

# THE ADMINISTRATIVE REVIEW TRIBUNAL: ONE YEAR IN

Paper delivered by Justice Kyrou, President of the Administrative Review Tribunal, at the Ninth National Access to Justice and Pro Bono Conference in Melbourne on 31 October 2025

The establishment of the Administrative Review Tribunal (Tribunal or ART) on 14 October 2024 represents a momentous reform of Australia's system of merits review.

At the inaugural ceremonial sitting of the Tribunal on its first day of operation, I articulated the following vision for the Tribunal:

My ambition as President ... is for the Tribunal to develop a reputation for excellence in everything that it does. I want it to be known as a tribunal which has efficient, transparent and user-friendly processes. A tribunal with empathetic staff who are committed to assisting parties who need help in using the [Tribunal's] services. A tribunal consisting of experienced and dedicated members who conduct fair and inclusive hearings promptly after applications for review are lodged, and who make high-quality and easy-to-understand decisions within a short time after a hearing concludes.

Although the ART is the successor to the Administrative Appeals Tribunal (AAT), there are fundamental differences between the two organisations. Those differences start with the statutory objective of each.

Under section 9 of the *Administrative Review Tribunal Act 2024* (ART Act), the Tribunal must pursue the objective of providing an independent mechanism of review that:

- is fair and just;
- ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits;
- is accessible and responsive to the diverse needs of parties to proceedings;
- improves the transparency and quality of government decision-making; and
- promotes public trust and confidence in the Tribunal.

The AAT's statutory objective was set out in section 2A of the *Administrative Appeals Tribunal Act 1975* (AAT Act). There are similarities between section 9 of the ART Act and section 2A of the AAT Act, but there are also important differences. The main differences are that section 2A:

- did not expressly state that the review mechanism must be independent;
- did not require that the review mechanism be responsive to the diverse needs of parties;
- referred to the review mechanism being 'accessible' but did not define that term or impose any specific obligation in relation to accessibility;

- did not require that the review mechanism improve the transparency and quality of government decision making; and
- referred to the promotion of public trust and confidence in the Tribunal's decision making rather than the Tribunal more generally.

These differences are not semantic. They are very real, particularly the requirements for accessibility, responsiveness to the diverse needs of parties, and improvement in government decision making, to which I now turn.

### **Accessibility and responsiveness to diverse needs of parties**

Section 51(1) of the ART Act is new. It provides that the Tribunal must, as far as practicable, conduct each proceeding in a way that is accessible for the parties to the proceeding, taking into account the needs of the parties. Section 4 defines 'accessible' as enabling persons to apply to the Tribunal and to participate effectively in proceedings. The definition gives examples of areas where arrangements may be made in relation to accessibility. One of the examples is reasonable adjustments to accommodate a person's needs, such as interpreter services for hearings.

The Tribunal recognises that many applicants, particularly in social security and NDIS matters, are vulnerable. The Tribunal has adopted a range of measures to comply with section 51(1) and make available facilities which accommodate applicants' individual needs, including those arising from disabilities, language barriers and cultural differences. The measures, include:

- rolling out a new and more accessible website, which includes plain English and accessible resources for applicants, providing information in multiple languages through text-to-speech and verified translations, and videos with closed captions and Auslan interpretation;
- establishing an Accessibility and User-Centred Design section within the Tribunal, encompassing the Tribunal's First Nations Liaison program, which involves engagement with groups representing First Nations peoples;
- creating an Accessibility Advisory Group to provide a forum within the Tribunal for consultation and discussion of accessibility issues impacting the Tribunal;
- delivering presentations and training for members and staff to ensure accessibility principles are implemented across the Tribunal;
- signing a protocol with the Victorian Bar for the provision of free legal assistance to applicants;
- continuing the AAT's protocol with the Australian Bar Association for the provision of free legal assistance to applicants in taxation matters; and
- where appropriate, referring unrepresented applicants to Legal Aid offices and other groups offering free legal assistance.

Also new is the power conferred by section 67 of the ART Act for the Tribunal to appoint a litigation supporter for parties who do not have decision-making ability. Section 67 provides

an important mechanism by which such parties can effectively participate in Tribunal proceedings.

The Tribunal has published a Litigation Supporter Practice Direction which sets out who may be appointed as a litigation supporter, the factors that disqualify a person from being appointed as such, the type of evidence that is required to establish that a party does not have decision-making ability and the circumstances in which a person can be removed as a litigation supporter.

Also important in this context is the right conferred by section 66 of the ART Act for parties to be represented by a person of their choice in all areas of the Tribunal's jurisdiction.

### **Improvement to transparency and quality of government decision making**

There are two key mechanisms in the ART Act which assist the Tribunal to promote improvement to the transparency and quality of government decision making.

The first mechanism is the President's power under section 193(i) of the ART Act to inform Ministers, Commonwealth entities and the Administrative Review Council of any systemic issues that have been identified in the caseload of the Tribunal. I gave a notice of a systemic issue in 2024 and another one in September this year. Both deal with social security matters.

The second mechanism is the Guidance and Appeals Panel (GAP). The GAP can be constituted to make Tribunal guidance decisions in relation to matters involving issues of significance to administrative decision making. Non-judicial Tribunal members must have regard to Tribunal guidance decisions in similar future cases. The GAP can also conduct a further review of Tribunal decisions that contain issues of significance to administrative decision making or which may contain a material error of fact or law. Tribunal guidance decisions promote consistency in Tribunal decision-making and, over time, they are expected to reduce the number of court appeals and judicial review applications of decisions of the Tribunal.

A number of hearings are scheduled to take place before the GAP in the coming months that will result in Tribunal guidance decisions. They include several NDIS matters, a protection matter and a migration matter. The NDIS matters involve questions about the proper interpretation of certain legislative provisions. The protection case involves a decision made under section 197D of the *Migration Act*. The migration case involves allegations of fraud by a purported migration agent

We have had success in arranging free legal assistance for unrepresented applicants in GAP matters.

In relation to transparency, section 113 of the ART Act requires the Tribunal to publish certain decisions, including Tribunal guidance decisions and those that the President considers involve a significant conclusion of law and those that have significant implications for Commonwealth policy or administration.

### **Other differences between the ART and the AAT**

Apart from the statutory objective and the emphasis in the ART Act on accessibility and improvement in government decision making, there are other important differences between the ART and the AAT. They include the following:

- The AAT operated on a divisional structure, with divergent approaches to caseload management, document templates and practices and procedures between the divisions. In contrast, the Tribunal operates as a uniform, national tribunal. Its 8 jurisdictional areas follow the same processes unless a variation is warranted due to legislative requirements or particular features of the caseload of a jurisdictional area. The 8 jurisdictional areas and the 23 lists that have been established within them are managed on a national basis by jurisdictional area leaders and list leaders. A statutory Tribunal Advisory Committee oversees the entirety of the Tribunal's caseload. The services provided by staff to support the members have been organised on a national basis. Those services include the national allocation and listings team, the legal services team and the member support team. A national, uniform approach promotes consistency in the services provided by the Tribunal, both internally and to its users, and facilitates ongoing improvement in the quality of those services.
- The type of work that members of the AAT were authorised to undertake was determined by the division to which the Attorney-General assigned them. Under the ART Act, the President determines the type of work that Tribunal members undertake by assigning them to particular jurisdictional areas. The President also has the power to establish lists as subareas within the jurisdictional areas, to appoint leaders for each list and to place members in lists for management and reporting purposes.

Under these reforms, the Tribunal, rather than the Government, determines our internal structures and allocation of cases and members to particular caseloads. We also determine caseload priorities. We therefore have flexibility in directing our resources where there is the greatest need from time to time.

- Members of the Tribunal are appointed in accordance with a statutory merit-based assessment process, whereas members of the AAT were not. Members of the Tribunal are merit-based appointees making merit-based administrative review decisions.
- AAT members undertook a variety of administrative tasks due to the absence of legislative authority for those tasks to be undertaken by non-members. The ART Act enables the President to authorise registrars to perform a large number of administrative tasks, thus freeing members to focus on hearing and determining contested proceedings. The roles and functions of registrars in case pathways for various matters within the Tribunal are being expanded. This will include directions hearings in protection and migration cases in the future.
- There is a discernible change in the culture of the Tribunal compared to the culture of the AAT regarding tolerance of delays by parties and non-compliance by them with procedural directions. The Tribunal is less willing than the AAT was to grant extensions of time and adjournments to suit the convenience of the parties. Generally speaking, the Tribunal prioritises meeting its statutory objective of resolving cases quickly over accommodating the preferences of the parties.

### **What has worked well**

At a morning tea to celebrate the ART's first anniversary on 14 October 2025, I referred to a number of significant achievements of the Tribunal in its first year. I have already mentioned some of them. The achievements that I have not already mentioned include the following:

- We have updated our Practice Directions and procedural documents, and provided extensive training to our members to ensure that we deal with all cases before us in a fair and just manner. That training has included how to conduct hearings fairly for applicants with diverse or special needs.
- The timeliness of our decision-making has improved dramatically from the time that I joined the AAT in June 2023.
- The number of cases that are more than 3 years old has decreased significantly.
- We have received feedback that the quality of our decisions has improved markedly. This is not surprising in light of the fact that all our members have been appointed through a merit-based assessment process.
- We have established minimum standards of behaviour and performance for members by publishing a Member Code of Conduct and a Member Performance Standard.
- We have actively engaged with stakeholders and the community more generally to inform them of our work and to promote public trust and confidence in the Tribunal.

## Challenges

The key challenges for the first 12 months of the Tribunal's operations have been as follows:

- The dramatic increase in lodgements in relation to student visa decisions and significant increases in lodgements in relation to protection and NDIS decisions. The Tribunal does not have the resources to process this magnitude of lodgements, with the result that the number of cases on hand has increased substantially.
- Although the ART is funded to have an increase in the number of members commensurate with increases in lodgements, there are delays in recruiting and appointing members, resulting in the Tribunal having far few members than we need to deal with our caseload.
- Due to the prevailing employment market, we have been unable to recruit the number of suitably qualified staff needed to accommodate the increase in lodgements and the number of members, resulting in delays in processing documents and providing support services for members.
- These delays have been compounded by ongoing problems with the legacy case management systems inherited by the ART from the AAT.

## Snapshot of the Tribunal as at 30 September 2025

Before I make some concluding comments about the future of the Tribunal, I would like to give you a brief snapshot of its operations as at 30 September 2025.

As at that date, the Tribunal had 120,248 cases on hand. The break up is 66,365 in Migration (that is 55%), 41,054 in Protection (that is 34%), 6,004 in NDIS (that is 5%), 1,598 in Social Security (that is 1%), and the remaining 5,227 cases (that is 5%) were in other areas. Two years ago, the AAT cases on hand were around 66,000, or roughly half of today's figure.

Between 14 October 2025 and 30 September 2025, the Tribunal received 85,051 applications, about double the annual number the AAT had received in previous years. The 85,051 comprised 49,334 (or 58%) in Migration, 17,566 (or 21%) in Protection, 7,375 (or 9%) in NDIS,

5,502 (or 6%) in Social Security and the remaining 5,274 applications (or 6 %) were in other areas.

As at 30 September 2025, Migration and Protection dwarfed all other areas of the Tribunal's jurisdiction. Combined, they accounted for 79% of our lodgements and 89% of our cases on hand.

### **Looking to the future**

In looking to the future, the Tribunal will continue to be very mindful of the fact that our decisions profoundly affect the personal and business affairs of applicants. We are acutely aware that our role is not simply processing applications for review and that our decisions have life changing impacts on applicants, many of whom are amongst the most marginalised and vulnerable members of the community.

We are hoping that our lodgements will stabilise and the new members that are appointed to the Tribunal progressively will quickly attain a level of experience which will increase the Tribunal's overall efficiency.

We have established induction programs and ongoing education and training to assist members. We have also introduced formal and informal mentoring arrangements. We are confident that these programs and arrangements, together with the Member Performance Standard, will result in ongoing improvements in the timeliness and quality of our decisions.

If the Administrative Review Tribunal and Other Legislation Amendment Bill currently before Parliament is passed, the Tribunal will have greater flexibility in deciding cases on the papers rather than conducting an oral hearing.

The gradual expansion in the powers of registrars to conduct directions hearings and routine case-management functions will result in ongoing improvements to the efficiency of the Tribunal's operations.

The Tribunal's new case management system called IRIS continues to be developed and to be rolled out in relation to a greater range of new lodgements. For example, all new NDIS matters are managed within IRIS. GAP matters have been managed in IRIS from the outset.

Cumulatively, these steps will enhance the Tribunal's performance and bring it closer to realising the vision I articulated on the day it commenced.