

# Commonwealth Ombudsman Report on Agency engagement with merit review

The Commonwealth Ombudsman is pleased to release the latest investigative report 'Learning from Merits Review: Best practice principles for agency engagement with merits review'.

Undertaken in 2024, the investigation occurred at the same time as the reforms to the Administrative Appeals Tribunal (AAT), which transitioned to the Administrative Review Tribunal (ART; the Tribunal) on 14 October 2024.

The Tribunal is a federal administrative body that can undertake independent reviews of decisions made by Commonwealth agencies.

The Office investigated 4 Commonwealth agencies with high Tribunal caseloads: Comcare, The Department of Home Affairs, The National Disability Insurance Agency and Services Australia. Overall, matters relating to these 4 agencies comprise 95.8% of total Tribunal lodgements.

Statement attributed to Mr Iain Anderson:

*"The AAT reforms have afforded an opportunity to review how agencies are engaging with the Tribunal, as well as establish best practice principles that will help guide agencies in learning from merits review decisions,"*

*'High numbers of Tribunal applications result in both high administration loads and litigation costs for the Commonwealth. It is important that agencies are continuously, and proactively, seeking opportunities to improve internal administration to reduce the need for decisions to go to a merits review.'*

## OFFICIAL

*"Each Commonwealth agency that engages with the ART should have an agency-wide strategy for learning from merits reviews that helps them identify and analyse lodgement trends, active caseload numbers, median time to finalisation, the rate at which agency decisions are overturned, settled or withdrawn, and matters being appealed by the agency."*

*"Our investigation report gives 3 recommendations for Comcare; The Department of Home Affairs; The National Disability Insurance Agency; and Services Australia for learning from merits reviews and incorporate Tribunal outcomes through continuous improvement processes."*

*"We were pleased to find that Comcare already has and enacts a merits review caseload analysis cycle that is consistent with best practice. Comcare should continue to strengthen these practices, and other agencies can refer to this strategy as an operable model."*

Under the Tribunal reforms, new referral and escalation powers have also been established.

Statement attributed to Mr Iain Anderson:

*"In addition to encouraging these four agencies to improve their mechanisms for learning from Tribunal outcomes, our investigative report also recommends that agencies integrate the new ART referral and escalation powers into their administrative practices," said Mr Anderson.*

*"The Robodebt Royal Commission highlighted systemic failures in the ways that agencies engaged with the merit review process and outcomes. We hope that agencies will accept all 3 recommendations of the report to reduce the likelihood of another event like the Robodebt scheme from occurring again." said Mr Anderson.*

*"We encourage all federal agencies who engage with the Tribunal, not just those surveyed in this investigation, to take this opportunity to review how and why they are engaging with the Tribunal".*

The full report is available on our [website](#).

For media enquiries email [media@ombudsman.gov.au](mailto:media@ombudsman.gov.au).