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HOUSE OF REPRESENTATIVES

SOCIAL SECURITY (REVIEW OF DECISIONS) BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Social Security,

The Honourable Brian Howe MP)

SOCIAL SECURITY (REVIEW OF DECISIONS) BILL 1988

OUTLINE

The Bill would amend the Social Security Act 1947 to

- . provide for a rationalisation of the social security review process, especially by means of the establishment of a Social Security Appeals Tribunal with power to make decisions on matters under review; and
- . renumber certain provisions of the Social Security Act 1947 in an orderly way.

In making provision for a rationalisation of the social security review process and for the establishment of the Social Security Appeals Tribunal the Bill would among other things:

- . provide specific recognition of Authorised Review Officers within the Department of Social Security and of their role in the review process;
- . provide for the Minister for Social Security to table in Parliament Government policy statements to which regard must be had by the Social Security Appeals Tribunal and officers of the Department of Social Security in exercising powers under the Social Security Act 1947. The guidelines would not be binding;
- . include a more complete statement than at present of the review powers of the Secretary to the Department of Social Security;
- . provide for review by the Social Security Appeals Tribunal of decisions by the Secretary and for the procedural rules attendant on such review;

- . provide objectives for the Social Security Appeals Tribunal to apply in carrying out its functions;
- . as a part of the Social Security Appeals Tribunal's procedures on review make specific provision for
 - the supply to an applicant of documents relating to the decision under review;
 - use of interpreters where appropriate;
 - information sources available to the Social Security Appeals Tribunal;
 - conduct of hearings; and
 - the requirement that decisions and reasons for decisions be in writing;
- . provide a right for the Secretary to the Department of Social Security and an applicant to seek review of a decision by the Social Security Appeals Tribunal by the Administrative Appeals Tribunal;
- . provide for the modification of the Administrative Appeals Tribunal Act 1975 in relation to certain applications for review of decisions under the Social Security Act 1947;
- . provide for the appointment of a National Convener of the Social Security Appeals Tribunal and for that person's functions, powers and tenure;
- . provide for the appointment of senior members of the Social Security Appeals Tribunal and for their functions, powers and tenure;

- . provide for the appointment of other members of the Social Security Appeals Tribunal and for their functions, powers and tenure;
- . provide for the appointment of an acting National Convener, or of a full-time or part-time acting senior member of the Social Security Appeals Tribunal where appropriate;
- . provide for payment and for other conditions of appointment and employment of members of the Social Security Appeals Tribunal;
- . prohibit the disclosure of confidential information by Social Security Appeals Tribunal members, staff and interpreters;
- . provide for the protection of members of the Social Security Appeals Tribunal and of representatives and witnesses before the Social Security Appeals Tribunal;
- . provide for payment of Social Security Appeals Tribunal witnesses;
- . provide for staffing of the Social Security Appeals Tribunal and for the conditions of employment of such staff;
- . provide for preparation and delivery of an annual report by the National Convener to the Minister for Social Security and for the report to be laid before each House of Parliament; and
- . provide for continued payment of pension, benefit or allowance pending the outcome of a review in certain cases.

FINANCIAL IMPACT STATEMENT

The measures in this Bill are expected, if implemented, to result in net savings of \$2.8m in the 1988-89 financial year and \$5.4m in the 1989-90 financial year.

NOTES ON CLAUSES

Clause 1 : Short title

This clause would provide that the Act may be cited as the Social Security (Review of Decisions) Act 1988 and that, in this Act, "Principal Act" means the Social Security Act 1947.

Clause 2 : Commencement

Clause 2 would provide for the date of commencement of the various clauses of this Bill. This would be 1 November 1988.

Clause 3 : Interpretation

This clause would amend section 3 of the Principal Act. Section 3 provides for definition of terms used in, and rules for, the interpretation of the Principal Act.

Clause 3 would insert a new definition of Authorised Review Officer. An Authorised Review Officer will conduct reviews on behalf of the Secretary where an applicant applies under section 173.

Clause 4 : Repeal of sections 16, 17 and 18 and substitution of new sections

Clause 4 would repeal sections 16, 17 and 18 of the Principal Act and insert new sections 16, 17 and 18.

New section 16: Authorised Review Officers

New subsection 16(1) would provide that the Secretary may authorise an officer as an Authorised Review Officer.

New subsection 16(2) would provide that any authorisation made by the Secretary should be in writing.

New section 17 : Government policy statements

New subsection 17(1) would enable the Minister to prepare a written statement of Government policy in relation to the administration of the Principal Act and give a copy to the Secretary to the Department of Social Security and the National Convener of the Social Security Appeals Tribunal.

New subsection 17(2) would provide that such statement shall be laid before both Houses of Parliament within 15 sitting days of the statement being given either to the Secretary or the National Convener.

New subsections 17(3) and (4) would provide that officers of the Department of Social Security, the National Convener and the Social Security Appeals Tribunal shall have regard to the statement in exercising powers under the Principal Act.

New section 18 : The Secretary and the National Convener may agree on administrative arrangements

New section 18 would provide that the Secretary to the Department of Social Security and the National Convener of the Social Security Appeals Tribunal may agree on administrative arrangements between the Department and the Tribunal to further the objectives of the internal and external review mechanisms as set out in the new Part XIX. The Social Security Appeals Tribunal is to pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

Clause 5 : Insertion of new section

Clause 5 would insert a new section 168A in the Principal Act.

New section 168A : The Secretary may continue payment pending the determination of an application to the Secretary or the Social Security Appeals Tribunal for review of an adverse decision

New subsection 168A(1) would provide that where

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

the Secretary may declare that the payment of the pension, benefit or allowance is to continue pending determination of the review. The new subsection would enable the payment to continue by stating that payment would be made as if the adverse decision had not been made.

New subsection 168A(2) would provide that the Secretary may declare that a payment is to continue as if the adverse decision had not been made in similar circumstances to new subsection 168A(1) where a person applies to the Social Security Appeals Tribunal for review.

New subsection 168A(3) would provide that declarations, made under subsections 168A(1) or (2) to continue payment pending determination of a review, are to be in writing.

New subsection 168A(4) would apply the Principal Act as if the adverse decision had not been made while a declaration is in force under subsection 168A(1) or (2) to continue payments pending determination of the review. This will have the effect of authorising the payments and the person receiving the payments will not incur an overpayment should the decision under review be affirmed.

New subsection 168A(5) would give effect to a declaration made under the new subsection 168A(1) on the day it is made or earlier if specified in the declaration. Such a declaration ceases if:

- . the application to the Secretary for review of the adverse decision is withdrawn;
- . the review is determined by the Secretary; or
- . the declaration is revoked by the Secretary.

New subsection 168A(6) would make similar provision for declarations under new subsection 168A(2) as would be made under new subsection 168A(5).

New subsection 168A(7) would clarify that even if a provision of the Principal Act does not expressly require the Secretary to hold an opinion, the decision under that provision would still be a decision referred to in the new subsection 168A(1) or (2).

New subsection 168A(8) would define an adverse decision as a determination under subsection 168(1) of the Principal Act which would cancel or suspend a pension, benefit or allowance or would decrease the rate a person is paid. It would also include a decision under the new subsection 174(1) which has the same effect.

Clause 6 : Insertion of new Parts

Clause 6 would insert a new Part XIX dealing with reviews of decisions by the Secretary, the Social Security Appeals Tribunal and the Administrative Appeals Tribunal and a new Part XX establishing the Social Security Appeals Tribunal.

NEW PART XIX - REVIEW OF DECISIONS

New Division 1 - Review by the Secretary

New section 172: The Secretary may review a decision

New subsection 172(1) would relocate part of the existing subsection 16(1) of the Principal Act. Subsection 16(1) enables the Secretary to review a decision of an officer if there is sufficient reason to review the decision. This provision would also apply to certain decisions made under the Health Insurance Act 1973.

New subsection 172(2) would ensure that this power of review can be exercised at any time even if a review is being conducted by the Social Security Appeals Tribunal or the Administrative Appeals Tribunal. It has been recognised by the Federal Court that this situation exists in the wording of subsection 16(1) of the Principal Act (Hangan v Director-General of Social Security 45 ALR 23) and the new subsection would be inserted to clarify that the relocation of this power did not intend this situation to change.

New subsection 172(3) would also relocate part of the existing subsection 16(1) of the Principal Act and would state that the Secretary's powers on review under the new subsection 172(1) would be to affirm or vary the decision or to set the decision aside and substitute a new decision.

New subsection 172(4) would provide that the Secretary shall give the National Convener written notice that a decision has been made under the new subsection 172(3), where that decision is also the subject of a review by the Social Security Appeals Tribunal.

New subsection 172(5) would make similar provision to the new subsection 172(4) except that it would apply to situations where the decision is being reviewed by the Administrative Appeals Tribunal.

New subsection 172(6) would relocate section 18 of the Principal Act insofar as it applies to decisions set aside by the Secretary under the new subsection 173(3). An example of a situation which would give rise to a use of this power would be where an incorrect decision to cancel a single person's pension was appealed but, before it could be set aside, the person became a married person but the person's spouse did not claim a wife's pension. If the original decision to cancel the pension was not made, the spouse would have lodged a claim. The new subsection 172(6), as with section 18 of the Principal Act, would enable the claim for wife's pension to be deemed to have been lodged on the day it would have been lodged if the person's pension had not been cancelled.

New section 173: A person affected by a decision may apply to the Secretary for review of the decision

New subsection 173(1) would relocate the existing subsection 16(2) of the Principal Act. Subsection 16(2) enables any person affected by a decision of an officer to apply to the Secretary for review of the decision.

New subsection 173(2) would also relocate part of the existing subsection 16(2) of the Principal Act and would provide that if the decision is the Secretary's personal decision, there can be no review under the new subsection 173(1). Without this provision, the Secretary might be required to review a decision repeatedly and there would be no stop to the review process.

New subsection 173(3) would also clarify the existing situation. A review under this section may be conducted by the Secretary or an Authorised Review Officer even if there is a review of a decision being conducted by the Social Security Appeals Tribunal or the Administrative Appeals Tribunal.

New subsection 173(4) would provide that, where a person applies to the Secretary for a review of a decision and that person has made an application for review of that same decision to the Social Security Appeals Tribunal or the Administrative Appeals Tribunal, the Secretary shall inform either the National Convener of the Social Security Appeals Tribunal or the Registrar of the Administrative Appeals Tribunal as appropriate. This will ensure that the relevant Tribunal is informed when a simultaneous review of the same decision is being conducted by the Secretary.

The facility for the Secretary to conduct a review even if a review is being conducted by the Social Security Appeals Tribunal or the Administrative Appeals Tribunal is necessary to overcome some of the complexities that may arise under the Principal Act. For example, should a person apply for review of a decision that an overpayment has been incurred and later information comes to light which may result in a reduction of the amount of the overpayment, the Secretary may determine that an overpayment of the lesser amount has been incurred. Without this provision, a person would have to recommence the review process from the beginning.

New section 174: The Secretary's powers on review

New subsection 174(1) would provide that, where a person applies under subsection 173(1) for review, the powers of the Secretary or the Authorised Review Officer shall be to affirm or vary the decision or to set the decision aside and substitute a new decision.

New subsection 174(2) would provide that the notice of the decision under the new subsection 174(1) shall be in writing.

New subsection 174(3) would provide that the Secretary or an Authorised Review Officer shall give written notice that a decision had been made under the new subsection 174(1), where that decision is also the subject of a review by the Social Security Appeals Tribunal.

New subsection 174(4) would make similar provision to the new subsection 174(3), except that it would apply to situations where the decision is being reviewed by the Administrative Appeals Tribunal.

New subsection 174(5) would relocate section 18 of the Principal Act insofar as it applies to decisions set aside by the Secretary or an Authorised Review Officer under the new subsection 174(1). The earlier explanation under the new subsection 172(6) provides an example of a situation in which this power would be used.

New section 175: The Secretary will notify the applicant of the applicant's right to apply to the Social Security Appeals Tribunal and the Administrative Appeals Tribunal

New subsection 175(1) would require that a written notice under the new subsection 174(2) shall include a statement to the effect that the applicant may apply to the Social Security Appeals Tribunal. Where application is made to the Social Security Appeals Tribunal, a statement will be prepared that sets out the reasons for the decision, the findings on material questions of fact and refers to the evidence on which the findings were based. The statement will also advise that, if the applicant is still dissatisfied with the decision after review by the Social Security Appeals Tribunal, application may be made to the Administrative Appeals Tribunal for further review.

New subsection 175(2) clarifies that, if there is a failure to comply with the notification requirements as set out in the new subsection 175(1), the validity of the decision remains unaffected.

New Division 2 – Review by the Social Security
Appeals Tribunal

New Section 176 : The Social Security Appeals Tribunal is
to provide a fair, just, economical,
informal and quick review

New section 176 would require the Social Security Appeals Tribunal to pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

New section 177 : A person affected by a decision may
apply to the Social Security Appeals
Tribunal for review of the decision

New subsection 177(1) would enable a person affected by a decision of an officer to apply to the Social Security Appeals Tribunal for a review of that decision.

New subsection 177(2) would clarify that even if an application has also been made to the Secretary to conduct a review under the new section 173, the Social Security Appeals Tribunal can conduct a review on the same decision. This provision is the counterpart of the new subsection 173(3) which allows the Secretary to review a decision, even if an application has been made to the Social Security Appeals Tribunal.

New section 178 : Some decisions are not reviewable
by the Social Security Appeals Tribunal

New section 178 would provide that the Social Security Appeals Tribunal cannot conduct reviews of decisions made by the Secretary under subsection 159(1) (approval of forms by the Secretary), section 163 (giving of notices of review by the Secretary and specification of compliance periods in some circumstances), section 164 (power of Secretary to require persons to furnish information), section 168A (continuation of payments under certain circumstances) and subsection 184(2) (a decision to make deductions from payments for the purposes of income tax).

New section 179 : How should an application be made?

New subsection 179(1) would state that applications to the Social Security Appeals Tribunal can be made in writing and sent to an office of the Tribunal or the Department. Alternatively, an application can be made orally at an office of the Tribunal or by telephoning an office of the Tribunal.

New subsection 179(2) would require the person who receives an oral application to make a written record of that application and the new subsection 179(3) would deem the written record to be a written application.

New subsection 179(4) would enable a person to state his/her reasons for making an application to the Social Security Appeals Tribunal.

New section 180 : What happens if the decision under review
is varied while the application for review
is still being heard?

New subsection 180(1) would provide that any variation to a decision that is being reviewed by the Social Security Appeals Tribunal does not deprive the Tribunal of its jurisdiction to

hear the matter. The application to review the decision proceeds as if it were an application for review of the varied decision.

New subsection 180(2) would make similar provisions to the new subsection 180(1), except that it would apply to decisions that are set aside.

New subsection 180(3) would provide that a person may proceed with the review or withdraw the application where a decision is varied or set aside by the Secretary while the application for review is before the Social Security Appeals Tribunal. This provision contemplates cases where an applicant will be satisfied with the decision after it is varied or set aside and there will no longer be any reason to proceed with review by the Social Security Appeals Tribunal.

New section 181 : Who are the parties to a review
of a decision?

New subsection 181(1) would state that the parties to a review of a decision are the Secretary, the applicant and any other person who has been made a party.

New subsections 181(2) and (3) would enable any person whose interests are affected by the decision under review to apply in writing to the National Convener to be made a party.

New subsection 181(4) would provide that the National Convener may order that the person who applied under the new subsection 181(2) may be joined as a party to the review.

New section 182 : The Social Security Appeals Tribunal's
powers on review

New subsections 182(1) and (3) would set out the powers of the Social Security Appeals Tribunal on review of a decision. The Tribunal may affirm or vary a decision or set a decision

aside. Where a decision is set aside, the Tribunal may substitute a new decision or send the matter back to the Secretary for reconsideration in accordance with the Tribunal's findings. The power to send a matter back might be used, for example, in circumstances where complex rate calculations are involved.

New subsection 182(2) would make decisions under the new subsection 182(1) subject to the provision in the new section 198 which allows the National Convener to dismiss an application where the National Convener is satisfied that the person does not intend to proceed with the application.

New subsection 182(4) would make it clear that the Tribunal will be able to exercise all the powers and discretions conferred on the Secretary by the Principal Act and not just the limited delegated powers that may have been conferred on the officer making the decision.

New subsection 182(5) will circumscribe the Tribunal's powers concerning a range of administrative decisions made under the Principal Act:

subsection 159(1): approval of claim forms by the Secretary;

section 161: payment of pension, benefit or allowance in such manner as the Secretary directs;

section 162: this provision allows the Secretary to give notice to a person requiring that person to satisfy a debt arising under the Principal Act. This may be used to garnishee wages;

section 163: this allows the Secretary to give notice to any person who is receiving money under this Act requesting information the Secretary may require for the administration of the Principal Act;

section 164: this allows the Secretary to give notice to any person who may have information the Secretary requires for the administration of the Principal Act;

section 168A: this provision allows the Secretary to make payments pending the outcome of an appeal;

section 170: this allows the Secretary to require persons in receipt of payments under the Principal Act to undergo a medical or similar examination.

subsection 184(2): a decision of the Secretary in relation to the deduction of income tax instalments.

New subsection 182(6) would clarify that when a decision under the Health Insurance Act 1973 is being reviewed by the Social Security Appeals Tribunal, the Tribunal may exercise all the powers conferred by that Act on the Secretary to the Department of Social Security.

New subsection 182(7) would enable an event to be deemed to have occurred if it appears the event would have occurred but for a decision having been taken and that decision having been subsequently varied or set aside on review.

New section 183: Date of effect of the Social Security Appeals Tribunal's decision

New subsection 183(1) will provide that a decision of the Tribunal comes into operation immediately the decision is given.

New subsection 183(2) would allow the Tribunal to specify that a decision comes into operation on a later day which is specified in the decision.

New subsection 183(3) would provide that, subject to new subsections (5) and (6), the date of effect shall be taken to be the date on which the decision under review has or had effect. This will apply to decisions which are varied on review by the Social Security Appeals Tribunal.

New subsection 183(4) would provide that, subject to new subsections (5) and (6), the date of effect of a decision in lieu of a decision which is set aside by the Social Security Appeals Tribunal will be taken to be the date on which the decision under review has or had effect.

New subsection 183(5) would provide that where:

- . a person is given written notice of a decision made by the Secretary or an officer under the Principal Act;
- . the person makes application to the Social Security Appeals Tribunal for review of that decision more than 3 months after the notice was given;
- . the Tribunal varies the decision or sets the decision aside; and
- . the effect of the Tribunal's decision is to grant a claim or direct the making of a payment or to increase the rate of a pension, benefit or allowance,

the date of effect of the Tribunal's decision will be taken to be the date of application to the Tribunal. This provision replicates the effect of section 168 of the Principal Act which also requires an application for review to the Secretary to be made within 3 months of the person being given notice of the decision in order for the decision to take effect from the date of the original decision.

New subsection 183(6) would provide for the situation where it would be necessary that the new subsections 183(3) and (4) not apply.

New subsection 183(7) would clarify, that where an order is made under the new subsection 183(6), the rules to be applied to determine the date of effect of the decision would be in the new subsections 183(1) or (2).

New Division 3 - Procedures for review of a decision by
the Social Security Appeals Tribunal

New Subdivision A - Preliminary procedures

New section 184: What happens initially when an
application for review is received?

New subsection 184(1) would provide that where an application is sent to an officer of the Department, the Secretary is responsible for ensuring that it is sent to the Social Security Appeals Tribunal as soon as practicable but in any case no later than 7 days of the Department having received it.

New subsection 184(2) provides that the National Convener shall give both the applicant and the Secretary written notice that an application has been received.

New subsection 184(3) would require the Secretary to provide a statement to the Social Security Appeals Tribunal about the decision under review. The statement should set out the findings of fact, make reference to the evidence and give the reasons for the decision. The Secretary is also required to provide the National Convener with all documents relevant to the decision under review. This will, in practice, be a transfer of the applicant's file. These requirements will have to be complied with within 28 days of the Secretary receiving notice of the application for review.

New subsection 184(4) would provide that where the National Convener asks the Secretary to send the statement and documents earlier than the 28 day period prescribed in new subsection 184(3), the Secretary shall take reasonable steps to comply with this request. Situations where the National Convener might issue a request under this subsection would be in cases in which financial hardship could occur pending determination of the appeal.

New subsection 184(5) would provide for the situation where documents may come into the Secretary's possession after the statement has been prepared and sent, with the file, to the National Convener. The Secretary is required to send a copy of the later documents to the National Convener as soon as possible after receiving them.

New section 185: The National Convener will give
the other parties a copy of the
paragraph 184(3)(a) statement

New section 185 requires the National Convener to give each party a copy of the Secretary's statement of the decision and reasons prepared in accordance with paragraph 184(3)(a).

New section 186: The National Convener will
make arrangements for the hearing
of the application

The arrangements that would have to be made by the National Convener for the review of a decision would include:

- . fixing the date, time and place for the hearing of the application [new subsection 186(1)]; and
- . taking reasonable steps to ensure that a decision is reviewed as quickly as possible where a declaration is in force under section 168A to continue payments pending the outcome of the appeal [new subsection 186(2)].

giving written notice to the applicant of the date, time and place fixed for the hearing [new subsection 186(3)] within a reasonable time before the date fixed for the hearing [new subsection 186(4)].

New section 187: The National Convener will give notice of the application to any person whose interests the National Convener believes are affected by the decision under review

New subsection 187(1) would require the National Convener to take reasonable steps to give any other person, whose interests the National Convener believes are affected by the decision under review, written notice of the application for review.

New subsection 187(2) would require that the person affected also receive notice of the right to apply to be made a party to the review.

New subsections 187(3) and (4) would require the National Convener to give other parties to the review a copy of the notice that was sent to the person whose interests may be affected. The notice can be given at any time before the Tribunal issues its determination about the decision under review.

New Subdivision B - How the Social Security Appeals Tribunal informs itself about the decision under review

New section 188: How does a party put material before the Social Security Appeals Tribunal?

New subsection 188(1) would allow a party to the review to make a submission either orally or in writing or both.

New subsection 188(2) would allow the Secretary to the Department of Social Security to make written submissions to the Social Security Appeals Tribunal.

New subsection 188(3) would allow a party to have another party make oral submissions on his/her behalf.

New subsection 188(4) would provide that submissions may be made by telephone in situations outlined in new subsection 188(5).

New subsection 188(5) outlines some of the situations where the National Convener may decide that oral submissions can be made by telephone. The list is not exhaustive but includes:

- . urgent applications where unnecessary delay would be caused by not having a telephone hearing;
- . situations where the applicant is in a remote locality and unnecessary expense would be incurred if the party or the party's representative has to travel to a hearing;
- . situations where the party has failed to attend the hearing and the applicant had not indicated that he/she was not going to attend (the Tribunal could make telephone contact with the person and proceed on that basis);
- . situations where the applicant is unable to attend the hearing because of illness or infirmity.

New subsection 188(6) would provide for the situation where a party is not proficient in English the National Convener may direct that communication proceed through an interpreter.

New subsection 188(7) would exclude the Secretary from operation of this provision as the Secretary will not be represented at hearings of a review.

New section 189 : When can the Social Security Appeals
Tribunal proceed without oral
submissions from a party?

New subsection 189(1) would provide that the Tribunal may proceed without oral submissions from a party where that party has advised that he/she does not intend making oral submissions.

New subsection 189(2) would provide that the National Convener may authorise the Tribunal to proceed without oral submissions from a party where the National Convener had decided to have oral submissions by telephone and the presiding member had made reasonable efforts to contact the party or the party's representative and was unable to do so.

New subsection 189(3) would provide that the National Convener may authorise the Tribunal to proceed without oral submissions from a party where there has been no determination under the new subsection 188(3) that submissions may be made by telephone and the party does not attend the hearing.

New subsection 189(4) would provide that the Tribunal may proceed to hear the application where the National Convener has given an authorisation under either of the new subsections 189(2) or 189(3).

New subsection 189(5) would allow the National Convener to revoke an earlier authorisation made under the new subsections 189(2) and 189(3). This may arise where contact is made with a party after the authorisation was made.

New section 190: The Social Security Appeals
Tribunal may take evidence

New section 190 would enable the Tribunal to take evidence on oath or affirmation for the purposes of a review of a decision.

New section: 191: The Secretary will provide further information on a request from the National Convener

New subsections 191(1) and (2) would enable the National Convener to require the Secretary to provide any further information that is in his or her possession that may be relevant to the review.

New section 192: The National Convener may ask the Secretary to exercise powers under section 164

New subsections 192(1) and (2) would enable the National Convener to ask the Secretary to take all reasonable steps to issue a notice under paragraph 164(1)(a) of the Principal Act where the National Convener is satisfied that another person has information or has custody or control of a document that is relevant to the review. Such a request should be met if at all practicable within 7 days of receiving the request but if not practicable, the request should still be met as soon as possible.

New Subdivision C - The nature of the hearing

New section 193: The hearing will be as informal as possible

New subsections 193(1) and (2) would provide that the Tribunal is not bound by technicalities, legal forms or rules of evidence, shall act as speedily as possible but still ensure that the review receives a proper consideration and shall have regard to the objective in new section 176. The Tribunal is also free to inform itself on any matter relevant to a review in any manner the Tribunal considers appropriate.

New section 194: The hearing will be in private

New subsection 194(1) would set out the general rule that the hearing of a review shall be in private.

New subsections 194(2) and (4) would provide the National Convener with a discretion to issue directions in writing or otherwise as to who may be present at any hearing of a review.

New subsection 194(3) would set out the matters that the National Convener must have regard to when exercising the discretion under the new subsection 194(2), those matters being the wishes of the parties and the need to protect their privacy.

New section 195: The National Convener may make orders restricting the further disclosure of information disclosed at a hearing

New subsection 195(1) would give the National Convener a power to make orders so that persons who are admitted to the privacy of a hearing do not disclose the information gained in the course of the hearing except as specified in the orders.

New subsection 195(2) would require a person not to contravene an order made under new subsection 195(1).

An offence under new subsection 195(1) would be an indictable offence and the penalty for contravention would be a maximum fine of \$5000 or 2 years imprisonment or both. This would be provided for in section 175 of the Principal Act which would be amended by Schedule 2 of this Bill.

New Subdivision D - Other procedural matters

New section 196: The Social Security Appeals Tribunal may adjourn a hearing

New subsections 196(1) and (2) would give the Tribunal power to adjourn a hearing at any time. The factors that may be relevant to a decision to refuse to adjourn are set out in new subsection 196(2) and include situations where:

- . there had already been a number of adjournments;
- . the adjournment would be contrary to the objective laid down in the new section 176; and
- . a declaration under the new section 168A to continue payments pending the outcome of the appeal is in force.

New section 197 : The applicant may withdraw
the application

New subsection 197(1) would provide that an applicant may withdraw the application at any time.

New subsection 197(2) would provide that the withdrawal, where it is in writing, may be sent to an office of the Department of Social Security or the Tribunal and, where it is oral, it must be communicated to the Tribunal either personally or by telephone. Oral withdrawals cannot be made to the Department of Social Security.

New subsection 197(3) would require the person to whom the oral withdrawal is communicated to make a written record of that withdrawal.

New section 198 : The application may be dismissed
if the applicant does not intend
to proceed with the application

New subsection 198(1) would give the National Convener the power to dismiss an application where the applicant has communicated an intention not to proceed with the application or, after having made reasonable attempts to contact the applicant, there has been no contact with the applicant.

New subsection 198(2) would set out the effect of a dismissal as being the same as if the application had been withdrawn. Where an application is dismissed it may be reinstituted at any time but arrears payments will not be made if the 3 month time limit in the new subsection 183(5) is exceeded.

New section 199 : Who presides at the hearing?

New subsection 199(1) would provide that, the National Convener shall preside if the National Convener is one of the members who constitutes the Tribunal for the purposes of a hearing.

New subsection 199(2) would provide that, in the absence of the National Convener being one of the members who constitutes the Tribunal, a senior member shall preside if a senior member is one of the members who constitutes the Tribunal for the purposes of a hearing.

New subsection 199(3) would provide that, in the absence of the National Convener or a senior member being members who constitute the Tribunal for the purposes of a hearing, the National Convener shall designate who is to preside.

New section 200 : Questions arising on a review
will be decided by a majority

New section 200 would provide that questions before the Tribunal will be decided by majority.

New section 201: What happens if the members are
equally divided in opinion?

New subsection 201(1) would provide that where the Tribunal is equally divided on the question before it, the question shall be decided according to the opinion of the member presiding. This scheme of deciding questions is intended to preserve the status quo that existed before the decision under review was made. Where the decision under review concerns a cancellation,

suspension or a decrease in rate of a pension, benefit or allowance, the decision under review would be set aside. Where the decision involved a rejection of a claim, the decision under review would be affirmed.

New section 202 : The National Convener may give directions as to the procedure to be followed in hearing reviews

New subsection 202(1) would provide that the National Convener may give:

- . general directions to be followed in connection with the review of decisions; and
- . particular directions to be followed in connection with a particular review. These may be given at any time either before or after the hearing of a review has commenced – new subsection 202(3)].

New subsection 202(2) would require that directions not be inconsistent with the Principal Act or Regulations.

New subsection 202(4) would give the presiding member authority to give directions as to the procedure to be followed on the hearing of that particular review provided the directions are not inconsistent with the Principal Act, Regulations or the National Convener's directions given under the new subsection 202(1) [new subsection 202(5)]. The presiding member's directions may be given before or after the hearing begins [new subsection 202(6)].

New subsection 202(7) requires that all directions given under this section, whether by the National Convener or the presiding member, should have regard to the objective, of the Tribunal as laid down in new section 176.

New section 203 : Who bears the expenses of the review?

New subsection 203(1) would provide that parties, except where new subsection 203(4) applies, must bear their own expenses incurred in connection with the review.

New subsection 203(2) would provide that the Social Security Appeals Tribunal may determine that a party should be reimbursed for reasonable travel and accommodation expenses incurred in relation to the review. Questions of what is reasonable will depend on the circumstances of each case. For example, having regard to the objectives of the Tribunal in new section 176, it might be reasonable in some cases to provide transport by taxi where the party was unable to travel by any other means and it was not desirable to hear from that party by telephone.

New subsection 203(3) would provide that the Tribunal may determine that an applicant should be reimbursed for expenses incurred in relation to a medical service such as examination by a medical practitioner, where arrangements for the service were made by the Tribunal.

New subsection 203(4) would provide that the Commonwealth may reimburse a party for expenses incurred where there is a determination made under the new subsections 203(2) or 203(3).

New Subdivision E - Notification of decision

New section 204: What happens when the Social
Security Appeals Tribunal
makes its decision on the review?

New subsection 204(1) would require the Tribunal after it makes its decision to prepare a statement which:

- . sets out the decision;
- . sets out the reasons for the decision;
- . sets out the findings on material questions of fact; and
- . refers to the evidence or other material on which the findings were based.

This statement would then be given to all parties to the review within 14 days after the determination of the review and the documents provided by the Secretary would be returned. Copies of any later documents collected by the Tribunal would also be provided to the Secretary.

New subsection 204(2) would require a notice, to be provided with the statement of decision, to the effect that a dissatisfied party may appeal to the Administrative Appeals Tribunal.

New subsection 204(3) would clarify that the validity of a decision is not affected by a failure to comply with the new subsection 204(2).

New Division 4 - Review by Administrative Appeals Tribunal

New Subdivision A - Right to review by Administrative
Appeals Tribunal

New section 205: A person affected by a decision that has been
reviewed by the Social Security Appeals
Tribunal may apply to the Administrative
Appeals Tribunal for a further review of
the decision

New subsection 205(1) would provide that a person affected by a decision that has been affirmed, varied or set aside by the Social Security Appeals Tribunal may apply to the Administrative Appeals Tribunal for further review.

New subsection 205(2) would clarify that the decision made by the Social Security Appeals Tribunal will be taken to be a decision of the Tribunal irrespective of whether the decision is affirmed, varied, set aside and a new decision substituted, or remitted to the Secretary with directions or recommendations.

New subsection 205(3) would clarify that new subsection 205(1) would be subject to section 29 of the Administrative Appeals Tribunal Act 1975 which lays down the manner in which an application to the Administrative Appeals Tribunal for review of a decision must be made.

New subsection 205(4) would relocate section 18 of the Principal Act insofar as it applies to decisions set aside by the Administrative Appeals Tribunal. Earlier explanation under the new subsection 172(6) provides an example of the use of this power.

New section 206: What happens if the decision under review is varied while the application for review is still being heard?

New subsection 206(1) would provide that where a decision is varied by the Secretary after an application has been made to the Administrative Appeals Tribunal, the decision under review is the varied decision rather than the original decision. This means that an applicant will not have to re-apply for review where a decision is varied after the application has been made to the Administrative Appeals Tribunal.

New subsection 206(2) would have the same effect as new subsection 206(1) except that this subsection would apply to decisions set aside.

New subsection 206(3) would make it clear that an applicant has a choice whether to proceed with the application for review or to withdraw where an officer varies the decision under review or sets the decision aside and substitutes a new decision.

New section 207: The Secretary will be able to apply to the Administrative Appeals Tribunal for review of a decision that the Social Security Appeals Tribunal has varied or set aside

New section 207 would allow the Secretary to apply to the Administrative Appeals Tribunal for review of a decision of the Social Security Appeals Tribunal where the earlier decision of the Secretary has been set aside or varied.

New Subdivision B - Modification of the Administrative
Appeals Tribunal Act 1975

New section 208 : Modification of the Administrative
Appeals Tribunal Act

New section 208 would provide that the new subdivision B sets out the modifications of the Administrative Appeals Tribunal Act 1975 that need to be made for applications for review by the Administrative Appeals Tribunal under the new section 205.

New section 209 : Applicant's right to have a
statement of the reasons for
the decision under review

New section 209 would modify section 28 of the Administrative Appeals Tribunal Act 1975 so that the National Convener will be the person identified as the person who made the decision and therefore, who has to meet any obligations that may arise under that provision.

New section 210 : Notice of application for review

New section 210 would modify subsection 29(11) of the Administrative Appeals Tribunal Act 1975 so that all parties to the review except the party making the application to the Administrative Appeals Tribunal receive a notice that another party or a person whose interests are affected by the review has applied to the Administrative Appeals Tribunal for a review of the decision made by the Social Security Appeals Tribunal.

New section 211 : Who are the parties to a review
by the Administrative Appeals
Tribunal?

New section 211 would modify paragraph 30(1)(b) of the Administrative Appeals Tribunal Act 1975 so that the parties to

the review by the Administrative Appeals Tribunal would be the same parties to the review by the Social Security Appeals Tribunal.

New section 212 : Lodging of material documents
with the Administrative Appeals
Tribunal

New subsection 212(1) would modify section 37 of the Administrative Appeals Tribunal Act 1975 so that the Secretary shall be the person who is required to provide the statement and documents pursuant to subsection 37(1) of the Administrative Appeals Tribunal Act 1975.

New subsection 212(2) would provide that, for the purposes of meeting the obligations under paragraph 37(1)(a) of the Administrative Appeals Tribunal Act 1975, the statement provided by the Social Security Appeals Tribunal under the new paragraph 204(1)(a) would be sufficient.

New subsection 212(3) would clarify that the Administrative Appeals Tribunal's power under section 38 of the Administrative Appeals Tribunal Act 1975 to obtain an additional statement is not limited by reason of the operation of the new subsection 212(2).

New section 213 : Power of the Administrative Appeals
Tribunal to obtain additional statements

New section 213 would modify section 38 of the Administrative Appeals Tribunal Act 1975 so that the person who is required to provide any additional statements under that section is the National Convener.

New section 214 : Operation and implementation of
the decision under review

New section 214 would modify subsection 41(4) of the Administrative Appeals Tribunal Act 1975 so that each party to the review before the Social Security Appeals Tribunal will be able to make submissions to the Administrative Appeals Tribunal where a party applies to the Administrative Appeals Tribunal for an order staying or otherwise affecting the operation or implementation of the decision made by the Social Security Appeals Tribunal.

New section 215 : Power of the Administrative
Appeals Tribunal to strike
out a party

New section 215 would modify subsection 42A(2) of the Administrative Appeals Tribunal Act 1975 so that the Administrative Appeals Tribunal cannot prevent the Secretary to the Department of Social Security from being a party to proceedings before that Tribunal.

NEW PART XX - SOCIAL SECURITY APPEALS TRIBUNAL

New Division 1 - Establishment and membership of the
Social Security Appeals Tribunal

New section 216 : Establishment of the Social Security
Appeals Tribunal

New section 216 would establish the Social Security Appeals Tribunal and provide that the Tribunal would consist of a National Convener, senior members and ordinary members.

New section 217: The National Convener

New subsection 217(1) would provide that the National Convener is responsible for the overall operation of the Tribunal.

New subsection 217(2) would provide that the National Convener shall:

- . monitor the operations of the Tribunal;
- . take reasonable steps to ensure that decisions of the Tribunal are consistent;
- . take reasonable steps to ensure that the Tribunal performs its functions efficiently and effectively.

New subsection 217(3) would provide that the National Convener may give directions for the purpose of increasing the efficiency of the operation of the Tribunal and for arranging the business of the Tribunal.

New section 218: Appointment of members

New section 218 would provide that the National Convener and senior members be appointed by the Governor General [new subsection 218(1)] and all other members be appointed by the Minister [new subsection 218(2)]. The National Convener must be a full-time member and all other members, including senior members, may be either full-time or part-time [new subsections 218(3) and (4)].

New section 219: Period of appointment of members

New subsections 219(1) and (2) would provide that all members hold office for such period as is specified in the instrument of appointment but that the maximum period of appointment for the National Convener is 5 years and for all other members, including senior members, the maximum period of appointment is 3 years.

New section 220: Acting appointments

New section 220 through its various subsections provides rules for acting appointments as follows:

- . acting National Convener for a period not exceeding 12 months during a vacancy in the office of National Convener or where the National Convener is absent from Australia or unable to perform the duties of office [new subsections 220(1) and (2)];
- . acting full-time senior member when the senior member is absent from duty or overseas or is unable to perform the duties of office [new subsection 220(3)];
- . acting part-time senior member when the member is unavailable to perform the duties of office for any reason [new subsection 220(4)];

. the normal terminating event for acting appointments would be:

- in the case of the National Convener, the filling of the office or the return of the National Convener to perform the duties of the office;
- in the case of a senior member, whether full-time or part-time, the return of the member to perform the duties of the office [subsection 219(12)];

. acting appointments could continue at the direction of the Minister after the normal terminating event occurred provided the period of continuation is specified in the direction and is no longer than 12 months [new subsections 220(5), (6) and (9)];

. the continuation of an acting appointment can be made only where a review in which the acting appointee had been involved had not been finalised, where other special circumstances exist or where the normal terminating event had not occurred [subsection 220(8)];

. where there has been an irregularity or a defect in the appointment, any decisions of the Tribunal or actions of the member so acting would be valid [new subsections 220(10) and (11)].

New Division 2 - Organisation of the business of the Social
Security Appeals Tribunal

New section 221 : The National Convener will direct which
members are to constitute the Social
Security Appeals Tribunal for the purposes
of a review

New subsection 221(1) would provide that the National Convener may direct who is to constitute the Tribunal for a particular review or reviews of a particular kind. The directions are to be in writing.

New subsection 221(2) would provide that the National Convener may direct who is to constitute the Tribunal for the purposes of all reviews or reviews of a particular kind that are listed in a particular place during a particular period. This would allow the National Convener, for example, to appoint a member with expertise in medicine to a Tribunal hearing a review involving medical questions. As the directions are in writing, they can be revoked and remade at any time after the original direction is made.

New section 222 : Number of members to constitute Social
Security Appeals Tribunal for the purposes
of a review

New subsections 222(1), (2) and (3) would provide that a Tribunal will be constituted by 3 or 4 members with a lesser number in special circumstances. Those circumstances are envisaged to include situations where an appointed member cannot continue to constitute a Tribunal because of illness or where an applicant may be vexatious and the matter should be dealt with expeditiously.

New section 223: What happens if a member of the Social Security Appeals Tribunal ceases to be available for the review?

New subsection 223(1) would provide that, where a member ceases to be available for a review, the Tribunal shall continue without that member unless the National Convener directs that the Tribunal should be reconstituted. A reconstitution may occur where an applicant feels that the case may be prejudiced unless the Tribunal is reconstituted.

New subsections 223(2) and (3) would provide that, where a Tribunal is reconstituted, the reconstituted Tribunal may have regard to the previous evidence and proceedings of the earlier Tribunal.

New Division 3 – Administrative matters

New section 224: Remuneration and allowances of members

New section 224 would provide that the remuneration of members shall be determined by the Remuneration Tribunal or, in the absence of a determination, by regulation.

New section 225: Leave of absence

New section 225 would provide that the Minister may approve leave of absence of the National Convener and all other members' leave of absence shall be approved by the National Convener. The terms and conditions of leave of all members would be determined by the Minister.

New section 226: Approval to engage in outside employment

New subsection 226(1) would provide that all full-time members, other than the National Convener, shall not engage in outside employment unless approved by the National Convener. There would be no provision for the National Convener to engage in outside employment.

New subsections 226(2) and (3) would provide that the Minister may give written directions to the National Convener about the exercise of powers under the new subsection 226(1) dealing with approval of leave for full-time members.

New section 227: Resignation

New section 227 would provide that members, including senior members, and the National Convener may resign by writing to the Minister.

New section 228: Removal from office

New section 228 would provide rules for removing members from office including:

- . proved misbehaviour or physical or mental incapacity - removal by the Governor-General in the case of the National Convener and senior members and by the Minister in the case of ordinary members;
- . the Minister may suspend any member, whether it is the National Convener, a senior member or an ordinary member, on the grounds of proved misbehaviour or physical or mental incapacity;
- . any further action on the suspension of the National Convener or a senior member requires the intervention of the Governor-General either to:
 - remove the person from office;
 - continue the suspension for a further specified period; or
 - terminate the suspension by a direction.
- . suspension does not affect the payment of remuneration or allowances.

removal from office may occur if one of the following circumstances (known as disqualifying circumstances) exists:

- bankruptcy
- application for bankruptcy or insolvency
- compounding with creditors
- assignment of remuneration to creditors;
- engaging in paid outside employment without approval;
- absence from duty for 14 consecutive days or 28 days in any 12 month period without reasonable excuse; or
- failure to comply with obligations under section 229 regarding disclosure of interests.

New section 229: Disclosure of interests

New subsection 229(1) would provide that, where a member of the Tribunal has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to a review, that interest must be disclosed to both the applicant and the Secretary and both must consent if the member is to continue to hear the review.

New subsection 229(2) would provide that, where the National Convener becomes aware of an interest of the kind referred to in the new paragraph 229(1)(b), the National Convener may direct that the member take no further part in the review or inform the applicant and the Secretary of the conflict of interest. Informing the Secretary and the applicant would then bring the procedures under the new subsection 229(1) into operation.

New section 230: Disclosure of Information

New subsections 230(1), (2), (3) and (4) would provide that all members, staff and interpreters of the Tribunal shall not, either directly or indirectly, make a record, divulge or communicate any information concerning a person obtained in the course of performing functions or duties or exercising powers under the Principal Act. The information may be disclosed for the purposes of the Act or in connection with the performance of a function or duty under the Act but not otherwise.

New subsection 230(5) would provide that a person to whom the Act applies shall not be required to produce any document in court or divulge or communicate any information to a court except for the purposes of the Principal Act.

New subsection 230(6) would provide that a court includes a tribunal or any person with the power to require the production of documents or the answering of questions.

New section 231: Delegation by the National Convener

New section 231 would allow the National Convener to delegate any or all of the powers of the National Convener to a member of the Tribunal. A member also includes an acting member by virtue of section 33A of the Acts Interpretation Act 1901 and a delegation may be made to a presiding member by virtue of section 41A of the Acts Interpretation Act 1901.

New section 232: Protection of members and witnesses

New section 232 would provide the following protection:

- for members – same protection and immunity as members of the Administrative Appeals Tribunal;

for representatives of parties - same protection and immunity as a barrister representing a party in proceedings before the Administrative Appeals Tribunal; and

for witnesses - same protection and immunity as a witness in proceedings before the Administrative Appeals Tribunal.

New section 233: Fees for witnesses

New subsection 233(1) and (2) would provide that witnesses attending a hearing of the Tribunal at the request of the National Convener would be entitled to be paid expenses in respect of the persons' attendance, fees and allowances. The amounts of the fees and allowances would be ascertained in accordance with a determination made by the Minister.

New subsection 233(3) would provide that a determination is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

New subsection 233(4) would provide that the fees and allowances shall be paid by the Commonwealth.

New section 234: Oath or affirmation of office

New section 234 would provide that the oath or affirmation of office shall be taken in accordance with the form in schedule 4 and shall be made before a Justice of the Peace or a commissioner for taking affidavits.

New section 235: Staff of the Social Security Appeals Tribunal

New section 235 would provide that any staff required to assist the Tribunal shall be appointed or employed under the Public Service Act 1972 and made available for the purpose by the Secretary.

New section 236 : Annual report

New subsection 236(1) would provide that the National Convener shall prepare an annual report as soon as practicable after 30 June each year and give the report on the operations of the Social Security Appeals Tribunal to the Minister.

New subsection 236(2) would require the Minister to place the report before each House of Parliament within 15 sitting days of receiving it.

New subsection 236(3) would provide that the first annual report would be in respect of the period starting on the day this new section comes into operation and ending on 30 June 1989.

Clause 7 : New schedule 1A to the Social Security Act 1947

Clause 7 would insert a new schedule 1A into the Principal Act.

Clause 8 : Minor and consequential amendments

Clause 8 would provide that the Acts specified in schedule 2 are amended as set out in the schedule.

Clause 9 : Transitional provisions

Subclause 9(1) would provide that the new provisions to be inserted by clauses 3, 4, 5, 6, 7 and 8 do not apply to decisions where review by the Social Security Appeals Tribunal is sought before 1 November 1988 and the Tribunal begins to hear the application for review before that date.

Subclause 9(2) would provide that the new provisions to be inserted by clauses 3, 4, 5, 6, 7 and 8 would apply to decisions where an application for review had been made before

1 November 1988 but the Social Security Appeals Tribunal does not begin to hear the application before that date. The application will be deemed to have been made under the new subsection 173(1).

Subclause 9(3) would require the Secretary to fulfil the obligations under the new section 184, for cases falling within subclause 9(2), within 28 days from 1 November 1988.

Clause 10 : Renumbering of the Social
Security Act

Subclause 10(3) would renumber the provisions of Part XXI of the Principal Act so that they bear consecutive Arabic numerals commencing with "237".

Subclause 10(4) would amend any provision of the Principal Act that refers to a section of that Act that has been renumbered by inserting the new section number and omitting the previous section number.

Subclause 10(5) would have the same effect as subclause 10(4) except that the renumbering will apply to any other law of the Commonwealth or a Territory that makes reference to a section of the Principal Act.

Schedule 1

Schedule 1 would contain the oath and affirmation required to be taken pursuant to the new section 234.

Schedule 2

Schedule 2 would amend section 5F of the Health Insurance Act 1973. The amendment would provide for a review of decisions made under sections 5 to 5E of the Health Insurance Act 1973 in Part XIX of the Principal Act.

Schedule 2 would also amend paragraph 168(4)(a) of the Principal Act to take account of the repeal of section 16 and the insertion of the new subsection 173(1).

Schedule 2 would also amend the heading to Part XIX to become Part XXI.

Schedule 2 would also amend subsection 175(1) of the Principal Act by inserting references to new subsections 195(2) and 230(3) after the reference to subsection 19(2).

TABLE OF PROVISIONS OF PART XXI
OF SOCIAL SECURITY ACT 1947 IMMEDIATELY
BEFORE AND AFTER 1 NOVEMBER 1988

Previous Number

New Number

Part XIX - MISCELLANEOUS

Part XXI - MISCELLANEOUS

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