ADMINISTRATIVE REVIEW COUNCIL

REPORT TO THE ATTORNEY-GENERAL

THE STRUCTURE AND FORM OF SOCIAL SECURITY APPEALS

Report No. 21

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CORRIGENDA

Page 8; paragraph 21:
Delete the words “in favour of appellants”.
Delete the words “Favourable recommendations” and substitute the word “Recommendations”.
Delete the words “favourable” wherever occurring.

Page 21, paragraph 78:
Delete the words “that were in favour of appellants”.

Dear Attorney-General,

In November 1983 you sought the advice of the Administrative Review Council as to whether, in the light of developments since preparation of its 1980 report on Social Security Appeals, it now favours a two-tiered appeal structure and, if so, what form that structure might take.

I now have pleasure in submitting to you the Council’s report on this matter.

Yours sincerely,

E.J.L. Tucker
Chairman

Senator the Hon. Gareth Evans, Q.C.
Attorney-General
Parliament House
Canberra, A.C.T. 2600
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RECOMMENDATION 1
A Social Security Appeals Tribunal should be established under the Social Security Act 1947 as a first tier external review tribunal to hear and determine appeals on the merits from decisions made under the provisions of that Act. A provision should be included in the Act stating that a primary objective of the Tribunal should be to provide an informal, expeditious and economical form of review in a two-tiered structure of external appeals. The Tribunal’s power of decision should be determinative rather than recommendatory.

RECOMMENDATION 2
(a) Membership of the Social Security Appeals Tribunal should be drawn from persons with expertise in the interpretation of relevant law and experience or skill in the conduct of tribunal proceedings, persons with appropriate experience or qualifications in the provision, operation or study of welfare services, persons from, or formerly from, the Public Service with experience in social security or welfare administration, and legally qualified medical practitioners.
(b) Members should be appointed on either a full-time or a part-time basis, provided that an officer of the Public Service shall be appointed on a part-time basis only where the volume of work does not justify a full-time appointment.
(c) A Public Service member should not be subject to the direction and control of the Director-General of Social Security in the performance of his duties as a member of the Social Security Appeals Tribunal.
(d) The Social Security Appeals Tribunal should be constituted in general appeals by a legal member, a welfare member, and a serving or former public servant, augmented in medical appeals, at the discretion of the Chairman (see (e) below), by a medical member.
(e) A full-time Chairman should be appointed from the categories of persons eligible for membership to co-ordinate the operations of the Tribunal on a national basis and to perform such other functions as are proposed for him in this Report.
(f) At least one Deputy Chairman should be appointed from the categories of persons eligible for membership in each State and Territory on a full-time basis or, where the caseload does not warrant a full-time appointment, on a part-time basis, provided that an officer of the Public Service shall not be appointed on a part-time basis.
(g) The Chairman should be responsible for constituting the Tribunal to hear an appeal and, where the Tribunal as so constituted does not include the Chairman or a Deputy Chairman, should nominate a member (other than a serving or former officer of the Public Service) to preside.
(h) In the event of an equality of votes in deciding any matter, the presiding member’s opinion should prevail.
(i) The Chairman should be empowered to delegate any of his powers, other than the power of delegation itself, to a Deputy Chairman.

The Social Security Act 1947 should be amended to provide accordingly.

RECOMMENDATION 3
Members of the Social Security Appeals Tribunal should be appointed by the Governor-General in Council for terms not exceeding five years and be eligible for reappointment, and the Social Security Act 1947 should provide accordingly.
RECOMMENDATION 4
(a) An application for review by the Social Security Appeals Tribunal should be lodged, either orally or in writing, with the Tribunal within 28 days of notification of an adverse primary decision or within such further time as the Chairman or a Deputy Chairman permits.
(b) The Chairman should be empowered to order in special circumstances the interim payment of a pension or benefit or to stay the cancellation or suspension of a pension or benefit or a reduction in the rate of an existing pension or benefit, pending the determination of an appeal.
(c) The Director-General should be required to provide to the Tribunal as soon as is practicable and, in any event, not later than 28 days after receipt by him of notification of the lodgment of an appeal, copies of any reports or documents held by the Department on which it intends to rely in the appeal and any other documents necessary for a proper understanding of the primary decision.
(d) Reports and documents which come into the Director-General’s possession after the expiration of the 28 day time limit should be required to be transmitted to the Tribunal as soon as is practicable.
(e) Reports and documents upon which an appellant intends to rely should be transmitted to the Tribunal as soon as is practicable.

Regulations should provide accordingly.

RECOMMENDATION 5
The Social Security Act 1947 should empower the Social Security Appeals Tribunal to conduct oral hearings; to require the production of documents; and to give directions prohibiting or restricting the publication or disclosure of some or all of the contents of a document lodged with the Tribunal or other evidence received by the Tribunal if the Tribunal is satisfied that such directions are desirable by reason of the confidential nature of any matter or evidence or for any other reason. Appellants should be encouraged to participate in Tribunal hearings but an oral hearing need not be held if both parties agree or if the appellant is unwilling to participate. The Tribunal should not be bound by rules of evidence and proceedings should be conducted with as little formality and technicality, and with as much expedition, as the requirements of all relevant enactments and a proper consideration of the matters before the Tribunal permits. Sufficient funds should be made available to enable the Tribunal at the discretion of the Chairman to conduct hearings in regional or country locations.

RECOMMENDATION 6
Regulations should provide that the Social Security Appeals Tribunal is responsible for providing the Department or the appellant at least 7 days before a hearing with a copy of any written submission made by the other party and any report or document transmitted in accordance with recommendation 4, subject to the Tribunal’s power to give appropriate directions as to the publication or disclosure of material as proposed in recommendation 5.

RECOMMENDATION 7
(a) An appellant should be entitled to be represented, if he wishes, before the Social Security Appeals Tribunal by a person of his own choice.
(b) The Director-General of Social Security should be entitled with the leave of the Tribunal to be represented before the Social Security Appeals Tribunal by a person of his own choice.
(c) Where leave is granted for the Director-General to be represented in accordance with (b) above and the claimant is unrepresented, the Department of Social Security may be
required at the Tribunal’s discretion to pay the reasonable costs of providing suitable representation for such a claimant.

Regulations should provide accordingly.

RECOMMENDATION 8
(a) The Social Security Appeals Tribunal should be required to give decisions in writing and to provide a brief statement of the reasons for decisions.
(b) Reasons may be stated orally but the Tribunal should be required, if requested by either of the parties, briefly to state its reasons in writing within 28 days of receiving such a request.

Regulations should provide accordingly.

RECOMMENDATION 9
For the purpose of the Social Security Appeals Tribunal’s jurisdiction, regulations should provide that hearings should be held in private subject to a discretion in the presiding member to admit any person.

RECOMMENDATION 10
Legislation should provide for:
(a) the protection of Social Security Appeals Tribunal members, and representatives and witnesses appearing in Tribunal proceedings; and
(b) the obligations of witnesses in such proceedings to answer questions at the request of the presiding member and to give evidence that is neither false nor misleading.

RECOMMENDATION 11
Legislation should require the Chairman of the Social Security Appeals Tribunal to prepare an Annual Report of the Tribunal’s operations which should be forwarded to the Minister for Social Security for tabling in the Parliament.

RECOMMENDATION 12
Staff servicing the Social Security Appeals Tribunal should be appointed on a full-time basis wherever it is practicable to do so and should be subject to the direction of the Chairman or the Deputy Chairman of the jurisdiction concerned.

RECOMMENDATION 13
Sufficient funds should be made available to the Social Security Appeals Tribunal to enable it to recompense appellants for the cost of travel and accommodation expenses in attending Tribunal hearings and any expenses reasonably incurred in obtaining evidence.

RECOMMENDATION 14
Review by a Review Officer should not be prerequisite to seeking external review but claimants should be encouraged to use this review process before seeking external review. The Department’s current practice of immediately reconsidering a decision which is the subject of an appeal should continue and such reconsideration should be completed as soon as is practicable.

RECOMMENDATION 15
Section 15A of the Social Security Act 1947 should be repealed and jurisdiction should be conferred on the Administrative Appeals Tribunal to review a decision of the Social Security Appeals Tribunal (including a decision on an interlocutory matter made by the Chairman or
a Deputy Chairman) at the behest of either the claimant or the Director-General of Social Security.

**RECOMMENDATION 16**
An appeal to the Administrative Appeals Tribunal in its social security jurisdiction should only lie from a decision of the Social Security Appeals Tribunal except where the Chairman or a Deputy Chairman of that Tribunal refers an appeal to the Administrative Appeals Tribunal on the ground that the appeal involves an important principle of general application, and legislation should provide accordingly.

**RECOMMENDATION 17**
Legislation should provide that decisions made under the *Health Insurance Act 1973* concerning disadvantaged persons should be subject to the same appeal provisions as apply to decisions made under the Social Security Act.

**RECOMMENDATION 18**
Legislation should provide that a decision of the Director-General of Social Security acting on behalf of the Commonwealth to recover a debt arising under regulation 22 of the *Migration Regulations* in relation to the payment of special benefits should be subject to the same appeal provisions as apply to decisions made under the *Social Security Act*.

**RECOMMENDATION 19**
The Council reiterates the recommendation it made in its Report on Social Security Appeals that, for the purposes of the Administrative Appeals Tribunal’s social security jurisdiction, provision should be made for payment of expenses and allowances to claimants in respect of attendance at Tribunal hearings.

**RECOMMENDATION 20**
A national survey of the needs of social security claimants and appellants in terms of advice and assistance should be conducted with a view to developing a scheme to ensure that claimants and appellants have access to adequate sources of advice and assistance.
INTRODUCTION

1. In June 1980 the Council reported to the then Attorney-General on Social Security Appeals. The Council proposed a comprehensive system of external review of social security decisions and also made recommendations concerning primary decision making and internal review. The principal recommendations made by the Council in its Report were that:
   (a) Social Security Appeals Tribunals (SSATs) should be abolished and replaced by an improved Review Officer structure.
   (b) There should be a right of appeal from decisions of the Director-General of Social Security to the Administrative Appeals Tribunal (AAT).

2. Three significant developments have occurred since that Report was transmitted. First, SSATs have not been abolished and many changes have been made to their operations. Second, the AAT has exercised appellate jurisdiction over a wide range of social security decisions. Third, the Administrative Review Council has gained more experience in relation to a two-tiered structure of appeals in jurisdictions involving large numbers of decisions.

3. In the light of these developments, the Attorney-General requested the Council in November 1983 to give further consideration to a two-tiered structure in social security appeals and to advise him on the form that that structure might take (a copy of the Attorney’s letter is set out in Appendix 1). The Attorney indicated that both he and the Minister for Social Security were inclined to favour a two-tiered appeals structure prepared by the Minister for Social Security. Copies of those suggestions are also set out in Appendix 1 to this Report. Careful consideration has been given by the Council to the two suggested structures but in formulating its advice to the Attorney-General the Council has not regarded itself as being limited simply to choosing between those suggestions. It will be seen, however, that the structure and form of social security appeals favoured by the Council shares many of the features of the second of the two suggested structures.

4. In developing this project the Council has had access to material and information collected by it in relation to its earlier Report on Social Security Appeals and also its case study of the administration of the Commonwealth social security system which forms part of the Council’s current Impact Project. In addition, the Council’s Director of Research held consultations with members of the existing Social Security Appeals Tribunals and officers of the Department of Social Security. In November 1983, to encourage preliminary comments on its project, the Council circulated to interested groups and persons, copies of the two suggested ‘structures provided by the Minister for Social Security. Copies of a draft Report to the Council were also circulated to those groups and persons in mid-January 1984 with an invitation to comment. A list of persons and organisations who made submissions to the Council is set out in Appendix 2. The Council expresses its appreciation to those who assisted its project by providing information and comment.

5. This Report is divided into 3 Parts. Part 1 describes the existing structure of social security appeals and highlights the changes that have occurred since the Council’s earlier Report was prepared. Part 2 involves an assessment of the existing system of social security appeals and identifies certain problems. In Part 3 the Council proposes that the existing two-tiered structure of appeals be retained but recommendations are made with a view to improving the existing system. The dissenting views of the Hon. Justice M.D. Kirby and Mr A.D. Rose on two issues are set out at the end of Part 3.
PART 1: THE EXISTING STRUCTURE OF SOCIAL SECURITY APPEALS

6. An appeal or review system must be viewed in the light of both the legislative framework within which it operates and the scheme of primary decision making which underpins it. In its earlier Report on Social Security Appeals (chapter 2) the Council summarised the legislative framework established by the Social Security Act 1947 (‘the Act’) and described the procedures then current for primary decision making and internal review (Appendix 5, Part 3). Most of the main points to emerge from that material remain valid today. Those points may be summarised as follows:

Legislative Framework

7. A wide range of pensions, benefits and allowances is provided for under the Act including age and invalid pensions, widows’ and wife’s pensions, supporting parent’s benefits, funeral benefits, family allowances, double orphans’ pensions, handicapped child allowances, unemployment and sickness benefits, special benefits, sheltered employment allowances and rehabilitation payments. The Act confers broad discretionary powers on the Director-General in determining eligibility and disentitlement to social security benefits. In practice these powers are usually delegated to officers of the Department of Social Security (DSS). The exercise of such broad discretions may be expected to give rise to appeals which vary considerably in nature and complexity.

Primary Decision Making

8. The DSS is responsible for a large number of decisions which affect many Australians. For example, during 1982-83 age pensions were paid to almost 1.5 million people, invalid pensions were paid to over 270 000 people, and family allowances were paid in respect of 4.3 million children. During that year, social security payments made under the Act totalled in excess of $11 500 000 000 and the total cost of administering the Act amounted to $320 000 000. Further illustration of the magnitude of decision making involved in administering the Act is the fact that during 1982-83 the Department commenced payment of nearly 1.5 million new pensions or benefits. To this figure could be added the many decisions taken in rejecting claims or varying, maintaining, or discontinuing existing payments.

9. The DSS currently employs approximately 16 000 staff who are located in Central and State (or Territory) Headquarters, in Area Management Offices, and in more than 180 Regional Offices throughout Australia. There is a wide variation in the degree of experience among primary decision makers, many of whom are in the age bracket 18-25. The high volume of decisions and extensive decentralisation of decision making powers inevitably create difficulties in maintaining uniform and consistent decision making under the Act.

Internal Review

10. The Act provides that not only does the Director-General have power to determine claims but also that he has power to review his decisions and those of his delegates where it appears to him that there is sufficient reason for so doing (s.14). In addition, provision exists for a person affected by a decision to appeal to the Director-General against a decision except one taken by the Director-General himself (s.15).
11. Since April 1978, Review Officers (ROs) have been progressively introduced by the DSS to conduct internal reviews and to make new decisions in appropriate circumstances. As stated above, the Council recommended in its earlier Report that the role of SSATs should be replaced by an improved RO structure.

12. There is no separate designation or substantive office of an RO, but the functions of an RO are normally attached to the substantive position of one or more senior officers in each Regional Office. As an officer previously uninvolved in the matter in dispute, the ROs’ function is to bring a fresh mind to bear in conducting an expeditious and informal reconsideration of the disputed decision. The ROs’ task is to reconsider the merits of a decision, to establish whether relevant information exists which was previously unknown to the Department, to clarify any misunderstandings, to rectify any mistakes that may have occurred, to better explain the decision in question, and to provide information on further rights of appeal. The ROs’ role is an important one in reducing the number of external appeals, not only by varying erroneous primary decisions but also by explaining and elaborating upon the reasons for adverse primary decisions to the satisfaction of some claimants. Review by an RO is especially relevant where a complaint involves immediate financial hardship. While prompt review is desirable in all cases, it is recognised that some social security grievances are particularly time sensitive, such as those involving the issue of duplicate cheques, time of payment, and refusal to pay a pension or benefit where a complainant has no alternative source of income. In these circumstances, speedy review by an RO (or the Ombudsman) is likely to prove more appropriate than recourse to an SSAT or the AAT.

13. It is not possible accurately to state how many reviews have been conducted by ROs over a given period since only a few offices of the DSS maintain relevant statistics. However, extrapolation form information provided by the DSS in relation to New South Wales indicates that approximately 25,000 reviews are conducted throughout Australia on an annual basis. Details of the outcomes of those reviews are not available.

14. It has been recognised that the RO concept does not provide a complete solution to the need for effective methods of obtaining review of departmental decisions. Two other methods are available to review adverse decisions on their merits: SSATs and the AAT.

Social Security Appeals Tribunals

15. SSATs had been in existence for five years when the Council made its earlier Report which included a critical assessment of the Tribunals’ operation at that time. The Council concluded that the SSATs were unacceptably internal to the DSS and that both their constitution and operation were unsatisfactory. In particular it was stated at para. 2.034 that SSATs:
- are and are recognised to be part of the process of advising the Director-General;
- have no statutory basis and no power of decision;
- give the appearance of lack of independence by including serving DSS officers in their constitution;
- lack procedures and powers for effective fact-finding; and
- offer a level of justice which falls short of that appropriate to the interests and issues at stake.

16. It will be seen in Part 2 of the Report that the Council considers that some of those criticisms are still relevant. On the other hand, it must also be acknowledged that some changes have been made to the jurisdiction and procedures of the Tribunals since the
Council’s earlier Report was completed and some of the Council’s criticisms are no longer applicable. These changes are identified in the following description of the SSATs current operation. It should also be emphasised that the Council’s earlier assessment of the SSATs was made at a time when the AAT was not involved in reviewing social security decisions. The Council’s criticisms of the SSATs were predicated on the assumption that the Tribunals constituted the only tier of quasi-external appeal. Different considerations apply today since the SSATs constitute the first level of a two-tiered structure of appeal. The current operation of SSATs is now described in brief.

CONSTITUTION AND MEMBERSHIP

17. SSATs were established not by legislation but by Ministerial directive and they began operation on 10 February 1975. Since then Tribunals have been created in each State and Territory but they are not formally organised or co-ordinated on a national basis.

18. The constitution of the Tribunals varies according to whether a general or a medical appeal is being heard. For general appeals the Tribunals are constituted by three members comprising an officer seconded from the DSS on either a full-time or part-time basis according to the volume of appeals in a particular jurisdiction, and two part-time members, one with appropriate qualifications in law and the other with appropriate qualifications or experience in welfare. In medical appeals, a part-time member with medical qualifications is added as a fourth member.

19. Departmental members are appointed by the Director-General and other members are appointed by the Minister for Social Security. Terms of appointment vary but are usually for periods of 12 months or more. Members may be considered for reappointment. As at 1 December 1983, there were 12 full-time and 3 part-time Departmental members, and 86 other members appointed on a part-time basis. The Tribunals were serviced at that time by 26 support staff.

JURISDICTION

20. Initially, the Tribunals’ jurisdiction was confined to hearing general appeals and at the same time the Council’s earlier Report was prepared medical appeals were heard, not by SSATs, but by Directors of Health who made recommendations to the Department. It was not until September 1980 that the Tribunals’ jurisdiction was extended to include medical appeals involving invalid pensions; sickness benefits and handicapped child allowances.

POWERS

21. SSATs do not have the power to set aside a decision and substitute a new decision. The Tribunals have no legislative foundation and are limited to recommending to the Director-General that a decision be affirmed, varied or annulled. However, most recommendations of the Tribunals are in fact accepted by the DSS. The Department’s Annual Report for 1982-83 reveals that only 5% of SSAT recommendations in favour of appellants were rejected by the Department (see Table 1 below). (Such a low overall rejection rate is especially relevant in considering whether the SSATs should be vested with determinative rather than recommendatory powers (see para. 78).) Favoured recommendations were rejected in 8.3% of general appeals and in only 2.6% of medical appeals. Wide variations do occur, however, between particular categories of decisions. For example, during 1982-83 the Department rejected only 3.5% favourable recommendations in relation to invalid pension appeals, but rejected 37.6% of favourable recommendations concerning special benefits. Several reasons may explain such variations. The width of discretion varies from one category of benefit to another and some Tribunals adopt a more
liberal position than the Department is prepared to accept. In other cases, Tribunals may make recommendations regarding certain categories of decision which the Department rejects as being legally unacceptable.

PROCEDURES

22. As stated above, the Council in its earlier Report was critical of SSAT procedures that were then in operation. Specific criticisms were levelled at the lack of uniformity and consistency between Tribunals on procedural questions and the absence of any system designed to co-ordinate procedures on a national basis. The Council found that inconsistencies existed between Tribunals on such matters as the conduct of oral hearings, personal attendance by appellants, cross-examination of appellants, provision of telephone hearings, the relevance of Departmental Manuals, and access to information in Departmental files (Social Security Appeals, para. 2.029 and Appendix 5, paras 3.106-3.147).

23. As the following section reveals, some improvements have been made in procedural matters and some of the Council’s earlier criticisms are no longer apposite. However, despite a general move towards greater uniformity, variations in Tribunal procedures remain both within and between States and Territories.

24. There is at present no uniform code of procedures applying to SSATs on a national basis. Appeals Procedures Instructions were prepared by the Department in 1975 but were not binding and Tribunals were left with a discretion to formulate their own procedures. The Appeals Procedures Instructions are referred to throughout the Council’s earlier Report. The Instructions were subsequently withdrawn by the Department with a view to revising them but no revised Instructions have been distributed at this time.

25. Some Tribunals, such as Queensland, have developed written guidelines concerning basic procedures in the conduct of hearings. These guidelines are designed to achieve reasonable uniformity in approach by all Queensland Tribunals and to strike a satisfactory balance between formal procedures and informal atmosphere at Tribunal hearings. The guidelines recognise, however, that flexibility is desirable and Tribunal Chairman are entitled to vary the basic procedures at their discretion in particular cases.

26. Written sets of procedures have not been formulated in all States and variations occur in the conduct of Tribunals’ business both within and between States. In N.S.W., for example, different Tribunals have adopted different attitudes on the issue of whether it is appropriate in medical appeals for the medical member to conduct an independent examination of appellants. No formal mechanism exists by which such procedural differences may be authoritatively resolved on either a State or national basis. Annual SSAT National Conferences provide an opportunity for issues of procedure to be debated and resolutions may be passed and forwarded to the Minister for his consideration. A resolution was passed at the 1983 National Conference, for example, recommending that a Standing Committee be established comprising one delegate from each State and Territory Tribunal for the purposes of formulating standard procedures pertaining to the conduct and hearing of appeals and for the purpose of implementing resolutions of SSAT National Conferences. Such resolutions are not, however, formally binding on either the Minister or the Tribunals themselves.

27. Some specific aspects of SSAT procedures are now described with a view to highlighting any changes which have occurred since 1980 and any significant variations that exist in current procedures.
28. (a) Lodgement of Appeal. Procedures for lodging an appeal to an SSAT are characterised by their flexibility and informality. Appeals may be instigated notwithstanding that there has been no previous contact with an RO. The DSS has prepared a pamphlet, Reviews and Appeals, which provides basic information on appeal processes and informs claimants that SSAT appeal forms are obtainable from the DSS. Identical forms are also available at SSAT offices. Use of the form is not, however, essential and an appeal may be commenced by an oral or written request.

29. Appeals may be lodged directly with an SSAT office but generally they are lodged at the Regional Office in the area where the primary decision was taken and are then passed to the SSAT. The Tribunals’ staff record and acknowledge receipt of the appeal and the Department is informed of the application, but the appeal is not set down for hearing at this stage. Rather, the appeal is subject to a process of reconsideration internal to the Department. This process may involve the Regional Office concerned as well as the Specialist Benefit Section at State Headquarters. The consideration process was described in detail in the Council’s earlier Report (Appendix 5, paras 3.066-3.071).

30. The internal reconsideration process frequently results in the appeal being conceded by the DSS without resort to an SSAT hearing. Indeed, during 1982-83, the Department conceded 38.9% of all SSAT appeals in advance of hearings (for detailed statistics, see Table 1 below). The Council has also noted that the reconsideration process is the source of considerable delay in processing appeals (see Table 2).

31. If an appeal is not conceded, the DSS prepares a brief submission on the case which is forwarded to the SSAT together with the appellant’s file. The Tribunal then sets the appeal down for hearing. The appellant is informed of the hearing date and at the same time is provided with a copy of the Department’s submission and information about what can be expected to occur at the hearing itself.

32. As far as access by appellants to material within the possession of the Department is concerned, it was noted in the Council’s earlier Report that appellants were not routinely told of their right to have access to documents within the Department’s possession and, in practice, access was seldom sought (Appendix 5, paras 3.117-3.119). Two significant developments have occurred since the Council’s earlier Report. First, the Freedom of Information Act 1982 establishes a general legal right of access to information held by the Federal Government. Subject to the provisions of that Act, appellants can get access to Departmental Manuals of Instructions, Handbooks, or other documents and reports. Second, at the time of the Council’s earlier Report, SSATs did not hear medical appeals and the issue of providing access to medical reports obtained by the Department was not a major problem. The current practice is not to provide an appellant with full copies of medical reports but a summary of any such report is normally included in the Department’s submission to the Tribunal which, as has been noted above, is made available to an appellant.

33. (b) Hearings. The conduct of attended hearings was described in the Council’s earlier Report (Appendix 5, para. 3.126) and that description remains generally accurate today. Where they are held, oral hearings are relatively informal and brief. Rules of evidence are not applied and proceedings are usually conducted on an ‘interview’ or ‘discussion’ basis. The hearings of South Australian and Tasmanian Tribunals are recorded on tape but this practice has not been adopted in any other State or Territory.
34. The most significant development to have occurred in relation to the conduct of hearings since the Council’s earlier Report relates to the personal attendance by appellants at Tribunal hearings. In its earlier Report, the Council drew attention to the fact that, while SSAT procedures were left to the Tribunals themselves, the Department had instructed Tribunals that they were not required to hold a hearing in any particular case unless the appellant insisted on a hearing. The Council reported at that time that, while some Tribunals (for example, N.S.W. and A.C.T.) had developed policies of encouraging all appellants to either contact the Tribunal by telephone or attend for a hearing in person, other Tribunals did so only in respect of some appellants and the Queensland Tribunal heard appellants in person in ‘comparatively few’ cases (Appendix 5, paras 3.107-3.112).

35. The policies and procedures of Tribunals have been amended so that there is now a general consensus on the need to encourage appellants to attend appeal hearings wherever practicable so that they may be given a full opportunity of presenting their cases. There has, for example, been a recent reversal of attitude on the part of the Queensland Tribunal. During the second half of 1981, hearings were conducted in less than 2% of appeals in that State and personal attendances by appellants were minimal. Following a review and restructuring of Tribunal procedures in that State during 1982, appellants attended approximately 82% of SSAT hearings during the latter half of that year (see the Report on the Operation of the Queensland SSAT tabled at the 1983 National Conference of SSATs, p. 14).

36. All SSATs are located in the capital cities in buildings separate from those occupied by the DSS. The travel and accommodation expenses of appellants attending hearings may be met by the Department. The Tribunals are also provided with funds to enable them to travel to country areas to conduct hearings where this would be more economical than assisting appellants in attending hearings in a capital city. At the time of the Council’s earlier Report, wide differences existed between the States concerning travel by the Tribunals and payment of appellants’ expenses (Appendix 5, paras 3.124-3.125). These differences have since been largely removed as the result of changes in policy on the part of particular Tribunals. The Council has noted in particular that the Queensland Tribunal (which, previous to 1982, had neither assisted an appellant in attending a hearing nor itself travelled outside Brisbane) has overturned its practice on these matters (Report on the Operation of the Queensland SSAT, op. cit., page 8). National statistics give some indication of the magnitude of the changes that have occurred in respect of payment of appellants’ expenses and travel by the Tribunals. In 1979-80, $4 550 was spent on these items, compared with a figure of $93 699 for 1982-83.

37. Appellants do not personally attend all Tribunal hearings. In some instances, telephone hearings may be conducted to enable the appellant to participate in the appeal. In other cases, a Tribunal may dispose of the appeal on the basis of the written file alone but such cases are not common in any State or Territory. The Tribunals normally sit in three-hourly sessions during which time each Tribunal hears approximately 4 appeals. This figure is only a broad estimate as the actual number of appeals heard depends on such factors as the complexity of the case, whether the appellant attends in person, whether the services of an interpreter are required, and whether witnesses are called. Not all appeals are disposed of after a single hearing. Adjournments may be necessary in order, for example, to enable additional evidence to be obtained or to arrange for witnesses to attend.

38. Wide variations occur between different States and Territories in relation to Tribunal workloads. The Council was informed by the Department that during 1982-83, for example, an average of 17 three-hourly sessions per week were held in N.S.W. compared with figures of 11 in Victoria, 7 in Queensland, 2 in S.A., 2 in W.A. and 1 in Tasmania and the Northern
Territory. In the A.C.T., sessions are arranged according to demand but averaged less than 1 session per week during 1982-83.

39. Another area in which there has been a change of attitude since the Council’s earlier Report concerns representation of appellants at Tribunal hearings. At the time the Council’s Report was prepared, Departmental Instructions provided that appellants could be represented before the Tribunals at hearings, but representation by legal practitioners was prohibited (Social Security Appeals, Appendix 5, para. 3.107). This prohibition is no longer enforced by any SSAT and appellants are able to be represented if they wish by any person of their choosing. Legal aid is generally not available but has been obtained in some SSAT appeals, particularly in Queensland.

40. (c) SSAT Recommendations. The procedures by which SSATs forward their recommendations with reasons to the State Directors of Social Security for consideration were described in the Council’s earlier Report (Appendix 5, paras 3.130-3.135). The Council has noted, however, that certain changes in those procedures have been made since its earlier Report was prepared. Previously, the Tribunals did not notify an appellant of a recommendation until the Department had reached a decision on whether or not to accept that recommendation. The current practice of all SSATs is to inform an appellant where an appeal is dismissed at the same time as the Tribunal forwards its recommendation for dismissal to the Department. There is, however, no uniform practice among the Tribunals on the issue of informing an appellant of a recommendation to uphold an appeal. In Victoria, favourable recommendations are not communicated to appellants until such recommendations have been either accepted in the State Office or determined by the Central Office of DSS in Canberra. A different procedure exists in other States and Territories. In those jurisdictions, an appellant is advised of the Tribunal’s recommendation at the same time as a submission is forwarded to the Department, regardless of whether the recommendation is to dismiss or to uphold the appeal.

41. The Council has also noted that variations exist in relation to the preparation of the Tribunals’ recommendations and reasons. In some jurisdictions (e.g. the A.C.T.) the full-time member is responsible for preparing the Tribunal’s recommendation which is then considered by the chairman before it is transmitted to the Department. In other jurisdictions, such as N.S.W., no uniform practice exists. In that jurisdiction, Chairman appointed since November 1982 are personally responsible for preparing recommendations and supporting reasons, while Chairman appointed before that date rely on reports written by full-time members.

WORKLOAD

42. The total number of appeals lodged with SSATs declined sharply from a figure of 17 084 in 1977-78, to 9 312 in 1978-79, to 6 704 in 1979-80 (at which time the Council’s earlier Report was written), after which it increased with the inclusion of medical appeals within the Tribunals’ jurisdiction. During 1980-81, 9 468 appeals were lodged, while the figures for 1981-82 and 1982-83 were 11 721 and 12 284 appeals lodged respectively. Detailed statistics for the financial years 1981-82 and 1982-83 are set out in Table 1 below (percentages are based on the number of appeals dealt with by SSATs).
Table 1 Review by Social Security Appeals Tribunals 1981-83

<table>
<thead>
<tr>
<th></th>
<th>1981-82</th>
<th></th>
<th>1982-83</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General</td>
<td>Medical</td>
<td>Total</td>
<td>General</td>
</tr>
<tr>
<td>Appeals Lodged</td>
<td>4 731</td>
<td>6 990</td>
<td>11 721</td>
<td>5 407</td>
</tr>
<tr>
<td>Appeals upheld by Department without reference to SSATs</td>
<td>1 121</td>
<td>2 431</td>
<td>3 552</td>
<td>1 284</td>
</tr>
<tr>
<td>Appeals dealt with by SSATs</td>
<td>2 550</td>
<td>2 853</td>
<td>5 403</td>
<td>2 713</td>
</tr>
<tr>
<td>Appeals upheld on recommendations of SSATs</td>
<td>762 (29.9%)</td>
<td>1 038 (36.4%)</td>
<td>1 800 (33.3%)</td>
<td>878 (32.4%)</td>
</tr>
<tr>
<td>Appeals dismissed on recommendation of SSATs</td>
<td>1 588 (62.3%)</td>
<td>1 776 (62.3%)</td>
<td>3 364 (62.3%)</td>
<td>1 611 (59.4%)</td>
</tr>
<tr>
<td>Appeals dismissed against recommendations of SSATs</td>
<td>200 (7.8%)</td>
<td>39 (1.4%)</td>
<td>239 (4.4%)</td>
<td>224 (8.3%)</td>
</tr>
<tr>
<td>Appeals withdrawn or lapsed</td>
<td>724</td>
<td>433</td>
<td>1 157</td>
<td>997</td>
</tr>
</tbody>
</table>

Source: Annual Reports of the Department of Social Security, 1981-83.

PROCESSING TIMES

43. In its earlier Report, the Council drew attention to the problem of delay in finalising social security appeals (Appendix 5, paras 3.085-3.087). At that time SSATs did not hear medical appeals and the Council found that the national average time for finalising appeals was approximately 6 weeks (this figure included all appeals conceded by the Department without resorting to Tribunal hearings). The Council concluded that while the average delay period was undesirably long from the perspective of an impecunious claimant it represented ‘fairly rapid decision making given the physical requirements of obtaining files, checking information, preparing submissions, and consideration by the Tribunal and, where necessary, reconsideration by DSS’ (Appendix 5, para. 3.086).

44. As the following Table reveals, the problem of delay in processing SSAT appeals has become more acute since the Council’s earlier Report. Statistics for the quarter ending 30 June 1983 establish that the average processing time (arithmetic mean) from registration of an appeal to finalisation is 27.1 weeks in relation to general appeals and 42.3 weeks in relation to medical appeals. A substantial proportion of those times is taken up by the DSSs involvement in reconsidering a primary decision in advance of an SSAT hearing and, subsequently, in considering the Tribunal’s recommendation. The Council was informed by the Department that it is currently attempting to finalise a backlog of particularly old appeals and that recent statistics may not accurately reflect the present performance of the appeals system because of the disproportionately high number of old appeals. The Department anticipates that there will be a marked improvement in SSAT processing times once this series of old appeals is finalised. The problem of delay is discussed later in this Report (paras 93-6) and recommendations are made in Part 3 with a view to improving the current position.
Table 2 Average Processing Times (Weeks)\(^{(a)}\) of SSAT Appeals - National Figures

<table>
<thead>
<tr>
<th>Quarter Ending</th>
<th>Registration to SSAT</th>
<th>Transmission to SSAT</th>
<th>Tribunal Recommendation</th>
<th>Registration to Finalisation</th>
<th>Registration-Finalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Appeals</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.9.81</td>
<td>5.5</td>
<td>8.5</td>
<td>5.2</td>
<td>19.7</td>
<td></td>
</tr>
<tr>
<td>31.12.81</td>
<td>5.8</td>
<td>8.3</td>
<td>7.1</td>
<td>22.0</td>
<td></td>
</tr>
<tr>
<td>31.3.82</td>
<td>8.3</td>
<td>9.7</td>
<td>8.3</td>
<td>25.5</td>
<td></td>
</tr>
<tr>
<td>30.6.82</td>
<td>7.4</td>
<td>9.7</td>
<td>7.9</td>
<td>26.1</td>
<td></td>
</tr>
<tr>
<td>30.9.82</td>
<td>8.4</td>
<td>7.6</td>
<td>6.8</td>
<td>23.8</td>
<td></td>
</tr>
<tr>
<td>31.12.82</td>
<td>10.0</td>
<td>8.4</td>
<td>10.9</td>
<td>29.0</td>
<td></td>
</tr>
<tr>
<td>31.3.83</td>
<td>13.3</td>
<td>9.5</td>
<td>6.3</td>
<td>28.5</td>
<td></td>
</tr>
<tr>
<td>30.6.83</td>
<td>12.8</td>
<td>9.5</td>
<td>4.5</td>
<td>27.1</td>
<td></td>
</tr>
<tr>
<td>Medical Appeals</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.9.81</td>
<td>11.7</td>
<td>9.9</td>
<td>1.4</td>
<td>22.4</td>
<td></td>
</tr>
<tr>
<td>31.12.81</td>
<td>11.2</td>
<td>11.4</td>
<td>2.4</td>
<td>25.5</td>
<td></td>
</tr>
<tr>
<td>31.3.82</td>
<td>13.8</td>
<td>14.4</td>
<td>2.9</td>
<td>31.1</td>
<td></td>
</tr>
<tr>
<td>30.6.82</td>
<td>17.4</td>
<td>17.0</td>
<td>4.4</td>
<td>38.0</td>
<td></td>
</tr>
<tr>
<td>30.9.82</td>
<td>23.4</td>
<td>18.1</td>
<td>5.0</td>
<td>45.2</td>
<td></td>
</tr>
<tr>
<td>31.12.82</td>
<td>22.5</td>
<td>18.3</td>
<td>5.1</td>
<td>41.7</td>
<td></td>
</tr>
<tr>
<td>31.3.83</td>
<td>21.0</td>
<td>16.5</td>
<td>3.7</td>
<td>42.3</td>
<td></td>
</tr>
<tr>
<td>30.6.83</td>
<td>21.3</td>
<td>15.8</td>
<td>2.6</td>
<td>42.3</td>
<td></td>
</tr>
</tbody>
</table>

Key

\(\text{Registration}\) - a Date of registration of appeal by SSATs.

\(\text{Transmission to Tribunal}\) - Date when file transferred to the Tribunal.

\(\text{Tribunal recommendation}\) - Date when recommendation is made by the Tribunal to uphold or dismiss the appeal.

\(\text{Finalisation}\) - Date when appellant advised of the result of the appeal.

\(^{(a)}\) Arithmetic mean

Source: Department of Social Security.

Administrative Appeals Tribunal

45. Since 9 September 1980 the AAT has had jurisdiction to review decisions of the Director-General in cases which have first been considered by a SSAT. Both general and medical appeals are now included in the AATs jurisdiction. The Director-General may also refer a matter direct to the AAT without requiring it to be considered by an SSAT if he certifies, at the request of an appellant, that the matter involves an important principle of general application. To date, certificates have been sought in only a handful of cases and only one has so far been granted.

46. The AAT was not involved in reviewing social security decisions when the Council prepared its earlier Report. There follows a brief description of the AATs current operations in this area.

47. The AATs function is to review decisions on their merits. In contrast to the recommendatory powers of SSATs, the AAT has determinative powers which enable it to set
aside a primary decision and substitute a decision which the Tribunal regards as being correct or preferable in the light of the relevant legislation and all the material before it.

48. Under section 28 of the *Administrative Appeals Tribunal Act 1975* appellants have a right to request and receive from the primary decision maker within 28 days a written statement of reasons setting out the findings on material questions of fact and referring to the evidence or other material on which those findings were based. As of 30 June 1983, the Department had received only 29 requests for reasons under this provision.

**PROCEDURES**

49. (a) **Lodgment of Appeal.** An appeal must be made in writing though it need not be made on a predetermined form. Standard forms are available, however, from offices of the AAT and DSS. Appeals must generally be lodged within 28 days of the right of appeal accruing. Appellants would normally be supplied with a brochure entitled *Your AAT Hearing: What Will it be Like?* which provides basic information on the Tribunal, its functions and powers, and how it operates. The appellant is also advised of his role in the review process.

50. The AAT informs the Department once a valid application for review is lodged and the Department is then obliged by section 37 of the AAT Act to prepare and lodge with the Tribunal within 28 days a written statement of the reasons for the primary decision (including findings on material questions of fact and evidence or other material supporting those findings) and copies of every other relevant document in the Department’s possession. All this material is made available to an appellant subject to the AAT’s power to grant in appropriate cases an order to confidentiality in respect of parts or all of the relevant documents.

51. The Department has experienced some difficulties in the past in complying with the 28-day time limit in preparing section 37 statements, and extensions of time have been obtained. This resulted in the growth of a backlog of appeals before the Tribunal awaiting section 37 statements. The problem was particularly acute during the latter part of 1981 but it has gradually eased since then as the result of the Department acquiring more staff and also adopting certain suggestions made by the Tribunal as to how section 37 statements might be condensed (see ARCs Sixth Annual Report, p. 80). At the end of 1983 the Department was complying with the time limit.

52. (b) **Hearings.** Prior to a full hearing being conducted by the AAT, it is likely that one or more preliminary conferences will be held. These conferences are usually conducted by a part-time member who is not a lawyer but who has gained experience in the social security jurisdiction and such conferences are designed to provide an informal means of identifying the issues in dispute. The preliminary conference procedure has proved a notable success in facilitating early resolution of appeals since a high proportion of cases at this stage are either conceded by the Department or withdrawn by the appellant without resort to a full hearing. During 1982-83, for example, more than 50% of appeals to the AAT in this jurisdiction were disposed of in this manner.

53. Preliminary conferences may be conducted by conference telephone if the appellant resides outside the capital cities. Telephone hearings are also employed by the Tribunal in the conduct of directions hearings which are used to resolve jurisdictional difficulties and to ensure that matters are ready to go to full hearing.
54. If a matter goes to full hearing, there is considerable flexibility in the way in which the hearing may proceed. The Tribunal might be constituted in a variety of ways, ranging from a panel of three (which might include a Judge of the Federal Court of Australia or another presidential member) to a senior member sitting alone.

55. The nature of the hearing itself is also likely to vary, ranging from a relatively formal, adversarial-type hearing to an informal, inquisitorial-type proceeding. The conduct of the hearing will depend on several factors including the nature of the issues in contention, whether the appellant is represented, the attitudes of the parties and any representatives, and the personal preferences of individual Tribunal members.

56. AAT hearings are generally held in public and evidence is given on oath or affirmation. Witnesses may be subjected to cross-examination. An appellant may represent himself or herself, or be represented by a person of his or her choosing including a legal practitioner. The Department is generally represented by one of its own officers and it is occasionally represented by a legal practitioner. Although costs are not awarded in this jurisdiction an appellant’s expenses may be met to some extent by the grant of legal aid in appropriate cases. An appeal may be taken from a decision of the AAT by either party to the Federal Court of Australia but only on a point of law.

**WORKLOAD**

57. As stated above, the AATs involvement in social security appeals commenced in 1980 but it was not until 1981 that a substantial number of cases flowed through to the AAT from SSATs, particularly invalid pension appeals. During 1980-81, 381 social

| Table 3 Outcome of AAT Appeals (1.4.80-30.6.83) (recorded by period in which applications were determined) |
|--------------------------------------------------|--------------------------------------------------|--------------------------------------------------|--------------------------------------------------|
| 1.4.80- 9.9.80 1.7.80- 1.7.82- | 9.9.80- 30.6.81 1.7.81- 30.6.82 | 1.7.82- 30.6.83 | 30.6.83 |
| Affirmed                                                                                   | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical |
| 2 (33.3%) | 6 (11.5%) | 23 (25.0%) | 45 (27.4%) |
| - | 2 (4.6%) | 13 (5.0%) | 57 (10.6%) |
| Varied                                                                                     | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical |
| - | - | 5 (5.4%) | 5 (3.0%) |
| - | - | 1 (0.4%) | 4 (0.7%) |
| Set aside                                                                                  | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical |
| - | 2 (3.9%) | 11 (12.0%) | 11 (6.7%) |
| - | - | 39 (15.2%) | 36 (6.7%) |
| Conceded                                                                                   | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical |
| 2 (33.3%) | 16 (30.8%) | 17 (18.5%) | 18 (11.0%) |
| - | 6 (14.0%) | 113 (44.2%) | 250 (46.5%) |
| Withdrawn                                                                                   | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical |
| 1 (16.7%) | 12 (23.1%) | 27 (29.3%) | 71 (43.3%) |
| - | 4 (9.3%) | 83 (32.4%) | 157 (29.2%) |
| Dismissed                                                                                   | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical |
| 1 (16.7%) | 6 (11.5%) | - | 1 (0.6%) |
| - | 1 (2.3%) | 2 (0.8%) | - |
| Outside jurisdiction                                                                        | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical | Non-medical | Medical |
| - | 10 (19.2%) | 9 (9.8%) | 13 (8.0%) |
| - | 30 (69.8%) | 5 (2.0%) | 34 (6.3%) |
| Total                                                                                      | Non-medical | Medical | Not classified | Not classified |
| 6 | 52 | 92 | 164 |
| - | 43 | 256 | 538 |
| - | - | 2 | - |
| Total | 6 | 95 | 350 | 702 |

*Source: Department of Social Security*
security appeals were lodged with the Tribunal; in 1981-82 the figure was 891; and 1 104 appeals were lodged during 1982-83 (ARCs Seventh Annual Report, p. 46). At present the Tribunal is receiving approximately 250 general appeals a year, while the number of medical appeals is approximately 800 a year. Recent trends suggest that the number of medical appeals is declining and will reduce to around 500 a year as the backlog of invalid pension cases at the SSAT level (particularly in New South Wales) is cleared (see ARCs Seventh Annual Report, p. 28).

58. The following Table reveals the outcome of AAT appeals disposed of between 1 April 1980 and 30 June 1983.

**PROCESSING TIMES**

59. The overall time taken to resolve a disputed social security decision will be added to significantly if an appeal is taken to the AAT. The Council’s Secretariat has compiled statistics on AAT processing times from the date of lodgment of appeals in relation to a case study on the DSS which has been conducted as part of the Council’s current project assessing the Impact of Administrative Review Reforms (see ARCs Seventh Annual Report, pp. 10-11). Those statistics are presented in Table 4. That Table reveals that, of the appeals finalised by the Tribunal during 1982 after a full hearing, approximately 75% of medical appeals and approximately 71% of general appeals took 9 months or longer to determine. Of the appeals finalised without the necessity of a full hearing (i.e. either conceded by DSS or withdrawn by the appellant), approximately 63% of medical appeals and 54% of general appeals took 7 months or longer to resolve.

60. Several factors contribute to the time taken to finalise AAT appeals. One reason has been the failure of the DSS to comply with the 28-day time limit in providing section 37 statements and documents (see para. 51). Other reasons include the time taken in the organisation and conduct of preliminary conferences and directions hearings. In addition, in medical appeals, it is often established only at the preliminary conference stage that additional medical evidence is required and six months or more may elapse before appointments for examination can be made and reports subsequently obtained.

| Table 4 Processing Time of AAT Appeals Finalised 1.1.82-31.12.82 |
|----------------|----------------|----------------|----------------|----------------|
| Finalised after full hearing | Conceded by DSS before full hearing | Withdrawn by client before full hearing |
| Processing Time | Medical | General | Medical | General | Medical | General |
| Under 1 Month  | 0 | 0 | 0 | 0 | 0 | 2 |
| (0%) | (-) | (-) | (-) | (-) | (-) | (3.2%) |
| Under 2 Months | 0 | 0 | 0 | 1 | 5 | 4 |
| (-) | (-) | (-) | (2.6%) | (4.4%) | (6.5%) |
| Under 3 Months | 0 | 1 | 6 | 2 | 10 | 9 |
| (-) | (2.3%) | (3.1%) | (5.3%) | (8.8%) | (14.5%) |
| Under 5 Months | 0 | 3 | 18 | 3 | 10 | 8 |
| (-) | (6.8%) | (9.5%) | (7.9%) | (8.8%) | (12.9%) |
| Under 7 Months | 6 | 2 | 35 | 8 | 28 | 9 |
| (9.5%) | (4.5%) | (18.3%) | (21.0%) | (24.9%) | (14.5%) |
| Under 9 Months | 10 | 7 | 35 | 13 | 21 | 9 |
| (15.9%) | (15.9%) | (18.3%) | (34.2%) | (18.6%) | (14.5%) |
| Under 12 Months | 24 | 16 | 49 | 5 | 26 | 18 |
| (38.1%) | (36.4%) | (25.7%) | (13.2%) | (23.0%) | (29.0%) |
| Under 18 Months | 22 | 14 | 46 | 6 | 13 | 3 |
| (34.9%) | (31.8%) | (24.1%) | (15.8%) | (11.5%) | (4.9%) |
| Under 24 Months | 1 | 1 | 2 | 0 | 0 | 0 |
| (1.6%) | (2.1%) | (1.0%) | (-) | (-) | (-) |

18
Social security decisions are subject to processes of review in addition to those that have been described above. These other methods include investigation by the Commonwealth Ombudsman, judicial review, and representations by parliamentarians.

**OMBUDSMAN**

The Ombudsman’s Office has, been, and continues to be, actively involved in investigating complaints of defective administration in relation to DSS decision making as Table 5 reveals. As at 30 June 1983, the Ombudsman had received 2 055 written complaints and in excess of 6 000 oral complaints in relation to social security matters, of which 1 804 and 5 265 respectively had been resolved.

### Table 5 Ombudsman Review of Social Security Decisions (1977-83)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of written and oral complaints received</td>
<td>(a)</td>
<td>(a)</td>
<td>1 562</td>
<td>1 695</td>
<td>2 032</td>
<td>2 147</td>
</tr>
<tr>
<td>Written complaints</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) Number received</td>
<td>374</td>
<td>380</td>
<td>380</td>
<td>296</td>
<td>271</td>
<td>254</td>
</tr>
<tr>
<td>(ii) Number finalised</td>
<td>193</td>
<td>405</td>
<td>316</td>
<td>330</td>
<td>195</td>
<td>365</td>
</tr>
<tr>
<td>(iii) Outcomes of those finalised(b)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outside jurisdiction</td>
<td>14</td>
<td>20</td>
<td>12</td>
<td>11</td>
<td>16</td>
<td>12</td>
</tr>
<tr>
<td>(7.3%) (4.9%) (3.8%) (3.3%) (8.2%) (3.3%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discretion exercised</td>
<td>46</td>
<td>77</td>
<td>61</td>
<td>53</td>
<td>38</td>
<td>75</td>
</tr>
<tr>
<td>(23.8%) (19.0%) (19.3%) (16.1%) (19.5%) (20.5%)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Withdrawn or lapsed</td>
<td>5</td>
<td>15</td>
<td>11</td>
<td>15</td>
<td>11</td>
<td>19</td>
</tr>
<tr>
<td>(2.5%) (3.7%) (3.5%) (4.5%) (5.6%) (5.2%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resolved substantially in complainants’ favour</td>
<td>43</td>
<td>88</td>
<td>94</td>
<td>86</td>
<td>35</td>
<td>63</td>
</tr>
<tr>
<td>(22.3%) (21.7%) (29.7%) (26.1%) (17.9%) (17.3%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resolved partially in complainants’ favour</td>
<td>11</td>
<td>37</td>
<td>44</td>
<td>35</td>
<td>16</td>
<td>36</td>
</tr>
<tr>
<td>(5.7%) (9.1%) (13.9%) (10.6%) (8.2%) (9.9%)</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Resolved in Department’s favour</td>
<td>74</td>
<td>168</td>
<td>94</td>
<td>130</td>
<td>79</td>
<td>60</td>
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<td>(38.5%) (41.5%) (29.7%) (39.4%) (40.5%) (43.8%)</td>
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<td>Oral complaints(c)</td>
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<td></td>
</tr>
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<td>(a)</td>
<td>1 182</td>
<td>1 008</td>
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<td>(ii) Number finalised</td>
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<td>1 182</td>
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<td>(iii) Outcomes of those finalised(b)</td>
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<tr>
<td>Outside jurisdiction</td>
<td>(a)</td>
<td>(a)</td>
<td>51</td>
<td>48</td>
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<td>(5.1%) (4.0%) (4.8%) (3.8%)</td>
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<td>Discretion exercised</td>
<td>(a)</td>
<td>(a)</td>
<td>100</td>
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<tr>
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<td>(a)</td>
<td>328</td>
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<td>530</td>
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<td>Resolved partially in complainants’ favour</td>
<td>(a)</td>
<td>(a)</td>
<td>165</td>
<td>157</td>
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<td>(16.4%) (13.0%) (5.5%) (15.6%)</td>
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<tr>
<td>Resolved in Department’s favour</td>
<td>(a)</td>
<td>(a)</td>
<td>364</td>
<td>495</td>
<td>572</td>
<td>476</td>
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<td>(36.1%) (40.9%) (38.5%) (30.5%)</td>
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(a) Data not available.
(b) The percentages presented in brackets are based on the total numbers of complaints finalised.
(c) The figures on oral complaints include the reasonably small numbers of oral complaints which have been lodged against actions of the Commissioner for Employees’ Compensation. No separate figures for social security oral complaints alone are recorded by the Ombudsman’s Office.

63. The Ombudsman has a statutory discretion not to investigate a complaint if he is of the opinion that it would be reasonable for the complainant to resort to an alternative remedy. The large proportion of cases in which the Ombudsman has exercised his discretion not to investigate social security complaints can be largely explained on the basis that the Ombudsman would not generally involve his Office in matters which could be appealed to the SSATs or the AAT. Complaints about other matters such as the manner in which a primary decision was taken or delay in making of such a decision would generally not fall into this category and would normally be investigated by the Ombudsman. It has also been noted above (para. 12) that Ombudsman review is especially apposite in cases involving immediate financial hardship where prompt investigation and resolution of grievances is essential.

JUDICIAL REVIEW

64. Decisions of the DSS made under the Social Security Act are amenable to judicial review in the Federal Court under the Administrative Decisions (Judicial Review) Act 1977 and under section 39B of the Judiciary Act 1903, and also by the High Court in its original jurisdiction as illustrated by that Court’s decision in the much publicised Karen Green case ((1977) 13 ALR 1).

65. Judicial review represents a formal and authoritative remedy against unlawful decision making. However, other remedies are likely to be more appropriate in providing effective and accessible review of the merits of disputed social security decisions. As at 30 June 1983, only 7 applications for review of social security decisions had been lodged with the Federal Court under the AD(JR) Act.

REPRESENTATIONS BY PARLIAMENTARIANS

66. Some DSS clients may prefer to seek the support of a Member of Parliament when aggrieved by departmental action rather than resort to other means of review. An M.P. could pursue the constituent’s complaint with the relevant Regional Office or submit a formal representation to the Minister. No statistics are available to the Council to indicate how frequently parliamentarians become involved in such disputes.
PART 2: AN ASSESSMENT OF THE EXISTING SYSTEM OF SOCIAL SECURITY APPEALS

67. In this Part the Council identifies some problems with the current structure of social security appeals and its operation. Before proceeding to that assessment it is appropriate that the Council describes what it regards as the primary objectives of a social security appeals system. The existing system can then be evaluated in the light of those objectives.

Objectives of a Social Security Appeals System

68. The need for a system of external review of social security decisions was considered in the Council’s earlier Report (Chapter 3). Relying on the fact that, in principle, the Social Security Act establishes that social security benefits are a legal entitlement and not a privilege, and pointing to the fact that those benefits are financially important to claimants, the Council concluded that there was a need for a system of external review to ensure that the Department’s decisions were the correct or preferable decisions. The need for a system of external review has officially been recognised by the decision to involve the AAT in social security appeals and, to a lesser extent, by the earlier establishment of the SSATs as quasi-external appeals bodies. It is the Council’s view that the primary contemporary issue is not whether a system of external review is needed, but what form that system should take.

69. The primary purpose and objective of a system of review of administrative decisions was described by the Council in its earlier Report as being ‘to provide for the resolution of grievances by correct and authoritative decisions which command general confidence’ (Social Security Appeals, para. 8.001). The Council added that, for a review authority to achieve this purpose, it should:

• have powers and procedures for effective and efficient fact finding;
• observe high standards of procedural fairness; and
• be accessible, both physically and psychologically, to persons seeking review.

Furthermore, the Council recognised at that time that an external review system could not be considered in isolation from primary decision making and internal review processes. The Council expressed the view that:

[a] review system is riot, except in the simplest situations, merely the addition of a means of independent review at the end of and outside an existing decision making structure. Where the volume of decisions and appeals is large it should be considered and designed as a total process which may require adjustments within the original decision making structure itself. Given the benefits of administrative review the process is justified provided it does not involve a disproportionate use of resources having regard to the importance of the subject matter to persons affected by decisions. This involves balance in the application of resources to the tasks of primary decision making, internal review and external review so that correct decision making at the primary level is encouraged and so that disputes are resolved, where this can be done justly and efficiently, at the earlier and less costly stages of the process rather than later (para. 8.002).

70. In addition to these general considerations, the Council stated that the nature of social security decisions and the attributes of claimants had to be taken into account and 5 specific requirements were identified in this context:

(1) A social security appeals system should accommodate the fact that it is dealing with disadvantaged clients.
(2) Information concerning rights and responsibilities should be widely disseminated to claimants both before and after any dispute arises; in particular, claimants should be informed of matters in issue.

(3) The number of independent initiatives required of claimants in pursuing their rights should be kept to the minimum practicable.

(4) Tribunal procedures should be flexible and permit substantial informality in appropriate cases as well as allowing the Tribunal to undertake an active role.

(5) Provision should be made for advice and assistance for claimants, particularly the specially disadvantaged groups such as Aboriginals and migrants.

With those general objectives and specific requirements in mind, the Council recommended that a new structure of social security review be introduced involving the replacement of the SSATs by the AAT and an improved RO system.

71. Without commenting at this stage on the primary recommendations made in its earlier Report, the Council considers that its previous statements of both the general objectives of a review system and the specific requirements of a social security appeals system remain essentially valid today. While endorsing those earlier statements of objectives and requirements, however, the Council considers that two additional considerations have to be taken into account in devising or evaluating a system of social security appeals. First, in a large volume jurisdiction such as social security involving a substantial number of primary decisions and potential appeals, it may be necessary to establish a two-tiered structure of external review. Such a structure would involve a first tier of review which is designed to provide economical, expeditious and informal review, and a final level of review which is designed not only to determine individual cases flowing from the first review authority, but also to develop and enunciate general principles for the guidance of both primary decision makers and the lower tribunal alike.

72. Second, it is considered that another primary objective should be to minimise the time taken to finalise appeals wherever it is practicable to do so. While recognising that some time lag is unavoidable in any review system, the Council considers that all reasonable steps should be taken to reduce unnecessary delays, particularly in a jurisdiction such as social security where the financial and psychological needs of claimants require prompt decision making.

73. With these considerations and objectives in mind, the Council has examined the existing structure of social security appeals and its operation. Attention has been given not only to the role of the SSATs and the AAT as external appeal bodies, but also to the role of Review Officers in providing a system of internal review.

Problems of the Existing Appeals System

74. In the Council’s opinion, the existing structure of social security appeals is basically sound but several problems and difficulties have been identified in relation to the operation of the review system. Recommendations for reform are made in Part 3.

75. (a) **Recommendatory Power of SSATs.** The absence of a legal power in SSATs to determine appeals is, in the Council’s opinion, a serious deficiency in the present system. The Council has arrived at this conclusion on the basis of two primary considerations: public perception of the ‘Tribunals’ role and the need for expedition in finalising social security appeals.
76. Some welfare agencies have claimed that public confidence in the role of SSATs is weakened by the fact that the Tribunals do not have a power of determination. As the Council observed in its earlier Report, in the absence of such a power, the Tribunals can only make recommendations and so are exposed to the danger of becoming little more than another level in the process of ‘passing up’ decisions through the Department (Appendix 5, para. 3.103). Lack of confidence in the role and independence of SSATs is likely to lead to some dissatisfaction with the first level of review and threatens to increase the number of appeals flowing through to the final review authority. As stated above, it is the Council’s view that an important objective of a review system should be to encourage the settlement of disputes at the earlier and less costly stages of decision making.

77. The Council also considers that the absence of a determinative power in SSATs exacerbates the problem of delay in processing SSAT appeals and, accordingly, undermines the objective of minimising the time taken to finalise appeals. The necessity for the DSS to consider recommendations made by SSATs can add significantly to the time taken to process and finalise appeals at this level of review. Quarterly statistics for the financial years 1981-82 and 1982-83 reveal that the average time taken by the DSS to consider SSATs recommendations ranged from 4.5 to 10.9 weeks in general appeals and from 1.4 to 5.0 weeks in medical appeals (see Table 2).

78. It is also considered that the operation of this aspect of the existing system must be evaluated in view of the fact that the Department is rejecting such a small percentage of the recommendations it receives from SSATs. As stated above (para. 21), while it is recognised that variations occur between different types of pensions and benefits, during 1982-83 the Department rejected overall only 5% of SSAT recommendations that were in favour of appellants. In light of the time taken in deciding whether or not to accept the Tribunals’ recommendations, the Council doubts whether the existing system is the most efficient way of handling social security appeals. The Council has noted that neither of the suggested structures proposed by the Minister for Social Security involves retaining only a power of recommendation in the first tribunal in a two-tiered structure of appeals. In Part 3 of this Report the Council recommends that SSATs be vested with a power to determine appeals.

79. (b) Absence of a Legislative Base for SSATs. The absence of a legislative foundation tends to promote a degree of flexibility in the Tribunals’ operations and may enhance the informal nature of their proceedings. The Council considers, however, that both flexibility and informality can be achieved where a review tribunal is established by legislation as long as there is a clear understanding of the special role or function to be performed by that tribunal in a two-tiered structure of appeals. Moreover, the Council believes that other advantages are likely to accrue if a tribunal has a statutory base. First, such a foundation will enhance the tribunal’s status and perceived independence. At present, SSATs lack a permanent and independent structure and are seen to be part of the Department’s internal decision making machinery. Second, a statutory foundation is more likely to assure continuity of existence on the part of a tribunal. Finally, establishing a tribunal by statute provides an opportunity for the Parliament to consider and debate the tribunal’s proposed powers and structure.

80. It is recognised that the question whether the Tribunals should be set up under legislation is tied up with several other issues such as the need to preserve informality and encourage speedy decision making at the intermediate level of review, and the question whether SSATs should be vested with determinative powers. The two suggested structures proposed by the Minister involve quite different methods of conferring a power of determination on the Tribunals. These and other matters are discussed in detail in Part 3.
81. **Membership of SSATs.** The Council has considered the position on the Tribunals of the member who is a serving DSS officer on full-time secondment from the Department. Three considerations need to be taken into account in assessing the Departmental member’s position:

- the desirability in principle of a review tribunal being independent, both in fact and in appearance;
- the fact that SSATs are the first tier in the appeals process; and
- the need to provide SSATs with access to the kind of knowledge and expertise about Departmental administration and practices that such a member possesses.

82. Submissions made to the Council by current members of SSATs who are not Departmental officers have commented favourably on the valuable and impartial role performed by full-time Departmental members and have supported the proposal that this category of membership be retained. Some members of the Council who have particular knowledge of the operation of SSATs agree with this view. On the other hand, other submissions received by the Council suggest that the presence of a serving DSS officer on the membership of the Tribunals detracts from some people’s perception of their independence from the Department. It is not merely a matter of a serving Departmental officer sitting on the Tribunals as an equal member, but the appearance of the Tribunals’ independence is said to suffer from the fact that that officer is appointed to a Tribunal by the Director-General, unlike other members, who are appointed by the Minister. It has also been noted that, although DSS officers are appointed to Tribunals as permanent officers, the Director-General has a discretion to transfer such officers to other positions and replace them on the Tribunals with other DSS officers as ‘temporary transferees’.

83. In the Council’s opinion, however, the question whether the ramifications of the position of the Departmental member for the independence of the SSATs constitute a deficiency in the existing system cannot be looked at in isolation from such matters as:

- the role of the SSATs in a two-tiered structure of appeals; and
- the problems that would arise if other means were used to provide SSATs with access to the kind of knowledge about the Social Security legislative and administrative framework, policy and practice that is currently provided by such officers.

The Council considers that a distinction exists between a final (or single) review body and a lower appeals tribunal in a two-tiered appeals structure in determining whether a perceived lack of independence arising from a tribunal’s membership is acceptable or not (see the Report on Review of Pension Decisions Under Repatriation Legislation, paras 210-216). In a two-tiered structure of appeals such as exists in social security, a perceived lack of independence from the Department on the part of SSATs may be acceptable as long as the final review tribunal (AAT) is fully independent.

84. The Council also considers that, although the kind of knowledge and experience brought to SSAT proceedings by Departmental members could be provided by Departmental officers acting as clerks to the tribunals (as occurs in the United Kingdom) as advisers, or as advocates, these alternatives would affect SSAT hearings in undesirable ways. The regular presence of Departmental advocates would be likely to introduce an adversarial element in proceedings that is currently absent and is, in principle, highly undesirable. The Council also considers that the presence of Departmental clerks would threaten the current informality of SSAT hearings and the presence of either Departmental clerks or advisers would, in the eyes of many appellants, be seen as little different from having Departmental officers sitting on the Tribunals as members. The Council has recommended in paragraph
that the Department be represented only by leave of the Tribunal and it considers that the presence of a Departmental adviser, assessor or clerk would introduce either an adversarial element or an appearance of influence which the Council regards as undesirable. Departmental advisers or consultants would presumably attend every appeal and would be expected to take an active part in Tribunal hearings. In the Council's view, their active participation would add greater imprecision to the relationship between the Tribunal and the Department. The Council considers, moreover, that a sense of allegiance to a review tribunal by those associated with it is an important element in assuring that the tribunal functions as effectively and efficiently as possible and it is the Council's view that, in tribunals such as SSATs, where direct access to information about Departmental operations and practices is so significant, a sense of allegiance is more likely to be fostered by having Departmental officers serve on the Tribunals as members rather than as advisers or clerks.

85. The Council considers that the members of each panel of the proposed SSAT should have between them all the basic knowledge and experience needed for their adjudicative function, including knowledge of Departmental policies and procedures. The information available to the Council indicates that the Departmental members of the SSATs have made a valuable contribution to the work of these Tribunals and that the presence of such members has been a satisfactory means of conferring upon SSATs useful depth of knowledge and experience, which is otherwise difficult to obtain.

86. The Council considers that the arguments for and against having Departmental officers as members of the proposed SSAT are finely balanced. The Council has concluded by majority, however, that the present arrangement is justifiable and should continue but it considers that this category of membership of the proposed Tribunal should not be restricted to serving DSS officers but should be extended to include former or serving public servants with experience in social security or welfare administration and a recommendation to this effect is made in Part 3. In the Council's view, alternative ways of providing the proposed Tribunal with access to the kind of knowledge provided at present by full-time Departmental members would create their own undesirable consequences, as indicated in the previous paragraph. The Council is also of the opinion that the position of Public Service members on the proposed SSAT is acceptable on the basis that the Tribunal is the first of two external appeal tribunals and the AAT, as the final review tribunal, is fully independent from the Department. Other recommendations are made in Part 3 which are designed to strengthen the independence of Public Service members from the DSS.

87. A separate problem relating to the Tribunal's membership concerns the terms of appointment of part-time members. Currently, appointments are made for approximately 12 months but in the past appointments have been made for periods as brief as 6 months. This occurred in N.S.W. recently where several part-time members were appointed for 6-monthly periods to clear a backlog of appeals that had accumulated in that State. The Council considers, however, that periods of appointments of 6 or 12 months are in principle too short. Part-time members are not only left in a position of uncertainty in arranging their future affairs, but such short-term periods of appointment detract from the perceived independence of the members' role. Furthermore, such short-term appointments are unsuitable because it may take some time for new members to make a full contribution after familiarising themselves with the role and operation of the review process.

88. (d) SSAT Procedures. In examining the existing procedures of SSATs, the Council has recognised the importance of balancing the need, on the one hand, for the first-tier appeal process to be both speedy and informal, with the need, on the other hand, for the process to maintain an appropriate standard of procedural fairness. In particular, the Council would
emphasise that the standard of procedural fairness required will vary according to whether a
review tribunal is operating in a one-tier or two-tier structure of review. The Council’s
assessment of the SSATs in its earlier Report must be read in the light of this important
factor.

89. The Council has commented above on improvements that have been made in SSAT
procedures and on the general movement towards greater uniformity and consistency in
those procedures, but it has found that significant variations still occur, both within and
between States and Territories, on such questions as whether medical members should
conduct medical examinations of appellants. The Council acknowledges that variations are
bound to occur in any review system involving more than one tribunal and, indeed, the
nature and variety of social security appeals requires a degree of flexibility and discretion in
determining the most appropriate procedures for a particular case. On the other hand, the
Council also regards it as desirable that certain uniform standards of procedure should be
adopted and followed to minimise the danger that social security appellants are treated
significantly differently in one tribunal hearing than in another. As the Council stated in its

. . . consistency is of fundamental importance to proper administrative review. Just as all
persons affected by decisions within a particular area of administration have the right to
expect fair and equal treatment, so the same expectation applies on review of those
decisions. Consistency is a basic condition for ensuring the status and authority of a
review tribunal in the eyes of persons coming before it (para. 105).

The Council regards as a serious deficiency in the current first level of appeals, the absence of
a formal mechanism by which procedural differences may authoritatively and formally be
resolved. Informal meetings are held by State and Territory SSATs and all the Tribunals
meet annually at a National Conference but neither of these facilities produce formal rulings
that are binding on individual Tribunals.

90. The Council is of the opinion that SSATs have inadequate powers of control over the
progress of appeals after an application for appeal has been lodged. Under the present
system as described above (para. 29), an appeal is not set down for hearing until such time as
the DSS completes its internal reconsideration of the appealed primary decision and
transmits to the Tribunal the appellant’s file together with the Department’s submission.
During this period, which can often be of considerable duration (see Table 2), the Tribunal
effectively has no control over the appeal. In the Council’s opinion, the absence of any
formal powers of control on the part of the Tribunals not only undermines their role as
independent review bodies, but also contributes to lengthy delays in processing appeals.

91. (e) Appellants’ Access to Material. At present the decision whether to grant access to
documents in the possession of the DSS is taken by the Department, not the SSATs. As
described above, appellants are generally provided with a copy of the Department’s
submissions to the Tribunal, which normally includes a summary of any medical report that
the Department has obtained. Appellants are, of course, entitled to seek access to
information under the Freedom of Information Act but this would require a separate
initiative on their part and access would be governed by the provisions of that Act relating to
such matters as confidentiality.

92. The Council recognises that considerations of confidentiality (see s.141 of the Social
Security Act) and secrecy (see s.17 of that Act) are important in the context of claimants’
access to material. Furthermore, in accordance with well-established principle, medical
reports should not be disclosed directly to an appellant where disclosure might cause harm
to that person. The Council’s concern, however, is that at present decisions on matters relating to disclosure are taken by the Department itself without any direct involvement by SSATs. The Council views the current position as unsatisfactory in as much as SSATs lack appropriate legal powers to ensure that appellants are provided in appropriate cases with copies of documents so that they are fully aware of the case they have to meet.

93. (f) Delays. It is apparent from the statistics provided in Tables 2 and 4 above that the time taken to process social security appeals is considerable at both the SSAT and AAT stages of review. The Council recognises that some time lag is unavoidable. In medical appeals, for example, the DSS is likely to refer appellants to the Department of Health and to private specialists for further and better medical examinations prior to transmitting the case to the SSATs. Moreover, as stated above, it often emerges at the preliminary conference stage of an AAT review that additional medical evidence is required before a full hearing can proceed. Consequently, at either level of review, delays of 6 months or more may occur while that medical evidence is obtained.

94. Delays of a lesser magnitude are also inevitable in general appeals. Both parties will require time to prepare their cases. The appellant may require advice and assistance. The Department will wish to reconsider the primary decision which will involve calling up the appellant’s file for analysis and, if the appeal is not conceded, preparing a submission for the SSAT. Welfare and other reports may also need to be obtained in advance of the SSAT hearing.

95. The Council’s concern is with those aspects of the current system which, in its opinion, create unnecessary and avoidable delays. The Council has concluded that the existing system of social security appeals is defective in producing needless delays in two respects. First, as stated above (para. 90), SSATs are powerless to control the progress of an appeal until such time as the Department completes its internal reconsideration process and transmits the appellant’s file. Only at this time is the appeal set down for hearing and, in the normal course of events, at least 3 weeks would be allowed for the appellant to prepare his case. Such an arrangement is, in the Council’s opinion, defective. Recommendations for reform are made in Part 3.

96. A second deficiency in the existing system relates to the Department’s consideration of recommendations made by SSATs. The Council has criticised this process as being an inefficient way of handling social security appeals in view of the few cases where the Tribunals’ recommendations are rejected by the DSS (para. 78). The process also adds significantly to the time taken to finalise SSAT appeals. From the appellant’s viewpoint, this time would be saved if the SSATs were vested with a power of determination, as the Council recommends in Part 3.

97. (g) Internal Review. The role and function of ROs was described above (paras 11-14). The Council has emphasised that an effective internal review process is essential to cater for grievances which are amenable to such review (such as those which are especially time sensitive) and to reduce the number of complaints which might otherwise proceed to an external review body. Although the Council attaches great importance to the need to improve primary decision making and to develop effective internal review procedures, it has not conducted a detailed examination of these matters in relation to the DSS in this project. Such an examination would have added considerably to the time taken by the Council in finalising its advice to the Attorney-General on the primary questions of whether there should be a two-tiered structure of social security appeals and, if so, what form it should take. The Council has noted, however, that in submissions it received, some groups and
organisations involved in advising and representing social security claimants drew attention to several problems with the existing RO system. The Welfare Rights Centre (Sydney), for example, stated in its submission that it had ‘grave doubts about the efficacy of the Review Officer system’. The Centre commented on the high number of appeals to SSATs that are conceded by the DSS notwithstanding that internal review has previously occurred. The Centre criticised the tendency of some ROs to rely solely on material that was before the primary decision maker, rather than considering whether to obtain additional material. The adequacy of some ROs’ training was also questioned by the Centre. The Norwood Community Legal Service criticised other aspects of the RO system. The Service claimed that some ROs placed excessive reliance on Departmental Policy Manuals in investigating grievances and that in its experience some people had been ‘talked out’ of appealing by an RO.

98. It is the Council’s view that the development and maintenance of an effective internal review system is primarily a matter for the administering Department but, without purporting to advance an exhaustive program for reform, some recommendations for change are made in Part 3.

99. (h) Advice and Assistance. In its earlier Report, the Council noted that there was no formal provision for advice and assistance in the social security system in existence at that time (Appendix 5, para. 3.150). The Council described the provision of advice and assistance for claimants as ‘a highly desirable aspect of the social security appeals process’ and stated that in ‘the absence of an adequate system of advice and assistance, the whole appeals process would be seriously inadequate’ (para. 7.001). The Council concluded that the determination of an appropriate scheme to advise and assist claimants was beyond the charter of the Council, but it urged the Government to devise such a scheme. Moreover, the Council formally recommended that provision should be made for:

- legal aid to be made available in AAT cases involving important principles of wide application;
- the AAT to be empowered to order payment of the expenses of appellants attending hearings; and
- a system to ensure that claimants are advised by the DSS or the AAT of the sources of advice and assistance available to them.

100. The Council has noted that, since those recommendations were made, legal aid has become generally available to AAT appellants, and to SSAT appellants in some jurisdictions. The Council has also noted that it is standard practice for the DSS to inform a claimant of rights of appeal at the same time as communicating an adverse primary decision but some submissions indicate that the extent of that information varies between Regional Offices. Some Offices do not draw attention to the right of appeal to an SSAT but merely highlight the possibility of having a decision reviewed by an RO. The Welfare Rights Centre (Canberra) also stated in its submission that in its experience some decisions are brought to the notice of clients in a manner which does not lead them to consider review. The Centre stated that this frequently occurs in cases involving a change to an existing rate of payment where a client might be sent a cheque for a reduced amount without any accompanying explanation of the change. The Council has also noted that the AAT has drawn attention to the fact that the DSS does not always inform claimants of their rights of appeal (see, for example, Mokaj v. Director-General of Social Security, unreported, 10 February 1984).

101. Limited resources and time constraints in preparing this Report as a matter of urgency have prevented the Council from conducting a detailed examination of sources of advice and assistance that are currently available to social security claimants. On the basis of
the information available to the Council, however, it would appear that the existing system of social security appeals is deficient with respect to the absence of a developed and adequate system of advice and assistance for social security claimants and appellants. DSS officers such as social workers and Review Officers may provide advice and assistance in preparing a formal appeal, but as the Council concluded in its earlier Report, ‘advice and assistance are of such importance in social security cases that their provision should not be left to the chance that DSS officers and welfare groups will be available to assist in given cases’ (para. 7.002). It appears that the need for independent sources of advice and assistance is being met only to a limited extent at present by bodies such as welfare and caring agencies and free legal advice centres. The Council has noted that Welfare Rights Centres have been established in Sydney and Canberra: to provide independent advice and representation and that similar services are provided by bodies such as the Public Interest Advocacy Centre in Sydney and the Norwood Community Legal Service in South Australia. Some SSATs, such as those in Victoria, are also taking steps to encourage independent agencies and organisations to become more actively involved in advising social security claimants and in appearing as advocates before the Tribunals and appropriate training schemes are being planned in that State. Moreover, it was decided at the 1983 National Conference of SSATs to refer to the proposed Standing Committee (para. 26) a proposal put forward by the Victorian SSATs to encourage advocacy by independent persons and agencies before the Tribunals. Finally, the Council has noted that the Commonwealth Legal Aid Council has funded a study by a team from the Department of Social Work at the University of Queensland to inquire into the legal needs of social security claimants in Queensland. The Council welcomes these developments but considers that much more remains to be done. The Council recognises the limitations in its own charter and resources in devising a comprehensive scheme of advice and assistance for social security appellants and its recommends in Part 3 that the Government should commence a study of the needs of social security appellants with a view to devising such a scheme.
PART 3: THE PROPOSED STRUCTURE AND FORM OF SOCIAL SECURITY APPEALS

102. In Part 2 of this Report, the Council described what it regards as the primary objectives and requirements of a social security appeals system. The operation of the existing system of appeals was assessed and certain deficiencies and weaknesses were identified. In this Part the Council makes recommendations concerning the structure and form of social security appeals. In the Council’s view, a two-tiered structure of external appeals is necessary in a mass volume jurisdiction such as social security. Changes are proposed to the existing system of appeals but these changes are regarded as being more in the nature of a progressive evolution and refinement of the existing system than a radical reform thereof. In brief, the Council is proposing that a review tribunal (referred to for convenience as the ‘Social Security Appeals Tribunal’ or ‘SSAT’) be established by legislation as the first tier of review in a two-tiered appeals structure with power to determine social security appeals on their merits. It is proposed that the Tribunal be organised on a national basis with panels sitting in each State or Territory. Recommendations are made in relation to the Tribunal’s procedures and powers but it is neither intended nor envisaged that these recommendations will significantly alter the existing character of SSAT hearings. In particular, it is expected that the SSAT will continue to provide a form of review which is designed to deal with a large number of appeals in an informal and expeditious manner. A right of appeal from a decision of the SSAT to the AAT would be available to both a dissatisfied claimant and the Director-General of Social Security.

A Two-tiered Structure

103. In the Council’s view, a two-tiered structure of external appeals is to be preferred to a single tier structure in a high volume jurisdiction such as social security in achieving a proper balance between the various objectives and principles enunciated in Part 2. The Council has come to this conclusion contrary to the primary recommendations made in its earlier Report on Social Security Appeals on the basis of the wider experience it has acquired in areas such as immigration and repatriation which, like social security, involve a large number of decisions (see, for example, the Council’s Report on Review of Pension Decisions Under Repatriation Legislation, 1983), and on the basis of the Council’s assessment of the existing structure of social security appeals. The Council considers that certain problems have arisen in the way the current structure operates in practice and some recommendations for reform are made which are designed to meet those problems but the Council has concluded that the current two-tiered structure of external appeals of social security decisions should remain. In proposing this, the Council emphasises the essential need to appreciate the different functions and role to be performed by the first and final review tribunals. As a corollary, contrasting procedures and approaches will be required at the two levels of review.

104. The Council has considered the proposal made by some persons and organisations such as the Australian Council of Social Service (see the Report by ACOSS to the Attorney-General on Social Security Appeals, February 1983), that a single tier of external appeals should replace the existing structure, but it is considered that a single tier structure would be inappropriate in a jurisdiction such as social security. In the Council’s opinion, a single appeals tribunal would not be able to provide an accessible, speedy, informal and economical form of review in such a high volume jurisdiction and, at the same time, achieve an adequate standard of justice in all cases.
105. The Council attaches great importance to the normative effect of administrative review. A primary objective of any review system should be to develop general principles for the guidance of primary decision makers. Implementation of these principles should encourage the taking of more correct primary decisions and ultimately reduce the number of decisions for review. It is considered, however, that a single social security appeals tribunal would be inhibited in providing such guidance by the volume of appeals it would be called upon to handle and the need for speed and informality in the conduct of review hearings.

106. In its Report on Review of Pension Decisions under Repatriation Legislation, the Council found that the Repatriation Review Tribunal, as the single external review tribunal in the repatriation jurisdiction, was unable to fulfil its review role adequately because of the volume of cases it was called upon to determine (the RRT receives almost 4,000 appeals annually). The RRT's attempts to achieve an appropriate standard of review in the face of such a high caseload have produced long delays in the processing of repatriation appeals. It is considered that similar problems would arise in social security if a single tier of external appeals were introduced.

107. The Council recommended in its Repatriation Report that a two-tiered structure of appeals should be established in the repatriation jurisdiction, involving a first tier of review (a Veterans' Appeals Board) and a final tier of review (the AAT). In Council's view, the Veterans' Appeals Board would provide a speedy, informal and economical level of review which would deal with a mass volume of appeals to the satisfaction of most repatriation claimants. It was acknowledged, however, that such a review body would not be able to achieve those objectives and also deal with the facts and issues in every appeal in appropriate depth. Accordingly, it was considered that a final review authority was necessary to give more detailed attention to the individual cases which come before it and to develop principles of general application. It is the Council's view that a similar structure should operate in the social security jurisdiction with the proposed SSAT as the first tier of review and the AAT as the final review authority. The Council is not proposing that the SSAT will be significantly different in its methods of operation to SSATs already in existence. This approach may be contrasted with that adopted by the Council in its Repatriation Report where it recommended the establishment of an entirely new body at the first level of review because, in its opinion, no existing tribunal in the repatriation jurisdiction was capable of performing the special functions envisaged for the first review tribunal in a two-tiered structure of appeals.

108. The influence which the AAT can achieve as the final review authority in formulating and developing general principles is well illustrated by its involvement in the existing social security appeals structure. Although the Tribunal receives more appeals in its social security jurisdiction than in any other, the volume of cases it has been called upon to decide is of manageable proportions and the Tribunal has been able to clarify for the guidance of both SSATs and primary decision makers the meaning of many of the principal provisions of the Social Security Act. As one commentator has recently written:

The AAT would not appear to be the ideal forum for the initial determination of social security appeals . . . The AAT is not a suitable forum for the processing of large numbers of individual cases: it is a most valuable forum for more detailed consideration of specific issues of difficulty.

One consequence of its work is that the AAT has been able to highlight a number of specific difficulties with the substance of social security law; for example, the means of defining 'income' for the purposes of working out means tests, or the 85% incapacity rule in relation to invalid pensions. Indeed, in a number of cases the AAT has recommended that detailed changes in the statute law should be made. It is most desirable that public
attention be drawn to these matters, rather than that they remain concealed and regarded merely as administrative difficulties (Professor Martin Partington, ‘The Impact of the AAT on Social Security’, Faculty of Law, Monash University, 1983).

The Council agrees generally with those views.

109. It is considered that the AAT could not operate satisfactorily as the only review tribunal in a jurisdiction such as social security. A lower review tribunal is required not only to process a high volume of appeals in an expeditious, informal and economical fashion, but also to cater for the special needs of social security claimants which the AAT may not be as well equipped to handle. In particular, it is recognised that many social security claimants have needs which go beyond the basic need for administrative justice. Those needs include material needs (food and accommodation), and social and emotional needs. Some SSATs presently perform a valuable function as informal review bodies in identifying those needs and, in appropriate cases, referring appellants to other agencies for support and assistance (though the Council understands that variations occur in the extent to which individual SSATs become involved in these matters). It is the Council’s view that it is highly desirable that such needs should be met on a uniform basis at the first tier of review.

110. The Council has considered whether the problems that have been identified above as being likely to arise if a single tier structure of social security appeals were introduced could be overcome by having a right of appeal on a point of law from decisions of a single tribunal. A similar system operates in the United Kingdom where Supplementary Benefits Appeal Tribunals act as a single tier of review processing a large volume of cases in an expeditious and informal manner. An appeal lies from a decision of a Supplementary Benefits Appeal Tribunal to Social Security Commissioners on a point of law. It is the Council’s view, however, that such a system is defective in not meeting the needs of many social security complainants in terms of administrative justice. To restrict a right of appeal from decisions of a single tier tribunal to a point of law precludes complainants from challenging the factual, as opposed to the legal, aspects of the tribunal’s decisions. No remedy is available to a complainant who considers that the facts found by the tribunal are wrong. Errors of fact are bound to occur in any system involving speedy and informal mass volume review and the Council considers that an appropriate remedy is essential. It is considered that the various objectives and requirements of a social security system described in Part 2 are more likely to be attained under a two-tiered structure of appeals on the merits.

First Tier of External Review: Social Security Appeals Tribunal

111. Having concluded that a two-tiered structure of external appeals should be retained, the Council has considered practical matters concerning the form and operation of the proposed first tier appeals tribunal. The Council’s primary concern in this context has been to ensure that the proposed SSAT will operate substantially as SSATs presently do, providing an informal, expeditious and economical form of review while achieving a standard of procedural fairness befitting an appeals tribunal operating as the first tier of external review in a mass volume jurisdiction. In particular, the Council would reiterate that the procedures and approach appropriate to a tribunal at this level of review will be different from those expected from a final review tribunal because the two tribunals perform distinct, albeit complementary, functions.

POWER OF DETERMINATION

112. It is considered that the proposed SSAT should be invested with a power to determine appeals on the merits from decisions taken under the Social Security Act 1947. It is
the Council’s view that conferring a power of determination on the SSAT will enhance that
Tribunal’s credibility and standing and its independence from the Department and
contribute to a reduction in the time currently taken to finalise appeals at the first level of the
appeals structure. As noted above (para. 76), public confidence in the role and independence
of SSATs is weakened by their lack of a power of determination. Further, for reasons stated
above (para. 77), the Council is of the view that the existing power of SSATs merely to make
recommendations to the Director-General adds unduly to the time taken to finalise appeals.
If the SSAT has a determinative power and processes appeals at current rates, removing the
need for the Department to consider Tribunal recommendations should lead to a decrease in
processing times. The Department may still wish to examine individual decisions of the
SSAT with a view to determining whether an appeal should be taken to the AAT but, from
the claimant’s perspective, this reconsideration process will not prolong finalisation of an
appeal at the lower level of review.

113. It is recognised that there is a danger that, if the SSAT has a power of determination,
some Tribunal members may misconceive the primary functions of the first tier of review
and be tempted to regard it as their duty under the proposed system to give more detailed
consideration to appeals than is the case at present. If this were to occur, an undesirable
consequence would be to add to the time taken to process appeals at this level of review.
While acknowledging that the danger exists, the Council considers that it would be
minimised if Tribunal members were adequately informed of the different roles and
functions to be performed by the first-tier and final review tribunals in a two-tiered structure
of appeal. The SSAT should not attempt to duplicate the sort of hearing conducted by the
AAT but should continue to provide a form of review which is informal, speedy and
economical.

114. The Council has noted that it is sometimes argued that one advantage of the SSATs’
present recommendatory power is that it can be used to influence the Director-General to
exercise his discretionary powers favourably to an appellant who might otherwise not
succeed. It is also argued that the recommendatory power can be exercised to highlight
anomalies in the legislation and in the Department’s policies and procedures. The Council
considers, however, that each of these results can just as effectively be achieved by a power
of determination. In an appropriate case, the SSAT will be able to substitute its own decision
for that of the Department without relying on the Director-General to exercise his discretion.
The Director-General will, of course, be entitled to take an appeal to the AAT if he considers
that the decision of the SSAT is not the correct or preferable decision. Finally, anomalies and
injustices can just as conveniently be brought to the Director-General’s attention in the
Tribunal’s reasons for decision as in any recommendation made at present by SSATs.

LEGISLATIVE FOUNDATION

115. Having concluded that the SSAT should have a power to determine appeals, the
Council has considered what is the appropriate method for conferring such a power on the
Tribunal. Both of the suggested structures proposed by the Minister (see Appendix 1)
assume that the first appeals body will determine appeals but the Proposals differ in how
this might be achieved.

116. The primary attractions of Proposal 1, that a power of determination could be
delegated to the chairman of each Tribunal, are its simplicity and the speed with which it
could be implemented. Moreover, it is arguable that this Proposal, which does not involve
legislation, is more likely to conduce to informality in the Tribunal’s proceedings. On the
other hand, it is considered that the Proposal suffers from several drawbacks. First, far from
strengthening the perceived independence of the Tribunal from the DSS, it is likely that the proposed arrangement would be seen as bringing the Tribunal even more closely within the Department’s structure and control. The Tribunal’s perceived independence would suffer not only as a result of the Department’s proposed power to invite a chairman to reconsider a decision, but also from the fact that the Director-General would retain a formal power to revoke a delegation. Second, it is considered that the proposal to delegate review powers to Chairman alone has undesirable consequences. It appears that the Social Security Act currently precludes the Director-General from delegating a power of review to a multi-member tribunal as a unit, but the proposed delegation to Chairman alone would have the potential effect of creating members of unequal status. Although it is proposed that a chairman would be required to have regard to the opinions of other members, it would be he alone who would formally make a determination and it is unclear what responsibility other members would have for that determination. Difficulties are likely to occur where a chairman finds that he is in a minority position.

117. Proposal 2 involves providing a statutory footing for the first tier appeals tribunal. Setting up the SSAT by statute would overcome the problems identified above as stemming from the current non-legislative foundation of SSATs (para 79). A statutory basis would underline the Tribunal’s independence from the DSS, provide it with greater legitimacy and permanence, and enhance its status and authority. On the other hand, there is a risk that providing the Tribunal with a statutory foundation would introduce an undesirably formal element in its operations.

118. Having considered all these factors, the Council has concluded that the SSAT should formally be established under the Social Security Act 1947. The Council does not consider that its proposals that the Tribunal should be set up by legislation and have a determinative power are incompatible with the essential need for informality and expedition at the first tier of review. It has noted that Student Assistance Review Tribunals (SARTs) are established by legislation and have a power of determination, yet their hearings are conducted in a speedy and informal fashion. The Council described SART hearings in the following manner in its Report on Student Assistance Review Tribunals (1981):

- The attitude of the Tribunals towards applicants is benevolent; members often try to help applicants find grounds upon which eligibility may be based even though those grounds may differ from the basis on which their appeals were made. The Tribunals often explain in detail to unsuccessful applicants the reasons why they were not eligible for assistance. This particular function, giving students the satisfaction of seeing their cases independently and sympathetically considered, is more in the area of public relations that adjudication (para 12).

SARTs are able to achieve an informal atmosphere in their hearings notwithstanding that they are responsible for adjudicating claims arising under legislation which is regarded as being highly technical and complex. The Council has also noted that SARTs have formal powers to summon a person to give evidence and produce documents, as well as to take evidence on oath or affirmation. Such formal powers have not, however, detracted from the overall informality of Tribunal hearings and the speed with which appeals are processed. A power to compel production of documents is later proposed for the SSAT and the Council believes that a sensible and balanced attitude on the part of the members of that Tribunal towards the exercise of that power will ensure that the primary objectives of providing an informal, speedy and economical review at this level will not be undermined.

119. In order to encourage the preservation of the informal character of SSAT hearings, the Council is of the opinion that a provision should be included in the Social Security Act which states the objectives sought to be achieved at the first level of review and which emphasises
the essential need for informality and speedy proceedings. Such a provision would assist Tribunal members in understanding the nature of their role and functions. Moreover, it would go some way towards indicating the standard of procedural fairness expected from the SSAT and thereby reduce the possibility of judicial intervention on the grounds that SSAT hearings were a denial of the principles of common law natural justice.

120. The Council has considered whether the lower appeals tribunal should be called the Social Security Review Tribunal, as suggested in Proposal 2, but it has concluded that there is more merit in retaining a nomenclature similar to that which is already familiar. Apart from conferral of a decision making power, no radical changes are proposed to the existing role and operations of the SSATs and it is the Council’s view that a sense of continuity will assist in minimising any risk that some members will misconceive the intended role of the lower review tribunal and seek to introduce undesirably formal elements in its proceedings. However, since it is proposed that the lower review tribunal be organised on a national basis it is considered preferable that it be referred to as ‘the SSAT’, rather than by a title appropriate to a series of autonomous tribunals.

Recommendation 1

A Social Security Appeals Tribunal should be established under the Social Security Act 1947 as a first tier external review tribunal to hear and determine appeals on the merits from decisions made under the provisions of that Act. A provision should be included in the Act stating that a primary objective of the Tribunal should be to provide an informal, expeditious and economical form of review in a two-tiered structure of external appeals. The Tribunal’s power of decision should be determinative rather than recommendatory.

CONSTITUTION AND MEMBERSHIP

121. It is considered that the following qualities should ideally be brought together in the hearing of social security appeals:

- expertise in the interpretation of the relevant law and experience or skill in the conduct of tribunal proceedings;
- expertise and experience in the welfare needs of social security claimants;
- knowledge and familiarity with the nature and operation of social security administration; and
- in some medical cases, medical expertise.

The current composition of SSATs manifests an acceptance of the need to bring together different types of expertise and experience in hearing social security appeals, with 3-person tribunals hearing general appeals and 4-person tribunals hearing medical appeals. The Council is of view that the existing categories of membership should remain in the proposed SSAT but it is considered unnecessary that a medical member sit in all medical appeals. The extent to which detailed medical issues arise in medical appeals varies considerably from one case to another and, in these circumstances, it is desirable that the Chairman or a Deputy Chairman determining the constitution of the Tribunal to hear a medical appeal should have a discretion to include a medical member in an appropriate case. Accordingly, the proposed SSAT would be constituted by a 3-member panel in all general appeals and in some medical appeals, and by a 4-member panel in other medical appeals.

122. The Council has also considered whether the SSAT should be constituted by multi-member panels (as SSATs are constituted at present), or should be able to be constituted in some, if not all, cases by a single member. The attractions of a single person panel at the first tier of review lie in the greater expedition in decision making and the savings in cost that are
likely to be achieved. In particular, there would appear to be considerable merit in the possibility of single person panels travelling to country areas. In the United States of America, Administrative Law Judges, sitting alone, provide the first level of review of decisions in the Social Security Administration. While the Council considers that the advantages of single-member panels need to be carefully considered in a two-tiered structure of appeals, it has concluded that such panels would be inappropriate under present circumstances in Australia in social security. In reaching this conclusion the Council has recognised the widespread support, based on experience with the SSATs, for the view that social security appellants have a diversity of needs at the lower level of appeal which are unlikely to be satisfied by single person panels. Multi-member panels are necessary if the desirable range of expertise and skill in social security appeals described above is properly to be represented. Submissions received by the Council have indicated that public confidence in SSATs is enhanced by their multi-member constitution and it is considered that confidence in the proposed SSAT is more likely to be assured if a similar constitution were adopted, particularly since it is proposed that one member of each panel of the SSAT should be a serving or former public servant (possibly a serving or former DSS officer) with experience in social security or welfare administration. Although these considerations have led the Council to conclude that the SSAT should be constituted by multi-member panels, it is considered that the possibility of enabling the Tribunal to be constituted in at least some appeals by a single person should be kept under review.

123. It has been noted above (para 82) that the inclusion of serving DSS officers on existing SSATs has been criticised by some people who made submissions to the Council on the ground that in their view such membership derogates from the perceived independence of the Tribunals. The Council has considered this criticism in determining the categories of membership for the proposed SSAT. In the Council’s view, it is important that the Tribunal should have access to the kind of knowledge and practical experience about DSS operations and procedures that has been provided to SSATs in the past by full-time Departmental members. This matter has been dealt with in detail above (see paras 81-86) and only a few points are repeated briefly here. As noted above (para. 82), several submissions received from current non-Departmental members of SSATs have commented on the valuable role performed by Departmental members and have expressed the view that in practice such members act independently of the Department. The kind of knowledge and experience which the Council considers should be available to the proposed Tribunal could, of course, be provided, not only by DSS officers but also by other officers of the Public Service (either serving or former) who have a background in social security or welfare administration. The Council has concluded (by majority) that there should be a category of membership of the Tribunal open to serving or former public servants (including DSS officers) with appropriate experience in the administration of social security or welfare services. Under the proposals in other paragraphs of this section of the report, a serving or former public servant would be only one member of a 3-person or 4-person panel of the SSAT, and would not be eligible to be a presiding member of such a panel. (The dissenting views on this matter of the Hon. Justice M.D. Kirby and Mr A.D. Rose are set out at the end of Part 3.)

124. Some organisations have made submissions to the Council which have included suggestions of alternative ways of providing the Tribunal with access to knowledge and experience concerning the operation of social security services. The Welfare Rights Centre (Sydney), for example, proposed that a Departmental ‘adviser’ or ‘consultant’ could be seconded full-time to the Tribunal to give advice to it in the presence of the claimant. The Council has considered this and other similar suggestions (such as having Departmental officers act as advocates or clerks to the Tribunal) but for reasons given above (para. 84) it is of the opinion that each of these alternative methods would have undesirable consequences.
The Council has noted in this context that, while urging it to consider the notion of a Department ‘adviser’ or ‘consultant’, the Welfare Rights Centre (Sydney) expressed the view in its submission that ‘on balance’ it did ‘not necessarily oppose continued departmental membership’ of the Tribunal and the Centre added that it regarded the issue of Departmental membership as being closely linked to the issue of Departmental representation before the Tribunal.

125. Recommendations are made below which are designed to underline the independent role of Public Service members. To the extent that the presence of such members on the proposed SSAT will be perceived by some people as derogating from the independence of the Tribunal from the Department, the Council considers that a perceived lack of independence on the part of one member of a first-tier review tribunal may be acceptable as long as the final review authority is fully independent.

126. The Council is concerned that there should be no confusion or misunderstanding about the role and functions of Public Service members of the Tribunal, particularly where a former or serving DSS officer is appointed in this category. The responsibility of such members will be to determine appeals in accordance with the legislation and not to act as nominees or representatives of the DSS. Moreover, their primary allegiance should be to the Tribunal and not to the DSS. To emphasise these points and to underline the independence of Public Service members from the Department, the Council is making three recommendations. First, it is the Council’s opinion that a provision should be included in the Social Security Act to the effect that a Public Service member is not subject to the direction and control of the Director-General of Social Security in the performance of his duties as a Tribunal member. Second, it is considered highly desirable that, wherever practicable, serving DSS officers appointed in this category of membership should be seconded to the Tribunal on a full-time basis. It is envisaged that a Departmental officer would be appointed as a member on a part-time basis only where the volume of work did not warrant a full-time appointment. Third, it is recommended that all appointments be made by the Governor-General in Council (at present, Departmental members of SSATs are appointed by the Director-General).

127. In the context of the issue of the proper role and function of Tribunal members, the Council considers that medical members should not conduct medical examinations of appellants as is currently the practice in some SSATs. It is the Council’s view that the distinct roles of witnesses and Tribunal members should be preserved. However, the Council does not intend to preclude a simple physical inspection by the members of the Tribunal with the consent of an appellant where this will help to explain or clarify other evidence.

128. The Council is proposing that members of the Tribunal be appointed in each State and Territory sufficient in number to deal with the workload in each jurisdiction. It is the Council’s view, however, that the SSAT should be organised and co-ordinated on a national basis and, accordingly, the Council is recommending that a full-time Chairman should be appointed. The Chairman would be responsible on a national basis for directing the administrative operations of the Tribunal and for promoting uniformity of procedures and consistency of decision making and approach. Devising methods and procedures for achieving these ends is a matter best left to the Chairman, but the Council commends the current practice of holding an Annual Conference of SSATs.

129. The Council also considers that at least one Deputy Chairman should be appointed in each State and Territory on either a full-time or part-time basis according to the anticipated
volume of work in each jurisdiction. It may be necessary to appoint more than one Deputy Chairman in busy jurisdictions such as N.S.W. and Victoria. The Chairman should be responsible for constituting the Tribunal in hearing appeals but it should be possible to delegate this and his other powers, apart from the power of delegation itself, to a Deputy Chairman. It is envisaged that the administrative and co-ordinating functions of the Chairman and Deputy Chairman would be additional to their ordinary responsibility as Tribunal members.

130. The Chairman and Deputy Chairman should be appointed from the categories of persons otherwise eligible for appointment to the Tribunal. In constituting the Tribunal to hear an appeal, the Chairman (or a Deputy Chairman acting under delegated powers) should nominate one member to preside but it is considered inappropriate that a Public Service member other than one who is the Chairman or a Deputy Chairman should act in this capacity. It is generally regarded that legal members are qualified as a class to preside but the Council considers that individual members of other categories of membership (excluding Public Service members) might also be equipped to act in this capacity and, accordingly, should not be precluded from being nominated as presiding members.

Recommendation 2

(a) Membership of the Social Security Appeals Tribunal should be drawn from persons with expertise in the interpretation of relevant law and experience or skill in the conduct of tribunal proceedings, persons with appropriate experience or qualifications in the provision, operation or study of welfare services, persons from, or formerly from, the Public Service with experience in social security or welfare administration, and legally qualified medical practitioners.

(b) Members should be appointed on either a full-time or a part-time basis, provided that an officer of the Public Service shall be appointed on a part-time basis only where the volume of work does not justify a full-time appointment.

(c) A Public Service member should not be subject to the direction and control of the Director-General of Social Security in the performance of his duties as a member of the Social Security Appeals Tribunal.

(d) The Social Security Appeals Tribunal should be constituted in general appeals by a legal member, a welfare member, and a serving or former public servant, augmented in medical appeals, at the discretion of the Chairman (see (e) below), by a medical member.

(e) A full-time Chairman should be appointed from the categories of persons eligible for membership to co-ordinate the operations of the Tribunal on a national basis and to perform such other functions as are proposed for him in this Report.

(f) At least one Deputy Chairman should be appointed from the categories of persons eligible for membership in each State and Territory on a full-time basis or, where the caseload does not warrant a full-time appointment, on a part-time basis, provided that an officer of the Public Service shall not be appointed on a part-time basis.

(g) The Chairman should be responsible for constituting the Tribunal to hear an appeal and, where the Tribunal as so constituted does not include the Chairman or a Deputy Chairman, should nominate a member (other than a serving or former officer of the Public Service) to preside.

(h) In the event of an equality of votes in deciding any matter, the presiding member’s opinion should prevail.

(i) The Chairman should be empowered to delegate any of his powers, other than the power of delegation itself, to a Deputy Chairman.

The Social Security Act 1947 should be amended to provide accordingly.
APPOINTMENT AND TENURE

131. Members should be appointed by the Governor-General in Council for terms not exceeding 5 years and should be eligible for reappointment. It is envisaged that the Chairman would normally be appointed for a 5-year term and that other members, including Deputy Chairman, would normally be appointed for terms of 3 years, though the Council recognises that special circumstances might require that some appointments be made for shorter periods. It is also accepted that different considerations might apply in relation to Public Service members but it is considered that ideally their appointment to the Tribunal should be for terms of approximately 3 years. It is envisaged that existing members of SSATs will be considered for appointment to the proposed Tribunal and the Council considers that it is desirable that any vacancies arising in the Tribunal’s membership should be advertised.

132. It is the Council’s view that its recommendations relating to appointment and tenure will have the effect, if adopted, of underlining the independence of the SSAT from the Department and will also assist in attracting persons of appropriate calibre as members.

Recommendation 3

Members of the Social Security Appeals Tribunal should be appointed by the Governor-General in Council for terms not exceeding five years and be eligible for reappointment, and the Social Security Act 1947 should provide accordingly.

MATTTERS OF PROCEDURE

133. The Council has recommended above that the SSAT should be established under the Social Security Act and that amendments to that Act should be made to confer a power of determination on the Tribunal and to provide for such matters as appointments, membership and the constitution of the Tribunal. In Part 2 the Council assessed the existing procedures of SSATs. It is considered that some improvements should be made and are achievable without detracting from the current informality and speed of SSAT proceedings. It is not considered that all the proposed changes in procedures necessarily require implementation by statute. In the Council’s view the essential need to promote informality and flexibility in procedure is more likely to be served if some of the proposals for change discussed below are implemented by regulation rather than statute. It has been noted that the Social Security Act currently provides a power to make regulations (s.149).

134. (a) Notification of Appeal. It should be sufficient that there be notification of dissatisfaction with a decision and that such notification should be made orally or in writing. It is not considered necessary nor desirable that appeals be lodged on a predetermined form, but, for convenience, such forms should be available from DSS and SSAT offices. It should be possible to lodge appeals both directly with the SSAT or via a DSS Regional Office. Appeals lodged under the latter procedure should be transmitted immediately to the Tribunal. The Council also considers that the DSS should continue its existing practice of informing claimants of their rights of appeal at the same time as communicating primary decisions and appropriate steps should be taken to ensure that the practice is uniformly implemented by all Regional Offices in relation to all primary decisions, including decisions to change an existing rate of payment. Applications or requests for appeal (whether written or oral) should be lodged within 28 days of receipt of an adverse primary decision, or within such longer period as the Chairman or a Deputy Chairman allows. The Council would anticipate that the discretion to extend the time limit would be exercised liberally.
Some appellants will suffer financial hardship pending the finalisation of their appeals. Hardship might be experienced whether the appeal primary decision was to deny entitlement to a pension or benefit, to cancel or suspend an existing pension or benefit, or to reduce an existing rate of payment. The Council considers that there are two ways in which the risk of financial hardship may be able to be minimised. First, it is assumed that in any of the circumstances described above, consideration would be given by the DSS to paying an appellant special benefit pending the finalisation of an appeal (though it is recognised that some appellants may be ineligible to receive such a benefit). Second, it is envisaged that the Chairman and Deputy Chairman of the Tribunal would be alert to expedite as far as is practicable the hearing of appeals involving financial hardship. It is considered, however, that these steps may be insufficient to deal with all cases of financial hardship and it is the Council’s view that the Tribunal should be vested with adequate powers to order in special circumstances the interim payment of a pension or benefit and to stay the cancellation or suspension of a pension or benefit, or a reduction in an existing rate of payment, pending the determination of an appeal by the Tribunal. It is not envisaged that these powers would be exercised automatically but it is considered that they would be used where the special circumstances of a particular case warranted their exercise. Undesirable delays might occur, however, if these powers were exercised by a fully constituted Tribunal. Accordingly, it is considered that the powers to make interim orders should be both vested in, and exercised by the Chairman sitting alone but such powers could, of course, be delegated to Deputy Chairman.

In order to ensure that appeals are processed as expeditiously as possible, the Council considers that the Director-General should be obliged to transmit to the SSAT as soon as is practicable any medical reports and documents on which the Department intends to rely and any other documents necessary to provide a proper understanding of the primary decision and, in any event, to transmit such documents within 28 days of notification to the Department of lodgment of an appeal. It is expected that the Department will attempt to make documents available to the Tribunal well within the 28-day time limit to enable hearings to be conducted as expeditiously as possible. The Council later proposes that the Tribunal be vested with a power to order the production of documents (see recommendation 5), and this power could be used, if necessary, to compel the Department to make documents available immediately to enable an urgent hearing to be conducted.

Some documents, such as medical and welfare reports, may not be in existence when the time limit expires and the Council considers that the Director-General should be obliged to transmit copies of any such documents to the Tribunal as soon as is practicable after they have come into the Department’s possession. It is highly desirable that reports and documents should be transmitted to the Tribunal well in advance of a hearing to enable copies to be made available to the other participant in the proceedings, but the Tribunal should also have a discretion to allow a report or document to be tendered at the hearing itself. It is also considered that an appellant should be required to make available to the Tribunal as soon as is practicable any report or document upon which the appellant intends to rely at the hearing of the appeal. Recommendations are made by the Council later in this Report which are designed to provide appellants with access to appropriate material lodged with the Tribunal by the Director-General (see recommendation 5).

Recommendation 4

(a) An application for review by the Social Security Appeals Tribunal should be lodged, either orally or in writing, with the Tribunal within 28 days of notification of an adverse primary decision or within such further time as the Chairman or a Deputy Chairman permits.
The Chairman should be empowered to order in special circumstances the interim payment of a pension or benefit or to stay the cancellation or suspension of a pension or benefit or a reduction in the rate of an existing pension or benefit, pending the determination of an appeal.

The Director-General should be required to provide to the Tribunal as soon as is practicable and, in any event, not later than 28 days after receipt by him of notification of the lodgment of an appeal, copies of any reports or documents held by the Department on which it intends to rely in the appeal and any other documents necessary for a proper understanding of the primary decision.

Reports and documents which come into the Director-General’s possession after the expiration of the 28-day time limit should be required to be transmitted to the Tribunal as soon as is practicable.

Reports and documents upon which an appellant intends to rely should be transmitted to the Tribunal as soon as is practicable.

Regulations should provide accordingly.

138. (b) Hearings and Powers. It has been emphasised throughout this Report that the Council envisages that the SSAT, as the first of two external review tribunals hearing social security appeals, should provide an informal, expeditious and economical review process. Accordingly, the procedures of the Tribunal should be tailored to achieve those objectives. Proceedings should be conducted with as little formality and technicality and with as much expedition as the requirements of all relevant legislation and a proper consideration of the matters before the Tribunal permits. The SSAT should not be bound by the rules of evidence. It is envisaged that the Tribunal will hear approximately 4 appeals in each 3-hourly session, as SSATs currently do.

139. The Council considers that appellants should be encouraged to participate in the Tribunal’s proceedings. Participation might involve personal attendance by the appellant at the hearing or, where such attendance is impracticable, participation in a conference telephone hearing. The DSS should also be given the opportunity adequately to present its case to the Tribunal but it is not considered that the Department will need to be represented in many appeals since an opportunity to make written submissions will generally suffice. Nor is it envisaged that the Tribunal will conduct an oral hearing in every case. If the parties are mutually agreed, or if the appellant is unwilling to participate directly in the hearing of an appeal, the Tribunal should be entitled in its discretion to determine the appeal without holding an oral hearing. The Council considers that a party to the Tribunal’s proceedings should be entitled to make written submissions, whether or not that party is present or represented at a hearing.

140. The Council considers that the SSAT should be based in the capital city of each State and Territory and should hold hearings in venues and rooms similar to those currently associated with SSATs. In order to underline the independence of the Tribunal from the Department, it is the Council’s view that the Tribunal’s accommodation, mailing address and telephone number should be separate and distinct from those of the Department. In addition, it is considered that the Tribunal should be entitled to travel to country areas for the purpose of conducting oral hearings and sufficient funds should be available to the Tribunal to enable it in appropriate circumstances to conduct hearings in such areas. The Council is of the view that the Chairman and Deputy Chairman should have authority to make decisions concerning travel (acting if necessary under delegated powers and within appropriate budgetary limits), without the necessity of referring individual cases to the Department.
141. SSAT hearings are at present essentially of an inquisitorial nature and it is considered to be highly desirable that their basic character should be preserved. It is also important, however, that the proposed Tribunal should be equipped with adequate powers to ensure that the relevant facts are established to the Tribunal’s satisfaction and that appropriate material is made available to the Tribunal to enable it to determine appeals effectively while still providing an informal and speedy form of review. Accordingly, it is the Council’s view that the Tribunal should be vested with a power to order the production of documents and other evidence. The Council regards such a power as essential if the Tribunal is to control the progress of appeals. The power could be used, if necessary, to expedite the hearing of an urgent appeal by compelling the Department to make immediately available relevant papers and background documents.

142. The Council has also considered whether it should recommend that the Tribunal have powers to summons witnesses and to take evidence on oath or affirmation but it has decided against so recommending for the following reasons. First, while the Council recognises that it is desirable that the Tribunal have powers to enable it to establish relevant facts and evidence, this consideration needs to be balanced against the primary concern to avoid Tribunal proceedings becoming undesirably formal and adversarial in character. The availability to the SSAT of powers to summons witnesses and receive sworn evidence might tempt some members to duplicate the sort of hearing associated with the AAT, which the Council is anxious to avoid. Second, the Council considers that the exercise of powers to summons witnesses and to take sworn evidence might add significantly to the time taken to process appeals at this level of review and the Council is concerned that hearings be conducted as expeditiously as possible. Third, without suggesting that the principles of natural justice should be inapplicable to SSAT hearings, it is the Council’s opinion that different standards of procedural fairness should apply at the two levels of appeal in a two-tiered structure. The absence of formal powers to summons witnesses and require sworn evidence to be given would, in the Council’s view, go some way towards indicating the standard of procedural fairness expected at SSAT hearings.

143. The Council has also considered whether the Tribunal should be empowered to make orders or give directions to prohibit or restrict publication of the contents of any document lodged with the Tribunal, or other evidence received by the Tribunal. The Council recognises the importance in principle of all evidence and material relied on by the Tribunal being made available to the participants in an appeal, but it also recognises that a power to prohibit or restrict disclosure of certain evidence or material may be necessary to protect confidentiality or to prevent harm to some appellants if certain information were disclosed to them. The Council has noted that the AAT is empowered to prohibit or restrict publication or disclosure of material or evidence if it ‘is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason’ (AAT Act, sub-s.35(2)). In considering whether reasonable grounds exist to justify the making of such an order, the Tribunal is required to:

- take as the basis of its consideration the principle that it is desirable that . . . evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available . . . to all the parties . . . (AAT Act, sub-s.35(3)).

It is considered that a similar provision should exist at the SSAT level of review but it is emphasised that a power to withhold evidence or material from an appellant would need to be exercised with restraint and it is envisaged that directions would be given only in clear cases. Moreover, consistent with the principle that it is desirable that all evidence or material considered by the Tribunal in deciding an appeal should be made available to the
participants in that appeal, it is envisaged that the Tribunal would consider in appropriate cases disclosing information to an appellant’s representative. In the rare circumstances where considerations of mental or emotional harm are relevant, it might be appropriate for the information to be released to a doctor of the appellant’s nomination. In the event that an appellant is unrepresented, it is considered desirable that the presiding member should inform the appellant of the Tribunal’s decision to withhold certain information from him and advise him of the desirability of arranging for a person to represent him to whom the information might be disclosed. Finally, it is envisaged that, as with other aspects of the Tribunal’s powers and procedures, the Chairman and Deputy Chairman will be concerned to promote consistency and uniformity in the exercise of the Tribunal’s power to give directions concerning disclosure of information.

144. The Council has considered whether the power to give directions concerning disclosure of information should be conferred upon the Chairman and Deputy Chairman to enable decisions to be taken on such matters in interlocutory proceedings. The advantages of such an option are the savings in cost and time that would be likely to be achieved if such matters were disposed of in advance of a hearing by the fully constituted Tribunal. While recognising the importance of these considerations, the Council has concluded, however, that this power should be exercised by the full tribunal at a hearing where the claimant or his representative will have the opportunity to be present. In the Council’s view, such procedures are essential in view of the importance of a decision to withhold information from one of the parties to an appeal. It is considered that such a decision to withhold information from a claimant should only be taken by the full Tribunal whose constitution will include a legal member in accordance with recommendation 2 above. It should be emphasised in this context that under the Council’s proposals eligibility for appointment as Chairman or Deputy Chairman will not be confined to legal members.

Recommendation 5

The Social Security Act 1947 should empower the Social Security Appeals Tribunal to conduct oral hearings; to require the production of documents; and to give directions prohibiting or restricting the publication or disclosure of some or all of the contents of a document lodged with the Tribunal or other evidence received by the Tribunal if the Tribunal is satisfied that such directions are desirable by reason of the confidential nature of any matter or evidence or for any other reason. Appellants should be encouraged to participate in Tribunal hearings but an oral hearing need not be held if both parties agree or if the appellant is unwilling to participate. The Tribunal should not be bound by rules of evidence and proceedings should be conducted with as little formality and technicality, and with as much expedition, as the requirements of all relevant enactments and a proper consideration of the matters before the Tribunal permits. Sufficient funds should be made available to enable the Tribunal at the discretion of the Chairman to conduct hearings in regional or country locations.

145. (c) Appellant’s Access to Material. If an appellant is to know the case that he has to meet at the hearing, it is essential that documents and material relevant to the appeal which are in the DSSs possession should be made available to the appellant subject to the Tribunal’s power to give appropriate directions as proposed in recommendation 5. Unnecessary delays would occur if this material were only made available at the Tribunal’s hearing as adjournments would probably be required. In the Council’s view, the appellant should be provided with access to such material sufficiently well in advance of the hearing to enable him adequately to prepare his appeal and it is recommending that the Tribunal should be responsible for ensuring that a copy of any written material lodged with the Tribunal by
either the Department or the appellant is made available to the other at least 7 days in advance of the Tribunal’s hearing.

Recommendation 6

Regulations should provide that the Social Security Appeals Tribunal is responsible for providing the Department or the appellant at least 7 days before a hearing with a copy of any written submission made by the other party and any report or document transmitted in accordance with recommendation 4, subject to the Tribunal’s power to give appropriate directions as to the publication or disclosure of material as proposed in recommendation 5.

146. (d) Representation. In the Council’s view, representation by legal practitioners should not be prohibited before the SSAT. The Council has noted that no limits are placed on representation before SSATs at present and there is no evidence that this has affected the informal nature of hearings. It is the Council’s view that it is desirable that an appellant should be entitled to be represented, if he wishes, by a person of his own choice, whether legally qualified or not. The Council considers that both appellants and the proposed Tribunal will benefit from the involvement of representatives in appropriate cases. Some appellants might be reluctant to pursue their appeals if representation were not allowed. The Tribunal is also likely to benefit in achieving speedier determinations by the presence of a representative capable of identifying key issues and presenting his client’s case in a structured and informed manner.

147. The Council considers that the Director-General should also be permitted to be represented by a person of his choosing if he so wishes. It is anticipated that in those cases where the Director-General wishes to be represented, an officer of the DSS will appear on his behalf. The Council would emphasise, however, that unless such representation is limited to exceptional cases, the primary objective of providing hearings that are speedy, informal and inquisitorial in nature will be threatened. Accordingly, the Council proposes that the Director-General should only be represented with the leave of the Tribunal which should have regard to the special circumstances of the individual case. Moreover, to ensure that an unrepresented claimant is not disadvantaged in a case where leave is granted for the Director-General to be represented, it is considered that the Tribunal should have a discretion to require the DSS to meet the reasonable costs of providing suitable representation for the claimant in such a case.

Recommendation 7

(a) An appellant should be entitled to be represented, if he wishes, before the Social Security Appeals Tribunal by a person of his own choice.

(b) The Director-General of Social Security should be entitled with the leave of the Tribunal to be represented before the Social Security Appeals Tribunal by a person of his own choice.

(c) Where leave is granted for the Director-General to be represented in accordance with (b) above and the claimant is unrepresented, the Department of Social Security may be required at the Tribunal’s discretion to pay the reasonable costs of providing suitable representation for such a claimant.

Regulations should provide accordingly.

148. (e) Reasons. The Council is of the opinion that the SSAT should be obliged to give reasons for its decisions but these reasons should be brief and not as detailed as the statement of reasons expected of a final review tribunal. An adequate statement of reasons
will provide guidance for the Department’s primary decision making and also assist both parties in determining whether to appeal to the AAT. The Council accepts, however, that the writing of reasons can be a time-consuming task which might cause delays in processing appeals. The Council is concerned to ensure that appeals are processed as expeditiously at the first level of external review as at present and it has concluded that, although the terms of a Tribunal’s decisions should always be reduced to writing, reasons for those decisions may be given orally. If, however, one of the parties so requests, the Tribunal should be obliged within 28 days to provide a brief statement of its reasons in writing. It is not envisaged that a written statement of reasons provided in response to such a request would be any more detailed or lengthy than the statements of reasons currently prepared by SSATs to support their recommendations to the Director-General. It is also expected that in some circumstances it will be appropriate to provide a brief written statement of reasons notwithstanding that no request has been made. Such would be the case, for example, where the Tribunal was not in a position to state its reasons orally in the presence of the parties at the end of a hearing.

149. Several submissions received by the Council have drawn attention to practical difficulties that might arise in some cases if oral reasons were given, such as where Tribunal members were unable promptly to agree at the end of a hearing on the reasons for a decision, or where an appellant interrupted the Tribunal while it was attempting to provide oral reasons. The Council acknowledges that such difficulties might occur but it does not consider that this likelihood is an argument against providing the Tribunal with a discretion to give oral reasons. The Council’s proposal does not preclude the Tribunal from giving written reasons rather than oral reasons and this may be a preferable course of action in cases presenting practical difficulties such as those described above.

Recommendation 8

(a) The Social Security Appeals Tribunal should be required to give decisions in writing and to provide a brief statement of the reasons for decisions.

(b) Reasons may be stated orally but the Tribunal should be required, if requested by either of the parties, briefly to state its reasons in writing within 28 days of receiving such a request.

Regulations should provide accordingly.

150. (f) Public or Private Hearings. The Council has considered whether oral hearings, where conducted by the Tribunal, should generally be held in public or in private. The Council has noted that SSAT hearings are at present invariably conducted in private. In its earlier Report on Social Security Appeals, the Council recommended that AAT hearings in its proposed social security jurisdiction should normally be held in private (paras 5.021-5.022). In making this recommendation, the Council pointed to the experience of overseas jurisdictions, the personal nature of many of the issues involved in social security appeals, fear of publicity inhibiting appellants, and the belief that privacy would promote informality and expedition. The Council has noted, however, that contrary to its earlier recommendation, AAT hearings in social security appeals are at present normally held in public except in special circumstances, in accordance with the provisions of the Administrative Appeals Tribunal Act 1975. Accordingly, under the existing system of social security appeals, different practices apply at the first (SSATs) and final (AAT) tiers of review.

151. The Council has concluded (by majority) for the following reasons that hearings before the SSAT should generally be held in private subject to a discretion in the presiding member to admit any person in appropriate circumstances. First, it is not considered that in
a two-tiered external appeals structure consistency in practice and procedure between the two levels is either desirable in principle or necessary in practice. Indeed, differences will inevitably occur since the two levels are designed to serve different ends. Second, it is the Council’s view that the essential requirements of informality and speed at the first level of review are more likely to be achieved if hearings are generally conducted in private. It has been noted in this context that SSAT hearings are currently held in camera and that the physical setting in which such hearings occur is designed to conducive to informality. Normally, only members of the Tribunal and the appellant are present, although in some cases an interpreter, a representative, or witnesses may also attend. Rooms in which hearings are held are of a size appropriate to accommodate the handful of people present. An informal atmosphere is promoted by furniture being arranged on a ‘round-table’ discussion basis. If hearings of the proposed SSAT were generally conducted in public, it is considered that different arrangements would be needed. Seating would have to be provided for members of the public and larger rooms might be required. Quite apart from any intimidation that might be experienced by some appellants if members of the public were in attendance, it is considered that the physical changes to the setting of Tribunal hearings, occasioned by the possibility of members of the public attending, would derogate from the relatively informal atmosphere in which hearings are currently conducted. Finally, while the Council recognises the importance of the general principle that tribunal proceedings be subject to scrutiny, it considers that the holding of hearings in public is not the only way of facilitating such scrutiny. It is the Council’s view that the need for informality in proceedings and the need to protect the privacy of social security claimants justify a general practice of holding SSAT hearings in camera, and that public scrutiny can be provided by AAT and judicial review of those hearings, by requiring the SSAT to prepare an Annual Report, and by vesting a discretion in the presiding member to admit any person, including lawyers, welfare workers and other persons interested in observing the Tribunal’s proceedings. It is assumed, of course, that in exercising this discretion, a presiding member would ascertain and take into account the views of an appellant on the issue of admitting members of the public. It is expected, moreover, that the discretion would generally be exercised favourably to an appellant who requests that a hearing be public. A refusal of such a request should only be for good cause.

152. The dissenting views of the Hon. Justice M.D. Kirby and Mr A.D. Rose on this issue are set out at the end of Part 3.

Recommendation 9

For the purpose of the Social Security Appeals Tribunal’s jurisdiction, regulations should provide that hearings should be held in private subject to a discretion in the presiding member to admit any person.

153. (g) Protection of Members, Representatives and Witnesses. The Council considers it desirable that, to ensure the proper functioning of the SSAT, its members should be given the same protection and immunity in the performance of their duties of office as members of other review tribunals such as the AAT and SARTs. Likewise, representatives and witnesses appearing before the Tribunal should be protected to the same extent and, in the case of witnesses, be obliged to answer questions at the request of the presiding member and to give evidence that is neither false nor misleading. The Council has noted that such matters are dealt with at the AAT level in sections 60, 62, and 62A of the AAT Act and these provisions could be used as models for the SSAT.
Recommendation 10

Legislation should provide for:
(a) the protection of Social Security Appeals Tribunal members, and representatives and witnesses appearing in Tribunal proceedings; and
(b) the obligations of witnesses in such proceedings to answer questions at the request of the presiding member and to give evidence that is neither false nor misleading.

ANNUAL REPORT OF SSAT’S OPERATIONS

154. It is the Council’s view that the Chairman should be required to prepare an annual report of the Tribunal’s activities which should be forwarded to the Minister for Social Security for tabling in the Parliament. Such a report should provide detailed statistical information concerning the Tribunal’s operations as well as other material customarily found in comparable reports (see, for example, the Annual Reports of the Repatriation Review Tribunal). It is considered that, consistently with the Tribunal’s independence from the Department, the Tribunal’s staff should be responsible for collating statistical information relating to the Tribunal’s operations.

155. The Council has considered whether to recommend that anonymised decisions of the Tribunal should regularly be reported. Such a proposal would promote consistency in decision making and provide information to appellants, their advisers and representatives on the principles and approach adopted by the Tribunal. While recognising the importance of these considerations the Council has concluded, however, that it should not propose that Tribunal decisions be regularly reported. In addition to the practical implications in terms of resources and costs implicit in such a proposal in the context of a mass-volume jurisdiction, the Council is also mindful of the practical difficulties that might arise in reporting decisions in the light of its separate recommendation that the Tribunal need only provide oral reasons unless requested otherwise. Moreover, it is the Council’s view that consistency in the Tribunal’s decisions is likely to be fostered by AAT review of SSAT decisions (and AAT decisions are, of course, regularly reported), and by guidance provided by the Chairman and Deputy Chairman. Consideration might be given, however, to including in the Tribunal’s Annual Report reasons for decisions in selected appeals, as presently occurs in the Ombudsman’s Annual Reports.

Recommendation 11

Legislation should require the Chairman of the Social Security Appeals Tribunal to prepare an Annual Report of the Tribunal’s operations which should be forwarded to the Minister for Social Security for tabling in the Parliament.

STAFFING

156. At present, clerical and support staff servicing SSATs are part of the DSSs establishment. As at 1 December 1983 there were 26 SSAT staff (excluding Departmental members). In all jurisdictions apart from Tasmania, the Northern Territory and the A.C.T., staff are devoted full-time to servicing the Tribunals. The Council is of the view that the proposed Tribunal’s support staff should continue to be appointed on a full-time basis wherever it is practicable to do so, and should be responsible to the Chairman or relevant Deputy Chairman concerned, rather than to the Director-General of Social Security as occurs at present.

157. The Council has considered whether to recommend the creation of an SSAT Registry but has concluded that such a proposal is both unnecessary and undesirable. It is envisaged
that the Chairman and Deputy Chairman, assisted by the Tribunal’s staff, will be responsible for processing requests for review and other administrative tasks incidental to the hearing of appeals. The Council sees no need to recommend the creation of a separate bureaucratic structure to handle these matters and it considers that the establishment of a Registry might introduce an undesirably formal element in the Tribunal’s operations.

Recommendation 12

Staff servicing the Social Security Appeals Tribunal should be appointed on a full-time basis wherever it is practicable to do so and should be subject to the direction of the Chairman or the Deputy Chairman of the jurisdiction concerned.

EXPENSES OF APPELLANTS

158. As stated above (para. 36), appellants’ travel and accommodation expenses in attending SSAT hearings may at present be paid by the DSS. The Council considers that adequate funds should continue to be made available to enable such expenses to be paid. Several submissions received by the Council have urged it to recommend that the Tribunal should have a power to award legal costs to a successful appellant. The Council has decided to reserve its position on this issue pending completion of its separate project which examines the subject, Costs before Administrative Tribunals.

159. The Council has also considered whether appellants should be reimbursed for any expenses incurred in obtaining reports or other evidence. At present, SSATs may recompense an appellant for any expenses incurred in obtaining additional medical or other evidence at a Tribunal’s request and the Council considers that this practice should continue. The Council was informed that it is rare in practice for an appellant to incur expenses in obtaining a medical or other report in advance of a hearing specifically for the purpose of that hearing (as opposed to a case where a report has already been obtained for the purpose of a compensation claim), but it is considered that provision should also exist to enable the Tribunal to reimburse expenses reasonably incurred in these circumstances.

Recommendation 13

Sufficient funds should be made available to the Social Security Appeals Tribunal to enable it to recompense appellants for the cost of travel and accommodation expenses in attending Tribunal hearings and any expenses reasonably incurred in obtaining evidence.

Review Officers

160. In the Council’s opinion, a fundamental principle of any external review process is to encourage the taking of correct decisions at the level of primary decision making. The Council also considers that the existence of an external appeals structure does not obviate the need for an effective internal review process. As the Council stated in its earlier Report on Social Security Appeals:

- It is generally accepted that internal review is both necessary and desirable; necessary because primary decisions tend to be made by officers of such limited experience that it would be unsatisfactory for those decisions to form the basis for external review; desirable because internal review permits fast and cost effective evaluation of decisions and reduces the need for external review (para. 2.024).

For these reasons, the Council does not consider that its proposal for the establishment of a two-tiered structure of appeals in social security in any way diminishes the important role performed by ROs as described above (paras 11-14). However, as noted above (para. 97), the
Council has not attempted in this project to conduct a detailed examination of the operation of internal review procedures within the DSS.

161. In its earlier Report, the Council considered the question whether review by an RO should be a prerequisite to external review and concluded that, while it would generally be in the interests of a claimant to first seek RO review (because of the prospect of a quick, informal and cheap resolution of the problem), a claimant should not be prevented from invoking an external review process where it is believed that RO review is unlikely to be helpful. The Council has reconsidered its earlier recommendation and has come to the same conclusion. While the Council considers it to be desirable that claimants be encouraged to use the RO process, to require them to do so as a prerequisite to external review would create an additional hurdle to be negotiated in the review process. The Council is concerned to minimise the number of steps or initiatives required of appellants in the appeals process.

162. The Council has also noted that, upon notification of lodgment of an application for SSAT review, the current practice of the Department is immediately to reconsider the primary decision in advance of the SSAT hearing. This administrative practice does not require the appellant’s consent. The Council considers that the Department’s practice is a desirable one in providing an opportunity for appeals to be resolved in advance of a full tribunal hearing. An appeal may be finalised following internal review as a consequence either of the Department altering the primary decision or of the appellant withdrawing the appeal. Moreover, even if internal review does not produce early finalisation of an appeal, it is considered that such involvement is likely to assist subsequent SSAT review by clarifying the issues in dispute.

163. It is important, of course, that internal review be conducted as expeditiously as possible to avoid undue delay in processing appeals and, in the Council’s view, the Department should take appropriate steps to ensure that the internal review process is completed as soon as is practicable and, in any event, within the 28-day period for transmitting reports and documents pertaining to an appeal to the SSAT. In the event that internal review takes longer in a particular case than the Tribunal considers appropriate, the Tribunal will have a discretion to proceed with the appeal since under the Council’s proposals the Tribunal will assume responsibility for controlling the progress of an appeal from the date of lodgment of an appeal request, and the Tribunal will have available to it adequate powers to ensure if necessary that documents and papers relevant to an appeal are transmitted to it.

**Recommendation 14**

Review by a Review Officer should not be a prerequisite to seeking external review but claimants should be encouraged to use this review process before seeking external review. The Department’s current practice of immediately reconsidering a decision which is the subject of an appeal should continue and such reconsideration should be completed as soon as is practicable.

**Ombudsman’s Jurisdiction**

164. The Council has noted that SSATs currently fall within the Ombudsman’s jurisdiction to investigate matters of defective administration and the Council considers that the proposed SSAT should also be within that jurisdiction. It is considered that none of the Council’s recommendations will have the effect of excluding the SSAT from the definition of a ‘prescribed authority’ for the purposes of review by the Ombudsman.
165. The Council considers that the AAT should continue to act as the final level of appeal reviewing the merits of social security decisions: The AAT would review the primary decision as affirmed or varied by the SSAT. Section 37 of the AAT Act will therefore operate to require both the primary decision maker and the SSAT to provide the AAT with statements of reasons for their decisions and with copies of relevant documents. Many of these documents will have been available to both the primary decision maker and the SSAT since the Council has proposed in recommendation 4 that the DSS should forward all documents relevant to a primary decision to the SSAT. Other documents may also have come into existence after the primary decision was taken in connection with the SSAT's hearing of an appeal. It is the Council's view, however, that primary responsibility for collecting and forwarding section 37 documents to the AAT should rest with the Department. The Council is concerned to avoid duplication of effort and is also anxious to minimise the number of administrative steps which might contribute to delays in processing SSAT appeals.

166. The AATs current involvement in the social security appeals system has been described above in Part 1 and some problems in that jurisdiction were identified in Part 2, particularly in relation to delays in finalising appeals. It was observed there, however, that the sources of many of the delays that have occurred in the jurisdiction were either unavoidable or outside the control of the Tribunal. The Council considers that the AAT has operated satisfactorily as the final tier of review and only minor changes are proposed to the AAT's existing jurisdiction.

167. The Council considers that the Director-General of Social Security, as the statutory officer responsible for administering the Social Security Act, should have the right to challenge SSAT decisions before the AAT. The claimant should, of course, also have that right. The Council has noted that sub-section 27(1) of the Administrative Appeals Tribunal Act 1975 provides that an application for review of a decision may be made by or on behalf of any person or persons 'whose interests are affected by the decision'. In the Council's view there is no doubt that this provision covers both claimants and the Director-General and the Council sees no need to recommend that a specific provision be enacted to deal with standing to appeal from SSAT decisions to the AAT. The Council has also assumed that the Director-General would pay a pension or benefit in accordance with an SSAT decision notwithstanding that he has lodged an appeal from that decision to the AAT.

168. The existence of a right of appeal on the part of the Director-General to the AAT is likely to result in an increase in that Tribunal’s caseload under its existing social security jurisdiction. It is impossible to predict accurately how many appeals are likely to be taken by the Director-General but the Council would not expect that number to be substantial. The Council has noted that during 1981-82, the Director-General rejected only 239 favourable recommendations made by SSATs and in 1982-83 the figure was 316. These figures provide a general indication of the likely number of potential appeals by the Director-General to the AAT under the proposed system assuming, of course, that SSAT determinations are not significantly more favourable to claimants than recommendations from SSATs have been in the past. The Council would also expect that the Director-General would not be concerned to appeal every SSAT decision which was adverse to DSS. It is anticipated that his primary concern would be to identify those decisions that involved a principle of general application.

169. Subject to minor proposals made later in this Report, the Council has assumed that appeals taken from SSAT decisions to the AAT would be governed by the existing provisions
of the AAT Act. It should also be noted that, in accordance with section 44 of the AAT Act, an appeal on a point of law could be taken to the Federal Court of Australia from a decision of the AAT by either the claimant or the Director-General. It is the Council’s view, however, that where the Director-General appeals from a decision of the AAT to the Federal Court, consideration should be given by the Department to paying the claimant’s legal costs irrespective of whether the appeal is successful or not.

170. The Council considers that section 15A of the Social Security Act 1947, which deals with appeals to the AAT under the existing system, should be repealed and a new provision enacted vesting jurisdiction in the AAT to hear appeals from SSAT decisions on an application from either a claimant or the Director-General of Social Security. It is intended that the AAT should have jurisdiction to review not only substantive decisions of the fully constituted Tribunal but also any interlocutory decisions by the Chairman or a Deputy Chairman with regard to such matters as extensions of time, interim payments, stay orders and so on.

Recommendation 15
Section 15A of the Social Security Act 1947 should be repealed and jurisdiction should be conferred on the Administrative Appeals Tribunal to review a decision of the Social Security Appeals Tribunal (including a decision on an interlocutory matter made by the Chairman or a Deputy Chairman), at the behest of either the claimant or the Director-General of Social Security.

DIRECTOR-GENERAL’S CERTIFICATION POWER

171. It was noted above (para. 45) that at present the Director-General has the power to refer a matter direct to the AAT without requiring it to be considered by an SSAT if he certifies, at the request of an appellant, that the matter involves an important principle of general application (para. 15A(2)(b) of the Social Security Act). In the Council’s opinion it would be inappropriate for the Director-General to retain this power if the Council’s proposals for establishing a two-tiered structure of appeals were implemented. The decision whether a claimant should be able to bypass the first tier of review and appeal directly to the AAT is one which should not, in the Council’s opinion, be taken by the Director-General who it is proposed will be a party in proceedings before the SSAT and the AAT. The Council considers that the Director-General’s certification power should be abolished and it has noted that its earlier recommendation that section 15A of the Social Security Act should be repealed would have this effect if it were adopted.

172. The Council considers that, in general, appellants should not be able to bypass the SSAT and appeal direct to the AAT. To allow appeals to be taken direct to the AAT from primary decisions would, in the Council’s view, undermine one of the basic objectives of a two-tiered structure of appeals in a mass-volume jurisdiction, which is to have the majority of appeals disposed of at the first tier of appeal, leaving the final review tribunal to deal primarily with appeals that are particularly difficult or complex or involve important principles. The role and function of the two tribunals are quite different and will require different approaches. The Council considers that if the AAT is to continue to perform satisfactorily as the final review tribunal in this jurisdiction, it is essential that there should be a filtering process to limit the number of appeals with which that Tribunal has to deal.

173. It is recognised, however, that time and resources would be saved if some mechanism existed by which an appeal to the SSAT involving a principle of general application could be referred directly to the AAT without the SSAT having to determine the appeal. Accordingly,
the Council has concluded that provision should be made in the legislation-conferring jurisdiction on the AAT for appeals to be referred to that Tribunal where an appeal involves an important question of general application. It is considered, however, that in order to minimise the danger of inconsistency it is appropriate that decisions on questions of referral should be taken by the Chairman or a Deputy Chairman alone. It is not anticipated that many cases would be referred to the AAT in this manner. The Council has noted that at this stage only one matter has been referred to the AAT under the Director-General’s existing certification power.

Recommendation 16

An appeal to the Administrative Appeals Tribunal in its social security jurisdiction should only lie from a decision of the Social Security Appeals Tribunal except where the Chairman or a Deputy Chairman of that Tribunal refers an appeal to the Administrative Appeals Tribunal on the ground that the appeal involves an important principle of general application, and legislation should provide accordingly.

HEALTH INSURANCE ACT 1973

174. The Council has noted that decisions of the DSS made under the Health Insurance Act 1973 in relation to the entitlements and benefits of disadvantaged persons are currently reviewable by SSATs and, subsequently, by the AAT (Social Security Act, s.15A(2)(b) and (3)). The Council’s earlier recommendation that section 15A should be repealed would have the effect of divesting the AAT of this jurisdiction. The Council considers that decisions made under the Health Insurance Act in relation to disadvantaged persons should be subject to the same two-tiered structure of appeals as is recommended in relation to decisions made under the Social Security Act.

Recommendation 17

Legislation should provide that decisions made under the Health Insurance Act 1973 concerning disadvantaged persons should be subject to the same appeal provisions as apply to decisions made under the Social Security Act.

MAINTENANCE GUARANTEES

175. The Council has also noted the existing role played by SSATs in advising the Minister for Social Security whether he should exercise his discretion under the Migration Regulations to write off any debt due to the Commonwealth arising under those Regulations. The Migration Regulations empower the Minister for Immigration and Ethnic Affairs to require persons seeking to enter or remain in Australia to give maintenance guarantees (reg. 21). Where a maintenance guarantee has been given in relation to a person who subsequently obtains special benefit under the Social Security Act during the period of the guarantee, action may be taken by the DSS acting on behalf of the Commonwealth under the Migration Regulations to recover from the guarantor an amount equivalent to the value of the special benefit. Sub-regulation 22(3) provides, however, that the Minister for Social Security may, in his discretion, write off any such debt due to the Commonwealth. By Ministerial arrangement, SSATs currently make recommendations to the Minister on the exercise of his discretion to write off a debt. The tribunals become involved at the request of a claimant. The Council was informed, however, that the current practice of the Tribunals is to transmit their advice in such cases to the DSS which then prepares a submission for the Minister’s consideration setting out the Tribunal’s advice together with any comments of the Department. The Council has noted that the Department’s decision whether or not to recover such a debt under sub-regulation 22(2) is not currently reviewable by the AAT.
176. In the Council’s opinion, sub-regulation 22(2) of the Migration Regulations confers a discretion on the Commonwealth whether to recover a debt arising under those Regulations in a court of competent jurisdiction or to request that the Minister for Social Security write off the debt under sub-regulation 22(3). It is the Council’s view that a decision by the DSS to take action on behalf of the Commonwealth to recover from a guarantor an amount equivalent to the value of special benefit paid to a migrant should be reviewable by the SSAT and the AAT. It is considered that action to recover a debt is similar to action taken by the DSS to recover an overpayment under sub-section 140(1) of the Social Security Act. If the Council’s proposal that decisions of the Director-General taken under authority of the Social Security Act should be reviewable by a two-tiered appeals structure is implemented, decisions taken in relation to the recovery of overpayments will be reviewable by both the SSAT and the AAT and it is considered that similar review procedures should apply to DSS decisions to recover debts.

177. The Council has noted that the Migration Regulations define maintenance of a persons as including not only special benefit received by a person under the Social Security Act but also a person’s accommodation, surgical and dental treatment. It is possible, therefore, that action might be taken by Commonwealth Departments other than the DSS to recover debts arising from the operation of maintenance guarantees given under Migration Regulations. The question whether rights of review should also apply in relation to action taken by other Departments is a matter which the Council proposes to deal with in its current project dealing with rights of review and appeal under the Migration Act and related legislation. The Council also intends in that project to consider the question whether decisions of the Minister for Social Security to write off a debt under sub-regulation 22(3) of the Migration Regulations should be subject to external appeal. It notes at this stage, however, that under the procedure described in para. 175, the SSATs currently act as advisers to the Minister when he makes decisions under sub-regulation 22(3). In the Council’s view, such an advisory function is inconsistent with the role of the proposed SSAT as a determinative review authority and should not be one of the functions of that body.

Recommendation 18

Legislation should provide that a decision of the Director-General of Social Security acting on behalf of the Commonwealth to recover a debt arising under regulation 22 of the Migration Regulations in relation to the payment of special benefit should be subject to the same appeal provisions as apply to decisions made under the Social Security Act.

APPELLANTS’ EXPENSES AT AAT HEARINGS

178. The Council has considered whether adequate provision exists for payment of legal and other expenses incurred by social security appellants in participating in AAT hearings. It has been noted that appellants are entitled to seek legal advice and assistance from the Australian Legal Aid Office (ALAO), or from one of the independent aid commissions which have been established in some State and Territory jurisdictions. Eligibility for legal aid and assistance under these schemes is, however, dependent upon a means and needs test and some social security appellants may be ineligible.

179. The Council has also noted that AAT appellants are entitled to apply to the Attorney-General for both legal and financial assistance relating to their participation in AAT proceedings under section 69 of the AAT Act. Such financial assistance may include compensation for travel and accommodation expenses in attending AAT hearings. It is the practice of the Attorney-General’s Department to encourage applicants for assistance under
this scheme to apply initially for legal aid to the ALAO, or to a State or Territory legal aid commission. All applicants for assistance under section 69 are required to satisfy a means and needs test similar to that which is applied by the ALAO and legal aid commissions. Some social security appellants may be ineligible to receive assistance under this scheme because of the means and needs test.

180. It is considered that existing schemes do not adequately provide for payment of expenses and allowances in respect of attendance by social security appellants at AAT hearings. Some schemes do not provide for payment of non-legal expenses incurred in attending AAT hearings, and all schemes (including that under section 69 of the AAT Act) are subject to a means and needs test which disentitles some social security appellants from obtaining aid and assistance. The Council has noted that payment of expenses and allowances at the SSAT level of review is not currently restricted by a means and needs test.

181. In its earlier Report on Social Security Appeals, the Council recommended that the AAT should be empowered to order payment of the expenses of applicants attending hearings. The Council argued in support of that recommendation that payment of travel and accommodation would considerably enhance access of appellants to the AAT (para. 7.009). It should also be noted in this context that a similar recommendation was recently made by the Council in its Report on Review of Pension Decisions under Repatriation Legislation. In paras 307-308 of that Report, the Council noted that expenses and allowances of repatriation appellants in attending hearings of the Repatriation Review Tribunal were reimbursed, including allowances for loss of salary or wages. Since the Council was recommending that the RRT should be abolished and that the AAT be established as the final review tribunal in repatriation, the Council recommended that expenses and allowances of appellants in attending AAT hearings should similarly be recompensed.

182. The Council considers that no distinction exists in principle between the proposed involvement of the AAT in the repatriation and social security jurisdictions and is of the opinion that the financial needs of appellants will be similar in both jurisdictions. Moreover, the Council has recommended that appellants expenses continue to be paid at the first tier of review and it would be anomalous to require appellants to meet such expenses at the final level of review. The Council accordingly recommends that adequate provision should exist for payment of expenses and allowances in attending AAT proceedings.

183. The question whether the AAT should also have a power to award legal costs to successful claimants in its social security jurisdiction raises separate issues. The Council is currently conducting a project which examines the subject Costs before Administrative Tribunals and it has decided to reserve its position on that question pending completion of that project.

Recommendation 19

The Council reiterates the recommendation it made in its Report on Social Security Appeals that, for the purposes of the Administrative Appeals Tribunal’s social security jurisdiction, provision should be made for payment of expenses and allowances to claimants in respect of attendance at Tribunal hearings.

Advice and Assistance

184. In Part 2 the Council drew attention to the recommendation it made in its earlier Report that provision should be made for a system to ensure that claimants are aware of the sources of advice and assistance available to them. The apparent absence of a developed and
systematic scheme for providing advice and assistance for social security claimants and appellants was described in that Part as a deficiency in the existing system.

185. It is the Council’s view that the benefits of the proposed two-tiered structure of external appeals will not be fully realised unless claimants and appellants have access to independent sources of advice and assistance concerning social security law and the review processes. The Council’s charter and limited resources prevent it from conducting a detailed survey of the specific needs of social security claimants in terms of advice and assistance. It has already been noted in this context (para. 101) that a study has been funded by the Commonwealth Legal Aid Council to research the legal needs of social security claimants in Queensland. The results of that study were not available as at 1 March 1983. It has also been noted above that SSATs in Victoria have embarked upon a programme aimed at educating welfare agencies about the role they can play in advising and assisting claimants in the review process. While these are welcome developments, it is considered that a comprehensive survey needs to be conducted on a national level to inquire into the specific needs (legal and otherwise) of social security claimants in terms of advice and assistance with a view to devising an appropriate scheme for meeting those needs.

Recommendation 20

A national survey of the needs of social security claimants and appellants in terms of advice and assistance should be conducted with a view to developing a scheme to ensure that claimants and appellants have access to adequate sources of advice and assistance.

Costs of the Council’s Proposals

186. The Council has considered the likely costs of its proposals concerning the structure and form of social security appeals. The Council’s recommendations are likely to require some increase in existing Government expenditure on social security appeals but it is the Council’s view that the size of the increase is not likely to be significant since no radical restructuring of the existing system of appeals is being proposed. On the contrary, the Council’s proposals are properly seen as being more in the nature of promoting evolutionary changes to the status quo. Accordingly, the question of cost needs to be examined in the context of the past and present involvement of both SSATs and the AAT in processing social security appeals.

187. The DSS has estimated that the total cost to the Department of financing SSAT operations in 1982-83 was $2.57 million, including the remuneration and expenses of non-departmental members, the salaries of the Departmental members and support staff, the expenses of appellants, and overheads. The cost of the AATs involvement is more difficult to determine in view of the fact that that Tribunal is involved in more jurisdictions than social security alone and the Tribunal does not keep records of the costs of its individual jurisdictions. An attempt was made, however, to calculate the cost of AAT operations in the case study carried out by the Council on the administration of the Commonwealth social security system which forms part of the Council’s current project examining the impact of administrative review reforms. Two different methods of estimation were used in that case study (the results of which are still to be published). The first method was based on the number of finalised applications in the Tribunal’s social security jurisdiction as a percentage of the total number of applications finalised in 1981-82, while the second concentrated on the number of hearings conducted, including preliminary conferences. The figures arrived at by these two methods were approximately $1 million and $0.5 million respectively.
188. It is recognised that the proposals for change contained in this Report are likely to entail some increase in existing Government expenditure on social security appeals. Additional funds would be required, for example, to finance the appointment of full-time members such as the Chairman and some Deputy Chairman (the appointment of Deputy Chairman on a full-time basis should depend, in the Council’s opinion, on the volume of work in each jurisdiction). The Council’s recommendations that appellants be recompensed their expenses in attending AAT hearings and that a national survey be conducted of the needs of social security claimants and appellants in terms of advice and assistance would also obviously involve financial cost to the Government.

189. Any significant increase in the number of social security appeals at either the SSAT or AAT levels of review might necessitate the establishment of new tribunals or the appointment of additional members in order to cope with the increased caseload. It is not considered, however, that the Council’s proposals will produce any such increase. In the Council’s view, current trends in caseload numbers are likely to continue at both the first and final tiers of external review. It has been noted above, for example, that there has been a recent decline in the number of medical appeals being lodged with the AAT as the backlog of cases at the SSAT level (particularly in N.S.W.) has cleared (para. 57). The proposal that the Director-General should be entitled to appeal to the AAT from a decision of the SSAT is likely to give rise to some increase in the number of appeals at this level but, for reasons stated above, the Council anticipates that this number is likely to be small (para. 168).

190. It has also been emphasised throughout this Report that it is envisaged that the SSAT will process appeals at much the same rate as SSATs presently do and, if this occurs, it is unlikely that any new panels will need to be created. In particular, apart from the proposed new positions of National Chairman and Deputy Chairman, the Council is not recommending that any additional appointments of members should be made.

191. The Council has also considered whether additional Departmental staff would need to be appointed. Under the Council’s proposals, Departmental officers will continue to be eligible to be appointed as Public Service members of the SSAT. Support staff would also still be required to service the first-tier review tribunal as at present. Additional staff may need to be appointed, however, if the Tribunal is to assume responsibility for controlling the processing of appeals from the date of lodgment as the Council proposes. Extra support staff may also be required to provide administrative support to the Chairman and Deputy Chairman.

192. The Department is not at present represented before SSATs but this may change to some extent under the Council’s scheme. The Council has recommended that no restrictions should be placed on the rights of appellants to be represented at SSAT hearings if they wish, and that the Department may be represented by leave of the Tribunal, but it is not anticipated that the Department will wish to be represented by one of its officers in many SSAT hearings. It is acknowledged that some additional expenditure may be involved in providing Departmental representation in selected appeals with leave of the Tribunal, but the amount involved is unlikely to be substantial.

193. The Council would emphasise that any additional costs created by its proposals have to be balanced against the benefits that are likely to emerge if those proposals are adopted. The Council’s recommendations are designed to facilitate the resolution of the vast majority of external appeals at the lower level of appeals which is expected to be speedy, economical and informal. The proposal that the SSAT be given a determinative power is likely to involve some reduction both in the time taken at present to finalise SSAT appeals and in
Departmental expenditure since it will no longer be necessary for the Department to devote resources for the purpose of considering SSAT recommendations and, for reasons stated above at para. 168, any Departmental resources devoted in future to examining SSAT decisions with a view to determining whether appeals should be taken to the AAT are likely to be of a smaller magnitude. Any reduction in the time taken to finalise appeals is also likely to produce some savings in government expenditure. At present the DSS normally continues to pay an existing invalid pension pending finalisation of an SSAT appeal which may take twelve months or more. Similar discretionary payments may be made during some general appeals.

Dissenting Views

194. The following records dissenting views expressed by two members of the Council (the Hon. Justice M.D. Kirby and Mr A.D. Rose) on two issues dealt with above.

PUBLIC SERVICE MEMBERS OF SSAT

195. Justice Kirby and Mr Rose disagree with the recommendation that the SSAT should be constituted to include an officer of the Public Service. A number of submissions, not only from lawyers, opposed this proposal. A number of specific problems have arisen in the independence and appearance of independence of SSATs, as presently constituted, that suggest a change should be made. The influence of a Departmental member may extend beyond direct supply of information, including details of the law and Departmental practice. It may extend to a subtle impact on the minds of other members of the SSAT, alert to the possibility that their decisions will be rejected by the Department. The risk of such an influence, by a person connected with the other party to the dispute before the SSAT, is wrong in principle. It offends the notion of a neutral decision maker.

196. No action can be taken effectively to remove the potentiality of undue and subtle influence, except by removing the Departmental member from the membership of the SSAT. No machinery provisions, such as statutory secondment or statutory instruction of independence, will adequately detach the member from the association he or she will inevitably continue to have with the Federal administration. It is to service in that administration that the member will normally return. Too vigorous an independence on the part of the Departmental member might impede career prospects. It might inhibit the performance by the member of the quasi-judicial function which the Council envisages for the SSAT. There is also the problem of the perception of independence. There are already difficulties enough, some of which are addressed in the report. They include the venue of hearing rooms and the telephone number shared with the Department. But none of these associations is so stark and offensive to the appearance of independence as the presence in the SSAT of a member of the Public Service, who in all probability will be from the very agency being appealed against.

197. Justice Kirby and Mr Rose acknowledge the importance of achieving the three objectives sought by the majority:

(a) supply to the SSAT of a high level of information on relevant laws and practices applicable in a somewhat complex area of public administration;

(b) provision of a high level of independence and appearance of independence to a body to be established by a statute; and

(c) reduction of the risks of the introduction of undue formality and an unsuitable adversarial procedure that might result from significant changes in the current composition of the SSAT.
However, they believe that these objectives can be achieved without accepting continuation of the inclusion in the SSAT of a Public Service member. A preferable course would be to include a facility for a Departmental assessor or adviser who would give information and advice to the independent members of the SSAT in public, in the presence of the claimant or otherwise in public but then withdraw, with the claimant, so that the decision of the Tribunal is and is seen to be completely independent. The two dissenting members do not believe that it is necessary for the assessor or adviser to become an advocate, introducing adversarial procedures to the SSAT. Appropriate arrangements could be made for a continuance of informality, limiting adversarial procedure to rare cases. Both in the manner and time of the presentation of information and advice to the SSAT and in the design of hearing rooms, steps should be taken to emphasise that the Departmental officer is not a member of the decision making body but simply providing advice and assistance to it. There is well-established legal authority for the duties of such an assessor. See Owners of SS Australia v. Owners of SS Nautilus [1927] AC 145, 150, 152; Richardson v. Redpath Brown & Co. Ltd [1944] AC 62, 70; Adhesive Pty Ltd v. Aktieselskabet Dansk Gaerings-Industry [1936] 55 CLR 523, 559; and Cement Linings Ltd v. Rocla Ltd [1940] 40 SR (NSW) 491, 494-5. Cf Valenski v BRC [1973] RPC 357, 350. See also A. Dickey, 'The Province and Functions of Assessors in English Courts' (1970) 33 Mod L Rev 494 which traces the ‘perceptible trend’ in English statutes towards the use of assessors in tribunals, committees and inquiries.

198. Justice Kirby and Mr Rose considered various objections to the proposal to use an assessor or adviser. The argument of novelty is unpersuasive. The problem is a special one, namely that of securing at once general continuity of an established system, utilisation of experienced personnel, preservation of the supply to the SSAT of essential information, retention of a high level of informality and avoidance of the inappropriate features of the adversary system. When to these objectives is added a desire to increase both independence and perception of such independence, by the community and the applicant, it is clear that a novel reform is necessary. It is made more necessary by the decision of the Council to recommend that the SSAT should be determinative and not advisory. Once that recommendation is made, it is specially necessary to assure the reality of appearance of independence of the SSAT.

199. Second, it is important to draw a distinction between the establishment of an informal advisory tribunal by action of the Executive Government (such as the initial establishment of the present SSATs) and a recommendation by the Council to the Attorney-General and Parliament that Parliament should establish an apparently independent determinative tribunal, but containing departmental officers. Recommendations by the Council must be careful to avoid establishing undesirable precedents in public administration in Australia. They should be alert to the need to comply with basic human rights obligations including the submission of determinations about the rights of people to bodies that are and appear to be independent.

200. Third, the opposition to the inclusion of a Departmental representative is not incompatible with the previous support of the Council for inclusion of a serviceman’s representative on the Repatriation Review Tribunal (see the report of the Council on Review of Pension Decisions Under Repatriation Legislation, 1983, paras 210-216). In that case, the designated external representative was a potential critic of the Federal administration. In the present majority proposal, the Departmental representative will appear to be an ally of the very people being appealed from. Furthermore, he will exercise most of his influence in secret. In establishing the Australian Federal system of administrative review, special care should be taken to reassure the individuals coming before statutory tribunals of their integrity and of the independence they enjoy from the Executive Government.
201. Fourth, it may be asked how a tripartite tribunal will be constituted without a Public Service member. The dissenting members prefer the reconstitution of the SSATs to be a single member tribunal with adequate rights of appeal to the AAT, invariably constituted as a three-member tribunal and including at least one person with a background in welfare matters. However, if three-member SSATs are to be preserved, they see no difficulty in constituting them without a Departmental representative. One member should be a lawyer (normally the Chairman), one a person with a background in welfare and the third, a medical practitioner, a person with former experience in administration in the public or private sector or an additional independent member.

202. A fifth objection raised against the assessor or adviser is that such a person would become an advocate for Departmental viewpoints and thereby inject undesirable adversary procedures into the operations of the SSAT. This argument can be met in two ways. First, presiding members of the Tribunal should be encouraged to preserve and enhance informality, whilst at the same time receiving advice and assistance from the Departmental officer in the presence of the applicant or otherwise in public. Second, the present and proposed arrangements permit the Departmental member to play the role of the advocate, but only to do so behind closed doors and in the secrecy of his influence upon Tribunal members. That proposal permits an ambivalent function to the Departmental member. The alternative proposal of an adviser or assessor should be preferred.

SSAT HEARINGS IN PRIVATE

203. Justice Kirby and Mr Rose also disagree with the recommendation that the hearings of the SSAT should be held in private, subject to a discretion of the presiding member to admit any member of the public. Adopting the general rule of ‘in camera’ proceedings, whilst sensitive to the legitimate concern for the privacy of claimants and confidentiality of some social security material, is insufficiently sensitive to the competing public interest in the open administration of justice and public conduct of statutory tribunals. A number of practical and legal constraints should be considered, which strike a preferable compromise between the competing public policies involved.

204. First, meeting rooms should continue to be small and informally arranged, so that the facilities for public participation would, in practice, continue to be limited and indeed minimal. Second, it is unlikely, in the nature of social security appeals, that members of the public would attend to listen to other people’s small claims. Third, facilities could be provided for limiting access by persons not immediately involved but in a way more closely in tune with recent Federal moves on this matter. The initial closure of the Family Court of Australia has recently been modified by amendments to sections 97 and 121 of the Family Law Act 1975. These amendments introduce a more acceptable balance between private claims to confidentiality and public claims to the open administration of the law. They provide a healthier precedent for the SSAT than does the majority proposal.

205. A number of objectives should be sought:
(a) The scrutiny of those who are administering the law, whether in courts, or tribunals, so that they are themselves constantly submitted to the judgment of the community. Cf Russell v. Russell (1976) 9 ALR 103 and Home Office v. Harman (1983) AC 280.
(b) The need, in the case of the SSAT (and, on appeal, the AAT) to ensure the greatest possible privacy and informality compatible with the first objective. The need to strike a proper balance between those competing considerations is recognised in
Article 14(1) of the *International Covenant on Civil and Political Rights* to which Australia is a party.

(c) The public interest in minimising the growing tendency to close courts and tribunals, which tendency has been a feature of Australian public law in recent years. The tendency can be seen in legislation on security matters, rape trials, discipline proceedings against prisoners in closed hearings in gaols, matters involving children, family law and committal proceedings. It is a tendency that should be halted. Other protections should be provided short of closure to the public.

206. In the case of the SSAT, as proposed to be constituted by the majority, there is a special reason for openness, namely the perception of special injustice that may arise amongst claimants and in the community by the presence in the Tribunal of a Departmental member. Persons coming before the SSAT will typically be from disadvantaged sections of the community who may not be able effectively to assert their rights and privileges. In ignorance about the procedures and operations of courts and tribunals, rumours can grow. There are reasons of principle why the SSAT should be open to the very few members of the public who would want to attend them. Openness would also ensure that welfare workers and others can attend them without the necessity of leave and thereby gain experience in the difficult and important task of representing or assisting persons coming before the Tribunal.

207. In the place of the heavy preference for closure of the SSAT, Justice Kirby and Mr Rose would propose that they should normally be open, but relieved from the obligation to advertise or otherwise notify their sittings. The applicant should be told at the outset of the case that he or she has a right to request the closure of the Tribunal. If the applicant so requests, the presiding member should have the power to close the Tribunal, unless he or she considers it in the public interest that it should be open in the particular case. The presiding member should, in any case, have the power to limit the number of persons attending and to exclude persons from the hearing. He or she should have power to limit reporting and there should be a requirement of non-attribution to named persons of any facts coming before the Tribunal either in oral or written form. It is believed that such an arrangement, more compatible with recent reforms of Federal legislation, would also be more consistent with the balance that should be struck between legitimate individual rights and the public’s interest in the open administration of the law.

COMMENTS OF THE COUNCIL

208. The Council considers it desirable to record that it gave full consideration to the views expressed by Justice Kirby and Mr Rose before settling its report and recommendations.

209. To give effect to the dissenting view on Public Service membership of the proposed SSAT would, in the Council’s opinion, be destructive of its primary objective of establishing a competent but informal and expeditious tribunal at the first tier of external review, with a minimum of disruption to existing structures in so far as they are already working satisfactorily. In particular, proceedings would inevitably be more formal and decision making less expeditious, and a major restructuring of the review process would be necessary.

210. It is the Council’s view that, while ideal procedural standards are important as guidelines, their rigorous application may in some circumstances adversely affect the quality of administrative justice provided. Thus if they tend towards increasing formality they may, in a social security setting, inhibit at least some appellants in their understanding of
proceedings and in the presentation of their cases. They must therefore be balanced against competing considerations and, if this involves some departure from ideal standards, safeguards should be provided against any risks involved. For the reasons given in its report the Council believes that its recommendations achieve this. It draws attention in particular to the proposal that the AAT, a completely independent body, constitute the second tier of external review.

211. In the Council’s opinion, the dissenting proposal that SSAT hearings should generally be open to the public would also subordinate the interests of many appellants to the pursuit of an ideal principle. Furthermore, the Council’s proposal does not envisage denial of a public hearing to any appellant who seeks one.
APPENDIX 1: LETTER FROM ATTORNEY-GENERAL

Senator the Hon. Gareth Evans
Attorney-General
Parliament House
Canberra A.C.T. 2600
M/83/8818: E W

Mr E.J.L. Tucker
Chairman
Administrative Review Council
G.P.O. Box 9955
Canberra City, A.C.T. 2601

Dear Ernest,

In 1980 the Administrative Review Council reported to the then Attorney-General on social security appeals. The principal recommendation of the Council in its 1980 report was that there should be a one-tier appeal structure from decisions of the Director-General of Social Security to the Administrative Appeals Tribunal.

Since that report was prepared

- many changes have been made to the operation of Social Security Appeals Tribunals
- the AAT has exercised appellate jurisdiction in social security matters

In the light of developments since 1980 the Minister for Social Security and I are inclined to favour a two-tier approach. I particularly mention that I have reservations about conferring on the Administrative Appeals Tribunal original jurisdiction in a high volume area such as social security. I note also that, in its recent report to me on Review of Pension Decisions under Repatriation Legislation, the Council favoured a two-tier appeal structure in relation to repatriation decisions.

I am therefore writing to invite the Council to give further consideration to a two-tiered approach in relation to social security appeals. I mention, in this connection, that the Minister for Social Security has recently written to me suggesting two possible approaches to a two-tiered appeal structure. Copies of those suggestions are attached. I would appreciate the Council’s early advice whether it would now favour a two-tiered appeal structure and, if so, what form that structure might take.

This is, as you know, an area to which the Government attaches importance. I should therefore be grateful if the Council would give it priority.

Yours sincerely,

Gareth Evans
Proposal 1

This proposal essentially advocates a retention of the present relationship between the Minister for Social Security, the Social Security Appeals Tribunals (SSATs), the Director-General of Social Security and the Department of Social Security, and the Administrative Appeals Tribunal (AAT), except that the Director-General of Social Security would make delegations to Chairman of Social Security Appeals Tribunals thereby enabling them to decide cases coming before them.

The proposal would necessitate no (or only minor) change to the present law. Delegations would be granted to SSAT Chairman under the present section 15 of the Social Security Act 1947 and would enable Chairman, subject to guidelines issued with the delegations, to finally decide cases coming before the SSAT. Appeals would then lie by aggrieved claimants to the AAT under section 15A of the Act. The guidelines referred to would require the Chairman, in exercising delegated powers, to have regard to the views of the other members of the SSAT. Having formulated a proposed decision contrary to the interests of the appellant, the Chairman would make that decision forthwith and pass the files to the Department for implementation. Where a proposed decision was favourable to the interests of the appellant, the Department would be notified of the terms thereof; if the Department was dissatisfied with the proposed decision it would ask the chairman to reconsider the case if it involved a matter of principle; if the case did not involve a matter of principle, reconsideration would not be sought unless it was quite clear to the Department that the Tribunal had made some serious error in its interpretation of the facts; beyond such requests for reconsideration, the eventual decision of the chairman would be viewed by the Department as final and the Department would have no right of appeal to the AAT; in particular the Director-General would not override a decision by an SSAT Chairman or revoke a delegation to a chairman of an SSAT.

Current membership categories for SSAT members (lawyers, doctors, social welfare members and seconded departmental officers) would be retained but only legally qualified members would be able to hold office as Chairman and thereby exercise delegations.

Proposal 2

This proposal advocates the creation by statute of a lower tier appellate body with power to decide appeals on the merits, with appeals therefrom by either party (the aggrieved claimant or the Department of Social Security) going to the upper-tier Administrative Appeals Tribunal (AAT). The creation of such a statutory body may be viewed as either the statutory incorporation of the present Social Security Appeals Tribunals (SSATs), or equally as the creation of a new body to replace SSATs. The distinction is largely semantic. The new body is hereinafter referred to as the Social Security Review Tribunal (SSRT) to distinguish it from the present SSATs.

The general scheme foreshadowed under this proposal is as follows:
(a) The SSRT would be established by amendment of the Social Security Act 1947 as a statutory body responsible to the Minister for Social Security.
(b) The SSRT would have statutory power in its own right to decide appeals lodged with it on the merits.
(c) Appellants dissatisfied with an SSRT decision would be given the right to a hearing de novo by the AAT, and would thereafter be entitled to appeal to the Federal Court of Australia on questions of law only (as at present).
The Director-General of Social Security would have an equal right of appeal following an SSRT decision.

The SSRT would be required to determine all appeals made to it within its jurisdiction in accordance with the relevant law, but would not be bound by the rules of evidence.

The SSRT would be required to offer and give both parties the opportunity to adequately present their views to it, but would not be required to hold a hearing if the parties so agreed.

Appeals to the SSRT would be required to be lodged within a specified time of notification of the decision in question, or within such further period as the SSRT might allow.

Appeals from SSRT decisions to the AAT would be required to be made within the time limits currently prescribed - i.e. 28 days or such longer period as the AAT might allow.

The SSRT would have specific power to order the interim payment of pension or benefit pending the hearing and determination of an appeal, in defined circumstances.

SSRT decisions would be enforceable upon being made, subject to the issuance of stay or variation orders by the AAT.

The Director-General would be required to provide copies of all relevant documents to the SSRT within a specified period from the notification of lodgment of an appeal; the Director-General might at the same time or subsequently make a written submission to the SSRT.

The SSRT would provide the appellant with a copy of all relevant documents and any departmental submission provided to it, other than any documents ordered by it to be confidential.

SSRT hearings might be held either personally or by telephone.

The membership of the SSRT for a particular hearing would be drawn from amongst members appointed by the Minister for Social Security.

Members would be appointed in one of three categories: persons qualified to practise in law; legally qualified medical practitioners; persons with relevant qualifications or experience in the provision or administration of welfare services; there would be no departmental nominee.

The SSRT would be a structured body rather than a series of Tribunals, there would be a national 'president' who would direct operations of the SSRT in all States and Territories and who, in particular, would direct the constitution of the SSRT for each hearing.

The SSRT would have power to take evidence on oath or affirmation, to subpoena the attendance of witnesses, and to summon the production of documents either of its own motion or at the motion of a party.

The SSRT would not be required to give written detailed reasons for its decisions, unless requested to do so by either party.

There would be no limit on representation by either party before the SSRT.

Remuneration of SSRT members would be as determined from time to time by the Remuneration Tribunal.

The SSRT would have funds available to it to enable it to recompense appellants for the cost of travel and accommodation associated with attendance at an SSRT hearing, and to enable the SSRT to conduct hearings in regional or country locations as required.

SSRT staffing would be under the Public Service Act and responsible to the 'president' of the SSRT rather than the Director-General of Social Security.
APPENDIX 2: SUBMISSIONS ON DISCUSSION DOCUMENTS

Organisations

Aboriginal and Islander Community Health Service (Brisbane)
Bar Association of Queensland
Combined Pensioners’ Association of New South Wales
Council of Social Service (Australian Capital Territory)
Council of Social Service (New South Wales)
Kingsford Legal Centre
Law Institute of Victoria
Law Society of the Australian Capital Territory
Law Society of New South Wales
Law Society of Queensland
Law Society of Western Australia
Legal Aid Commission of Western Australia
Norwood Community Legal Service
Public Interest Advocacy Centre
Redfern Legal Centre
Welfare Rights Centre (Canberra)
Welfare Rights Centre (Sydney)

Social Security Appeals Tribunals

Australian Capital Territory
Queensland
Tasmania
Victoria
Western Australia

Individuals

Mr R. Beltrami
Dr T. Carney
Ms B. Cliffe
Ms H. Cole
Dr R. Cranston
Ms M. Dilosa
Mr M. Flynn
Professor J. Goldring
Mr P.J. Hanks
Dr C. Hazlehurst
Ms R. Hopcroft

Mr M. Horsburgh
Dr C.A. Hughes
Mr V.F. Kiessling
Mr J. Kirkwood
Mr B. Knox
Dr R. McEwin
Ms J. Moore
Professor D.C. Pearce
Ms L. Rodopoulou
Mr R.R.S. Tracey