



Law Council
OF AUSTRALIA

Office of the President

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Professor Margaret Allars SC
Chair
Administrative Review Council
Attorney-General's Department
3–5 National Circuit
BARTON ACT 2600

By email: ARCConsultations@ag.gov.au

Dear Chair

Social Security Inquiry: Issues Paper

1. The Law Council of Australia appreciates the opportunity to respond to the Issues Paper published by the Administrative Review Council (**ARC**) to inform its inquiry into the operation of the social security related provisions in the *Administrative Review Tribunal Act 2024* (Cth) (**ART Act**).
2. The Law Council acknowledges the contributions of the Law Society of the Australian Capital Territory and the Administrative Law Committee of our Federal Dispute Resolution Section (**FDRS**) in the preparation of this submission.
3. We welcome the ARC's inquiry into this issue, noting that such a review is consistent with Recommendation 3 of the May 2024 Report of the Senate Legal and Constitutional Affairs Legislation Committee, produced as part of its inquiry into the Administrative Review Tribunal Bill 2024 (Cth) and the Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2024 (Cth) (**ART Bills**).¹
4. Part 5A of the ART Act provides for a two-tier system for merits review by the Administrative Review Tribunal (**ART**) of 'eligible social services decisions'. It has been in force for nearly twelve months since the commencement of the ART on 14 October 2024. Eligible decisions include social security, child support, family assistance decisions, and other reviewable social security decisions, as defined in section 131C of the ART Act.
5. The Law Council engaged closely with the Attorney-General's Department (**AGD**) in the development of the ART Bills. That engagement included providing a detailed submission in response to the Administrative Review Reform Issues Paper,² and reviewing various iterations of draft legislation. In addition, the Law Council provided a submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs in February 2024 in respect of its inquiry into the ART Bills.³ That inquiry was subsequently transferred to the Senate Legal and Constitutional Affairs Legislation Committee.

¹ Ibid 22-31.

² Law Council of Australia, [Administrative Review Reform Issues Paper](#) (Submission to the Attorney-General's Department, 12 May 2023).

³ Law Council of Australia, [Administrative Review Tribunal Bills 2023](#) (Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, 2 February 2024).

Telephone +61 2 6246 3788 • Email mail@lawcouncil.au

PO Box 5350, Braddon ACT 2612 • Level 1, MODE3, 24 Lonsdale Street, Braddon ACT 2612

Law Council of Australia Limited ABN 85 005 260 622

www.lawcouncil.au

6. Our submissions on reforms to Australia’s system of administrative review did not engage in detail with matters relating to social security. That was primarily due to a lack of engagement from our membership on that specific aspect of the reforms, compounded by very truncated consultation timeframes.
7. Further, our approach to date has reflected the reality that other bodies, including National Legal Aid and Economic Justice Australia, are sometimes better placed to comment on the operation and impact of the social security provisions of the ART Act. That is because those bodies represent frontline organisations—Legal Aid Commissions and Community Legal Services—that provide advice to people on their social security rights. We encourage the ARC to have regard to the views expressed by those organisations.
8. The ART Bills, as introduced in December 2023, would have removed the two-tier review structure for social security matters that had existed in the Administrative Appeals Tribunal (**AAT**). During the Parliamentary inquiry process, strong concerns were raised by certain stakeholders about such proposed changes.⁴ The Government ultimately amended the ART Bills to reinstate the two-tier system for those matters, retaining many of the key features of the first- and second-tier review that had applied in the AAT.⁵
9. We note that the first annual report of the ART is not yet available, and the 2024–25 Annual Reports of Services Australia and the **Department** of Social Services have also not been released. In the absence of those reports, and noting the limited time that the ART has been in operation, the Law Council is unable to provide a comprehensive evidence-based analysis, or offer definitive comments on the consultation questions.
10. We did, however, receive constructive input from members of the FDRS’s Administrative Law Committee in response to some of the questions in the Issues Paper (noting not all questions have been responded to). Where views have been attributed to the FDRS Administrative Law Committee, these comments should not, at this stage, be taken to reflect the final views of the Law Council more broadly.

Responses to questions in Issues Paper

Internal review processes

11. The Law Council supports the role of internal review, in principle, as a critical component to administrative review mechanisms, particularly in areas of high-volume decision making such as the Social Security Jurisdictional Area. However, the effectiveness and fairness of those processes depends on the capability, capacity, and independence of review officers.
12. As noted in the Issues Paper, before a social security matter can be reviewed by the ART, it must go through an internal agency review process. An individual who receives a decision from Services Australia has the option to:
 - request an explanation for the decision from a Subject Matter Expert; and/or
 - apply for a formal internal review of the decision by an Authorised Review Officer (**ARO**).⁶

⁴ Senate Legal and Constitutional Affairs Legislation Committee, [Administrative Review Tribunal Bill 2023 \[Provisions\] and related bills](#) (Report, May 2024) 39.

⁵ Supplementary Explanatory Memorandum relating to Sheet SE106, Administrative Review Tribunal Bill 2024.

⁶ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 15.

An ARO is an officer who was not involved in making the original decision, and has the power to vary the decision, or set it aside and substitute a new decision.⁷

13. The Issues Paper identifies that concerns have been raised by stakeholders, in the context of multiple inquiries, about the ability of applicants to understand and access ARO review.⁸
14. Further, Services Australia does not publish data in relation to its internal review processes (e.g., application numbers, outcomes, and finalisation times).⁹ We recommend that such data be made publicly available to increase transparency and support analysis of review trends.

Question 2: Are there any changes to the process for arrangements for ARO review that could improve this avenue for review in terms of process or outcomes for individuals?

15. The FDRS's Administrative Law Committee suggests that a possible change that could expedite ARO review is the introduction of alternative dispute resolution (ADR) at that stage of the process.
16. Such an approach would have workforce implications, given that it would impose training and independence obligations on those conducting the review. To address those contingencies, the FDRS's Administrative Law Committee recommends that a group of ADR specialists (possibly made available from a panel outside the Department) could be utilised to ensure the perception of independence required to lend authority to the internal review outcome. Experience with the Veterans' Review Board illustrates the potential advantages of such a model.¹⁰

Question 3: Should there be statutory time limits on applying for ARO reviews and/or for an ARO to make a decision? Please explain why or why not.

Applying for ARO reviews

17. Time limits can act as an incentive for early resolution of social security matters, particularly for applicants who are often in financially vulnerable circumstances. The FDRS's Administrative Law Committee observes that, in practice, social security applicants already have a strong financial incentive to seek review of adverse decisions, which suggests that imposing a statutory time limit may not be necessary for this cohort.
18. Recognising that many applicants experience difficulty accessing and navigating the internal review process, measures to expedite review could instead be supported through targeted information and education programs, as well as targeted funding for advocacy services to assist individuals seeking to apply for ARO review.

Decision by ARO

19. Whilst there is no statutory timeframe for Services Australia to finalise an internal review, the Issues Paper states that Services Australia currently aims to finish at least 70 per cent of formal ARO reviews within 49 days from the date of request.¹¹ The FDRS's Administrative Law Committee recommends that the above target timeframe of seven weeks be shortened, particularly as there is no opportunity for an applicant to

⁷ *Social Services (Administration) Act 1999* (Cth) s 126.

⁸ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 16.

⁹ *Ibid.*

¹⁰ See Veterans' Review Board, [Dispute resolution events](#) (2025).

¹¹ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 16.

seek a stay of an adverse decision prior to accessing review in the ART, which will likely result in financial hardship.

20. Moreover, data from Services Australia Annual Reports, as extracted in the Issues Paper, indicates that approximately half of social security payment decisions were overturned at first review in the AAT in the 2023–24 financial year.¹² As data from the 2024–25 financial year with respect to the ART has not yet been published, we are not able to ascertain whether this trend has continued. Nonetheless, the 2023–24 data suggests that there is clearly a need for enhanced training for AROs, including about explaining their reasons,¹³ especially if the target timeframe for ARO review is to be shortened.
21. Ultimately, the current absence of data on ARO review processes makes the question of imposing a statutory time limit for an ARO to make a decision difficult to assess. It would be of benefit if Services Australia could provide information about:
 - the number of applications made for ARO review;
 - how many applications are diverted to a Subject Matter Expert;
 - the success rate of each avenue;
 - whether applications raise issues of wider significance; and
 - what steps are being taken to improve primary decision-making.
22. Until this information is available, it may be premature to consider imposing statutory time limits in the context of ARO decisions.

ART social security merits review structure

23. The ART provides two stages of review of reviewable social security and family assistance decisions in its Social Security Jurisdictional Area:¹⁴
 - First review in the ART is meant to be informal, accessible, trauma-informed and quick. The applicant is usually the only participating party. ADR is not typically used.¹⁵
 - Second review in the ART will usually involve the Department participating in the review as the respondent agency. There may be some form of ADR process (e.g., case conferencing, mediation, or conciliation) to seek to resolve the matter. If the matter is not resolved, it proceeds to a hearing.¹⁶

Question 5: Do the current structure and procedures for social security review in the ART promote the ART's objectives under the ART Act? If not, what do you think are the key impediments hindering this?

24. Under section 9 of the ART Act, the ART must pursue the objective of providing an independent mechanism of review that:
 - (a) is fair and just; and
 - (b) ensures that applications to the ART are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the ART permits; and

¹² Ibid 17; Services Australia, [Annual Report 2023-24](#) (October 2024) 128.

¹³ The Administrative Review Council's [Best Practice Guide: Statements of Reasons](#) (August 2025) will likely be of assistance for this purpose.

¹⁴ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 19.

¹⁵ Ibid.

¹⁶ Ibid.

- (c) is accessible and responsive to the diverse needs of parties to proceedings; and
 - (d) improves the transparency and quality of government decision-making; and
 - (e) promotes public trust and confidence in the ART.
25. Applicants have a strong financial interest in timely decision-making in this jurisdiction, which is of relevance to the objective at paragraph 9(b) of the ART Act. That objective was arguably not achieved in the AAT, where it took more than three months in 2023–24 for single-member reviews to be resolved.¹⁷ Taking into account the time required for internal ARO review (as outlined in response to question 3 above), that would mean that an applicant would not receive a final decision for close to six months in most cases.
26. If similar outcomes occur in the ART’s handling of social security matters, then corrective measures will be required. However, the lack of data regarding timeframes in the ART (and whether there has been an improvement compared to the AAT) makes it impracticable to provide a settled view at the current time.

Question 7: Do you believe a single tier of review in the ART could promote the objects of the ART?

Question 8: If there were a single tier of review in the ART, would particular measures or safeguards be needed to ensure that review remains accessible and responsive to the diverse needs of parties to proceedings?

27. A single tier of review for social security matters was proposed in the ART Bills when they were originally introduced into the Parliament. As explained in the Issues Paper:
- The proposed single-tier structure was intended to be consistent with the conduct of review in the rest of the ART’s caseload, and reflect the aim of the reforms to harmonise processes and procedures.*¹⁸
28. The Explanatory Memorandum to the Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2024 (Cth) stated:
- This change would be supported by a range of improvements in the quality and approach to reviewing social security matters, set out in the ART Bill. Instead of a two-tiered approach, in which neither tier is fully effective, the ART Bill provides for a more fit-for-purpose style of review. Matters will be triaged and resolved according to the complexity of the matter and whether the participation of the decision-maker (for example in a dispute resolution process) will assist its effective and efficient resolution.*¹⁹
29. In addition, under the structure that was initially proposed, social security applicants would have been able to make an application to the Guidance and Appeals Panel (GAP) for further review of their decision where it may contain a material error, or because the matter raises an issue of significance to administrative decision making.²⁰ In that respect, the term ‘single-tier review’ is inaccurate, as there was a possibility of further review (albeit limited) by the GAP.

¹⁷ Ibid 14; Administrative Appeals Tribunal, [AAT Caseload Report for the period 1 July 2023 to 30 June 2024](#) (2024).

¹⁸ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 11.

¹⁹ Explanatory Memorandum, Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023, 153-154.

²⁰ Ibid 154.

30. As noted in the Issues Paper, the subsequent amendments to the ART Bills—in response to stakeholder concerns—re-established the two-tier review structure and narrowed the availability of GAP review for social services matters.²¹ At present, the ART Act specifies that parties cannot apply to the GAP for review of either first review or second review of social security decisions.²² Nonetheless, the ART President has the discretion to refer an application for review by the GAP if the President is satisfied that:
- the application raises an issue of significance to administrative decision-making; and
 - it is appropriate in the interests of justice that the ART be constituted by the GAP for the purposes of the proceeding in relation to the application.²³
31. The *GAP (Guidance and Appeals Panel) Practice Direction* explains what is meant by ‘proceedings that raise an issue of significance to administrative decision-making’. That includes matters that ‘could potentially affect large numbers of individuals’,²⁴ and an example is given of matters that ‘involve a pattern of decision-making that affects significant numbers of people’.²⁵ The Practice Direction also provides that ‘the President may consider whether the proceeding is likely to have a broader impact on persons beyond the parties’.²⁶ Those factors are likely to be highly relevant in the Social Security Jurisdictional Area. However, it is difficult for the Law Council to comment on the effectiveness of the GAP review process without the availability of data on GAP applications and referrals.
32. The Issues Paper outlines arguments for and against the two-tier structure of external social security merits review.²⁷ There are persuasive arguments on both sides that we do not seek to reargue, noting the arguments have been canvassed already by the ARC in the Issues Paper, and by a variety of stakeholders during the inquiry into the ART Bills.²⁸
33. We recognise that returning to the single-tier model, as initially proposed in the ART Bills, would contribute to the harmonisation of processes, which was a key aim of the establishment of the ART. Regardless, the Law Council recommends careful consideration of whether a uniform approach is appropriate, given the diversity of applicants and matters before the ART, and the vulnerability of applicants in the Social Services Jurisdiction. It is critical that there is meaningful access to review, while maintaining procedural efficiency.
34. As noted above, it is critical that the ARC engages closely with stakeholders who provide advice (or represent bodies who provide advice) to people on their social security rights. Such bodies are well placed to provide frontline perspectives on:
- how the two-tier review structure is currently operating;
 - whether a single-tier structure could promote the objects of the ART; and

²¹ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 34.

²² *Administrative Review Tribunal Act 2024* (Cth) s 131W.

²³ *Ibid* s 122.

²⁴ Administrative Review Tribunal, [Administrative Review Tribunal \(Guidance and Appeals Panel\) Practice Direction 2024](#) 5.4.

²⁵ *Ibid* 5.4(d).

²⁶ *Ibid* 5.3.

²⁷ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 20.

²⁸ Senate Legal and Constitutional Affairs Legislation Committee, [Administrative Review Tribunal Bill 2023 \[Provisions\] and related bills](#) (Report, May 2024) 22-31.

- whether any measures or safeguards would need to be implemented if a single-tier review structure were to be established.

Role of the Department in the ART

35. The Issues Paper states that, although the Department is a party to social security review proceedings in the ART, it is deemed to have elected not to participate at first review, unless the ART orders otherwise.²⁹ The Department participates in all second review matters.³⁰

Question 10: What impact does the Department’s non-participation during first review have on the ART’s ability to resolve matters in accordance with its statutory objectives?

Question 11: Are there any changes you think should be made to the Department’s role before the ART to improve or better support the timely and effective resolution of matters at first review?

36. The Department’s non-participation at first review in the ART can promote faster outcomes for applicants and reduces administrative pressure on the ART’s workforce. However, the Law Council remains concerned that approximately half of social security payment decisions were overturned at first review in the AAT in the 2023–24 financial year.³¹
37. That data (while related to the AAT rather than the ART) suggests a failure by the Department to reach the correct or preferable decision at the outset and disadvantages applicants who do not proceed to the ART. The Law Council looks forward to closely reviewing equivalent data for the ART, once published. In the meantime, proactive measures are needed to ensure the quality of decision-making by the Department.
38. Whilst the ART is able to request the presence of a Departmental representative at first review, it is not yet known how frequently the ART has exercised that function. If applied appropriately, such a mechanism could help strike a balance between delivering timely decisions and avoiding undue burdens on Departmental officers. However, at this stage, it is too early to comment further.

Role of alternative dispute resolution in the ART

39. Current arrangements applying in the ART allow for the availability of ADR processes at first review for social security matters.³² As noted in the Issues Paper, that means it is possible for agency decision-makers to be required to participate in both first review and second review (including single-party case conferencing at both levels) if the ART considers it appropriate.³³

Question 12: Are there any changes you would suggest to the ADR process to support the ART’s objectives in relation to accessibility, responsiveness, and the quick and informal resolution and applications?

40. The use of ADR carries risks, particularly the imbalance in experience and knowledge between a first-time applicant, and a Departmental representative. That could result in

²⁹ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 24.

³⁰ Ibid.

³¹ Ibid 17; Services Australia, [Annual Report 2023-24](#) (October 2024) 128.

³² *Administrative Review Tribunal Bill 2024* (Cth) s 87.

³³ Administrative Review Council, [Social security inquiry](#) (Issues Paper, August 2025) 28.

an applicant accepting less than their lawful entitlement, or in the Department failing to address the need for legislative amendment, given that ADR outcomes are confidential.

41. Those kinds of risks prompted the Federal Court of Australia to caution in *Kovalev v Minister for Immigration and Multicultural Affairs*³⁴ that settlements reached through ADR, or by processes leading to consent orders, should only be approved by a tribunal if they are lawful.
42. Provided that the above safeguard is observed, the use of ADR is consistent with the *Legal Services Directions 2017*, which require consideration of ADR before initiating proceedings, and participation in ADR processes where appropriate.³⁵ Emphasising ADR also reflects the obligation on parties to assist the ART.³⁶
43. We note that there is no data publicly available to indicate whether ADR is being used at first review in the ART. We would welcome the availability of this data to assess how frequently ADR is being used at first review, and to evaluate its impact on outcomes for applicants and on the efficiency of the ART. Until that time, we are not able to comment further.

Contact

44. Thank you again for the opportunity to contribute to this inquiry. If the Law Council can be of further assistance to the ARC, please contact [REDACTED]

Yours sincerely



Juliana Warner
President

³⁴ [1999] FCA 557.

³⁵ *Legal Services Directions 2017* (Cth) Appendix B, para 2(d).

³⁶ *Administrative Review Tribunal Act 2024* (Cth) s 56(1)(a).