparing the documents for the AAT (Section 37 Documents) is the responsibility of advocates⁸⁰ in the Legal Services Branch. The AAT Act, the Practice Direction and the Guide represent the framework used by the advocates when preparing and lodging the Section 37 Documents.

Timeliness of information provided

3.14 In their respective annual reports, Centrelink and the Tribunals report on the timeliness of Centrelink's provision of documents against relevant statutory timeframes.⁸¹ The SSAT also reports on Centrelink's compliance with a non-statutory timeframe, relating to Centrelink's provision of relevant documents to the SSAT in cases identified as priority cases.⁸² Table 3.1 describes these timeframes and presents how Centrelink and the SSAT reported on Centrelink's performance over the last four years.

⁷⁸ Administrative Appeals Tribunal, *Practice Direction relating to Section 37 of the Administrative Appeals Tribunal Act 1975*, AAT, Canberra, 2007.

⁷⁹ Administrative Appeals Tribunal, *Guide to the Social Security Jurisdiction*, AAT, Canberra, April 2008.

⁸⁰ Advocates are responsible for scrutinising decisions of the SSAT and handle matters that are before the AAT and the Federal Court.

⁸¹ While the SSAT specifically reports on Centrelink's compliance with statutory timeframes, the AAT reports on its users' collective performance.

⁸² Priority cases are cases in which the applicant was deemed to suffer from financial hardship.

Table 3.1**Centrelink's timeliness in the provision of documents to the SSAT and the AAT**

Key Performance Indicator	Target	2006–07	2007–08	2008–09	2009–10
SSAT referral files lodged within 28 days*	100%	99%	100%	100%	100%
SSAT priority referral files lodged within 7 days**	7 days	6 days (average)	6.8 days (average)	7.5 days (average)	6.8 days (average)^
AAT S. 37 Documents lodged within 28 days*	100%	89%	88%	96%	96%

Source: * Centrelink, *Annual Reports 2006–07 to 2009–10*;
 ** SSAT, *Annual Reports 2006–07 to 2008–09*; and
 ^ SSAT advice.

3.15 While not always achieving the targets, Table 3.1 demonstrates that over the last four years Centrelink has consistently performed well in terms of meeting statutory and non-statutory deadlines. In relation to referral of documents to the SSAT in 2009–10, Centrelink's referral files were received within 9.5 days on average, or almost three times faster than the 28-day timeframe.⁸³

3.16 Consultations with Tribunal representatives confirmed Centrelink's performance in this area and the general level of satisfaction with Centrelink's ability to meet the established timeframes. The SSAT indicated this positive view in its annual report by stating:

Centrelink must be commended on its performance in this regard [referral of documents], especially given the very large number of appeals to the SSAT.⁸⁴

⁸³ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 22.

⁸⁴ *id.*, *Annual Report 2008–09*, SSAT, Canberra, 2009, p. 37.

Clarity and relevance of information provided to Tribunals

3.17 Overall, the SSAT offices and AAT registries consulted provided positive feedback on the nature of their relationship with Centrelink. The Tribunals described this relationship as ‘very professional’ and ‘constructive’. However, in a majority of instances, SSAT offices and AAT registries also raised concerns about the clarity and relevance of some of the documents provided by Centrelink.

Clarity of documents provided to Tribunals

3.18 Some of the key documents that must be included in the files provided to the Tribunals are the letters of notification sent by Centrelink to the customers, informing them of decisions regarding their entitlements or requesting additional information so as to determine eligibility. Due to the high number of letters Centrelink sends to customers, Centrelink keeps the electronic versions of the original letters for two months, before the letters are archived in an unformatted version.

3.19 In the majority of cases, Centrelink does not have a copy of the original letter in the customer file. In the case of an appeal, Centrelink uses software to re-introduce some formatting to the unformatted version that has been retained electronically, but does not reproduce a copy of the original letter sent to the customer. Accordingly, the letter produced has the same content, but is usually in a different format.

3.20 A majority of SSAT offices and one AAT registry consulted raised the absence of a copy of the original letter as an issue. They provided examples of letters included in the files to demonstrate that they are:

- difficult for the Tribunals and the customers to decipher (for instance when tables of debt calculation appearing in the original letter are replaced with series of numbers); and
- confusing for some customers who do not recognise the letter that was sent to them.

3.21 The lack of copies of original letters is an issue that was referred to in a decision by the AAT in 2007.⁸⁵ In the decision, the AAT highlighted:

... the difficulties which arise when the Tribunal is asked to decide upon the form of a notice without being provided with an exact copy of the document in question. ... in the matter before us the hearing commenced with only computer printouts. We required [Centrelink] to provide copies of the actual notices. In matters where the Tribunal is being asked to decide whether a document is an effective notice it is expected that the lay-out and format used in document will be of importance. In such matters the documents filed pursuant to Section 37 of the *Administrative Appeals Act 1975* should include copies of the actual documents in question.⁸⁶

3.22 The issue of the clarity of some of the documents provided to the Tribunals was also raised in relation to debt calculations and assessment tables. In particular, these issues related to the readability and useability of ADEX records⁸⁷, which are provided by Centrelink to the SSAT to explain debt calculations. In a context where debt determination forms the largest type of appeals to the SSAT, three out of five SSAT offices indicated that the ADEX records did not allow them to gain a clear understanding of how debts had been calculated.

3.23 Centrelink could benefit from consulting with the Tribunals and investigating the costs of reproducing copies of original letters sent to customers in cases where these letters are to be included in the documents provided to the Tribunals. The inclusion, in these documents, of debt calculation and assessment tables that can be more easily understood would also better assist the Tribunals' decision-making processes.

Relevance of documents provided to Tribunals

3.24 Most SSAT offices and half of the AAT registries consulted raised concerns about repeated instances where Centrelink provided irrelevant documents and where key documents were missing from the files. This was reported to have an impact on the review of the files by the Tribunals,

⁸⁵ *Department of Families, Community Services and Indigenous Affairs v Walshe* [2007], AATA 1861, (16 October 2007).

⁸⁶ *ibid.*, p. 371.

⁸⁷ ADEX is a web-based debt assessment tool that can be used by Centrelink to provide an explanation of negative adjustments following a reassessment on a customer's record.

generating additional work to remove irrelevant documents, to identify missing documents, and in general to gain an understanding of the appeal cases. Several stakeholders commented on often receiving voluminous files, and on the apparent lack of discrimination in the selection of the documents that these files reflected.

3.25 SSAT offices and AAT registries indicated, however, that Centrelink was helpful and responsive in providing missing documents identified and requested by the Tribunals.

Quality assurance of information provided to the SSAT

3.26 Task cards compliance audits are conducted jointly by Centrelink and the SSAT to monitor the quality of the files provided to the SSAT.⁸⁸ The results of the three audits conducted during 2006 and 2007⁸⁹ indicated that across the states and territories, the compliance of the files with the task cards was highly variable. While some states and territories performed relatively well, with compliance rates of 80 per cent or more, others recorded compliance rates of approximately 50 per cent or lower. Overall, the states and territories that performed poorly did so consistently across the three audits.

3.27 The 2009 audit focused on the states and territories that had been identified in the previous audits as performing poorly.⁹⁰ The ANAO compared the 2007 and 2009 results. Table 3.2 indicates that, for those states and territories that were included in both audits, the results remained comparatively low with a slight increase in the average level of compliance with the task cards between 2007 and 2009, from 52 per cent to 57 per cent.

⁸⁸ The AAA 2009–2011 indicates that compliance with the task cards is to be assessed jointly by Centrelink and the SSAT at least once every calendar year. Under the previous Agreement, compliance was to be assessed every six months. Since 2005, six audits have been completed, in September 2005, March 2006, October 2006, June 2007, February 2008 and February 2010.

⁸⁹ *Administrative Arrangements Agreement Compliance Survey Reports*, SSAT, October 2006, June 2007 and February 2008.

⁹⁰ *Administrative Arrangements Agreement Compliance Survey Reports*, SSAT, February 2010. The 2009 audit included four states and territories.

Table 3.2**Administrative Arrangements Agreement Compliance Survey results, July-December 2007 and July-December 2009**

States/territories	Number of files audited		Number of files compliant		Percentage compliant	
	2007	2009	2007	2009	2007	2009
States/territories included in the 2007 audit only						
A	16	-	16	-	100%	-
B	3	-	3	-	100%	-
C	84	-	82	-	98%	-
D*	72	-	59	-	82%	-
E	28	-	19	-	68%	-
Total	203	-	179	-	88%	-
States/territories included in the 2007 and 2009 audits						
F	19	19	9	15	47%	79%
G	42	52	21	30	50%	58%
H	71	58	39	29	55%	50%
Total	132	129	69	74	52%	57%

Source: ANAO analysis of the *Administrative Arrangement Agreement Compliance Survey Reports*, SSAT, February 2008 and February 2010.

Notes: * State/territory D was included in the 2009 audit, however it does not appear as such in this table because only one file was audited for that year.

3.28 Centrelink advised the ANAO that since the 2009 audit was undertaken, measures have been implemented that are designed to improve compliance with task cards and the quality of the documents it provides to the SSAT. AROs are now required to include a signed copy of the completed task card checklist in each file referred to the SSAT. The next task card compliance audit will provide the opportunity for Centrelink to assess the effectiveness of the measures it has put in place to improve the relevance of information provided to the SSAT. Further, given the time that has passed since the last complete audit, it will be important that future audits include adequate coverage of states and territories to provide an assurance that those who have previously performed well continue to do so.

Quality assurance of the information provided to the AAT

3.29 The documents provided to the AAT are prepared by an advocate of the Legal Services Branch. There is no formal quality assurance of the

documents before or after they are sent to the AAT. Instead, Centrelink relies on the ongoing communication with the AAT, including various meetings at national, state and territory levels, to identify potential issues in the relationship with AAT registries. However, given the feedback provided to the ANAO by some of the registries on the relevance of the Section 37 Documents, a more formal approach to quality assurance could help meet the AAT's expectations.

Recommendation No.2

3.30 The ANAO recommends that Centrelink improve the clarity and relevance of the documents provided to the Tribunals by:

- assessing the effectiveness of the measures developed to improve performance (increase AROs' compliance with the task cards), particularly in those states and territories where the performance has been below expectations; and
- consulting with the AAT and introducing a quality assurance approach for the documents provided to the AAT (Section 37 Documents).

Centrelink response

3.31 Agreed.

Access to Centrelink systems

3.32 The AAA specifies that the SSAT must have access to Centrelink's electronic documents relevant to the appeals.⁹¹ This is to allow the SSAT to complement or complete the information provided by Centrelink and gain a comprehensive understanding of the case under review. Access to these systems helps the SSAT be self-reliant as it reduces the need to request further information from Centrelink.

3.33 Centrelink has introduced a web-based application that provides a single point of access to customer information (Single User Workspace). Some SSAT offices are not yet able to access this new system. Centrelink advised that they are aware of this limitation and that the technical problems that may

⁹¹ Centrelink and Social Security Appeals Tribunal, *Administrative Arrangements Agreement 2009-2011*, February 2009, Schedule 4.

prevent SSAT staff from accessing Single User Workspace are being addressed through enhancements to the system.

Conclusion

3.34 In conducting merits reviews, the SSAT and the AAT make new decisions. To assist in this process, the Tribunals require Centrelink to provide them with documents that are clear and relevant in a timely manner. There are legislative and administrative mechanisms in place to support the process and define the requirements that Centrelink must meet in order to provide timely, quality documents.

3.35 Centrelink has established strong and positive relationships with the SSAT offices and AAT registries. Overall, Centrelink generally provides documents to the Tribunals in a timely manner and continues to improve its performance in this respect. However, some of the documents provided by Centrelink do not meet the Tribunals' expectations in terms of clarity and relevance. The Tribunals rely on the provision of quality documents in order to gain a thorough understanding of the cases under review. As such, the variability in the clarity and relevance of documents provided to the Tribunals impacts on the decision-making process.

3.36 Centrelink has recently implemented measures designed to improve performance in this area. Upcoming task card compliance audits and ongoing consultations with the Tribunals will help assess the success of these measures and allow the development of strategies to improve the clarity and relevance of documents provided.

4. Centrelink's, DEEWR's and FaHCSIA's Administration of SSAT and AAT Decisions

This chapter examines the effectiveness of the arrangements between Centrelink, DEEWR and FaHCSIA that support the management of appeals to the SSAT and the AAT.

Introduction

4.1 As the delegate of the Secretaries of DEEWR and FaHCSIA, Centrelink manages appeals arising from decisions made by Centrelink under social security and family assistance law. The two policy departments retain an interest in the appeals conducted by Centrelink on behalf of their Secretaries, and have a decision-making and oversight role in relation to Centrelink's conduct of any appeal cases.⁹²

4.2 In addition to providing an avenue for customers to have the Centrelink decisions they believe are incorrect examined and, if necessary, remedied, the review and appeal process is also an important mechanism in evaluating and improving programs and services, and informing decision-making about future service delivery. Effectively managing the SSAT and AAT review and appeal process should ensure that no unnecessary delays are generated that may impact on customer service. It should also allow Centrelink to identify and analyse any systemic issues in the interpretation and implementation of legislation, and to communicate these issues to the relevant policy departments, DEEWR and FaHCSIA.

4.3 The ANAO examined the legal and administrative arrangements between Centrelink and the two policy departments and reviewed the systems and practices implemented by Centrelink to manage the SSAT and AAT appeals and decisions.

⁹² *FaHCSIA and Centrelink Legal Services Protocol*, 24 November 2009, p. 3; *DEEWR and Centrelink Legal Services Protocol*, 24 November 2009, p. 4.

Administrative and legal arrangements

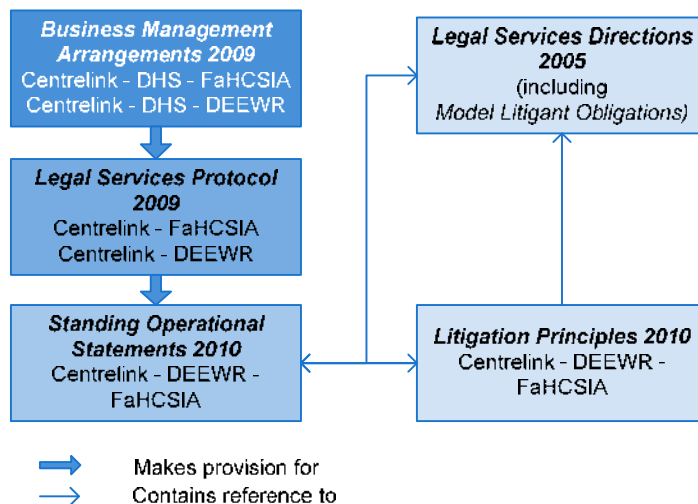
4.4 The relationship between Centrelink and the two policy departments, in relation to the process of appeal to the SSAT and AAT, is governed by a set of administrative and legal arrangements:

- the Bilateral Management Arrangements (BMAs), including the Legal Services Protocols;
- the *Legal Services Directions 2005* (the Directions), including the *Model Litigant Obligations*;
- the *Litigation Principles*, to guide decisions of whether to appeal decisions made under the social security and family assistance law; and
- the draft *DEEWR and FaHCSIA Standing Operational Statements for Centrelink* (the Standing Operational Statements).

4.5 The administrative and legal arrangements between the three agencies are illustrated in Figure 4.1.

Figure 4.1

Administrative and legal arrangements between Centrelink, DEEWR and FaHCSIA



Source: ANAO analysis.

Bilateral Management Arrangements

4.6 On 24 November 2009, Centrelink and DHS signed BMAs with DEEWR and FaHCSIA respectively.⁹³ A *Legal Services Protocol*⁹⁴, covering internal and external review of decisions made under delegation of the Secretaries of DEEWR and FaHCSIA to Centrelink, is part of each of these BMAs. While differing on specific aspects, both protocols aim to achieve comparable objectives, including:

- the delineation of responsibilities, reporting and communication mechanisms;
- a consistent and accurate interpretation and application of the DEEWR and FaHCSIA portfolio legislation;
- a cross-agency commitment to a fair, courteous, prompt and cost-efficient appeal and review system;
- appropriate management of legal and litigation issues in a cross-agency context; and
- the appropriate handling of personal information in accordance with relevant Commonwealth legislation.

Legal Services Directions and Model Litigant Obligations

4.7 As agencies subject to the *Financial Management and Accountability Act 1997*, Centrelink and the policy departments are required to comply with the *Legal Services Directions*⁹⁵, which are issued by the Attorney-General and set out the requirements for sound practice in the provision of legal services to the Commonwealth. Of particular relevance to agencies such as Centrelink, DEEWR and FaHCSIA, involved in merits review proceedings, is Appendix B

⁹³ *Bilateral Management Arrangement between the CEO of the Commonwealth Services Delivery Agency (Centrelink), the Secretary of the Department of Human Services and the Secretary of the Department of Education, Employment and Workplace Relations; Bilateral Management Arrangement between the CEO of the Commonwealth Services Delivery Agency (Centrelink), the Secretary of the Department of Human Services and the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs*. The two BMAs supersede the Centrelink-FaHCSIA Business Partnership Agreement 2006–10, the Centrelink-DEEWR Business Partnership Agreement 2006–09, and the Centrelink-DEEWR Interim Partnership Agreement 2008–09.

⁹⁴ DEEWR and Centrelink, *Legal Services Protocol*; FaHCSIA and Centrelink, *Legal Services Protocol*.

⁹⁵ Attorney-General's Department, *Legal Services Directions 2005*.

of the Directions, which specifies the obligations of the Commonwealth to act as a model litigant (the *Model Litigant Obligations*).

4.8 The *Model Litigant Obligations* are founded on the concepts of behaving ethically, fairly and honestly to model best practice in litigation, in particular through:

- dealing with claims promptly and not causing unnecessary delays in paying legitimate claims or undertaking litigation;
- not taking advantage of a claimant and acting consistently in the handling of claims and litigation;
- endeavouring to avoid or limit litigation where possible and keeping litigation costs to a minimum;
- not undertaking appeals unless there are reasonable prospects for success or the appeal is justified in the public interest; and
- apologising where the agencies have acted wrongly or improperly.⁹⁶

DEEWR and FaHCSIA Litigation Principles

4.9 In December 2007, the then Minister for Employment Participation asked the Secretary of DEEWR to review social security appeals and litigation arrangements to ensure that the litigation activities met the *Model Litigant Obligations*.⁹⁷ The review was prompted by the high rate of DEEWR appeals to the AAT that were lodged and subsequently withdrawn (62 per cent in 2006–07), and by the concern that these appeals ‘potentially cause[d] inconvenience and anxiety for the income support recipients or claimants due to uncertainty of the outcome’ and may have indicated ‘possible inefficiencies in DEEWR’s processes.’⁹⁸

4.10 The outcome of the review was a report that included six recommendations and a set of Principles⁹⁹ to guide decisions on whether to

⁹⁶ *ibid.*, Appendix B.

⁹⁷ DEEWR, *Report of Review of Department of Education, Employment, and Workplace Relations Social Security Appeals and Litigation Arrangements*, March 2008.

⁹⁸ *ibid.*, p. 3.

⁹⁹ The full name of the Litigation Principles is: *Principles to guide the decisions of departments when determining whether to appeal decisions made under social security and family assistance law.*

appeal a case (the Litigation Principles). The report's recommendations were all accepted by the Minister and were subsequently implemented.¹⁰⁰

4.11 The Litigation Principles to guide DEEWR's decision to appeal a case aim to ensure that:

... in undertaking its responsibilities related to protecting the integrity of the social security system, the Department has regard to the circumstances of the individual recipient/claimant, recognises the role of the Tribunals in undertaking merits review, avoids costly litigation and operates in a manner that is consistent with the *Model Litigant Obligations*.¹⁰¹

4.12 The Litigation Principles were approved by the Minister in June 2008, and have been used since that date when determining whether social security and family assistance matters should be appealed.¹⁰²

4.13 As a result of the review and of the application of the Litigation Principles, the number of cases appealed by DEEWR (formerly DEWR and DEST) decreased from an average of 23 a month (from July to December 2007) to an average of one case every two months (from January to June 2010).

4.14 In August 2009, FaHCSIA endorsed the use of the Litigation Principles in order to ensure that the two policy departments use consistent principles when deciding whether to appeal decisions made under the social security and family assistance law.¹⁰³

Draft DEEWR and FaHCSIA Standing Operational Statements for Centrelink

4.15 The Legal Services Protocols indicate that Standing Operational Statements may be developed that provide internal instructions regarding actions and operations undertaken by Centrelink and the policy departments when appealing decisions made under the social security and family assistance

¹⁰⁰ DEEWR, *Review of Department of Education, Employment, and Workplace Relations Social Security Appeals and Litigations Arrangements, Review of Progress following the Steering Committee Meeting*, 7 July 2009, p. 5.

¹⁰¹ DEEWR, *Report of Review of Department of Education, Employment, and Workplace Relations Social Security Appeals and Litigations Arrangement*, p. 17.

¹⁰² DEEWR, *Review of Department of Education, Employment, and Workplace Relations Social Security Appeals and Litigations Arrangements, Review of Progress following the Steering Committee Meeting*, p. 5.

¹⁰³ *ibid.*, p. 5, and written communication to the ANAO, 3 August 2010.

law. These Statements are being drafted collaboratively by the three agencies, with a view to have a completed set, common for DEEWR and FaHCSIA, endorsed by the end of 2010.

4.16 Previously, DEEWR and FaHCSIA communicated their instructions on how Centrelink should conduct litigation cases on their behalf through emails and verbal communication between the Legal Services Branch in Centrelink and its counterparts in DEEWR and FaHCSIA. The consolidation of the *Standing Operational Statements* into one document is a timely undertaking, aimed at ensuring that Centrelink's officers delegated to work on appeal matters across Australia share a common understanding of the policy departments' expectations.

Management of SSAT and AAT appeals and decisions

SSAT appeals and decisions

4.17 Centrelink's role in SSAT appeals is to provide the relevant documents to the Tribunal within the 28-day limit.¹⁰⁴ Centrelink is made aware of the decision, electronically, at the same time the SSAT provides a paper copy of the decision to the customer.¹⁰⁵

4.18 SSAT decisions that have been affirmed and decisions that have been changed are treated differently. Affirmed decisions confirm Centrelink's original decision, and Centrelink indicated that they are unlikely to contain new information. Consequently they are not scrutinised by the Legal Services Branch and are forwarded, for information, to the AROs whose decisions were appealed to the SSAT.

4.19 Changed decisions, however, contain information that must be scrutinised by the Legal Services Branch to:

- establish whether an appeal to the AAT is warranted; and
- identify issues that may be of interest to Centrelink or the policy departments because they affect program administration, service delivery, or the application of the current policy.

¹⁰⁴ The lodging of documents with the SSAT is prescribed in *Social Security (Administration) Act 1999 (Cth)*, s. 157(3).

¹⁰⁵ SSAT decisions are to be forwarded electronically to the Legal Services Branch within 24 hours of the decision. *Administrative Arrangements Agreement 2009–2011 Centrelink and the SSAT*, Schedule 5.

4.20 The decisions that Centrelink has scrutinised and identified as potential appeals, or as presenting issues of interest to Centrelink and the policy departments, are then forwarded to the policy departments' relevant legal services area. The policy departments in turn review the decisions and instruct Centrelink whether or not to lodge an appeal. These processes must be conducted within 28 days, which is the limit to lodge an appeal to the AAT.¹⁰⁶ Decisions for which Centrelink does not recommend an appeal are forwarded to the ODM for implementation.

AAT appeals and decisions

4.21 Appeals to the AAT can be lodged by customers or by Centrelink, on behalf of the Secretary of DEEWR or FaHCSIA. Appeals lodged by customers form the majority of AAT appeals (96 per cent).¹⁰⁷

4.22 Once an appeal to the AAT has been lodged, Centrelink's role is to:

- if relevant, lodge with the AAT, within 28 days, a request for a stay of the SSAT decision;¹⁰⁸
- prepare and lodge with the AAT, within 28 days, the documents relevant to the case, including a 'Statement of Reasons';¹⁰⁹ and
- prepare and participate in the preliminary hearings, conferences, mediation sessions, direction hearings and hearings.

4.23 For appeals lodged by customers, unless Centrelink considers that the cases present issues that the policy departments should be aware of, Centrelink manages the process without requesting advice from DEEWR or FaHCSIA, in accordance with the Litigation Principles and the departments' existing instructions. For appeals lodged by the Secretary, Centrelink is required to

¹⁰⁶ *Administrative Appeals Tribunal Act 1975 (Cth)*, s. 29(2).

¹⁰⁷ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 19. See also Chapter 5.

¹⁰⁸ The appellant (who can be Centrelink or the customer) can seek a stay of the SSAT decision, which means that the SSAT decision will be partially or totally suspended until the AAT has made its decision. The AAT can accept or reject the stay request. *Administrative Appeals Tribunal Act 1975 (Cth)*, s. 44A.

¹⁰⁹ The lodging of documents with the AAT is prescribed in *Administrative Appeals Tribunal Act 1975 (Cth)*, s. 37.

‘seek instructions from DEEWR/FaHCSIA on all substantive aspects of the appeal’.¹¹⁰

4.24 Centrelink reviews all AAT decisions (not only those decisions that have been changed), and develops a scrutiny document for those decisions that changed Centrelink’s original decision or present an issue that may affect program administration, service delivery, or the application of the current policy. The scrutinies are then referred to the relevant policy department¹¹¹, which makes the decision on whether to appeal the decision to the Federal Court.

Timeliness of the appeal process

4.25 The processes to review the decisions are framed within statutory requirements and internal targets. Table 4.1 presents Centrelink’s performance in 2009–10, in relation to these targets.

Table 4.1

Centrelink’s timeliness in conducting reviews, 2009–10

Activity	Type of requirement	Target	Centrelink’s performance in 2009–10
Internal reviews (ARO and/or ODM) are conducted within 28 days	Internal Publicly reported*	75%	89%
ARO prepares and lodges the documents with the SSAT within 28 days	Statutory (SSA Act) Publicly reported*	100%	100%
Centrelink lodges an appeal with the AAT within 28 days	Statutory (SSA Act) Not publicly reported^	100%	100%
Centrelink prepares and lodges the documents with the AAT within 28 days	Statutory (SSA Act) Publicly reported*	100%	96%
Centrelink lodges an appeal with the Federal Court within 28 days	Statutory (SSA Act) Not publicly reported^	100%	100%

Source: ANAO analysis.

Notes: * Centrelink, *Annual Report 2009–10*, p. 78.

^ Centrelink, written communication, 17 August 2010.

¹¹⁰ *Draft DEEWR/FaHCSIA Standing Operational Statements*, p. 2.

¹¹¹ DEEWR advised that the practice of sending AAT affirmed decisions (and not only the decisions that changed Centrelink’s original decision or presented a broader issue) to the policy departments was not generally or routinely applied at the time of the audit (August 2010), however Centrelink has informed the ANAO that it has taken steps to ensure that this occurs consistently.

4.26 Centrelink reports meeting its statutory requirements in a majority of cases. When, in four per cent of cases, the lodgement of documents with the AAT is not achieved within the statutory 28 days, Centrelink and the AAT indicated that, upon Centrelink's request, an extension of time could be negotiated.

Capture of broader implications

Monitoring and reporting

4.27 Centrelink, DEEWR and FaHCSIA have reporting and communication mechanisms, prescribed in the governance documents¹¹², that aim to support a consistent and accurate interpretation, understanding and application of the relevant legislation, policy and service delivery:

- Centrelink provides to DEEWR and FaHCSIA, separately and on a quarterly basis, reports containing statistics on all SSAT and AAT appeals in the previous quarter, including timeliness, analysis by payment type, jurisdiction, applicant and outcome, and information on previous quarters.
- Monthly reports are also provided to DEEWR on the status of Secretary appeals to the AAT and of all appeals to the Federal Court.
- Centrelink meets separately with DEEWR and FaHCSIA on a quarterly basis to discuss the information contained in the reports and any other issues arising from litigation activities.
- Both Legal Services Protocols make provision for prompt notification and resolution of any inconsistent interpretation or application of legislation and policy for which DEEWR and FaHCSIA have responsibility, and of any issue 'systemic or otherwise, which in the opinion of the relevant protocol owner is best resolved by working together'.¹¹³

¹¹² *DEEWR and Centrelink Legal Services Protocol*, 24 November 2009; *FaHCSIA and Centrelink Legal Services Protocol*, 24 November 2009, and *Draft DEEWR/FaHCSIA Standing Operational Statements*.

¹¹³ *DEEWR and Centrelink Legal Services Protocol*, 24 November 2009, ss. 5.12 and 5.13; *FaHCSIA and Centrelink Legal Services Protocol*, 24 November 2009, s. 5.2.

- An email communication protocol has been developed, with a single email address for all communications between Centrelink and DEEWR and FaHCSIA.

4.28 Within Centrelink, program areas have access to the database that collects information on SSAT and AAT cases, and are able to generate reports on appeal numbers and trends using a range of criteria including payment type, applicant and outcomes. The Legal Services Branch also provides program areas with quarterly reports sent to the policy departments and reports prepared on specific issues of interests.

4.29 Within DEEWR, SSAT and AAT decisions are examined during the fortnightly Social Security Litigation Meetings to identify decisions that DEEWR wishes to appeal and any impact on program and policy. Centrelink is invited to attend these meetings as an observer.

4.30 Within FaHCSIA, decisions that have been scrutinised and forwarded by Centrelink are referred to the relevant policy area on a case-by-case basis together with any potential reviews of these cases conducted by the FaHCSIA legal services area.

Scrutiny process

SSAT changed decisions and AAT decisions

4.31 One of the objectives pursued by Centrelink when conducting scrutinies of all changed SSAT decisions and all AAT decisions is to capture issues that may have broader implications, and inform the relevant policy department or Centrelink program area. Within the scrutiny process, the business coordinators' role is to identify strategic issues and relay them as required.

4.32 The processes developed by Centrelink, DEEWR and FaHCSIA to scrutinise changed SSAT decisions and all AAT decisions are thorough and have the capacity to identify issues that may have broader implications for the interpretation or application of legislation, policy or service delivery.

SSAT affirmed decisions

4.33 Decisions that have been affirmed by the SSAT are not scrutinised by Centrelink and are instead sent, for information, to the ARO who conducted

the initial review. These decisions represented 54 per cent of all SSAT decisions in 2009–10, or approximately 7750 decisions.¹¹⁴

4.34 AROs have an interest in SSAT decisions, which can be used as a source of feedback regarding the decisions they made. One of the ARO's responsibilities is to raise, via the business coordinator or Centrelink's National Helpdesk¹¹⁵, policy, legislative or service delivery issues that they identify as part of their work.¹¹⁶ During audit fieldwork, consultations with AROs indicated that SSAT decisions were generally reviewed, however it was at the discretion of the individual ARO.

4.35 Centrelink and DEEWR indicated that affirmed decisions are not scrutinised because they are unlikely to provide useful information beyond the fact that Centrelink's decision was the correct or preferable one in the particular circumstances of the case.¹¹⁷ FaHCSIA advised that the quarterly SSAT – Deputy Secretary meetings 'provide an opportunity for SSAT to raise concerns about systematic issues regarding FaHCSIA policy or legislation'.¹¹⁸

4.36 Centrelink's *Advocate Handbook* however, indicates that SSAT affirmed decisions should be examined for comments that need to be brought to the attention of the policy departments or other areas of Centrelink.¹¹⁹ Centrelink's *Statement of Commitment* also indicates that all SSAT decisions are scrutinised.¹²⁰

4.37 In 2005, Centrelink commissioned a review of its structures and processes relating to internal and external review mechanisms.¹²¹ The report made 23 recommendations, including that there should be 'scrutiny by AROs

¹¹⁴ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 15.

¹¹⁵ The National Helpdesk provides advice on the legislation and the policy.

¹¹⁶ Centrelink, *ARO Training Module – Facilitator's Guide*, pp. 18 and 29.

¹¹⁷ DEEWR advised that, in case of specific policy or legislative reviews, the Department examines the appeals that apply to the matter under review. This includes relevant affirmed decisions, which are identified, prospectively, by Centrelink, and communicated to DEEWR.

¹¹⁸ The SSAT is part of FaHCSIA's portfolio. These meetings are primarily designed to discuss operational issues relating to the FaHCSIA-SSAT relationship. FaHCSIA, written communication, 29 March 2010.

¹¹⁹ *Advocate's Handbook*, Centrelink, 24 September 2008, section on SSAT decisions. The Handbook is currently under review, but is still available from Centrelink's intranet.

¹²⁰ *Statement of Commitment*, June 2007, p. 21.

¹²¹ Centrelink, *Report into the current administrative review and debt collection functions in Centrelink* (Tongue Report), June 2005.

(or a central officer) of all SSAT decisions to determine any issues raised that are of normative importance'. The report also commented that:

... at present there appears to be emphases on searching for the problems in SSAT overturn decisions rather than emphasis in overall learning from all decisions. For example, an affirmed decision may contain information about a customer service issue.¹²²

4.38 SSAT offices consulted by the ANAO confirmed that some affirmed decisions may include comments or reasoning that should be considered by Centrelink or the policy departments, but they were unsure if these comments are captured or used. Some SSAT offices have developed local arrangements where issues of interests are flagged (either in an email or on the cover page of the decision), and these are then easily identified by the Legal Services Branch before they are forwarded to the relevant ARO. These arrangements, however, are localised and not universal. Consequently, important insights from SSAT decisions, such as if the decision is affirmed on a different legal basis or the SSAT determines a matter is outside its jurisdiction, may be missed.

4.39 One such example is a case recently highlighted in a report by the Commonwealth Ombudsman.¹²³ The report outlined a case where the SSAT had determined that it did not have jurisdiction to conduct a merits review. The report found that FaHCSIA and Centrelink 'did not recognise the significance of the SSAT's decision' and the need to address its wider application. Accordingly, the Ombudsman recommended that FaHCSIA, through the Standing Operational Statements, '...should continue to take all necessary steps to ensure that the implications of court and Tribunal decisions are identified quickly...'¹²⁴

4.40 Centrelink and the policy departments advised the ANAO that given the high volume of affirmed decisions and the low likelihood of critical issues in these decisions, a system to systematically scrutinise affirmed decisions has not been established.

4.41 There would be benefit in Centrelink, in consultation with the SSAT, developing a process whereby affirmed decisions that contain information that

¹²² *ibid.*, p. 41.

¹²³ Commonwealth Ombudsman, *FaHCSIA and Centrelink: Review Rights for Income Managed People in the Northern Territory*, Report 10/2010, August 2010.

¹²⁴ *ibid.*, p. 9.

may have broader implications are flagged. The insights from these decisions could be centrally recorded, analysed and communicated to the relevant policy departments and Centrelink program lines. Recognising that a cost may be involved, such a development would help Centrelink mitigate the risk that relevant information contained in SSAT affirmed decisions is missed.

Conclusion

4.42 The suite of administrative and legal arrangements between Centrelink and the two policy departments that support the management of appeals to the SSAT and AAT is extensive, integrated and current. There is a concerted effort to develop and adopt comparable arrangements across the three agencies, which reduces the risks of inefficiencies and inconsistencies that may occur in matters that involve cross-agency partnerships.

4.43 The current work to formalise the *Standing Operational Statements* is timely and has the potential to improve the common understanding of the policy departments' expectations among Centrelink's officers across Australia who work on appeal matters.

4.44 Centrelink, DEEWR and FaHCSIA have developed work processes and reporting mechanisms, which are supported by the documents governing the relationships between the agencies. Appeals are managed in a systematic manner in relation to:

- the scrutiny of SSAT and AAT decisions; and
- the lodgement of appeals and supporting documents to the SSAT, AAT and the Federal Court.¹²⁵

4.45 The review and scrutiny process developed by Centrelink when receiving SSAT changed decisions and AAT decisions allows for an analysis of the decisions. This assists Centrelink's and policy departments' capacity to identify the cases they wish to appeal. This process also allows Centrelink and the policy departments to capture issues arising from most SSAT decisions and all AAT decisions, which may have broader implications for the interpretation, understanding and application of the relevant legislation, policy and service delivery.

¹²⁵ The ANAO found timeliness issues relating to the implementation of the Tribunal decisions. See Chapter 5.

4.46 Centrelink, however, does not systematically scrutinise SSAT affirmed decisions. Although these decisions, confirming Centrelink's previous conclusion, are not as likely to contain critical information as decisions that the Tribunals have changed, they may still include important information, for instance when the SSAT has used a different legal basis to reach a similar conclusion. Therefore, to help capture potential learning or better practice from affirmed decisions, Centrelink could investigate developing a process with the SSAT to flag such decisions and subsequently capture and disseminate relevant information.

5. Centrelink's Management of the Implementation Process

This chapter examines Centrelink's processes to consider and action SSAT and AAT decisions. It also analyses Centrelink's timeliness in implementing a sample of Tribunal decisions from the period 1 July 2008 to 30 June 2010.

Introduction

5.1 The appeal process can be a lengthy period for customers waiting to hear about their eligibility to entitlements, and for whom Centrelink's payments may be the main or sole source of income. In 2009–10, appeals to the SSAT took an average of 7.2 weeks, from lodgement of appeal to decision.¹²⁶ Appeals to the AAT, especially those requiring a hearing, can take up to 18 months.¹²⁷ Even if customers have been able to access an alternative form of payment during the appeal process, some may have been in a situation of financial insecurity for several weeks or months while they await a decision and its subsequent implementation.

5.2 Concerns over the time taken to implement SSAT and AAT decisions have been expressed in the past. In 1999, the Commonwealth Ombudsman wrote to Centrelink's Chief Executive Officer about Centrelink's practice of not implementing AAT decisions until a decision on whether to appeal had been made. In 2007–08, the Ombudsman again identified Centrelink's delayed implementation of SSAT and AAT decisions as an issue, and suggested that Centrelink revisit its processes to ensure that the Tribunals' decisions were implemented in a timelier manner.¹²⁸

5.3 In November 2008, the same issue was drawn to the attention of the Joint Committee of Public Accounts and Audit and the ANAO by a Centrelink customer. In its response to the ANAO about this matter, Centrelink advised that a number of modifications to processes had been implemented which had

¹²⁶ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 24.

¹²⁷ This was the case for three per cent of all social security AAT applications in 2009–10. Administrative Appeals Tribunal, *Annual Report 2009–10*, AAT, Canberra, p. 26.

¹²⁸ Commonwealth Ombudsman, *Annual Report 2007–08*, Commonwealth Ombudsman, Canberra, 2008, pp. 69–70.

resulted in an improvement in the timeliness of implementing SSAT decisions.¹²⁹

5.4 The case study below illustrates some of the concerns that have been raised by customers waiting for the implementation of an SSAT or AAT decision.

Case Study

Examples of concerns expressed by customers waiting for their decision implementation

Example 1 – Financial hardship due to delays in implementation

‘On 4th January 2010 I had a hearing with the SSAT regarding my parenting payment which has been an ongoing issue since October 2009. I had a decision made in my favour on 11 January 2010. I have since made several phone calls to Centrelink regarding the updating of this information. I realise that Centrelink has 28 days to appeal this decision however I appealed the original decisions due to the fact that the parenting payment amount was causing financial hardship. I have since become in arrears with my rent and my home phone has been restricted. I would ask that my file be looked at and decided upon before the due date of 9 February so that I can pay my essential bills that I need to. As mentioned this has been going on since October 2009 and I have patiently followed all the processes however I am getting further behind with my bills and would appreciate any assistance that you can offer.’

Example 2 – Decision not implemented over a month after it was made

‘On 30 October 2009, a customer lodged a complaint about the fact that the SSAT decision, which was ruled in his favour, was yet to be implemented. The customer stated that Centrelink had informed him on 29 September 2009 that the decision was not going to be appealed by Centrelink, and that the decision should be implemented. However he was frustrated that this still had not occurred over a month later.’

Example 3 – Centrelink not able to advise on progress of refund

‘On 3 November 2008, a customer lodged a complaint with Centrelink about her SSAT appeal, which had decided that Centrelink was to refund the money related to the payment she was entitled to. The customer expressed her frustration with the fact that repayments were yet to be made. She stated that she was experiencing financial hardship and was suffering from a medical condition, which had deteriorated during the delay in refund. She also indicated that she could not understand why no-one in Centrelink could give her an answer on the refund progress.’

Source: Centrelink complaints database. Cases have been de-identified.

5.5 The ANAO reviewed Centrelink’s processes that are designed to underpin the implementation of SSAT and AAT decisions in a timely manner. To support this assessment, the ANAO analysed Centrelink’s performance in the implementation of 7521 SSAT and 1173 AAT decisions finalised over a 24-month period between 1 July 2008 and 30 June 2010.

¹²⁹ Centrelink advised that in late 2008 and early 2009, processes for implementation of SSAT and AAT decisions were reviewed. As a consequence, the need for timely implementation and updating of customer files was reinforced amongst ODMs and advocates.

SSAT and AAT decisions implementation processes

SSAT decisions

5.6 Once the SSAT has made a decision, the Tribunal has up to 14 days to give a written statement of the decision to each party.¹³⁰ In 2009–10 the SSAT produced a written statement within 14 days for 99.7 per cent of Centrelink appeal cases. On average, the SSAT provided its decisions in 8.6 days over the period.¹³¹ The decisions are then sent electronically to Centrelink within 24 hours of despatching a paper copy to the customer.¹³²

5.7 Within Centrelink, the decisions are sent to the Legal Services Branch. Generally, the only decisions that require implementation by Centrelink are those that are changed (set aside or varied) by the SSAT.¹³³ Prior to being implemented, changed decisions are scrutinised by the Legal Services Branch within 28 days, the time limit to appeal to the next level of review, the AAT.¹³⁴ The policy departments are also given the opportunity to examine the decisions during this period if Centrelink recommends an appeal.¹³⁵

5.8 The Legal Services Branch directs the implementation of the SSAT decisions that are not appealed to the ODMs or, in cases where the branch has difficulties locating the officers, to the officers' work areas. The AROs responsible for the initial review are copied in the electronic correspondence between the Legal Services Branch and the ODMs.

¹³⁰ *Social Security (Administration) Act 1999 (Cth)*, s. 177. The *Families, Housing, Community Services and Indigenous Affairs and other Legislation Amendment (Miscellaneous Measures) Act 2010 (Cth)* recently amended the SSA Act and the FAA Act to allow the SSAT to give oral reasons for decisions which affirm the Centrelink decision. See Introduction, para. 1.14.

¹³¹ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 24.

¹³² Centrelink and the Social Security Appeals Tribunal, *Administrative Arrangements Agreement 2009–2011*, Centrelink and the SSAT, Schedule 5, p. 11, February 2009.

¹³³ Decisions affirmed by the SSAT do not change the original decision made and implemented by Centrelink. In general, only decisions that have been changed (set aside or varied) by the Tribunal, require that customers' payments and/or entitlements be modified. However, in some cases, affirmed decisions require changes to customers' entitlements. For instance, Centrelink may need to cancel a 'Payment Pending Review' (payment to the customers while they were appealing a decision).

¹³⁴ *Administrative Appeals Tribunal Act 1975 (Cth)*, s. 29(2).

¹³⁵ See Chapter 4 for a more detailed presentation of the scrutiny process.

AAT decisions

5.9 Centrelink, upon the receipt of AAT decisions, implements processes that are mostly comparable to those for SSAT decisions. All decisions made by the AAT (including affirmed decisions) are processed by the Legal Services Branch. The decisions that changed the original Centrelink decision or present a broader issue are scrutinised and sent to the relevant policy department.¹³⁶ As with appeals of SSAT decisions to the AAT, appeals of AAT decisions to the Federal Court must be made within 28 days.¹³⁷

5.10 Once Centrelink and the relevant policy department have determined that an AAT decision is not going to be appealed, the Legal Services Branch sends the decision, together with instructions on how to implement the decision, to the ODMs or their work area, with a copy to the ARO responsible for the initial review.

Information provided to customers

5.11 Unless customers waiting for the implementation of their decisions take the initiative of contacting Centrelink, they are not informed of the internal process to scrutinise the decisions, or of the length of time that they are likely to wait until the decisions are implemented. Centrelink's website does not include information about this matter.

5.12 The ANAO suggests that Centrelink, in consultation with the policy departments, investigate options to provide customers with information on Centrelink's timeframe and key activities to implement or appeal SSAT and AAT decisions. This could be done either at a general level, by including information on Centrelink's website and in the brochures about the appeal process; or at an individual level, by sending a letter to these customers who have had a decision made by the SSAT or the AAT and are awaiting implementation.

¹³⁶ As already mentioned in footnote 111, DEEWR advised that the practice of sending AAT affirmed decisions (and not only the decisions that changed Centrelink's original decision or presented a broader issue) to the policy departments was not generally or routinely applied at the time of the audit (August 2010), however Centrelink has informed the ANAO that it has taken steps to ensure that this occurs consistently.

¹³⁷ *Administrative Appeals Tribunal Act 1975 (Cth)*, s. 44(2A).

Timeliness of implementing decisions of the Tribunals

5.13 In order to assess Centrelink's performance in actioning Tribunal decisions, the ANAO analysed a sample of 7521 changed SSAT decisions and 1173 AAT decisions given between 1 July 2008 and 30 June 2010, and examined the time taken by Centrelink to implement these decisions.¹³⁸

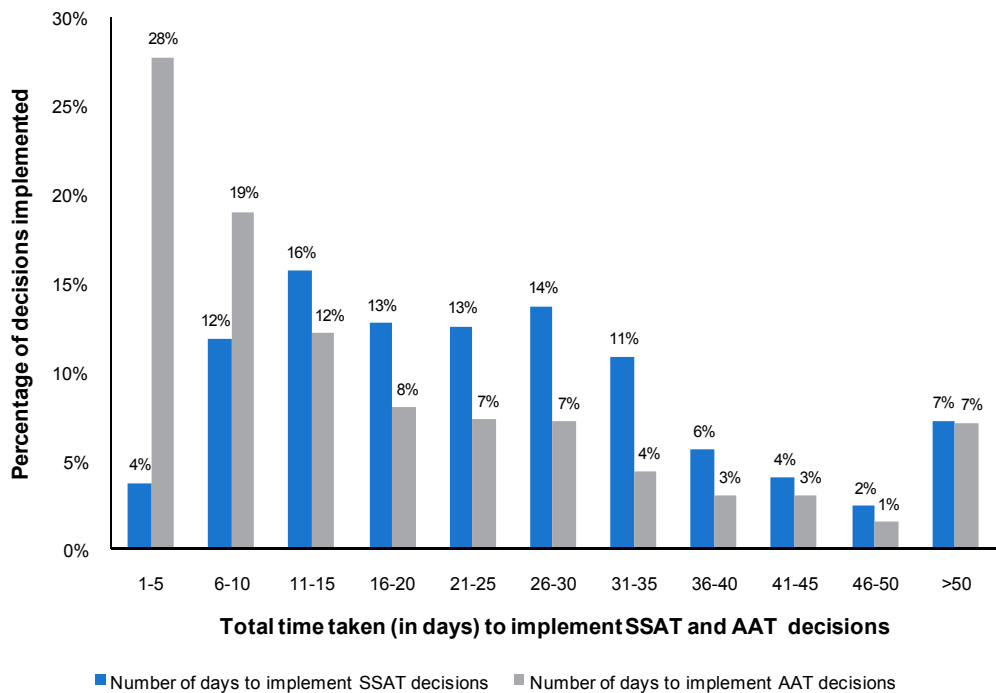
Overall time taken to implement SSAT and AAT decisions

5.14 Figure 5.1 outlines the number of days taken by Centrelink to implement SSAT and AAT decisions, from the day these decisions were received by Centrelink. On average, Centrelink took 26.6 days to implement SSAT decisions, and 20.7 days to implement AAT decisions. Thirty per cent of SSAT customers and 18 per cent of AAT customers waited more than 30 days to have their decision implemented. Seven per cent of both SSAT and AAT decisions were not implemented 50 days after the decision had been given.

¹³⁸ The ANAO extracted a dataset of 30 540 SSAT and AAT cases that received a decision during the period 1 July 2008 to 30 June 2010. The analysis presented in this chapter relates to a sub-group of these cases that required implementation. These cases were: all SSAT varied or set aside decisions, and a proportion of AAT decisions (Centrelink decisions that were affirmed by the SSAT and changed by the AAT and Centrelink decisions that were changed by the SSAT and affirmed by the AAT). Appendix 2 provides details on the methodology used to select these cases.

Figure 5.1

Total time taken (in days) to implement SSAT and AAT decisions



Source: ANAO analysis.
Notes: Total may not amount to 100 per cent due to rounding.

Variation in timeliness performance between July 2008 and June 2010

5.15 In order to assess whether Centrelink’s performance has varied within the 24-month interval between 1 July 2008 and 30 June 2010, the ANAO performed an analysis for each six-month period during this time. Table 5.1 compares the average number of days taken to implement SSAT and AAT decisions for the four periods.

Table 5.1

Time taken (days) to implement SSAT and AAT decisions, 1 July 2008–30 June 2010, by six-monthly periods

Period	Average number of days to implement:	
	SSAT Decisions	AAT Decisions
1 July–31 December 2008	28 days	31.8 days
1 January–30 June 2009	28.8 days	24.6 days
1 July–31 December 2009	25.5 days	15.9 days
1 January–30 June 2010	22.7 days	14.1 days
Average July 2008–June 2010	26.6 days	20.7 days

Source: ANAO analysis.

5.16 Overall, Centrelink has improved its performance in implementing Tribunal decisions during the last two years. There was an improvement in the average time taken to implement SSAT decisions, from 28 days in the July to December 2008 period to 22.7 days in the January to June 2010 period. For AAT decisions, there was a corresponding but greater improvement during the same period with the average time decreasing from 31 days to 14 days.¹³⁹

Timeliness of implementing SSAT decisions by payment types and regional locations

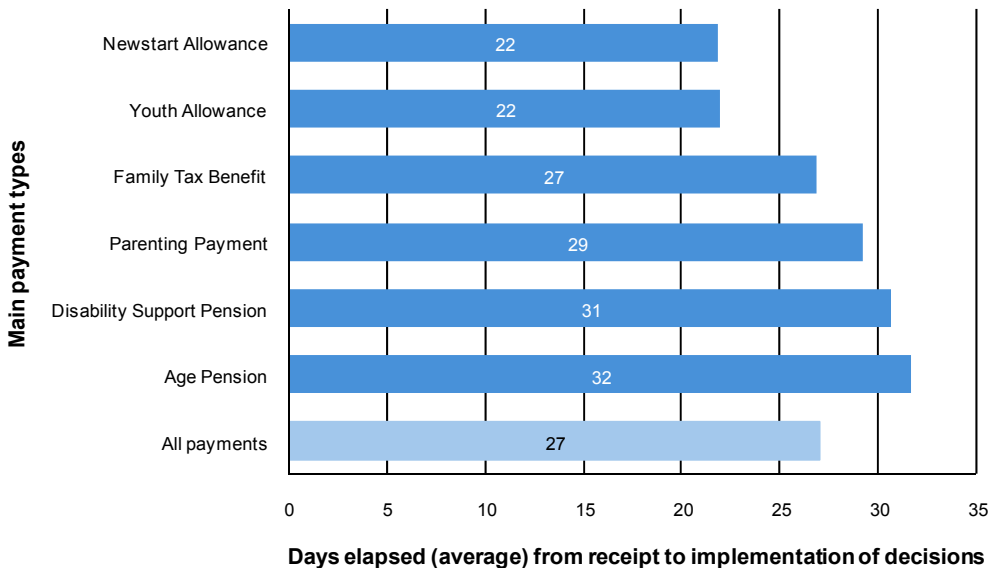
5.17 The ANAO examined whether factors such as payment type or the regional location of the ODM impacted on the time taken to implement decisions.¹⁴⁰

¹³⁹ The analysis presented in Table 5.1 is based on decisions that had been implemented. As established in paragraphs 5.21 and 5.22, a number of decisions were unimplemented at the date of data extraction (10 August 2010). Once implemented, these decisions will have an unknown impact on the observed timeliness performance, and could affect any trend seen in the data.

¹⁴⁰ This analysis was conducted on SSAT decisions only, as the number of AAT decisions was too small to allow for a reliable analysis by regional location and payment type.

Figure 5.2

Days elapsed (average) from receipt to implementation of decisions, by main payment types



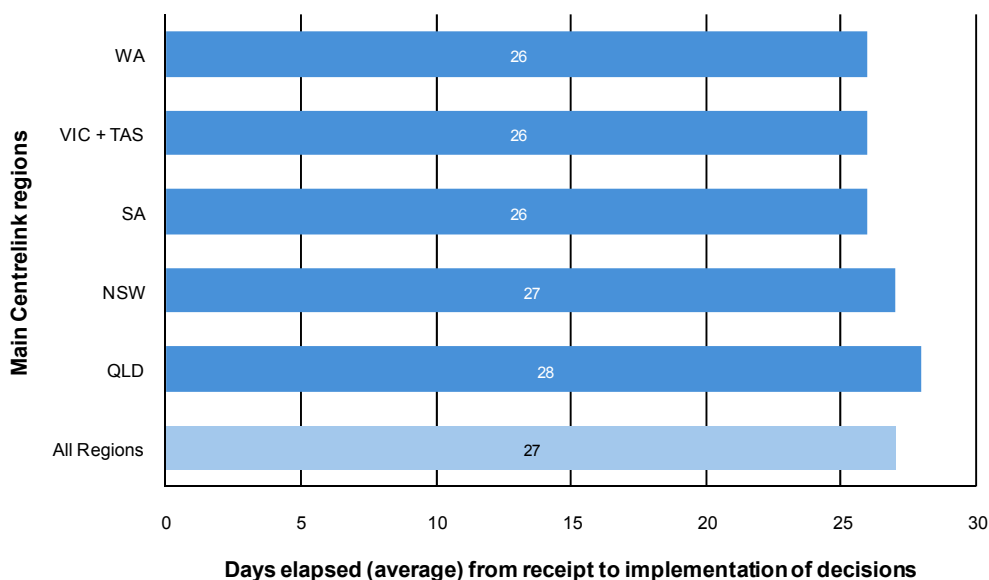
Source: ANAO analysis.

5.18 Of the three payment types that make up the majority of appeals to the SSAT, Disability Support Pension and Age Pension implementation times were, on average, longer than Newstart Allowance (Figure 5.2). Centrelink advised that the differences between average implementation times for different payment types may be explained by the need to request additional documents from customers, such as medical qualification for Disability Support Pension or financial statements for Age Pension, and by the necessity to conduct further assessments of complex situations, for instance when the determination of age pensions must take into account investments and corporate structures.

5.19 Figure 5.3 shows location had very little impact on the time taken to implement decisions. During the period, the average time taken to implement an SSAT decision varied between 26 and 29 days across Centrelink’s five main regions.

Figure 5.3

Days elapsed (average) from receipt to implementation of decisions, by main Centrelink regions



Source: ANAO analysis.

Data reliability

5.20 A number of cases, estimated at approximately 5550 SSAT cases and 2200 AAT cases, had to be excluded from the dataset used by the ANAO to assess implementation timeliness because:

- the database did not identify them as requiring implementation, although they actually did require action and had been implemented; or
- illogical or missing data entries suggested some coding errors.

5.21 In particular, a total of 383 SSAT decisions (five per cent of SSAT decisions requiring implementation) and 375 AAT decisions (32 per cent of AAT decisions requiring implementation) were recorded in the Centrelink system as unimplemented at the date of data extraction (10 August 2010). Further analysis of these cases found that the time elapsed was approximately evenly spread across the periods 300 days or less, 301 to 600 days and 601 days or more.

5.22 Centrelink reviewed a sample of the cases that had been excluded from the data sample and advised the ANAO that:

- in the majority of instances, the cases, although incorrectly or insufficiently coded in the database, had received appropriate treatment. In particular, over 75 per cent of the decisions recorded as not implemented had, in fact, been implemented; and
- the excluded cases were unlikely to present significantly different characteristics, in terms of implementation timeliness, from the ANAO selected sample.

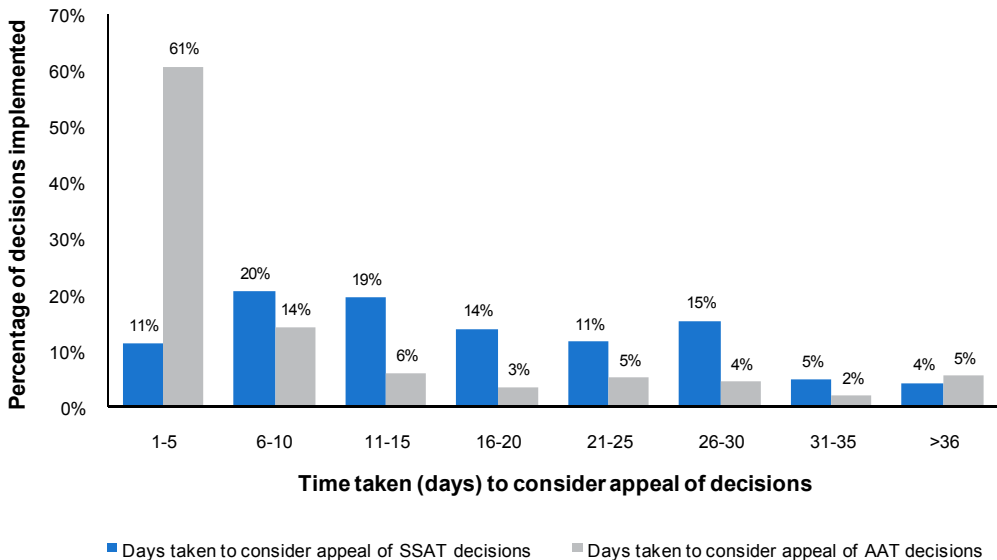
5.23 By reviewing and implementing measures that improve the reliability of information drawn from the data recording system, Centrelink would enhance its ability to collect performance information on the management of SSAT and AAT decisions.

Impact of processes on the time taken to implement a decision

5.24 Between the day Centrelink receives an SSAT or AAT decision and the day the decision is implemented, a number of processes are conducted. These include Centrelink's scrutiny process and consultation with policy departments to determine whether to appeal the decision, and the activities conducted by the ODM to implement the decision once it has established that further appeal will not be undertaken. The ANAO examined the impact of these processes on the time taken to implement a decision.

Process of appeal consideration

5.25 Figure 5.4 shows that the time taken to consider further appeal varies considerably between SSAT and AAT decisions. The majority (61 per cent) of AAT decisions were sent for implementation (that is a decision not to appeal was made), within one to five days. Whereas decisions on whether to appeal SSAT decisions were more evenly spread over time, with 50 per cent of decisions sent for implementation by the end of 15 days. Despite the 28-day statutory time limit, after 30 days, nine per cent of SSAT decisions and seven per cent of AAT decisions had no action recorded against them (that is, an indication that the decision will be either appealed or sent for implementation).

Figure 5.4**Time taken (in days) to consider SSAT and AAT decisions for appeal**

Source: ANAO Analysis.

Notes: Total may not amount to 100 per cent due to rounding.

5.26 Timely implementation of decisions is a principle supported by legislation, which imposes time limits at key stages of the appeal process. The SSA Act states that ‘a decision of the SSAT comes into operation immediately on the giving of the decision’.¹⁴¹ The AAT Act reaffirms this statement, by indicating that even in cases where a decision made by another Tribunal is being appealed to the AAT, that decision is current and should be implemented, unless a stay¹⁴² has been sought by the appellant and granted by the AAT:

¹⁴¹ *Social Security (Administration) Act 1999 (Cth)*, s.152(1). Subsection 152(1) is subject to the specifications described in subsections 152(2) to (6). These subsections outline the date of effect of the SSAT decisions, the SSAT’s powers to change the date of operation, and the types of decisions to which section 152 does not apply.

¹⁴² Staying a decision means that the decision that is being reviewed will be partially or totally suspended by the tribunal reviewing it until this tribunal has made its decision. The stay request can be made by Centrelink or the customer, and can be accepted or rejected by the tribunal.

... the making of an application to the Tribunal for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.¹⁴³

5.27 Centrelink, as part of their commitment to excellence in service delivery, emphasises the importance of timeliness in the process of review and appeals:

We will work with customers to resolve their complaints as quickly as possible.¹⁴⁴

We will ... correct any mistake openly, honestly and quickly.¹⁴⁵

5.28 Centrelink advised that the implementation of Tribunal decisions is generally delayed while Centrelink and the policy departments consider whether to further appeal the decisions. Implementing a decision in favour of a customer often means that Centrelink must reinstate on-going payments and pay arrears (relating either to a debt incorrectly recovered from the customer or to back-payments owed to the customer). If Centrelink was to immediately implement such a decision, and then successfully appeal the decision to the next level (AAT or Federal Court), the customer would have to reimburse all monies received while the appeal process was taking place.

5.29 Consequently it is, from Centrelink's perspective, preferable to withhold the implementation until the process of consideration for further appeal is finalised, rather than be exposed to the risk of paying arrears that may not be recovered easily or without adverse consequences for the customers.

5.30 In 1999, FaHCSIA sought legal advice on the question of not making payments ordered by the AAT until a decision had been made on whether or not to appeal the AAT decision to the Federal Court. During the audit, DEEWR and FaHCSIA obtained updated advice in relation to the delayed implementation of SSAT and AAT decisions. The 2010 advice concluded that 'it is defensible, on public law grounds, for implementation of a decision of the

¹⁴³ *Administrative Appeals Tribunal Act 1975 (Cth)*, s. 41.

¹⁴⁴ *Centrelink Statement of Commitment*, June 2007, p. 3 and p. 7.

¹⁴⁵ *Centrelink Customer Service Charter*, (no date) p. 7.

SSAT or AAT to be delayed while DEEWR and FaHCSIA are genuinely considering appealing the decision...' ¹⁴⁶

5.31 Both advices also suggested, in order to limit any negative impact on customers with limited financial resources, adopting a practical solution. This involved immediately implementing the part of a decision relating to ongoing payments, but delaying implementation of payment of arrears until the departments had decided whether or not to appeal. This solution was the object of a standing instruction provided to Centrelink by DEEWR in February 2007.¹⁴⁷ This instruction, however, was to be implemented only in cases where 'a customer presses for immediate implementation', which only the most proactive customers do.

5.32 Centrelink appeals only a very small proportion of SSAT decisions to the AAT, and an even smaller proportion of AAT cases to the Federal Court. In 2009–10, the SSAT changed approximately 3800 decisions.¹⁴⁸ Of these, Centrelink appealed 79 decisions to the AAT, or two per cent.¹⁴⁹ In the same period, the AAT made 539 decisions that could be appealed.¹⁵⁰ Of these, Centrelink appealed one decision to the Federal Court, or 0.2 per cent.¹⁵¹

5.33 Consequently, while from Centrelink's perspective the approach adopted provides time to consider each case and determine whether to appeal a decision, it also has the potential to adversely affect the majority of customers who have had a decision made in their favour by the Tribunals. Given the majority of SSAT and AAT decisions will not be appealed, greater emphasis on the early identification of decisions with characteristics which may lead to them being considered for further appeal, would allow the remaining majority

¹⁴⁶ *Social Security (Administration) Act 1999 (Cth)*, ss.152 and 188; *Administrative Appeals Tribunal Act 1975 (Cth)*, ss. 41, 43(6) and 44(A); *Implementing Tribunal Decisions*, Australian Government Solicitor, 28 July 2010 (legal advice sought by DEEWR and FaHCSIA).

¹⁴⁷ DEEWR, *Stay Order Standing Instructions*, 9 February 2007, Centrelink internal email, 22 November 2006.

¹⁴⁸ In 2009–10, the SSAT changed 26.5 per cent of the decisions reviewed (14 226 decisions). Social Security Appeals Tribunal, *Annual Report 2009–10*, p. 15.

¹⁴⁹ Centrelink, *Annual Report 2009–10*, Centrelink, Canberra, 2010, p. 77.

¹⁵⁰ These are the decisions that were finalised with a hearing (Centrelink cannot appeal a decision that was finalised without a hearing). AAT *Annual Report 2009–10*, AAT, Canberra, p. 135.

¹⁵¹ Social Security Appeals Tribunal, *Annual Report 2009–10*, SSAT, Canberra, 2010, p. 20.

of SSAT and AAT decisions to be progressed to the implementation phase in a timelier manner, and minimise the financial impact on customers.

5.34 In considering whether to appeal and when to implement a Tribunal decision, there are a range of issues for Centrelink and the policy departments to assess, including the facts of the individual case and the financial circumstances of the customer. However, the variability in the time taken to determine whether to appeal (as discussed in paragraph 5.25), combined with the fact that only a minority of cases will ultimately be appealed, indicates that the appeal consideration process could be streamlined.

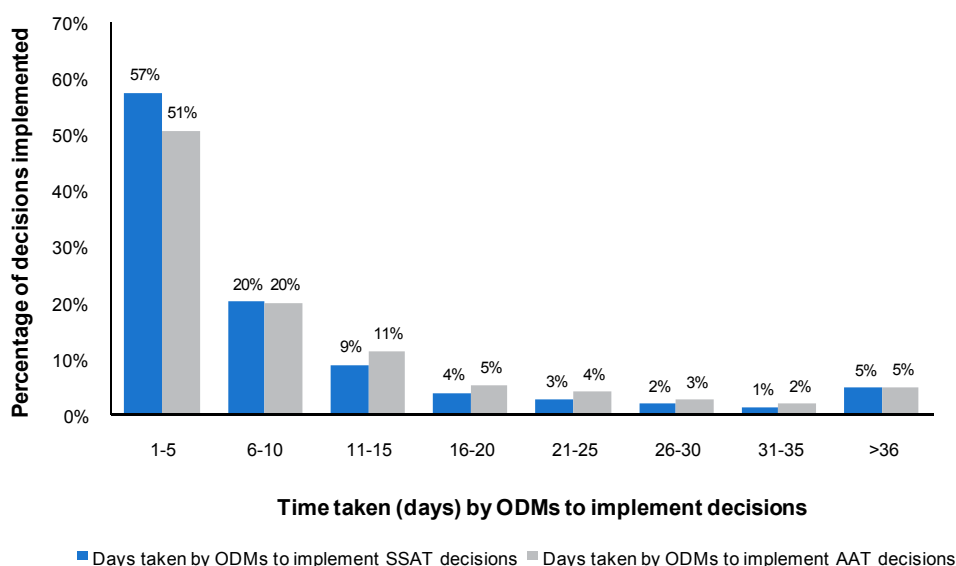
5.35 To assist with achieving a balance between the risk of generating unnecessary debts for the customer and providing for the timely implementation of the majority of decisions, Centrelink, in consultation with DEEWR and FaHCSIA, could take steps to improve the appeal consideration process, including:

- ensuring operational practices allow for a consistent and timely approach to determining appeal decisions for all cases; and
- undertaking work to identify early, those types of cases which are more likely to be appealed, and considering the use, where appropriate, of the practical solution outlined in paragraph 5.31.

Implementation of decisions by ODMs

5.36 Once the position has been reached not to appeal a decision it is passed to the ODM for implementation. The SSAT or AAT decisions not appealed are sent electronically to the ODMs whose role is to access the customer files and implement the decisions. ODMs do not have a set timeframe to implement the decisions.

5.37 Figure 5.5 shows that ODMs implement 57 per cent of SSAT decisions and 51 per cent of AAT decisions within five days of receiving the decision. However, a significant proportion of decisions (20 per cent for both the SSAT and the AAT) stay with the ODMs for six to ten days before being implemented. Twenty-three per cent of SSAT decisions and 30 per cent of AAT decisions remain unimplemented after ten days.

Figure 5.5**Time taken (in days) by ODMs to implement SSAT and AAT decisions**

Source: ANAO analysis.

Notes: Total may not amount to 100 per cent due to rounding.

5.38 Centrelink advised that the implementation of some decisions requires complex calculations or additional information to be provided by customers or third parties (for instance a valuation office or a medical practitioner), which may delay implementation. Centrelink also advised that the AROs who conducted the initial decision review are copied in the exchange between the Legal Services Branch and the ODMs, and they have responsibility for running and monitoring checks on SSAT and AAT cases that have not been implemented after 35 days without specific reasons. This timeframe includes the 28 days that are used to consider whether Centrelink will appeal the decision.¹⁵²

5.39 As part of ANAO consultations, AROs indicated that they are not systematically copied in on the exchange between the Legal Services Branch and the ODMs. Further, the monitoring of the ODM implementation is conducted inconsistently across Centrelink's business lines: in some areas, the ODM's manager runs timeliness reports to monitor compliance; in others a

¹⁵² Centrelink's ARO Performance Agreement 2009–10, p. 8.

specific ARO was responsible for this task on behalf of a group of AROs (a 'cluster'); and in others, the responsibility for checking implementation rested with the Legal Services Branch.

5.40 Centrelink advised that in April 2010, AROs were informed that they do not have responsibility for monitoring the implementation of SSAT and AAT decisions—this responsibility now rests with the Legal Services Branch.¹⁵³ This change in responsibility allocations has the potential to reduce the inconsistency of the ODM checking processes. Nevertheless, the absence of a clear time standard for implementation at the ODM level generates a risk that some of the decisions that are unimplemented after five days are not 'complex' and could have been implemented without delay.

Conclusion

5.41 The existing arrangements supporting the implementation of SSAT and AAT decisions have been developed to enable Centrelink, DEEWR and FaHCSIA to have assurance that the decisions they may want to appeal are identified and analysed. Consequently, a majority of decisions are not implemented for a number of weeks. This practice generates delays that have an impact on Centrelink's customers, some of which are among the most vulnerable in the community.

5.42 For the period 1 July 2008 to 30 June 2010, on average, Centrelink took 26.6 days to implement SSAT decisions, and 20.7 days to implement AAT decisions. During this period there has been an improvement in the average time taken to implement SSAT decisions and, more markedly, AAT decisions. However, 30 per cent of SSAT customers and 18 per cent of AAT customers waited more than 30 days to have their decision implemented. Seven per cent of both SSAT and AAT decisions were not implemented 50 days after the decision had been given. During this time, Centrelink does not inform customers on the status of their case, unless the customer initiates contact.

5.43 The time taken to implement a decision can be divided into two parts: consideration of whether to appeal a decision to the next stage in the process (Centrelink has 28 days from a decision to lodge an appeal to the next level of

¹⁵³ Centrelink advised that this responsibility had been removed as early as late 2008. However, this message had not been communicated clearly or formally at the time of the audit consultations, and implementation monitoring was still included as an ARO responsibility in their 2009–10 performance agreement.

review); and a Centrelink officer, the ODM, giving effect to decisions in those cases where an appeal is not pursued.

5.44 Centrelink, on behalf of the policy departments, appeals only a minority of SSAT and AAT decisions: in 2009–10, two per cent of SSAT and 0.2 per cent of AAT decisions. Consequently, the appeal consideration process focuses on a minority of cases and can negatively impact on the majority of customers who must wait several weeks before decisions that were made in their favour are implemented. Given the majority of SSAT and AAT decisions will not be appealed, greater emphasis on the early identification of decisions with characteristics which may lead to them being considered for further appeal, would allow the remaining majority of SSAT and AAT decisions to be progressed to the implementation phase in a timelier manner, and minimise the financial impact on customers.

5.45 Original Decision Makers do not have a set timeframe to implement Tribunal decisions. Fifty-seven per cent of SSAT decisions and 51 per cent of AAT decisions were implemented within five days of receiving the decision. However, a significant proportion of decisions, 23 per cent of SSAT decisions and 30 per cent of AAT decisions, remained unimplemented after ten days. In implementing a decision some cases are more complex than others and this can impact on the time taken to complete the process. While Centrelink needs to take account of the circumstances and information required to implement a Tribunal decision, the absence of a clear time standard creates a risk that some of the decisions take a longer period of time to implement, with adverse financial consequences for the customer.

Recommendation No.3

5.46 To reduce the time taken to implement SSAT and AAT decisions, the ANAO recommends that Centrelink, in consultation with DEEWR and FaHCSIA:

- undertake analysis to allow the earlier identification of those types of SSAT and AAT decisions that are more likely to be considered for further appeal, with a view to improving the implementation timeliness for the majority of decisions; and
- establish a time standard for implementing Tribunal decisions and monitor performance against this standard.

Centrelink response

5.47 Agreed.

DEEWR response

5.48 Agreed.

DEEWR will work with Centrelink and FaHCSIA to undertake the recommended analysis, however the department notes that the individual nature of each case may make it difficult to identify early those types of cases which are more likely to be appealed.

FaHCSIA response

5.49 Agreed.

Review and appeal data is currently provided by Centrelink to FaHCSIA under a Bilateral Management Agreement on a quarterly basis. FaHCSIA will collaborate with Centrelink and DEEWR to identify characteristics of SSAT and AAT cases which may trigger a further appeal.

For those decisions that are more likely to be appealed, FaHCSIA will provide Centrelink with instructions on whether to appeal the matter. FaHCSIA is in the process of revising its Standing Operational Statements which set out the arrangement between FaHCSIA and Centrelink with regards to review and appeals. Changes will be finalised by the end of 2010 and will provide a more definitive timeframe for information exchanges between the two agencies. Performance against these timeframes will be monitored.



Steve Chapman
Acting Auditor-General

Canberra ACT
25 November 2010

Appendices

Appendix 1: DEEWR response to the audit

The Department of Education, Employment and Workplace Relations (DEEWR) appreciates the opportunity to participate in the performance audit of Centrelink's Role in the Process of Appeal to the Social Security Appeals Tribunal (SSAT) and to the Administrative Appeals Tribunal (AAT).

DEEWR welcomes the ANAO's overall conclusion that Centrelink has established a framework for managing its role in the review and appeal process which supports Centrelink to meet external requirements and achieve organisational goals. In addition, these arrangements have helped facilitate an improvement in the time taken to implement the Tribunal's decisions. The department notes that the ANAO has identified areas where Centrelink could improve its practices so as to better meet the needs of stakeholders.

The department notes that most of the recommendations concern service delivery matters. The recommendations aim to improve the clarity and relevance of information provided by Centrelink to stakeholders; and the timeliness of Centrelink's implementation of the Tribunals' decisions. The department will work with Centrelink, as appropriate, to implement the recommendations.

DEEWR accepts all of the ANAO's recommendations and notes those directed to other agencies, and is of the view that these will strengthen procedures in relation to Centrelink's role in the process of appeal to the SSAT and to the AAT.

Appendix 2: Methodology for selecting the data set used to assess the timeframe for implementing SSAT and AAT decisions

In order to assess the timeliness of Centrelink's implementation of SSAT and AAT decisions, the ANAO used a data set of SSAT and AAT appeal cases to determine the time elapsed between key steps of the decision implementation process and whether this time varied according to payment types or the locations of the responsible Centrelink offices. Four key steps led to the selection of the final sample.

1. The ANAO extracted, with the help of Centrelink, an initial data set of 30 540 appeal cases from Centrelink's database, which comprised all appeal cases that Centrelink considered as 'finalised' (that is which had been sent to an ODM for implementation or for which an appeal had been lodged to the Federal Court) during the period July 2008–June 2010.
2. The ANAO selected, from these cases, those that had a SSAT or AAT lodgement date and a decision date after 1 July 2008. This resulted in:
 - 28 207 SSAT cases; and
 - 5254 AAT cases.¹⁵⁴
3. Not all SSAT and AAT cases require implementation. For instance, cases that have been affirmed by the SSAT and subsequently by the AAT, do not generally require implementation as Centrelink's decision remains the same. In order to measure Centrelink's performance in relation to implementation timeliness, the ANAO selected only cases which could be identified by their categorisation as requiring implementation:
 - 8008 SSAT cases categorised by Centrelink as 'varied' or 'set aside' cases; and
 - 1602 AAT cases categorised by Centrelink as 'consent – remitted', 'consent – set aside', 'consent – varied', 'set aside and

¹⁵⁴ The sum of these two numbers is higher than the total number of cases because cases with an AAT decision date had been, in most cases, previously appealed to the SSAT, and consequently also had a SSAT decision date.

substituted', 'set aside and remitted' or 'varied'; and decisions which were 'varied' or 'set aside' by SSAT and 'affirmed' by AAT.

4. Centrelink has two main processes leading up to the implementation of decisions:

- the time taken to consider whether or not to appeal the decision; and
- the time taken by ODMs to conduct the operations necessary to implement the decision.

In order to measure Centrelink's timeliness performance for each of these two processes, the sample was further narrowed to cases with:

- a date of forwarding to an ODM office;
- an implementation date; and
- a logical sequence between these two dates.

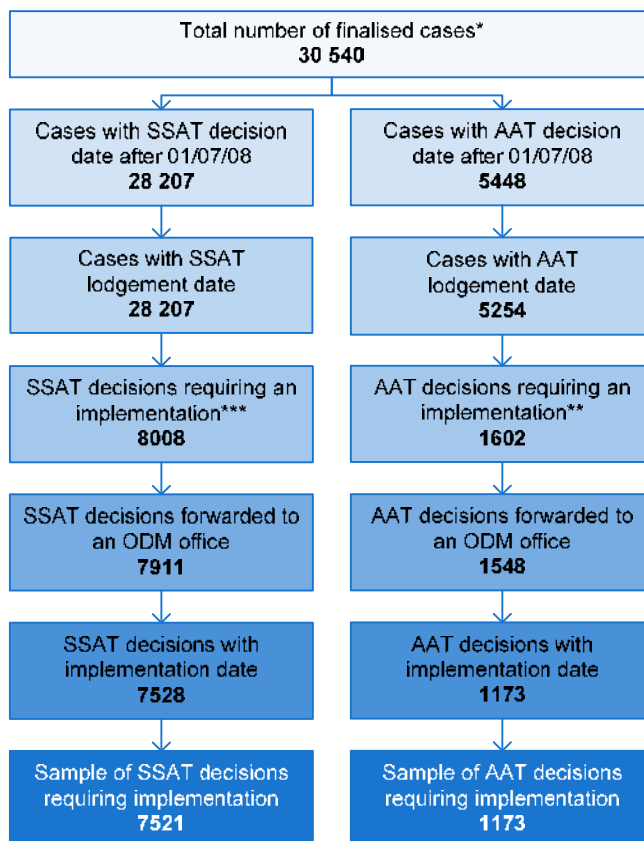
This last selection resulted in a final sample of:

- 7521 SSAT decisions; and
- 1173 AAT decisions.

Figure A 1 illustrates the sample selection process.

Figure A 1

Sampling steps



Source: ANAO analysis.

Notes: * 'Finalised cases' are: SSAT decisions that have been forwarded to an ODM office for implementation; OR AAT decisions that have been forwarded to an ODM office for implementation or for which an appeal has been lodged with the Federal Court.

** 'AAT decisions requiring implementation' are: decisions with a field content 'consent – remitted', 'consent - set aside', 'consent – varied', 'set aside & substituted', 'set aside & remitted' or 'varied'; and decisions which were 'varied' or 'set aside' by SSAT and 'affirmed' by AAT.

*** 'SSAT decisions requiring implementation' are: decisions with a field content 'varied' or 'set aside'.

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