



## Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2008

Paula Pyburne  
Law and Bills Digest Section

### Contents

Purpose . . . . .	2
Background . . . . .	2
Social Security Appeals Tribunal . . . . .	2
Child Support Agency reviews . . . . .	3
Committee consideration . . . . .	4
Financial implications . . . . .	4
Main provisions . . . . .	4
Schedule 1—Amendments about the Social Security Appeals Tribunal . . . . .	4
A New Tax System (Family Assistance) (Administration) Act 1999 . . . . .	4
Social Security (Administration) Act 1999 . . . . .	6
Schedule 2—Technical Amendments . . . . .	7
Schedule 3—Other Technical Amendments . . . . .	8
Aboriginal and Torres Strait Islander Act 2005 . . . . .	8
Native Title Amendment (Technical Amendments) Act 2007 . . . . .	8
Social Security Act 1991 . . . . .	9
Social Security (Administration) Act 1999 . . . . .	9

## Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2008

**Date introduced:** 25 November 2008

**House:** House of Representatives

**Portfolio:** Families, Housing, Community Services and Indigenous Affairs

**Commencement:** Schedule 3, items 4 and 5 on 21 July 2007; Schedule 1 on the day after the Royal Assent; all other provisions on the day of Royal Assent.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The primary purpose of the Bill is to amend social security law and the family assistance law in relation to the Social Security Appeals Tribunal (SSAT) so that:

- Centrelink will be allowed to make oral submissions to the SSAT
- the SSAT will be able to communicate decisions orally in ‘affirmed’ cases and
- SSAT members may be appointed for a term of up to five years.

In addition the Bill makes technical amendments to a number of Acts.

### Background

#### Social Security Appeals Tribunal

The SSAT is a statutory body established under the *Social Security (Administration) Act 1999* (SSAA) to conduct merits review of administrative decisions made under the social security law, the family assistance law, child support law and various other pieces of legislation. The powers and functions of the SSAT are set out in a number of Acts, namely the SSAA, the *A New Tax System (Family Assistance) (Administration) Act 1999* (New Tax System FAAA) and the *Child Support (Registration and Collection) Act 1988*.<sup>1</sup>

---

1. From the Social Security Appeals Tribunal website available at:  
[Hhttp://www.ssat.gov.au/iNet/ssat.nsf/start/pubH](http://www.ssat.gov.au/iNet/ssat.nsf/start/pubH) accessed on 28 November 2008.

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

As a merits review tribunal, the SSAT is ‘inquisitorial’ in its approach. Each SSAT panel takes a fresh look at the matter, including the consideration of events which might have occurred since the decision being appealed was made. The SSAT’s findings are usually based on information contained in the Centrelink or Child Support Agency (CSA) file (which includes the formal decision of a review officer) and the evidence presented at the hearing by the applicant, other parties, witnesses or representatives. In addition to considering all evidence presented, the SSAT can initiate its own inquiries.<sup>2</sup>

At present Centrelink is not permitted by legislation to make oral submissions at hearings.

In making decisions, the SSAT applies the relevant legislative provisions to its findings of fact. In interpreting those provisions, the SSAT is bound to follow relevant authority as determined by decisions of the courts. It is also guided by its own relevant previous decisions and decisions of the Administrative Appeals Tribunal (with regards to social security and family assistance cases), although it is not strictly bound by them. Similarly, the SSAT has regard to the policies of the Department of Families, Housing, Community Services and Indigenous Affairs, the Department of Education, Employment and Workplace Relations and the Child Support Agency. However, the SSAT may depart from these policies in the particular circumstances of a case, for example where it is considered the policy is not consistent with the law.<sup>3</sup>

The SSAT generally has the power to affirm, vary or set aside a decision under review. Where it sets aside a decision, the SSAT may either substitute a new decision or send the matter back to Centrelink or the CSA with directions or recommendations for further action.<sup>4</sup>

The SSAT aims to provide a mechanism of review that is fair, just, economical, informal and quick.<sup>5</sup>

### Child Support Agency reviews

With the enactment of the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006*, the SSAT became the first level of external review of most decisions made by the Child Support Agency with effect from 1 January 2007. The relevant [Bills Digest](#) provides information about that change.

- 
2. Social Security Appeals Tribunal, Annual Report 2007-08, p. 19, available at: [Hhttp://www.ssat.gov.au/iNet/ssat.nsf/e48f7693780ec5e7ca256cc900188503/730fb014a8166adaca2574f0007cd53b/\\$FILE/SSAT%20AR%202007-08.pdf](http://www.ssat.gov.au/iNet/ssat.nsf/e48f7693780ec5e7ca256cc900188503/730fb014a8166adaca2574f0007cd53b/$FILE/SSAT%20AR%202007-08.pdf)H accessed on 1 December 2008.
  3. *ibid.*
  4. *ibid.*, p. 9.
  5. Section 141 Social Security (Administration) Act 1999.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Unlike Centrelink, in some child support appeal cases, the CSA is represented at the hearing if this could assist the SSAT to make a decision. This Bill seeks to resolve that anomaly by allowing Centrelink the right to make oral and/or written submissions to the SSAT.

### Committee consideration

At its meeting of 26 November 2008, the Selection of Bills Committee resolved that the Bill not be referred to Committee for consideration.<sup>6</sup>

### Financial implications

According to the Explanatory Memorandum there is no financial impact from the amendments contained in the Bill.<sup>7</sup>

### Main provisions

The Bill contains three schedules.

#### Schedule 1—Amendments about the Social Security Appeals Tribunal

##### A New Tax System (Family Assistance) (Administration) Act 1999

Part 5 of the New Tax System FAAA contains the provisions which relate to the review of decisions. Division 3 of that Part sets out the procedures for review by the SSAT.

**Items 1–11** of the Bill have the effect of splitting existing Subdivision B, which sets out how the SSAT informs itself about the decision under review, into three parts being:

- Subdivision B which will relate to submissions to the SSAT from parties other than the head of an agency<sup>8</sup>
- Subdivision BA which will relate to submissions to the SSAT from the head of an agency and

---

6. Selection of Bills Committee, *Report No. 16 of 2008*, 26 November 2008.

7. Explanatory Memorandum

8. **‘Head of an agency’** is defined in section 3 of the New Tax System FAAA as being in the case of the Department—the Secretary; or in the case of the Commonwealth Services Delivery Agency—the Chief Executive Officer of the Agency; or in the case of the Australian Taxation Office—the Commissioner of Taxation; or in the case of Medicare Australia—the Chief Executive Officer of Medicare Australia.

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- Subdivision BB which will encompass existing sections 127–129 of the New Tax System FAAA.

**Items 1–9** of the Bill make consequential amendments to give effect to the proposed structure.

**Item 10** of the Bill inserts the **new heading** to Subdivision BA and **proposed section 126A**. **Proposed subsection 126A(1)** will empower the head of an agency which is a party to a review of a decision to make written submissions to the SSAT in the following ways. Either:

- The head of the agency must request, in writing, permission from the Executive Director of the SSAT to make either oral submissions, or both oral and written submissions, on the matter. That request must contain an explanation about how those submissions would assist the SSAT in its deliberations: **proposed subsection 126A(2)**.
- The Executive Director **may** grant the request if, in his or her opinion, the submissions would assist the SSAT. In forming that opinion the Executive Director is to have regard to the objective set out in section 110 of the New Tax System FAAA: **proposed subsection 126A(3)**.<sup>9</sup>

or alternatively:

- The Executive Director may order the head of the agency to make either oral submissions, or both oral and written submissions, if in the opinion of the Executive Director, those submissions would assist the SSAT: **proposed subsection 126A(4)**.

**Proposed subsection 126A(5)** provides that the Executive Director of the SSAT **may** allow for submissions by a head of an agency to be made by telephone or other electronic communications equipment.<sup>10</sup>

**Item 11** inserts the heading for proposed Subdivision BB.

**Items 12 and 13** relate to existing Subdivision E which sets out the procedure to be followed by the SSAT once a decision on a review has been made. The effect of the amendments is to separate out the three elements of section 141 as follows:

- **proposed subsections 141(1A)–(1C)** will set out what happens if the SSAT affirms the decision
- existing subsection 141(1) sets out what happens if the SSAT varies or sets aside the decision and

---

9. That is, the SSAT must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

10. This would allow for video conferencing where those facilities are available.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- existing subsections 141(2) and (3) set out further review rights.

**Item 12** inserts **proposed subsections 141(1A)–(1C)**. Where the SSAT affirms the decision on a review it must prepare an initial statement of its decision and, within 14 days of making the decision, provide each party to the review with a written copy of the initial statement: **proposed paragraphs 141(1A)(a) and (b)**.

In addition, within 14 days of making the decision, the SSAT **must** either:

- provide each party with a written statement of the reasons for decision. This written statement must set out the findings by the SSAT on material questions of fact and refer to the evidence or other material on which the findings of fact were based: **proposed subparagraph 141(1A)(c)(ii)** or
- give oral reasons for the decision to each party and advise them that they can request a written statement of reasons for the decision. That request must be made within 14 days after the copy of the initial statement is given<sup>11</sup> to the party: **proposed subparagraph 141(1A)(c)(i)**.

#### Social Security (Administration) Act 1999

Part 4 of the SSAA contains the provisions which relate to the review of decisions. Division 3 of that Part sets out the procedures for review by the SSAT.

**Items 15–20** of the Bill work in the same way as **items 1–11** to split existing Subdivision B, which sets out how the SSAT informs itself about the decision under review, into three parts being:

- Subdivision B which will relate to submissions to the SSAT from parties other than the Secretary<sup>12</sup>
- Subdivision BA which will relate to submissions to the SSAT from the Secretary and
- Subdivision BB which will encompass existing sections 164–166 of the SSAA.

**Item 19** inserts proposed section 163A into the SSAA. It is in the same terms as **proposed section 126A** which is described above.

---

11. Under section 29 of the *Acts Interpretation Act 1901* the initial statement will be ‘given’ if it is properly addressed, prepaid and posted as a letter which is delivered in the ordinary course of post.

12. ‘*Secretary*’ is defined in subsection 23(1) of the *Social Security Act 1991* to mean the Chief Executive officer of Centrelink in cases where the review of a decision was made by Centrelink. Where the decision was not made by Centrelink, the Secretary is the Secretary of the Department of Families, Housing, Community Services and Indigenous Affairs.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

**Items 21 and 22** relate to existing Subdivision E which sets out the procedure to be followed by the SSAT once a decision on a review has been made. The effect of the amendments is to separate out the three elements of section 177 as follows:

- **proposed subsections 177(1A)–(1C)** will set out what happens if the SSAT affirms the decision
- existing subsection 177(1) will set out what happens if the SSAT varies or sets aside the decision and
- existing subsections 177(2) and (3) will set out further review rights.

The amendments in **items 21 and 22** are in the same terms as the amendments, already described, in **items 12 and 13** of Schedule 1 of the Bill.

Clause 4 of Schedule 3 of the SSAA provides that a member of the SSAT holds office for the period which is specified in the instrument of appointment. **Item 23** amends existing subclause 4(2) of Schedule 3 to the SSAA so that the period of appointment of an SSAT member is increased from a maximum of three years to a maximum of five years.<sup>13</sup>

## Schedule 2–Technical Amendments

Schedule 2 makes technical amendments to the following statutes:

- *Income Tax Assessment Act 1936*
- *Safety, Rehabilitation and Compensation Act 1988*
- *Social Security Act 1991* and
- *Veterans Entitlements Act 1986*

Each of the amendments removes a reference to ‘rehabilitation allowance’<sup>14</sup> or ‘disability wage supplement’<sup>15</sup> which are no longer paid under social security law.

---

13. It should be noted that subclause 4(1) of Schedule 3 does provide that a member can be re-appointed.

14. The Social Security (Disability and Sickness Support) Amendment Act 1991 amended the Social Security Act 1991 so that rehabilitation allowance was phased out.

15. The Social Security and Veterans’ Affairs Legislation Amendment (Family and Other Measures) Act 1997 repealed Part 2.9 of the Social Security Act 1991 which contained the qualification provisions for disability wage supplement.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Schedule 3—Other Technical Amendments

### Aboriginal and Torres Strait Islander Act 2005

**Item 1** proposes to repeal Schedule 1 of the *Aboriginal and Torres Strait Islander Act 2005* (the ATSI Act).

The history of Schedule 1 is as follows:

- Part 3 of the *Aboriginal and Torres Strait Islander Commission Act 1989* as enacted related to ‘Regions and Zones’ and contained sections 91–144 of that Act. Subsection 91(1) provided that for the purposes of that Act, Australia was divided into 60 regions which were listed in Schedule 1.
- The *Aboriginal and Torres Strait Islander Commission Amendment Act 2005* did two things:
  - It changed the name of the *Aboriginal and Torres Strait Islander Commission Act 1989* to the ATSI Act with effect from 24 March 2005 and
  - It repealed Part 3 which included subsection 91(1) with effect from 1 July 2005.

The result is that Schedule 1 which listed the 60 regions and which is expressed to arise from subsection 91(1) no longer has an enabling provision and is redundant.

**Items 2 and 3** of Schedule 3 of the Bill propose to amend the note to Schedules 2 and 2A of the ATSI Act by omitting the existing reference to section 111. As section 111 was contained in Part 3 which has been abolished as explained above, the references are redundant.

### Native Title Amendment (Technical Amendments) Act 2007

**Items 4 and 5** amend the *Native Title Amendment (Technical Amendments) Act 2007*. That Act was intended, amongst other things, to implement technical amendments to the *Native Title Act 1993* (the Native Title Act) in order to improve existing processes for native title litigation and negotiation.<sup>16</sup>

The Explanatory Memorandum to the relevant Bill sets out the proposed amendment to section 203FI of the Native Title Act as follows:

*Item 9 – Section 203FI*

---

16. Explanatory Memorandum, [HNative Title Amendment \(Technical Amendments\) Bill 2007H](#), p. 3.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



2.40 Existing section 203FI allows the Secretary to delegate certain powers under Part 11 of the Native Title Act to senior Departmental officers. This item will allow the Secretary to delegate powers in proposed sections 203FBA and 203FBB (which deal with reviews of decisions by representative bodies not to assist an Aboriginal or Torres Strait Islander person).<sup>17</sup>

However, the amendments in item 9 of that Bill failed due to the incorrect placement of a comma. This amendment will give effect to the original amendment. It is for this reason that the commencement day of **items 4 and 5** of this Bill is 21 July 2007.

### Social Security Act 1991

Subsection 1068 of the *Social Security Act 1991* provides that the rate of newstart allowance, sickness allowance, partner allowance, mature age allowance and widow allowance is to be calculated in accordance with the Rate Calculator in that section. The Rate Calculator sets out the way that a person's entitlement to the relevant allowances is calculated by using a series of self-contained modules. At the commencement of each module there is a method statement which consists of a number of steps to be applied in that part of the rate calculation.

At present step 7, in the method statement at the commencement to module G, contains an incorrect cross-reference to point 1068-H12. **Item 6** amends step 7 so that the cross-reference is to point 1068-G12.

### Social Security (Administration) Act 1999

Section 19 of the SSAA as enacted included Subdivision D in Division 1 of Part 3 of that Act. Subdivision D contained only one section, namely section 19.

Section 19 was subsequently repealed.<sup>18</sup> Unfortunately the heading to the subdivision remained even though it was redundant. **Item 7** of Schedule 3 of this Bill amends the SSAA to repeal the redundant heading.

---

17. *ibid.*, p. 73.

18. By item 19 of the A New Tax System (Family Assistance and Related Measures) Act 2000.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

© Copyright Commonwealth of Australia

This work is copyright. Except to the extent of uses permitted by the *Copyright Act 1968*, no person may reproduce or transmit any part of this work by any process without the prior written consent of the Parliamentary Librarian. This requirement does not apply to members of the Parliament of Australia acting in the course of their official duties.

This work has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

Feedback is welcome and may be provided to: [web.library@aph.gov.au](mailto:web.library@aph.gov.au). Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Entry Point for referral.

---

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2434.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*