Social Security (Review of Decisions) Bill 1988

Date Introduced: 29 September 1988
House: House of Representatives
Presented by: Hon. Brian Howe, M.P., Minister for Social Security

Digest of Bill

Purpose
The Bill will provide a legislative basis for the Social Security Appeals Tribunal (the Tribunal) and give that body the power to make binding decisions.

Background
The Tribunal has existed since 1975 and aims to provide an informal setting for the consideration of reviews of decisions made by the Secretary of the Department of Social Security. At present, a person may appeal to the Secretary that a decision be overturned and the matter may also be appealed to the Tribunal. However, any decision of the Tribunal is not binding on the Secretary who may reject the Tribunal's decision. In such cases the appellant is required to appeal to the Administrative Appeals Tribunal if a further review of the decision is sought. While this Bill will give the Tribunal determinative powers, both parties to a decision will still be able to appeal to the AAT for review of a decision of the Tribunal.

The decision to give the Tribunal determinative powers was announced as part of the May Statement. In the Explanatory Memorandum to the Bill, it is estimated that the measures to be implemented will save $2.8 million in 1988–89 and $5.4 million in 1989–90. The basis for the savings appears to be that there will be savings on administrative costs. In the Minister's Statement on the May Statement, it is predicted that the new process will simplify appeals and remove the delays currently present while the Department considers the Tribunal's recommendation. The removal of the need to consider the Tribunal's decision in most cases should see some cost savings.

Main Provisions
The Bill will commence on 1 November 1988 (clause 2).

Proposed section 17, which will be substituted into the Social Security Act 1947 (the Principal Act) by clause 4, provides for the Government to prepare a statement of its policy in this area, for that statement to be given to the Secretary and National Convenor of the Tribunal and for the Statement to
be tabled in Parliament. The Secretary and the Tribunal are to have regard to the statement when exercising their powers under the Principal Act.

Proposed section 168A provides for payments to continue, at the Secretary’s discretion, while an appeal is pending (clause 5).

A new Part XIX will be inserted into the Principal Act by clause 6. The proposed Part deals with the review of decisions.

The Secretary may, if satisfied that there is sufficient reason to do so, review decisions made under the Principal Act or under sections 5A to 5E of the Health Insurance Act 1973 (under those provisions the Secretary is to determine if a person is a disadvantaged person for the purposes of health insurance. As the review of other decisions made under that Act is left to other bodies, review of the Secretary’s decision under sections 5A to 5E have been included in this Bill). The Secretary will have power to affirm a decision, overturn or vary it (proposed section 172). The provision also allows for the Secretary to review a decision while it is the subject of an appeal to the Tribunal or the AAT. This will allow the Secretary to vary the decision before the matter is heard by the appellant body (eg. to decide in the applicant’s favour). As a consequence, proposed section 180 provides for the Tribunal to review the varied decision. This procedure will allow the Secretary’s final decision to be reviewed, rather than the review being of a decision that the Secretary may have already decided to vary.

Proposed section 173 provides for an affected person to apply to the Secretary for a review of a decision where that decision was made by someone in the Department other than the Secretary.

Proposed Division 2 deals with review by the Tribunal. The Tribunal is to provide a form of review that is fair, just, economical, informal and quick (proposed section 176).

The combination of proposed section 177 and 178 provides that the Tribunal may review the range of decisions outlined above, except decisions relating to a number of minor matters, and matters for which the Tribunal is not the appropriate body, such as determining when applications were lodged and the exercise of the power to gain information.

The Tribunal’s powers on review are detailed in proposed section 182. The Tribunal may affirm, overturn or vary a decision. If the decision is overturned, the Tribunal may substitute a decision or refer the matter back to the Secretary for further consideration. The Tribunal will be able to exercise the same powers as the Secretary has under the Principal Act, except those relating to the excluded matters mentioned above. In addition, proposed sub-section 182(6) will give the Tribunal the powers that the Secretary exercises under the Health Insurance Act 1973. The purpose of these provisions is to place the Tribunal in the same position as the Secretary in relation to decisions that the Tribunal may review. This is particularly important if the Tribunal is to substitute its decision for that of the Secretary.
Proposed Division 3 deals with procedure. The Tribunal is to be informed of the decision under review, and the reasons for the decision, by the Secretary (clause 184) and this information is to be passed on to the other parties involved (clause 185).

Submissions may be made either orally or in writing, and the appellant may choose to have any oral submissions made by a third party. In addition, the National Convenor of the Tribunal may determine that submissions may be taken by telephone (clause 188).

Hearings are to be private and as informal as possible (clauses 193 and 194) and orders may be made to prevent the disclosure of information (clause 195).

Clause 198 provides that the National Convenor may dismiss an application if satisfied, after contacting the appellant or taking reasonable steps to contact them, that the person does not intend to proceed with the appeal.

Parties are generally to bear their own costs, though the Tribunal may determine that accommodation and travel expenses associated with the appeal should be paid by the Commonwealth. Such a determination will not be binding on the Commonwealth. Similar provisions apply in respect of medical costs where the Tribunal arranged the service (clause 203).

Division 4 deals with appeals from the Tribunal to the AAT. Proposed section 205 grants the right to appeal to the AAT and the remainder of the Division deals with minor aspects, such as the lodging of documents.

Proposed Part XX will establish the Tribunal. It is to consist of a National Convenor, and senior and other members appointed under this Bill. The National Convenor and the senior members are to be appointed by the Governor-General and the other members by the Minister (proposed section 218).

A Tribunal is generally to consist of three or four members, though less than this number may comprise a Tribunal if the National Convenor is satisfied that there are special circumstances justifying a hearing by less than three members (proposed section 222).

Proposed Division 3 contains the standard administrative clauses, such as those relating to remuneration, resignations, disclosure of interests etc. Of note are proposed section 233 which provides for witness fees to be paid by the Commonwealth, and proposed section 236 which requires an annual report to be presented.