

Appealing a Centrelink decision, claiming compensation and complaints

This factsheet is about appealing a Centrelink decision, claiming compensation and complaints. There is a factsheet with information about appealing Centrelink debts on our website.

This factsheet provides general information only. It is not legal advice. If you need legal advice, you can contact your local social security rights service, which you can find from our website at www.nssrn.org.au.

Overview – appeals, complaints and claims for compensation

If you do not agree with a decision by Centrelink, you have a right to appeal that decision. This is free. You can appeal in writing, by calling Centrelink or by going into a Centrelink office.

Centrelink won't discriminate against you if you appeal.

You can have legal representation, but do not have to.

You can also make a complaint or give feedback, and complain to the Commonwealth Ombudsman if not satisfied with Centrelink's response.

In some cases, you may also be able to claim compensation from Centrelink if you think it made a mistake that caused you financial loss or another harm.

Appealing Centrelink decisions

If you disagree with a Centrelink decision, you have a free right to appeal.

It can be a good idea to contact Centrelink and ask for an explanation first. In some cases, you may be able to give Centrelink more information and it will change the decision without the need for an appeal.

In some cases, a Centrelink staff member (sometimes called a "subject matter expert") may also call you to explain the decision.

Although it may be useful to get an explanation, if you are not satisfied with the explanation you have a right to appeal. It is best to say this clearly to Centrelink, for example, "I still don't agree with the decision and I want to appeal to a Centrelink authorised review officer".

Internal appeals to an authorised review officer

If you still think the decision is wrong, you have a right to appeal to a Centrelink authorised review officer ("ARO"), a senior Centrelink officer who checks Centrelink decisions. It is best to be clear about this, especially if you have had the decision explained to you.

You can ask for an appeal by:

- calling Centrelink (ask for a receipt number and keep a record of this call)
- filling in Centrelink's appeal form and giving it to them (<https://www.humanservices.gov.au/customer/forms/ss351>, or for ABSTUDY, <https://www.humanservices.gov.au/customer/forms/sy054>), or
- going in to a Centrelink office.

The Centrelink authorised review officer will try to call you about your appeal. When they decide your appeal, they have to write to you with their decision and give you their reasons.

Appeals to the Administrative Appeals Tribunal

If you do not agree with the Centrelink authorised review officer's decision, you can appeal to the Administrative Appeals Tribunal ("AAT"). This is free.

The AAT is an independent tribunal. It can change Centrelink's decision, but must apply the same law. It can only review a decision if a Centrelink authorised review officer has already done so.

There are two levels of appeal by the AAT. If you do not agree with its decision after the first review, you can apply for a second review. You should do this within 28 days of receiving the first AAT decision, otherwise your application may be refused.

Centrelink can also apply for a second review if it does not agree with the AAT's decision after the first review.

Appeals to the AAT are free. You cannot get any help with costs of your appeal, but equally you cannot be made to pay Centrelink's costs.

You can appeal to the AAT online, by phone or in person. There is more information about this on the AAT's website at <http://www.aat.gov.au/social-services-child-support-division/applying-for-a-review/how-to-apply>.

You can have legal representation, but do not have to.

Almost all Centrelink decisions may be appealed to the AAT. You may not be able to appeal to the AAT for some decisions, such as some ABSTUDY and Assistance for Isolated Children scheme decisions (except for debts, which can be appealed to the AAT).

Appeals to the Federal Court

You or Centrelink can appeal to the Federal Court of Australia from the AAT's decision on second review. You should appeal within 28 days of receiving the AAT's decision, or your application may be refused.

Appeals to the Federal Court must be on a question of law raised by the AAT's decision. This means you cannot appeal just because you think the AAT got the facts wrong. This is complicated and you should get legal advice before appealing to the Federal Court.

Generally fees apply (although they can be waived) and, if you lose an appeal to a Court, you usually have to pay Centrelink's legal fees which can be thousands of dollars.

Important information with appealing Centrelink decisions

This section has information about some important issues to keep in mind when appealing Centrelink decisions.

Time limits

There is no time limit for appealing a Centrelink decision that you owe it money to a Centrelink authorised review officer or the AAT for a first review, unless the decision relates to ABSTUDY or Assistance for Isolated Children debts (which should be appealed within 3 months, otherwise your appeal may be refused).

You usually have to start paying the money back during your appeal.

If the decision is about your payment, you should appeal to a Centrelink authorised review officer or the AAT for a first review within 13 weeks of being notified about the decision. If your appeal is more than 13 weeks after being notified, you may not get full backpay of your payment even if you win.

There are different time limits for some other Centrelink payments. Some appeals about Centrelink decisions to do with Family Tax Benefit can be made up to 52 weeks after being notified of the decision and you may still get full backpay. Different time limits also apply to decisions about paid parental leave.

But if you are unsure or you think more than one of your payments has been affected, it is safest to appeal as soon as possible and within 13 weeks.

Payment pending review

If you are appealing against Centrelink's decision to reduce or stop your payment, you can ask Centrelink to keep paying you while you appeal to an authorised review officer or the AAT (for a first review). This is called "payment pending review".

If you lose your appeal, you do not get a debt for social security payments made during your appeal. But if your family assistance payments (eg family tax benefit) also continued, you may get a debt.

Payment pending review does not apply if you appeal to the AAT for a second review. You may be able to ask the AAT for a "stay" to keep your payment while you appeal.

Procedure for AAT first reviews

After you apply to the AAT for a first review of a Centrelink decision, Centrelink sends a copy of the Authorised Review Officer decision and relevant Centrelink records to you and the AAT. This is usually about four weeks after you apply. You should look through these records and tell the AAT as soon as possible if you think Centrelink has not included all the records that are relevant.

You usually have a hearing about two weeks later and get a copy of the AAT's decision about two weeks after that. Centrelink also get a copy of the AAT's decision.

If your appeal is urgent, eg you are in financial hardship, you should tell the AAT and ask it for a quicker hearing.

Your hearing is usually with one member of the Tribunal and is private. No one from Centrelink is there. The tribunal member is usually experienced in Centrelink appeals and will mainly want to ask you questions to hear your side of the story. You can give new evidence to the AAT, even if you did not give it to Centrelink before.

In many cases the most important thing to do to prepare for the hearing is to collect evidence to support your side of the story. The factsheets on our website give examples of the kind of evidence you should collect for particular types of appeals, such as appeals about debts.

Procedure for AAT second reviews

After you apply to the AAT for a first review of a Centrelink decision, Centrelink sends a copy of the AAT first review decision and relevant Centrelink records to you and the AAT. This is usually about four weeks after you apply.

Centrelink has legal representation in an AAT second review. After you and the AAT get a copy of the documents, the AAT holds a meeting about your appeal with you and Centrelink's representative. At the meeting the AAT staff member ("registrar") will try to help you and Centrelink see if you can agree about the appeal. This is called settling your appeal. You do not have to settle your appeal, but it can be a good idea.

If you settle your case, Centrelink will ask you to sign a "settlement deed" which records your agreement with them. If you sign this, you cannot later appeal about the same issue. So it is a good idea to get legal advice before signing this.

If you cannot agree with Centrelink, the AAT will arrange a hearing. This will usually be with one tribunal member. Hearings are usually in public and decisions are published on the internet, although you can ask the tribunal for the hearing to be in private and/or its decision not to use your name or other details.

These hearings are more formal than for a first review. Centrelink's legal representative can ask you questions.

Claiming compensation from Centrelink

You may be able to claim compensation from Centrelink, if it makes a mistake that causes you financial loss or some other harm.

Claims for compensation against Centrelink can be made under the Compensation for Detriment caused by Defective Administration ("CDDA") scheme. Generally you need to show that:

- Centrelink made a mistake or its administration was defective in some way
- this caused you loss or harm
- the loss or harm was something Centrelink should reasonably have expected would be caused by its mistake.

There is more information about this on the Department of Finance website, at <http://www.finance.gov.au/resource-management/discretionary-financial-assistance/cdda-scheme/information-for-applicants-cdda/>.

Generally Centrelink will not pay you compensation if you may be able to appeal the decision. If you are not sure, it can be a good idea to start by appealing to a Centrelink authorised review officer and then consider a claim for compensation.

You should make a claim in writing. You can use Centrelink's form, available online (<https://www.humanservices.gov.au/customer/forms/ss509>) or you can ask Centrelink to send it to you.

You can submit your claim at a Centrelink office or by posting it to:

Department of Human Services
Customer Compensation
Reply Paid 7788
CANBERRA BC ACT 2610

Once submitted, Centrelink will send you a letter to say it has your claim. It aims to make a decision within 90 days. It will write you a letter telling you its decision. If you do not think its decision was reasonable, you can make a complaint to the Ombudsman.

In some cases you may be able to make a claim for an Act of Grace payment to the Department of Finance. There is information about that at <http://www.finance.gov.au/resource-management/discretionary-financial-assistance/act-of-grace-mechanism/information-for-applicants-act-of-grace-requests.html>.

Complaints and feedback

You can also provide feedback or make a complaint about the new online system by:

- Calling Centrelink's feedback and complaints line on 1800 132 468 or online at humanservices.gov.au/feedback, or
- If not satisfied with Centrelink's response to your complaint, contacting the Commonwealth Ombudsman at ombudsman.gov.au or on 1300 362 073.