

## Appealing Decisions - Centrelink

This fact sheet provides general information about appealing Centrelink decisions. There are some different rules about appealing decisions made by the Family Assistance Office (FAO) in regard to Family Tax Benefit (FTB) and Child Care Payments. For information about appealing FAO decisions see the factsheets - **Appealing Decisions –Family Tax Benefit Payments** and **Appealing Decisions – Child Care Benefit Payments**.

Social Security law can be extremely complex and Centrelink staff can sometimes make incorrect decisions. You have the right to appeal most Centrelink decisions if you think they are wrong using the Centrelink appeals process.

The first stage of the appeal process is to request a review by a Centrelink Authorised Review Officer (ARO) who is a senior Centrelink officer with experience in reviewing decisions and has the power to change them.

If you are unsuccessful at the ARO level you have further appeal rights to the Administrative Appeals Tribunal -Social Services Child Support (SSCS) Division (Tier 1 of the AAT) which is an independent Tribunal of review outside Centrelink.

If you do not agree with the Tier 1 decision there is a further right to review by the General Division (Tier 2) of the Administrative Appeals Tribunal.

Appealing Centrelink decisions is free at all stages of the appeal process up to and including both divisions of the AAT.

**Warning: In some circumstances there can be a risk that you could get a less favourable outcome if the original decision is looked at again at any stage of the appeal process. For example, if you are appealing a debt there is a risk that the amount of the debt could increase if there is a finding that it was incorrectly calculated in the first place.** You should get advice from a Welfare Rights Centre about your matter before lodging an appeal. To find your closest Welfare Rights Centre go to [www.welfare-rights.org.au](http://www.welfare-rights.org.au).

### When to request a review?

You can appeal a Centrelink decision to an Authorised Review Officer (ARO) at any time, but there are rules about when a decision in your favour will take effect.

If you request a review **more than 13 weeks after you were given notice of the decision** and your appeal is successful you can only be paid arrears from the day you requested the review.

If you are seeking review of a decision about:

- the start date of your payment;

- a reduction of your rate of payment;
- cancellation or suspension of your payment; or
- rejection of your claim for a payment

you must request a review **within 13 weeks of the date you were given notice of the decision** to be paid arrears from the date of the original decision if your appeal is successful.

### **There is no time limit to appeal Centrelink debts to an ARO.**

The same 13 week rules apply to an appeal from a decision by a Centrelink ARO to Tier 1 of the AAT for arrears if your appeal is successful.

### **Please Note**

If you want to appeal any AAT Tier 1 decision you must lodge your appeal in the General Division (Tier 2) within **28 days** of receiving the Tier 1 decision. This applies to all Tier 1 decisions including those in relation to debts. There are only limited circumstances when Tier 2 of the AAT may grant an extension of time to lodge an appeal with them.

The attached flow chart shows the different stages of appeal and relevant time limits.

## **Payment Pending Review**

If you lodge an appeal against the cancellation or reduction of your payment, Centrelink may agree to continue your payment at the previous rate until the review is finalised. This is called “payment pending review”. You should ask for this when you request an appeal to an ARO. Grant of payment pending review is a discretionary decision only available in certain circumstances. You can also ask Centrelink for payment pending review if you lodge an appeal against an ARO decision at Tier 1 of the AAT.

There is no provision for payment pending review after a decision has been made at Tier 1 of the AAT.

## **Internal Review**

### **Authorised Review Officer (ARO)**

You do not have to use any special words when asking for a review by an ARO, as long as you make it clear that you disagree with the decision.

You can lodge your appeal by phone or in writing. If you lodge your appeal by phone you should keep a record of the date and time you spoke to the call centre staff and ask for a receipt number for that call.

Don't forget that unless the decision is about a debt you should lodge your request for review within 13 weeks of the date you were given notice of the decision (see **When to request a review** above).

If you have no income and your appeal is about being paid a Centrelink payment, you should ask for your appeal to be dealt with urgently, which should mean you hear from the ARO in 7 to 10 days.

When you appeal to an ARO, Centrelink will usually first refer your matter to another Centrelink officer called a Subject Matter Expert (SME). The SME must either make a decision completely in your favour or pass your matter on to an ARO.

The SME or ARO may call you to ask if you have more information, or to discuss the decision with you.

If you want to give Centrelink more information about your circumstances, you can take any documents to a Centrelink office and ask them to take a copy for the ARO.

The ARO will send you a written decision which should include their findings of fact, the rules they applied and the reasons for their decision.

If you do not agree with the ARO decision you can seek review at the AAT.

If you have had a partial win at the ARO stage you should seek advice from a Welfare Rights Centre before lodging at the AAT. The AAT could find that the ARO was wrong to change that part of the decision in your favour and so you could end up worse off.

## **External Review**

### **Administrative Appeals Tribunal (AAT) Social Services Child Support (SSCS) Division Tier 1 Review**

You can lodge your appeal at Tier 1 of the AAT by using their application form, writing a brief letter saying you want to appeal a Centrelink decision, or phoning them on 1800 228 333. You can also apply online at: [www.aat.gov.au](http://www.aat.gov.au)

The AAT can only look at decisions that have been reviewed by a Centrelink ARO.

Don't forget that unless the decision is about a debt you should lodge your request for review within 13 weeks of the date you were given notice of the ARO decision (see **When to request a review** above).

The AAT Tier 1 will send you a written acknowledgment that they have received your request for review and tell Centrelink that you have lodged an appeal. Centrelink will send the AAT a statement giving reasons for their decision and a copy of relevant documents from your Centrelink file. Those documents are known as the T-documents. The AAT Tier 1 will send you a copy of the T-documents.

You can ask the tribunal for permission if you want someone to represent you at the hearing. You can also ask the tribunal if you can take a support person such as a friend or family member to the hearing.

A hearing date will be set after you have received the T-documents. Hearings may be done by phone, video link up or in person. It is generally better to attend a hearing in person if possible. Tier 1 hearings are fairly informal and there will usually be just one Tribunal member. You will have the opportunity to explain why you think the Centrelink decision is wrong or unfair. The Tribunal member may ask you questions about your matter and/or your circumstances. The hearing will be recorded.

You can ask the Tribunal to let witnesses, such as an accountant provide information on your behalf.

Any verbal statements made by you or any other witnesses will be given under oath or affirmation at the hearing.

You can present any new information at this hearing; it does not matter if you did not give the new information to Centrelink earlier. This can be very important, as new evidence is the most common reason why appeals to the AAT are successful.

Centrelink will not usually be present at the hearing but in some, limited, circumstances Centrelink may ask the Tribunal for permission to speak at the hearing and explain some aspects of their decision. If Centrelink make oral submissions at the hearing this will usually be by telephone or videoconference.

The Tribunal will usually send you their written decision within 14 days after the hearing.

If you are not happy with the AAT Tier 1 decision you have the right apply for a second review by the General Division (Tier 2) of the AAT.

If you have had a partial win at the AAT Tier 1 seek advice from a Welfare Rights Centre before asking for a Second Review. You should seek advice promptly as any request for review must be lodged with the AAT Tier 2 within 28 days of receiving the AAT Tier 1 decision - (see **When to request a review** above).

**The AAT Tier 2 could find that the AAT Tier 1 was wrong to change that part of the decision in your favour.**

Centrelink also has the right to appeal against an AAT Tier 1 decision to the AAT Tier 2 if they think the decision is wrong.

## **Administrative Appeals Tribunal (AAT) General Division (Tier 2)**

You must lodge your appeal at Tier 2 of the AAT in writing within **28 days** of receiving the AAT Tier 1 decision (see **When to request a review** above). If you are unsure whether you want to have the AAT Tier 1 decision reviewed you should lodge an appeal with the AAT Tier 2 anyway. You can later withdraw your appeal if you decide not to go ahead.

The AAT Tier 2 is a more formal legal process but should be flexible in its procedures and processes as most people do not have advocates or lawyers. Centrelink will have a representative at an AAT Tier 2 Hearing.

Before a hearing date is set there will be at least one meeting (conference) where you and a representative from Centrelink will meet with a Tribunal registrar to discuss the issues and see if the matter can be resolved between you and Centrelink without the need to go to a hearing.

**Any settlement is final.** You should seek advice from a Welfare Rights Centre before you accept or reject any offer to settle from Centrelink.

For more detailed information about the Tier 2 of the AAT you can go to the AAT website at: [www.aat.gov.au](http://www.aat.gov.au) or contact your local Welfare Rights Centre.

You can appeal an AAT Tier 2 decision to the Federal Court but only on a “question of law”, not because you think the AAT got the facts of your case wrong. Before lodging an appeal in the Federal Court you should seek legal advice about the chance of success and the possible cost of the appeal. Appeals to a court can be very expensive, as the losing party usually pays the legal costs of the other side, which can be thousands of dollars. You should seek legal advice promptly.

You must appeal to the Federal Court **within 28 days** of getting the AAT Tier 2 decision. In limited circumstances the Federal Court may give you an extension of time to put in your appeal.

### **Where can I get assistance?**

If you have any questions about appealing you should contact your local Welfare Rights Centre (contact details at: [www.welfarerights.org.au](http://www.welfarerights.org.au)).

# Centrelink Review and Appeal Stages

## Original Decision

Made by the Original Decision Maker (ODM).



## Review by Authorised Review Officer (ARO)

If you wish to be paid arrears if your appeal is successful, you need to request this review within **13 weeks** of the original decision.

There is no limitation period for appealing Centrelink debts



## Appeal to the Administrative Appeals Tribunal (SSCS Division) Tier 1

If you wish to be paid arrears if your appeal is successful you need to lodge an appeal within **13 weeks** of the date of the ARO letter.

There is no limitation period for appealing Centrelink debts



## Appeal to the Administrative Appeals Tribunal (General Division) Tier 2

Lodge an appeal with the General Division Administrative Appeals Tribunal within **28 days** from the day you received the SSCS Division (Tier 1) decision. This applies for all SSCS Division (Tier 1) decisions including decisions about debts.

An AAT General Division (Tier 2) decision can be appealed to the Federal Court on a point of law only. Applications need to be lodged within 28 days of the AAT decision. Seek legal advice prior to lodging at the Federal Court

**Please note:** This information contains general information only and is accurate at July 2015. It does not constitute legal advice. If you need legal advice about social security entitlements, please contact your local Welfare Rights Centre/Advocate. Welfare Rights Centres are community legal centres, which specialise in social security law, administration and policy. They are entirely independent of Centrelink. All assistance is free. Contact Welfare Rights & Advocacy Service on (08) 93281751 or by email at [welfare@wraswa.org.au](mailto:welfare@wraswa.org.au)