

Learning from merits review

Best practice principles for
agency engagement with
merits review

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Executive Summary

Quote

“The purpose behind the merits review system is not only to give better administrative justice in individual cases but also to secure an improvement in primary administrative decision-making”

– The Hon Sir Gerard Brennan AC, former Chief Justice of the High Court.¹

Merits review of agency decisions by an independent tribunal is a fundamental part of the Commonwealth administrative law framework, which was put in place in 1976–77 to enable the community to contest Commonwealth government agency actions and decisions.

Members of the community can make complaints to the Ombudsman; can seek merits review by the Tribunal (formerly the Administrative Appeals Tribunal (AAT), and from October 2024, the Administrative Review Tribunal (ART)); or can seek judicial review by the Federal Court of Australia (FCA) or the Federal Circuit and Family Court of Australia (FCFCA). Merits review by the Tribunal is intended to be simpler and more approachable than going to court, while also being legally binding and enforceable.

The Robodebt Royal Commission highlighted that systemic failures in the way in which agencies had engaged with merits review by the Tribunal was one of the reasons that the Robodebt scheme was able to continue on to cause distress and hardship to hundreds of thousands of people.

Quote

‘The financial hardship and distress caused to so many people could have been avoided had the Commonwealth paid heed to the Tribunal decisions, or if it disagreed with them appealed them to a court so the question as to the legality of raising debts based on income averaging from ATO data could be finally decided’

– [Prygodicz v Commonwealth of Australia \(No 2\) \[2021\] FCA 634, \[10\]](#)

¹ The Hon Sir Gerard Brennan, [‘The AAT – Twenty Years Forward’](#) (Speech, Canberra, 21 July 1996). Quoted by C Holmes AC SC, [Report of the Royal Commission into the Robodebt Scheme](#), 2023, p 553.



While the Royal Commission made recommendations about how Services Australia and the Department of Social Services (DSS) should engage with the Tribunal, all agencies subject to merits review should equally adopt a strategic and learning-based approach.

Merits review involves the Tribunal standing in the shoes of the agency decision-maker and deciding what is the correct or preferable decision. A Tribunal decision resolves the application of the law to the case before it – but it is also intended to contribute to the improvement of primary decision-making by agencies. A Tribunal decision is independent expert feedback for an agency on how it had applied its legislation to a factual situation, when the agency originally made the decision that was appealed to the Tribunal.

Merits review sometimes seems to be seen by agencies as insignificant, to be left to relatively junior in-house lawyers and with each decision confined to the case involving it. In fact, it should be core business for agencies: identifying areas for improvement in internal decision-making processes, as well as issues for legal or policy reform.

This report provides analysis and evaluation of how four Commonwealth agencies engage with the Tribunal and implement improvements as a result of Tribunal outcomes.

Written in the lead-in to the establishment of the new ART, the report provides all Commonwealth agencies with best practice guidance on Tribunal engagement according to six key principles:

1. A strategic vision for learning from merits review
2. Constructive engagement
3. Action orientated
4. Appropriately supportive
5. Inquiring, data driven and reflective
6. Improvement focused

These six foundation principles underscore 3 Recommendations and 2 Suggestions to assist agencies to strengthen processes and implement continuous improvement to their administration. The agency's responses to the recommendations and suggestions is provided at **Appendix C**.



Postscript – DSS' response to 'FTXB' decision

On 23 October 2024, DSS made a [public statement](#) about its approach to income apportionment in light of the decision in [FTXB; Secretary, Department of Social Services](#),² made by the (then) AAT in August 2024. Income apportionment was the subject of two reports published by the Ombudsman's Office in [August](#) and [December](#) 2023.

DSS announced that it would be progressing reviews of debts affected by income apportionment in accordance with its own interpretation of the law, rather than in accordance with the FTXB decision, which casts doubt on the legal certainty of DSS' current debt recalculation method.

Although this development is directly relevant to this report, it occurred after the report was written. The Office will revisit this issue in a separate publication, given its complexity and significance for all government agencies and the ART.

² [2024] AATA 3021 (28 August 2024).



Recommendations



Recommendation 1 – Commit to learning from merits review

Agencies should publish a statement of commitment to learning from merits review. This statement should be accompanied by a list of concrete steps for how the agency will give effect to that commitment.

The statement of commitment should be actively promoted to staff.



Recommendation 2 – Incorporate ART powers into policies, procedures and training

Agencies should incorporate the new referral and escalation powers available under the ART reforms into their policies and procedures. This should include guidance to staff on the different options available for the treatment of potential test cases in the Tribunal.

Agencies should provide comprehensive training to staff who engage with Tribunal matters on the new referral and escalation powers available under the ART reforms.





Recommendation 3 – Incorporate Tribunal Outcomes into continuous improvement processes

All agencies should incorporate and embed Tribunal outcomes into continuous improvement by:

- a) Reporting quarterly to Senior Executives, and distributing to agency decision makers and other relevant staff, the following information:
 - i. Themes and trends in Tribunal decisions, including settlements.
 - ii. Information relating to agency-wide management of matters before the Tribunal, including at a minimum: active caseload numbers, median time to finalisation, the rate of overturning of agency decisions, settlement and withdrawal rates, summaries of significant matters, and matters being appealed by the agency.
- b) Using the information referred to in recommendation 3(a) to:
 - i. Clearly define and document priority areas for business improvement to engage with the Tribunal and learn from Tribunal outcomes.
 - ii. Define measurable objectives for improvement, and a plan to achieve these objectives in priority areas.
 - iii. Measure and report on performance toward these objectives to the agency head.

Suggestions

We have made two suggestions on pages **26** and **34** of this report.



What did we investigate?

We examined how 4 Commonwealth agencies engage with, and implement improvements from, Tribunal outcomes.

The significance of the Tribunal

1. The Tribunal is an integral part of Australia's administrative law framework. It was created in 1976, alongside the Federal Court, as part of a suite of reforms that also established the Administrative Review Council (ARC) and the Commonwealth Ombudsman's Office.
2. The Tribunal was established so that people can seek an independent 'merits review' of individual government decisions that affect them. Merits review serves a different function to judicial review. The Tribunal 'stands in the shoes' of the original decision maker,³ and makes a fresh decision based on all evidence available, which can include evidence the original decision-maker did not have.⁴ The Tribunal also is obliged to make the correct or preferable decision in each case: legally correct, where there is only one possible correct decision, and preferable where there can be more than one correct decision. The Tribunal serves as an independent check of the quality of agency decision-making.
3. In contrast, courts are typically limited to looking at whether decisions were lawfully made, and – if a decision is found to be unlawfully made – the court will rarely seek to remake the decision itself and will typically remit the matter back to the original decision-maker for reconsideration.
4. The Tribunal has another important function, which is that – compared to going to court – it is cheaper, faster and more accessible. Most applicants are not represented by a lawyer: the AAT's 2022-2023 annual report observes that 'While

³ *Shi v Migration Agents Registration Authority* [2008] HCA 31.

⁴ See D Bennett, '[Balancing Judicial and Merits review](#)', *Administrative Review Council – Admin Review*, 2000.



parties may elect to be represented or assisted by a lawyer, migration agent, advocate or other person, a significant proportion of parties represent themselves.⁵

5. Despite this, individuals may not have the resources, capacity or knowledge required to proceed with a review. While review applications in some divisions are free, applications in some other divisions can incur application fees of up to several thousand dollars.
6. For all of those reasons, it is important that agencies effectively use learnings from Tribunal outcomes to improve their own processes and decision-making.
7. The phrase 'Tribunal Outcomes' in this report encompasses not only matters where the Tribunal makes a decision, but also applications that are finalised in other ways where applicable – such as matters settled by the consent of both parties (through Alternative Dispute Resolution or otherwise) or withdrawn by the applicant. We consider there are unexplored learnings for agencies in these alternative outcomes, discussed further under principles 2, 4 and 5 below.
8. The report of the Robodebt Royal Commission made several recommendations to Services Australia and DSS about the importance of engaging strategically with Tribunal review processes.⁶ We consider that these recommendations have lessons for all agencies that have their decisions reviewed by the Tribunal.

Quote

*"... there was no system or policy in place to allow DHS or DSS to systematically review AAT decisions; monitor statements of legal principle emerging from AAT decisions; consider how any guidance the AAT gave could improve decision-making; raise significant cases with senior officers in DHS or DSS; or generally exchange information about AAT decisions with each other. **Such a system would have been valuable. It would have enabled an approach to appeals which could have resolved the issues of law and policy which the Robodebt decisions raised and, at the least, had the beneficial effect of improving the quality and consistency of decisions made by DHS officers.***





– Catherine Holmes AC SC, [Report of the Royal Commission into the Robodebt Scheme](#), 2023, p 555-6

⁵ Administrative Appeals Tribunal, [Annual Report 2022-23](#), p 13.

⁶ C Holmes AC SC, [Report of the Royal Commission into the Robodebt Scheme](#), 2023, p xix (recommendations 20.1, 20.2, 20.3)



Figure 1. Tribunal key Statistics 1 July 2023 to 31 May 2024⁷

Applications to the Tribunal 	Average Resolution time 	Application Cost 	Matters Finalised 
<p style="text-align: center;">42,614</p>	<p style="text-align: center;">38 weeks</p>	<p style="text-align: center;">Free (Social Services and Child Support first review, Social Services second review, NDIA divisions)</p> <p style="text-align: center;">\$1,121-\$3,496 (Other divisions)⁸</p>	<p style="text-align: center;">39,577</p>

How we investigated

9. We issued an Investigation notice under section 8 of the *Ombudsman Act* (1976) on 10 January 2024 to the following agencies:

- **Comcare**
- **The Department of Home Affairs**
- **The National Disability Insurance Agency**
- **Services Australia**

10. Information on each of these agencies and their roles is provided at **Appendix A**. We selected these agencies because a relatively high proportion of Tribunal matters involve review of their decisions and because the Tribunal matters in which they are involved are highly varied and involve broad issues impacting the Australian community.

11. Figure 2 below provides data on each agencies’ Tribunal caseload.

⁷ Administrative Appeals Tribunal, AAT Caseload Report, 1 July 2023–31 May 2024.

⁸ Fees are current as of 9 December 2024 - see Administrative Review Tribunal, [Fees](#). Tribunal fees may have changed since publication of this report.

Figure 2: Tribunal Caseload by Agencies Investigated 1 July 2023–31 May 2024⁹

Agency	Number of Tribunal cases lodged	Percent of total Tribunal lodgements	Finalised	On Hand	Median time from lodgement to resolution
Comcare (Workers Compensation)	1,223	2.9%	1126	1322	44 Weeks
Department of Home Affairs*	26,915	63.2%	22,049	59,949	127 weeks
National Disability Insurance agency	3,593	8.4%	3,677	2,754	26 weeks
Services Australia**	9,068	21.3%	10,682	2,484	16 weeks
Totals	40,799	95.8%	37,534	66,509	83 weeks

*Combined Migration & Refugee, Australian citizenship and Visa-related decisions relating to character

**Including Centrelink first and second review, Child Support and Paid Parental Leave reviews.

12. We requested documentary evidence from each agency. Material requested included agency written responses to our investigation scope, relevant procedures and other documents relevant to the investigation. We then conducted a desktop review to examine this material.
13. We complemented this material by conducting 14 interviews, primarily with operational staff, across all four agencies.

⁹ AAT Caseload Report, 1 July 2023–31 May 2024.









14. This information was assessed against the 6 evidence-based principles outlined below.

How should this report be used?

This report contains best practice guidance for agencies on how to learn from merits review. It calls out six best practice principles for effective engagement with the Tribunal and in implementing improvements from Tribunal outcomes.

Figure 3. The six Best Practice Principles

 <p>A strategic vision for learning from merits review</p>	 <p>Constructive engagement</p>	 <p>Action orientated</p>
 <p>Appropriately supportive</p>	 <p>Inquiring, data driven and reflective</p>	 <p>Improvement focused</p>

What did we find?

15. The agencies we investigated demonstrated both areas of good practice and areas where they can improve their strategic engagement with merits review of their decisions by the Tribunal.
 - 15.a. All agencies demonstrated a general commitment to sharing learnings from Tribunal outcomes, but **most did not have an agency-level approach to support continuous improvement arising from tribunal outcomes.**
 - 15.b. **Agencies could do more to use data about Tribunal outcomes to make improvements to their own decision-making.** This was particularly the case for Tribunal matters that settled without the Tribunal making a decision.
 - 15.c. We also observed examples of agencies taking a passive approach to the opportunity to gain strategic value and learning from merits review of their decisions. Agencies could, broadly, do more to learn from Tribunal outcomes. Many cases are dealt with through the agency simply providing documents and not appearing at hearings. In other cases, merits review was seen as a matter mainly for the agencies' in-house legal teams to manage rather than of interest to decision-makers and agency executive, and **examples of best practice for learning from Tribunal outcomes were not embedded or formalised in agencies** at an enterprise level.
 - 15.d. Agencies generally have **appropriate processes and policies to engage with the Tribunal while a matter is ongoing.** Agencies have frameworks that facilitate compliance with Tribunal processes, have processes to ensure legal representatives comply with their obligations, and actively engage in alternative dispute resolution.
 - 15.e. **Agencies could make better use of potential 'test cases', which could be identified to the Tribunal for discussion as to whether they might be escalated and handled in a specific manner.**
 - 15.f. We also identified that some **agencies could do more to share their learnings, best practice and knowledge more effectively within the agency itself.** Failing to share learnings can lead to inconsistent practices between different business areas and reduce the overall effectiveness of merits review.



Principle 1: A strategic vision for learning from merits review



Agencies should have an agency-wide strategy for learning from merits review

- 1.1. Our investigation highlighted the value of a public agency-wide vision for strategic engagement with merits review by the Tribunal.
- 1.2. In making a clear public statement about commitment to learning from merits review, agencies send a message that their leadership prioritises and values learning from Tribunal outcomes, which actively encourages a constructive organisational culture.¹⁰
- 1.3. Agency guidance and policies should be simple and clear in order to be readily understood by staff. As well as a commitment to continuous improvement in the quality and consistency of decision-making, the agency vision could include:
 - clear objectives to improve Tribunal engagement
 - measures to achieve these objectives
 - timely analysis of performance against measures to achieve objectives.
 - processes to ensure Tribunal outcomes are fed back to relevant work areas and decision makers.
- 1.4. Among other things, this might include creating a test case program with dedicated funding. While the ATO is not in this Office's jurisdiction, it has historically also been involved in high volumes of merits review cases. The ATO

¹⁰ Administrative Review Council, *Better Decisions: review of Commonwealth Merits Review Tribunals*, Report No 39, 1995, p 113.



has long had a formal test case program – see Appendix B for more information.

What we found

- 1.5. In the varied levels of strategic engagement we observed across agencies, we found pockets of maturity and best practice in specific teams within agencies.
- 1.6. However, only Comcare and the NDIA were able to point to whole of agency visions for constructively engaging in Tribunal hearings and learning from merits review decisions, supported by clear objectives to achieve this.
- 1.7. Others relied on established business practices to learn from and communicate Tribunal learnings, but these practices were not always formalised or embedded agency wide.
- 1.8. No agency we investigated had a public agency-level vision for engagement with the Tribunal and learning from merits review.
- 1.9. Without a whole of agency vision, agencies miss opportunities to improve their engagement and learn from Tribunal outcomes, through tracking trends in Tribunal outcomes and identifying agency-wide risks. An agency-wide vision assists with breaking down silos in knowledge or practice created by internal work areas that separately engage with the Tribunal. These silos can lead to inconsistent administration and decision-making and mean that opportunities to share best practices within an agency are missed.
- 1.10. **Comcare's Claims Litigation Strategy (CLS)** is the strongest example we observed of an agency-wide vision for learning from merits review. The CLS sets out Comcare's performance measures for the Tribunal as a percentage target according to two metrics: the proportion of matters progressing to hearing or finalised within 12 months, and the proportion of tribunal litigation with a successful outcome. Incremental increases in the percentage target are also set for each successive year that the strategy is in place. These quantifiable targets reflect Comcare's litigation vision "to resolve disputes promptly and with integrity" as guided by Section 72 of the SRC Act. This practical approach allows for performance against agency-set metrics to be tracked over time while moving towards an agency-wide goal for tribunal



engagement. Other agencies could adopt a similar approach to measuring and tracking tribunal engagement according to their own definitions and appropriate targets.

Case study

Comcare developed its *Litigation Strategy 2020–2023* with the aim of resolving disputes promptly and with integrity. The *Claims Litigation Strategy* embeds a monitoring framework, linked to the establishment of a Claims Litigation Committee to monitor implementation of the Strategy. This was supported with a focus on key initiatives to improve litigation performance, including greater collaboration with legal service providers and quarterly engagements with the Tribunal. Comcare has credited this approach with reducing its Tribunal caseload from 805 open matters as at 31 December 2019, to 397 open matters as at 30 June 2023.

- 1.11. Comcare developed its first ***Claims Litigation Strategy 2020–2023*** in response to high numbers of Tribunal applications over multiple financial years.
- 1.12. Our view is that Comcare’s comparatively small size and discrete focus as an agency enabled it to flexibility and efficiently change its approach to Tribunal litigation in response to applications for Tribunal review.
- 1.13. Comcare identified that a high number of Tribunal applications caused significantly increased litigation costs. Higher numbers of challenges to Comcare decisions, and lengthy processes to resolve those challenges, also meant extended periods of uncertainty as to the outcomes for both scheme participants and the agency.
- 1.14. One of Comcare’s aims in developing the CLS was to reduce the number of open Tribunal matters. They achieved this by setting Key Performance Indicators associated with organisational goals such as resolving disputes promptly through opportunities for settlement or early resolution. Comcare also took efforts to identify and resolve aged matters (cases open for 12 months or longer). Throughout these changes, the agency communicated their strategy with the Tribunal.

- 1.15. As part of the CLS, Comcare’s Legal Group supports its Claims Management Group at the first instance decision-making stage. This direct communication between the Legal Group and claims management decision makers contributes to administrative decision-making that is consistent with relevant laws and policies.
- 1.16. Comcare’s performance to achieve these objectives is monitored by the Claims Litigation Committee which receives monthly reports on agency performance.
- 1.17. The **NDIA** monitors Tribunal-related data, including total applications, reviews completed and decision outcomes. It has also developed a ***Dispute Resolution Improvement Strategy (DRIS) 2022-2025*** which sets out the strategic objectives of the NDIA’s chief counsel division in relation to Tribunal matters and ties these to measurable outcomes such as:
- reducing the amount of time NDIS plan matters spend in the Tribunal
 - 80% case resolution within 9 months
 - Reduction of legal costs per matter
 - Reduction of ‘aged matters’
 - Improved participant satisfaction
 - Quarterly internal reporting to relevant business areas on thematic analysis and policy advice in relation to Tribunal matters
- 1.18. The DRIS also articulates initiatives which aim to improve the agency’s handling of Tribunal matters, such as the increase of its in-house litigation capability and a consistent emphasis on a participant-centred approach to the appeals process.
- 1.19. We consider the DRIS to be a useful initiative which ties NDIA’s agency- wide vision and strategic objectives to measurable outcomes.
- 1.20. Having articulated this vision and highlighted measurable outcomes by which to evaluate its success, the DRIS provides a framework for the NDIA to create efficiencies and cultural improvements by ensuring the agency’s commitment



to learning from merits review is visible, measurable and supports the agency's other goals.

- 1.21. We did not observe a clearly defined agency-wide vision for learning from merits review by the **Department of Home Affairs** (the Department). The Department's Biannual AAT Remit Report, specific to one of its business areas, (discussed further below) includes objectives and processes we consider useful and worthy of broader application by the Department and we encourage it to do so. The principles in this report could be considered in creating an agency-wide vision. We discuss this report further in Principle 5 below.
- 1.22. **Services Australia's** *Standing Operational Statement – Protocols for the Management of Litigation and Legal Advice* sets out some guiding principles for litigation and dispute resolution. This includes the commitment for the agency to, 'in all appropriate cases, seek to resolve litigation in a fair, timely and equitable manner consistent with the law, using Alternative Dispute Resolution (ADR) methods that minimise litigation and related costs.' We also observed Services Australia actively tracks data on its sensitive Federal Court and Tribunal matters, however we did not observe a linkage between the data tracked and clearly defined agency objectives for learning from merits review.
- 1.23. We encourage Services Australia to implement an agency-wide vision for learning from merits review and set achievable, measurable objectives to achieve its vision.
- 1.24. Further, all agencies investigated could do more to develop and publicise their commitment to learning from merits review.





Recommendation 1

Agencies should publish a statement of commitment to learning from merits review. This statement should be accompanied by a list of concrete steps for how the agency will give effect to that commitment.

The statement of commitment should be actively promoted to staff.



Principle 2: Constructive engagement



Agencies should have clear processes to support engagement with the Tribunal, including at the pre-hearing, hearing and decision stages, as well as appropriately implementing or escalating any outcome

- 2.1. Agencies and agency staff must be aware of, and comply with, a suite of legal and professional obligations when they are party to a Tribunal review. This includes the APS Values and Code of Conduct, the Tribunal's own Rules, and the *Legal Services Directions 2017* (Cth) (the Directions).
- 2.2. The Directions outline the Commonwealth's duty to act as a 'model litigant'. This duty requires agencies to deal with claims and litigation promptly, act in accordance with legal principle and practice, not pursue appeals with no reasonable prospect of success, avoid litigation where possible through use of Alternative Dispute Resolution (ADR), and – where litigation is unavoidable – minimise cost and disadvantage to the other party.
- 2.3. ADR includes things like 'case conferencing', which occurs early in the Tribunal processes and allows the parties and decision-maker to informally discuss and define the issues in dispute, explore whether an outcome can be reached, and discuss how the case might proceed. It also includes things like conciliation and mediation.
- 2.4. Judicious and appropriate use of ADR can save time and costs for agencies and applicants and assist them to reach an outcome quicker and more efficiently. It follows that agencies should continue to use ADR wherever appropriate and support staff with relevant training so they can fulfil their professional obligations under the Directions.
- 2.5. ADR can narrow the issues in dispute, allowing the parties the opportunity to provide further evidence and reach a negotiated settlement. It can be particularly helpful for decisions that have numerous disputed issues and hence considerable scope for negotiation. For example, ADR is frequently



employed in Tribunal reviews of National Disability Insurance Scheme (NDIS) planning decisions, which can involve disagreements over numerous requested supports, or the funding levels for those supports, among many other potential issues. The vast majority of NDIS-related reviews are resolved either during or after ADR and prior to the Tribunal making a formal decision, a finding discussed in more detail in Principle 4 below.

What we found

- 2.6. The agencies we investigated had appropriate processes and policies in place to facilitate compliance with the Directions and their model litigant obligations.
- 2.7. Agencies demonstrated they were generally receptive to complaints and criticism about their adherence to model litigant obligations.
- 2.8. All agencies had appropriate frameworks and standing instructions in place to promote external legal providers' compliance with their obligations before the Tribunal.
- 2.9. Agencies generally were aware of and used alternative dispute resolution strategies where appropriate.
- 2.10. Over the last few years, the **NDIA** has received some media criticism relating to its conduct before the Tribunal.¹¹ According to the Tribunal's Annual Report for 2022–23, the median time to finalise was 31 weeks for all NDIS related Tribunal appeals. This can be a significant period to wait, especially for people who require significant support which included young children for whom early support can be highly impactful. The annual report states that 98% of all Tribunal applications for a review of the NDIA's decisions are finalised through ADR without the Tribunal making a decision.¹² The agency advised us that in many cases once a Tribunal matter is underway, applicants supply information to the agency that was not supplied to the original decision-maker, which can prompt the agency to reconsider its original decision based

¹¹ See, for example, A Schultz, '[NDIA apologises to participants for AAT mismanagement](#)', *Crikey*, 30 December 2022, and D Jervis-Brady, '[NDIS 'battleground': Participants die waiting for justice after backlog delays appeals](#)', *The West Australian*, 29 December 2023.

¹² National Disability Insurance Scheme, [Annual Report 2022–23](#), p 138.



on this new evidence. However, this could also suggest that the primary decision-making at the NDIA was flawed, that the NDIA's internal review of decisions (prior to matters going to the Tribunal) was insufficiently rigorous, that NDIA's communications with participants about what information is relevant to their claims was unclear or ineffective, or simply that the NDIA approached Tribunal matters as a way to explore whether there was a better decision that could be made.

- 2.11. The agency advised that in recent years it has taken steps to improve its adherence with model litigant obligations, progress heavily delayed cases and reduce case backlogs generally. The NDIA's Early Assessment team was established to resolve matters early, where appropriate, by communicating directly with participants and their representative after a Tribunal application is made, an initiative which the agency advises has improved resolution rates and timeframes.
- 2.12. Additionally, the Independent Expert Review Program (IERP) trial explored methods for the agency to improve participant's external review experiences and reduce the Tribunal case backlog. As noted in the IERP trial report (discussed in more detail under Principle 6), in some cases this may be as simple as **providing a better explanation of a decision** at first instance.¹³ Participants who feel that their concerns are heard, and that they are provided clear and well explained reasons, are more likely to accept a decision, even if they were not granted all of the supports they initially sought.¹⁴
- 2.13. ADR is a focus of the NDIA's litigation strategy, supported by internal documentation and standard operating procedures for each step of the Tribunal process. Many of these new procedures were developed in approximately early 2023.

¹³ NDIS Research and Evaluation Branch, *Independent Expert Review Trial – Evaluation Report*, National Disability Insurance Agency, p xii–xiv.

¹⁴ Independent Expert Review Trial report, p 78.



Quote

'Based on feedback from IERP participants and their representatives, participants want greater opportunity to discuss their needs during planning and internal review processes, assurance that planners and internal review officers have considered their needs and reviewed all their evidence and a better explanation of decisions.'

- NDIS Research and Evaluation Branch, Independent Expert Review Trial –
Evaluation Report, p xvii

- 2.14. **Comcare** received some criticism from the federal court in the case of *Wuth v Comcare*,¹⁵ mostly relating to timeliness and delayed claims. The agency advised us that in response to this decision, it reviewed a number of its on-foot Tribunal matters, and other matters with a long litigation history, to determine what further action could be taken and generally progress delayed cases.
- 2.15. We observed Comcare's CLS incorporates a requirement to consider all available ADR processes before proceeding with litigation. The agency has a dedicated procedures manual for Model Litigant complaints. Comcare mostly outsources its legal services and retains oversight over the processes followed by its external legal providers through its internal case managers.
- 2.16. **Services Australia** has recently updated its internal training packages for legal staff on core duties and obligations for government lawyers and provides continuing legal education to its staff on similar topics. The agency's procedures for participating in Tribunal appeals includes consideration of ADR processes.
- 2.17. Unique to cases in the *Social Security and Child Support Division*, if the Tribunal has confirmed, changed or set aside a decision, both the DSS Secretary and the applicant may apply for a second review of the decision by the Tribunal's *General Division*. The agency will frequently use preliminary conferences in second review decisions to allow parties to test the relative strengths of their

¹⁵ *Wuth v Comcare* [2022] FCAFC 42, [3]-[5].



cases to avoid unnecessary litigation. A significant number (up to 81%) of Tribunal cases are settled this way when Centrelink decisions are reviewed a second time.¹⁶ However, we were not able to form a firm conclusion about *why* this occurs. DSS's position is that a common reason for settlement at second review is because the agency's involvement enables increased engagement with applicants, including via ADR. The agencies we investigated, including Services Australia, did not generally track detailed information about the reasons matters settled prior to a hearing, a finding we analyse further in Principle 4 below.

- 2.18. This investigation scope did not include interviewing Tribunal applicants or reviewing Tribunal applications. As such, we were unable to firmly ascertain and verify why a high proportion of Tribunal cases are settled at second review. However, information we received from Services Australia indicates that matters settle frequently at second review because applicants receive more detail about issues with their application from agency advocates. Further, the Tribunal often arranges for second review applicants to speak to a legal aid lawyer, and they are provided with information about obtaining better evidence, factors which assist to reach settlement.
- 2.19. It may be the case that once the first review establishes the issues in dispute more clearly, the agency or applicant is more willing or able to resolve the dispute, or negotiate (for example) partial recovery of a debt where it is clear the applicant may not be able to repay the full amount.
- 2.20. We believe an opportunity exists for Services Australia to qualify, track and analyse trends related to reasons applicants settle at the second review stage. This data could be used to help the agency determine and gather evidence for the specific reasons why appeals occur and develop strategies with the aim of reducing the need for customers to appeal decisions where possible and practical.
- 2.21. The **Department of Home Affairs** engages in ADR processes infrequently. Business areas responsible for granting visas do not engage in ADR in

¹⁶ AAT Annual Report 2022–23, p 62.



applications for review of a visa decision in the Migration and Refugee Division (MRD). This is because the Minister is not a party to the application for review of a visa decision in the MRD, which is due to the deliberate design of that division. The MRD is the Tribunal's largest division, with approximately 20,000 cases finalised in the 2022–23 financial year, which is a highly resource-intensive caseload.

- 2.22. The Department advised that it uses case conferencing in Citizenship-related appeals, which are heard in the General Division. In doing so the Department can further explain the reasons why an application was refused and provide further opportunities for applicants to provide required documentation. Case conferencing also allows either party to withdraw if it becomes clear they will not be successful.
- 2.23. The Department told us that these processes are useful and produce good outcomes from the Department's perspective – that is, it avoids some unnecessary litigation.
- 2.24. We consider the Department may benefit from further applying these lessons learned from its participation in ADR to its decision-making processes generally. The fact that a not-insignificant proportion of Citizenship applicants withdraw their Tribunal cases after being presented with further and more detailed reasons at the case conference stage suggests that the Department could do more to inform applicants of the reasons for decisions when that decision is first made. By making well-reasoned and defensible decisions for those made under the Migration Act and, where applicable, clearly communicating reasons for decisions to applicants, the Department of Home Affairs can ensure that the administrative burden of undertaking reviews of decisions made under the Migration Act do not unnecessarily shift to the Tribunal.
- 2.25. We consider this can apply to **all agencies investigated**. In nearly every division of the Tribunal, a significant percentage of all cases are finalised after at least one ADR process is held – from a minimum of 40% for Home Affairs



cases in the General Division, up to 82% for Worker's compensation cases in the general division.¹⁷

2.26. As such, we suggest that all four agencies analyse the depth of information and explanations provided to Tribunal applicants at the case conferencing stage and consider if there may be benefits to providing this more generally to all applicants who have received an unfavourable outcome. If Tribunal applicants are receiving a greater depth of information or an otherwise better explanation of a decision than agency customers who receive a 'first-instance' decision, then providing similar information to first-instance recipients may remove the need for them to apply for a Tribunal review. This would assist with both the agency and Tribunal's workload while also being considerably more person-centric.



Suggestion 1

All agencies investigated should analyse if there are lessons that can be learned from Tribunal matters that settle or are withdrawn after the agency provides a better explanation of its decision during Alternative Dispute Resolution processes.

¹⁷ AAT Annual Report 2022–23, p 62.

Principle 3: Action Oriented



Agencies should be proactive in actioning issues arising from Tribunal decisions

- 3.1. Agencies should take prompt and considered action to address:
 - issues arising from individual decisions
 - systemic issues identified through individual or cohort of decisions
 - situations where they disagree with the Tribunal, and
 - cases where there is division of opinion within Tribunal decisions.
- 3.2. Agencies should have a clear decision-making process and criteria for determining whether they will appeal a decision.
- 3.3. A failure to do so may cause inconsistent outcomes depending on how far individuals pursue their review rights, as well as significant distress and hardship to those impacted by decisions.

What we found

- 3.4. All agencies had a clear and documented decision-making process to provide guidance on whether they would appeal unfavourable decisions. These documents emphasised a decision to appeal should be made efficiently to permit timely notification of appeal.
- 3.5. Each agency we investigated also had appropriate procedures for identifying significant matters, with the exact criteria for 'significant' varying depending on the agency's business activities. A significant matter may be one that has broader or systemic implications to the agency's administration, policy or interpretation of legislation.
- 3.6. We observed that when agencies receive an unfavourable Tribunal decision they do *not* consider significant, they generally have a low appetite to appeal it, even if they form the view the decision is incorrect at fact or law. An example of this may be where the Tribunal varies a Centrelink finding that a benefit is not payable, because the Tribunal interprets the same factual evidence



differently to Centrelink's preferred interpretation. While agencies implement such decisions, they seem to accept that Tribunal decisions can be inconsistent, and that as such the investment in time and resources to appeal individual decisions that 'turn on their own facts' (and do not have significant or systemic impacts) is rarely worthwhile compared to simply implementing the decisions.

- 3.7. During interviews with officers from all agencies, we were also advised that they rarely instigated test cases from Tribunal outcomes. A **test case** is a case where there is some uncertainty about how the law is applied, and where it is in the public interest to seek clarity.
- 3.8. If an agency identifies a Tribunal case as having the potential to resolve an issue of significance and/or resolve a number of other cases, the agency should ensure it prepares the case well and articulates its arguments effectively, taking a more active role such as making submissions and/or appearing at the hearing of the case.
- 3.9. An agency could also decide to offer financial assistance to an applicant or potential applicant, for example by offering funding to enable the applicant to be legally represented, in order to ensure that the applicant's case is similarly well presented and clearly argued. Having both sides of a test case well-presented is in the interests of the agency – as well as being efficient, fair and in the interests of justice.
- 3.10. The Tribunal has the ability to determine who will hear the case – which could for example involve assigning the case to a more senior member of the Tribunal, including a Deputy President, with particular expertise in the issues and legislation involved, if the Tribunal is advised that in the view of the agency the case is a potential test case.
- 3.11. Under the *Administrative Review Tribunal Act 2024* (Cth) (ART Act), Deputy Presidents are required to be former judges or lawyers of at least 10 years standing, unlike previously where a Deputy President of the AAT Tribunal did not need to be legally qualified. Some Deputy Presidents of the Tribunal are sitting Federal Court or Federal Circuit and Family Court judges, although their ability to hear Tribunal matters tends to be very limited and dependent on their Court caseloads.



- 3.12. The Tribunal will decide whether a matter warrants being heard by a Judicial Deputy President, and this is most likely where a related matter is before that Deputy President in their judicial capacity.
- 3.13. The Tribunal observed these referrals occur 'not infrequently', mostly during the review of Australian Tax Office decisions. Tax decisions can be appealed to the Tribunal or directly to the Federal Court, and in some cases a taxpayer may have related cases simultaneously before the Tribunal and before the Court.
- 3.14. The Tribunal can also determine that a case be heard by a multi-member panel of Tribunal members.
- 3.15. An agency can also test a case by appealing a Tribunal decision to a court, generally the FCA or FCFCFA.¹⁸
- 3.16. If a Judicial Deputy President's decision is appealed to the Federal Court, the case must be heard by a Full Court of the Federal Court¹⁹ (3 or more judges sitting together), an arrangement that is typically reserved for appeals of Federal Court decisions. This provides an opportunity to more quickly obtain an authoritative legal opinion on how the law should be applied in a matter, and to guide matters facing similar legal uncertainties.
- 3.17. The President of the Tribunal also has the power to refer a question of law arising in a case to the Federal Court for determination. In theory, this can be used to authoritatively resolve key questions of law without requiring a full appeal of a decision. In practice, this power is rarely exercised because there are complex legal requirements that must be satisfied before a question can be referred this way. The referral requirements have been the topic of prior Federal Court litigation, and many referrals in the past have failed for not meeting the requirements. The Tribunal advised us that no referrals to the Federal Court on a question of law have occurred in the last 3 financial years. While in practice it can be a complex matter to ensure that a case does in fact

¹⁸ *Administrative Review Tribunal Act 2024* (Cth), Part 7.

¹⁹ *Administrative Review Tribunal Act 2024* (Cth), s 175.



meet the requirements set out for referral, it is important not to lose sight of this as a potential option if a case is sufficiently significant.

- 3.18. Although the agencies we investigated were generally aware of the potential value of test cases, they did not demonstrate broad awareness of the range of escalation pathways discussed above.

New ART powers for managing significant issues in administration

- 3.19. The ART has new powers and functions designed to help agencies and the Tribunal itself to identify, escalate and resolve significant or systemic issues.
- 3.20. This includes a Guidance and Appeals Panel (GAP) to be presided over by the President (who must be a Judge of the FCA), a Judicial Deputy President (who must be a Judge of the FCA or the FCFA) or a Non-Judicial Deputy President (who must be a former Judge or a lawyer who has been admitted to practice for at least 10 years).
- 3.21. The GAP can hear and determine matters of significance to administrative decision making, and its decisions on such matters will become guidance decisions, which non-judicial members of the ART must take into account when making their decisions.
- 3.22. The GAP may also conduct a second review of some matters²⁰ following an initial decision by the ART, where the matter raises an issue of significance to administrative decision-making or the decision may contain an error of fact or law materially affecting the decision. Some matters can only be referred to the GAP by the President of the Tribunal.
- 3.23. We encourage agencies to be alert to the GAP's jurisdiction and role as well as to the possibility for GAP review, and to incorporate this option into their revised ART policies.

²⁰ For more information on cases that are not eligible for referral to the GAP, see [Guidance and Appeals Panel | Administrative Review Tribunal](#).

3.24. The ART Act also requires the ART to publish decisions if the President considers the decision ‘involves a significant conclusion of law or has significant implications for Commonwealth policy or administration’,²¹ which is a direct response to a recommendation of the Royal Commission into the Robodebt Scheme.²²

3.25. The ART also has powers to:

- compel agencies to attend and participate in a hearing, and
- inform Ministers, agencies and the Administrative Review Council of identified systemic issues.

3.26. The ART Act also re-established the Administrative Review Council (ARC), which monitors the performance of the Commonwealth administrative review system and provides guidance on best practice, among other things.²³



Recommendation 2

Agencies should incorporate the new referral and escalation powers available under the ART reforms into their policies and procedures. This should include guidance to staff on the different options available for the treatment of potential test cases in the Tribunal.

Agencies should provide comprehensive training to staff who engage with Tribunal matters on the new referral and escalation powers available under the ART reforms.

²¹ *Administrative Review Tribunal Act 2024* (Cth), s 113(2).

²² *Report of the Royal Commission into the Robodebt Scheme*, p 564.

²³ For more information, see Attorney-General's Department, [Administrative Review Council](#).



Principle 4: Appropriately supportive



Agencies should have structures in place to ensure Tribunal outcomes are analysed for lessons and fed back to original decision-makers and relevant work areas.

- 4.1. Lessons or improvements from Tribunal outcomes must be effectively communicated to the relevant parts of that agency to have a real impact. Agencies should therefore have effective communication systems for sharing information and learning from Tribunal outcomes.²⁴ This should extend beyond legal and management teams, to ensure information is effectively summarised and communicated to decision-makers and other teams with an interest in the outcome.

What we found

- 4.2. Our investigation found several instances of good practices in the agencies which supported constructive and systematic consideration and analysis of Tribunal outcomes. Agencies demonstrated a general commitment to sharing learnings from Tribunal decisions and outcomes. The primary medium for this was internal meetings, consultations, committees and working groups.
- 4.3. However, some of these practices were not embedded on a whole-of-organisation level, and frequently were limited to the agencies' own legal areas, with learnings, best practice and knowledge not being effectively disseminated to all decision-makers. This can potentially lead to inconsistent decision-making, where an agency makes a first-instance decision based on policies or procedures that are inconsistent with the procedures it later follows once the matter is reviewed by the Tribunal.

²⁴ Administrative Review Council, *Better Decisions: review of Commonwealth Merits Review Tribunals*, Report No 39, 1995, p 113.



- 4.4. We observed that some of these practices arose as informal work conventions and not as agency policy or procedure. While this presents no issues by itself, it is a business risk as work practices may get disrupted by (for example) organisational restructures or staff changes. Where possible, agencies should embed their commitment to constructive engagement and learning from Tribunal decisions within a policy or procedural framework.
- 4.5. We found that agencies, generally, did not analyse and consider potential learnings from Tribunal matters that were finalised prior to hearing – primarily settled matters. We consider that matters settled prior to a hearing are often still a valuable source of learnings for agencies, for reasons discussed below.
- 4.6. The **Department of Home Affairs'** litigation areas analyse Tribunal decisions and feed those back into decision-making areas. However, business areas had their own processes or approaches for responding to these outcomes. For example, some decision-making areas had little or no direct engagement with the Tribunal or with Tribunal outcomes, with all Tribunal-related activity going through the agency's litigation branch. Other business areas proactively analysed incoming Tribunal decisions for potential learnings and implemented these learnings within their branch. Learnings from Tribunal outcomes were generally distributed throughout the agency via ad-hoc informal processes or work conventions. Information was also fed back to decision-makers through committee meetings, bilateral meetings and working groups. However, there was no overarching organisational strategy tying this together.
- 4.7. The Department also had various means of storing and sharing knowledge, but this also tended to be unique to business areas. At the time of the investigation, the Department advised us it was focusing on improving its internal knowledge base to make it more useful to decision makers and centralise knowledge between different litigation teams. We support this initiative and make an accompanying suggestion to the Department that it take further steps to share organisational knowledge and learnings from Tribunal decisions.





Suggestion 2

The branches within the Department of Home Affairs that are involved in Tribunal liaison, or the conduct, analysis or implementation of Tribunal decisions, should convene a regular forum.

The aim of these forums should be to support a whole-of-agency approach to learning from Tribunal decisions, as well as sharing processes relating to Tribunal decisions.

- 4.8. Within **Services Australia**, we observed a well-developed framework for analysing and implementing Tribunal decisions. The agency's Payment Accuracy Branch analyses each incoming decision for systemic implications before referring it on to an operational area for implementation.
- 4.9. Services Australia undertakes regular litigation reporting, and provides generalised ongoing feedback to program areas, an initiative which started relatively recently.
- 4.10. Similar to the other agencies, Services Australia did not have structures to support analysis on matters which were finalised prior to hearing. Some of this is attributable to the fact that Services Australia is unrepresented at the first stage of the Tribunal process, but given the high percentage of cases that settle when the agency is represented at second appeal (81%), we consider it is a missed opportunity. We make a recommendation on this for all agencies in Principle 5 below.
- 4.11. The **NDIA** advised us that because of the complexity and individuality of each Tribunal appeal, there is often limited 'precedent' value in individual decisions. We recognise that most NDIS Tribunal appeals turn on their own facts, meaning learnings from one decision may not be applicable to another, even when cases appear similar on the surface. For example, we recognise that NDIS plans typically involve numerous disability supports, and each support may be disputed in different ways. A participant may disagree with the NDIA's decision to not fund a support, with the level of funding for a support, or with the type of support funded (for example, a lower-cost version of a requested



support). Participants may also seek to review the ways their funding can be used, or their plan is managed.

- 4.12. However, we found that the NDIA had reasonable and appropriate procedures in place to escalate adverse decisions and disseminate related learnings. Adverse Tribunal decisions are typically referred to the agency's senior executive and discussed at monthly and quarterly internal committees.
- 4.13. The NDIA also outlined the restructure and expanded role of its Legal Practice and Capability Branch, responsible for conducting post decision reviews of all NDIS plan making and plan review activities. The NDIA advised that this restructure has improved its capability to analyse the root cause of poor quality NDIS plans and plan reviews, and the Branch drives improvement through learning, development and change and the monitoring of actions in their continuous improvement register.
- 4.14. As discussed in Principle 2 above, the overwhelming majority of NDIA Tribunal appeals do not proceed to a hearing and are settled or withdrawn before then.
- 4.15. The high rate of cases settled has led, in some cases, to a public perception that the only way the NDIA will fund certain supports such as Specialist Disability Accommodation is if the participant appeals to the Tribunal.²⁵ In other cases, participants have lodged a Tribunal appeal to make minor changes to their plan or to fix errors that were not resolved in earlier internal review stages – both matters that could potentially have been resolved without needing to resort to an AAT appeal, with resulting benefit to both participant and agency. Analysing why a case settled may provide a valuable insight into common participant concerns and other factors which can contribute to improving first instance agency decision-making and agency communication about first instance decisions.
- 4.16. We think it would be appropriate for the NDIA to analyse and consider whether there are further learnings that can be gleaned from cases that are settled prior to hearing. By focussing more on learnings for initial planning decisions,

²⁵ NDIS Review, *Working Together to Deliver the NDIS – Final Report*, p 139. See also S Convery, '[National Disability Insurance Agency accused of 'failing' young children with autism](#)', The Guardian, 29 August 2023.



the agency may be able to further reduce the likelihood of a participant applying for review at the Tribunal. This also avoids the costs and time investment – for both the applicant and the agency – associated with an application for Tribunal review. We provide a **recommendation for the NDIA** on this in our discussion of Principle 6 below.

- 4.17. We found that **Comcare** had appropriate structures in place to support constructive engagement with the Tribunal.
- 4.18. As part of its overarching litigation strategy, the agency has a process in place to review Tribunal decisions and identify lessons learned.
- 4.19. When the agency receives a decision from the Tribunal, it holds a consultation meeting with relevant internal stakeholders to discuss the implications of the decision, on the specific matter in question and more generally if applicable. Comcare considers whether there are any potential errors of law in the decision and identifies any 'lessons learned' as part of this process that may be of use to the broader agency. These lessons are circulated amongst the agency's leadership group.



Principle 5: Inquiring, data driven, and reflective



Agencies should have structures in place to systematically review and analyse Tribunal outcomes, both from a qualitative and quantitative dimension.

- 5.1. If agencies do not have a systematic method for identifying, tracking and analysing data on Tribunal outcomes, they will struggle to proactively identify improvements to the ways they engage with the Tribunal and learn from Tribunal outcomes. Drawing insights from the analysis of Tribunal outcome data ensures that improvements are founded on evidence and focussed on the areas where improvements would be most effective, efficient and sustainable.
- 5.2. Where possible, agencies' consideration of Tribunal outcomes should encompass a wider frame of reference beyond individual decisions or outcomes. Agencies ought to use data to identify patterns, thematic concerns and emergent issues.²⁶
- 5.3. Agencies should also actively use data and information technology to support analysis and trend monitoring.
- 5.4. This includes analysis that extends beyond legal considerations to examine root causes that might be driving applications, such as access issues, poor communications and support for people facing access barriers.

²⁶ Report of the Royal Commission into the Robodebt Scheme, p 555.



What we found

- 5.5. The agencies we investigated had divergent and specific approaches to systemic and quantitative analysis.
- 5.6. While most agencies had a range of data and trend reporting for Tribunal decisions, none had an emphasis on monitoring and analysing settled matters. By proactively identifying trends that lead to the settlement of cases, agencies can improve resolution rates more broadly.
- 5.7. Of the agencies we investigated, only Comcare tracked and reported, in a consistent and centrally managed way, each of the following Tribunal-related measures: active caseload numbers; median time to finalisation; overturn, settlement and withdrawal rates; summaries of significant matters, and matters being appealed by the agency. We found that while Services Australia, NDIA and the Department of Home Affairs track some of these measures, they either did not track all, or they had the facility to track these measures but did not report on them in a consistent or centrally managed way across the agency.
- 5.8. We noted **Comcare's** demonstrated emphasis on data and reporting in light of its express commitment to 'insight-driven evidence-based approach to decision making within a good governance framework'.
- 5.9. Comcare evidenced a broad range of monthly qualitative and data reports relevant to Tribunal matters that are considered by its Claims Litigation Committee.
- 5.10. Its reports include a monthly 'AAT trend report' which condenses key data from its litigation portfolio, including stock and flow of matters, disputation rates, timeliness, affirmation rates and costs. The reporting can be broken down further to employing agencies and jurisdiction. The report is used by Comcare for various internal and external reports, including the Ministerial briefings, preparation for Senate Estimates and reporting to Comcare's Executive and Governance committees.



- 5.11. Given that approximately 75% of Comcare matters before the Tribunal are resolved through settlement,²⁷ the investigation team would have liked to have seen the maturity of its reporting extended to settlement outcomes.
- 5.12. The **NDIA** evidenced a comprehensive range of well-developed agency-wide reports on qualitative and quantitative data from Tribunal outcomes. Importantly, it appeared that the NDIA is making use of this data actively to generate improvements and test them. We also observed regular meetings and working groups which analysed this data, as well as reports which were distributed across a range of seniority and subject matter experts.
- 5.13. Similar to Comcare, given that approximately 74% of NDIA planning matters before the Tribunal are resolved through settlement,²⁸ the investigation team would have liked to have seen the maturity of its systemic and trend reporting extended to settlement outcomes. Although the highly individualised nature of settlement outcomes would not often lend themselves to trend reporting, the large number of these matters means that any increased understanding of root causes, patterns, thematic concerns and emergent settlement issues had the potential to deliver significant improvements in agency processes and decision making.
- 5.14. **Services Australia** evidenced a range of qualitative and quantitative reports on the types of Tribunal decisions being made, patterns or common trends.
- 5.15. The investigation team also observed sound information sharing processes between DSS (who has policy responsibilities for the legislation Services Australia administer), Services Australia’s legal areas, practice directors and program areas. The most mature example of trend analysis of patterns, thematic concerns and emerging issues was the Services Australia Compliance Division’s Framework for Implementing AAT Decisions for Compliance Reviews. This Framework states that it aims to ‘improve the end-to-end quality and accuracy of Tribunal decision implementation’. It outlines a centralised process to examine Tribunal decisions for implementation, ensuring that the Tribunal’s direction is well understood, and advice about how

²⁷ AAT Annual Report 2022-23, p47.

²⁸ NDIA, [Quarterly Report: 2023-24 Q4](#), p 41.



to implement the decision is prepared for the operational compliance and debt teams. This Framework demonstrated quality assurance checks throughout the implementation process.

Case study

The Department of Home Affairs *Refugee, Humanitarian and Settlement Division* prepares the *Administration Appeals Tribunal Biannual Remit Report*. This report provides quantitative data on trend countries, claim types and cohorts represented. It also includes qualitative analysis on key grounds, reasons for remittal, Tribunal reasoning and significant findings and points of interest.

It also provides for recommendations to the Division's First Assistant Secretary, quality assurance measures on practices and policies, quality control measures, training, reviews on decisions, post decision processes and updates to relevant directions and material used by decision makers.

- 5.16. The **Department of Home Affairs** has a range of procedural guidance and instructions for responses to Tribunal cases and decisions. However, the investigation team did not see evidence of agency-wide systems or processes to support the analysis of how cases impact systemic portfolio or policy issues more broadly. The investigation team noted that a lack of operational connectivity was also noted in the *2024 APS Commission Capability Review: Department of Home Affairs* which noted that 'At an operational level, the strategic policy team's work must be connected with those areas focusing on future operational capability, to ensure coordinated use of data, intelligence, future technologies and risk-based models, and to maximise opportunities.'
- 5.17. This is not to say that we did not observe some good initiatives within the Department. For example, the express intent of the Humanitarian Branch's remit report is to analyse selected categories of Tribunal decisions which have been remitted to the Department, to determine whether there are systemic issues in first-instance decision making (see case study above). This demonstrates a positive example of how one area within the Department reviews and analyses Tribunal outcomes to inform continuous improvement in first instance decision-making. We consider it would be useful for the



Department to consider how it could expand and embed such practices in other areas of the Department, specifically in teams which engage with the Tribunal.

- 5.18. We make a recommendation for all agencies on this issue below in Principle 6, to ensure that continuous improvement is supported by reporting and disseminating key information and data on Tribunal outcomes.



Principle 6: Improvement focused



Agencies should actively learn and improve from Tribunal outcomes

- 6.1. Agencies should foster a culture of learning that incorporates a robust approach to knowledge acquisition, information distribution and organisational memory.²⁹
- 6.2. As part of this culture, agencies should draw from their experience of previous related Tribunal matters – both their handling of the case, and Tribunal outcomes – to identify opportunities to improve their processes and decision-making.
- 6.3. Agencies should develop and maintain structures which enable them to identify whether any Tribunal outcomes have effects that might require changes to legislation, guidelines or policies.
- 6.4. As part of their organisational learning, agencies should measure and evaluate the success of their continuous improvement initiatives, to determine whether they are having the intended impact.³⁰

What we found

- 6.5. Agencies generally recognised the value of merits review decisions to identify opportunities for improvement. However, the capacity of each agency to effectively recognise and implement these learnings varied.

²⁹ R Thomas, *Administrative Justice, Better Decisions, and Organisational Learning*, Public Law (2015), 10 August 2014, p 11.

³⁰ Australian National Audit Office, *Decision-making Controls for NDIS Participant Plans*, 29 October 2020, 3.84.



- 6.6. **Comcare** demonstrated a mature and intentional approach to continuous improvement across all levels of the organisation. As well as its clearly articulated vision and trend reporting discussed in earlier principles, its approach to improvement regarding Tribunal matters is characterised by good collection and usage of data and effective distribution of knowledge.
- 6.7. Comcare has a significant litigation monitoring function, which monitors Tribunal matters that could have an impact on the interpretation of the *Safety, Rehabilitation and Compensation Act 1988* and the way workers compensation claims are decided and managed. Comcare produces a quarterly report on **Potentially Scheme Significant Matters**, which is a good practice of information sharing and contributes towards a culture of learning. Comcare provides internal guidance for staff on how to identify 'significant matters', i.e. matters which need legal clarification, or matters which raise concerns about the integrity of the scheme.
- 6.8. Comcare's Lessons Learned Framework also outlines a comprehensive list of prompts for actions for officers to take following Tribunal outcomes. One of these is for the Legal Group to review adverse decisions to consider whether they raise any issues that may require a change to how Comcare operates the worker's compensation scheme. This could be a decision which is not consistent with existing scheme policy or legal interpretation or advice. We considered this process effectively prompted officers to identify potential areas for continuous improvement.
- 6.9. The Framework also prompts officers to capture any lessons learned in Comcare's Lessons Learned Register, which is communicated to litigation and policy teams and the agency's Claims Litigation Committee.
- 6.10. Comcare has also developed a scheme policy register resource designed to encourage staff to consider the legislative origins and purpose of the policy being applied. This supports the application of good administrative principles to everyday decision-making.
- 6.11. Lastly, Comcare demonstrates a commitment to meeting its strategic priority to improve tribunal engagement according to its internally defined metrics by



publishing each metric, its status, and the result achieved for the reporting period.³¹

- 6.12. In addition to the qualitative and quantitative reports and data from Tribunal outcomes discussed in Principle 5 above, **NDIA** has focussed on participant experience in its approach to improvement. The design of its **Independent Expert Review Program (IERP)** trial was informed by consultation with disability sector advocates to ‘increase the fairness, efficiency and transparency of NDIS decision making, reduce the Tribunal caseload and importantly, be less adversarial and legalistic for participants.’³² It followed Tribunal matters rising to 4,501 active cases in May 2022.³³
- 6.13. Our interviews with NDIA staff indicated they were aware that NDIS participants often had difficulty navigating the Tribunal process. This is reflected in staff training materials, which emphasise the agency’s role in the Tribunal process, to assist both the Tribunal and the participant ‘in reaching the best possible resolution ... by agreement.’
- 6.14. In response to stakeholder feedback that the use of external lawyers contributed to a stressful and adversarial atmosphere during Tribunal proceedings, the Agency has committed to reducing its reliance on external legal service providers and building up its in-house legal capability.
- 6.15. In 2023, the NDIA consulted stakeholders as part of a project to gain a greater understanding of participant’s experience with the Tribunal. The agency spoke with NDIS participants and representatives as well as NDIA staff, advocacy groups, Tribunal staff and state Legal Aid offices. This engagement pointed to three desired outcomes: meaningful engagement with participants before the matter gets to a Tribunal hearing, improved training, clearer Standard Operating Procedures and better IT infrastructure to support NDIA workforce, and the improved availability and accessibility of information about the

³¹ Comcare, [Annual report 2022-2023](#).

³² NDIS [Independent Expert Review Trial – Evaluation Report](#), 1.2.1.

³³ NDIS [Independent Expert Review Trial – Evaluation Report](#), p. viii.



Tribunal process for participants. We consider this project is a positive initiative and encourage the agency to continue to work to implement these findings.

- 6.16. In early 2023, DSS requested **Services Australia** provide more detailed reporting on the reasons for outcomes of Tribunal reviews, to assist in identifying emerging trends or issues. In response, Services Australia developed a system that enables it to track and filter Tribunal outcomes by keywords. This built upon Services Australia's existing practice of creating 'Advice on Further Administrative Review' for each Tribunal decision that goes against the agency's preferred position.
- 6.17. We learned from our investigation that Services Australia practice directors regularly meet to discuss recent Tribunal matters which have been identified as significant or complex. While this is a positive initiative that centres potential learnings from Tribunal matters, it is not clear from records provided that these discussions are feeding back into decision-making at an operational level.
- 6.18. Services Australia also advised us that they have agreed on a framework with DSS for regular monthly reporting on significant Tribunal matters, providing DSS with all tribunal decisions which vary or set aside the original decision. Services Australia stated that its intention is for these enhancements to contribute towards greater awareness of possible systemic issues that may arise so that these can be addressed as soon as possible.
- 6.19. Services Australia has also developed a framework for implementing learnings from the Tribunal within its Compliance Assurance and Debt Operations Division. Prior to this framework, there was no process which provided a central point to monitor the implementation of Tribunal decisions, or to oversee a consistent quality assurance process, or capture insights across cases. We regard this as a positive step for the agency. We encourage Services Australia



to ensure that this does in practice assist earlier decision-making on strategic issues reflected in Tribunal cases.

Case study

In 2021, Services Australia developed the *Implementing AAT Decisions for Compliance Reviews* process to centralise monitoring of Tribunal decision implementation, insights and quality assurance. The process designates teams to provide implementation instructions, identify and report on trends in decisions from quality assurance checks and update processes to facilitate better future outcomes. It also requires escalation of emerging issues and learnings to the executive and monitoring timeliness of Tribunal decision implementation. It provides for fortnightly stakeholder forums for relevant business areas to discuss issues and solutions for quality implementations.

- 6.20. Across the materials provided and our interviews with staff, the **Department of Home Affairs** demonstrated an awareness of the importance of an 'actionable feedback loop' between Tribunal reviews of its decisions and its own assurance and decision-making practices. However, we observed a decentralised approach to Tribunal matters across workgroups and branches within the Department.
- 6.21. We understand and acknowledge that the Department faces challenges with regards to the review and evaluation of its decisions, given the way that the Department was formed in 2017 as an amalgamation of multiple agencies with different responsibilities and work practices. The Department is presently responsible for a wide range of decisions across multiple program areas (skilled and family migration, citizenship, protection and refugee visas, among others). This was remarked on by the 2024 Departmental capability review, discussed above in Principle 5, which stated that:

... The department should also prioritise review and evaluation to support its policy and operational activity. Currently this capability is very much a secondary focus in many parts of the department. While there are pockets of



*activity, there is not a culture of regularly learning from the past or taking the time to review and reconsider areas for improvement.*³⁴

- 6.22. An example of positive practice in terms of improvement is the **Biannual Remit report**, discussed in Principle 5, which examines and analyses the reasons why decisions have been remitted from the Tribunal back to the department.
- 6.23. Overall, our analysis found that the agencies we investigated have a demonstrated understanding of the importance of learning from merits review decisions, especially post-Robodebt and the recommendations of the Royal Commission.
- 6.24. However, we consider there is room for improvement for Commonwealth agencies to more clearly define their *organisational objectives* with respect to Tribunal engagement and outcomes. Though it is one thing to track data and monitor incoming decisions for potential significant outcomes, agencies that take a purely 'reactive' approach to merits review may miss opportunities to improve their processes and decision-making.
- 6.25. Agencies should proactively set agency-wide measurable objectives for improvement with regards to Tribunal engagement and outcomes. This may be, for example, improving applicant or customer experience (reducing overall case numbers and backlogs) or improvements to first-instance decision making (reducing the number of decisions that are unfavourable to the agency).
- 6.26. We are mindful of the challenges inherent in defining measures that are also strategic targets – where targeting a particular metric for improvement may create an incentive for agencies or staff to massage that measure. Agencies ought to be mindful of the risks of directly targeting measures of performance when determining strategic objectives. This recommendation should be read in tandem with all our recommendations, and in particular Recommendation 1 regarding strategic objectives.

³⁴ Australian Public Service Commission, [Capability Review: Department of Home Affairs](#), 24 May 2024, p 16.





Recommendation 3

All agencies should incorporate and embed Tribunal outcomes into continuous improvement by:

- a) Reporting quarterly to Senior Executives, and distributing to agency decision makers and other relevant staff, the following information:
 - i. Themes and trends in Tribunal decisions, including settlements.
 - ii. Information relating to agency-wide management of matters before the Tribunal, including at a minimum: active caseload numbers, median time to finalisation, the rate of overturning of agency decisions, settlement and withdrawal rates, summaries of significant matters, and matters being appealed by the agency.
- b) Using the information referred to in recommendation 3(a) to:
 - i. Clearly define and document priority areas for business improvement to engage with the Tribunal and learn from Tribunal outcomes.
 - ii. Define measurable objectives for improvement, and a plan to achieve these objectives in priority areas.
 - iii. Measure and report on performance toward these objectives to the agency head.



Appendix A

Comcare

Comcare administers the Commonwealth's workers' compensation scheme. Primarily, Comcare's Tribunal caseload relates to decisions under the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

The Department of Home Affairs

The Department of Home Affairs' responsibilities include national security, border control and immigration. The Department is the largest user of the Tribunal by number of matters. Our investigation primarily considered the Department's immigration and citizenship-related tribunal engagement. Most of the Department's decisions under the *Migration Act 1958* (Cth), which can be reviewed in the Migration and Refugee Division, and the Citizenship Act, which are reviewed in the General division.

The National Disability Insurance Agency

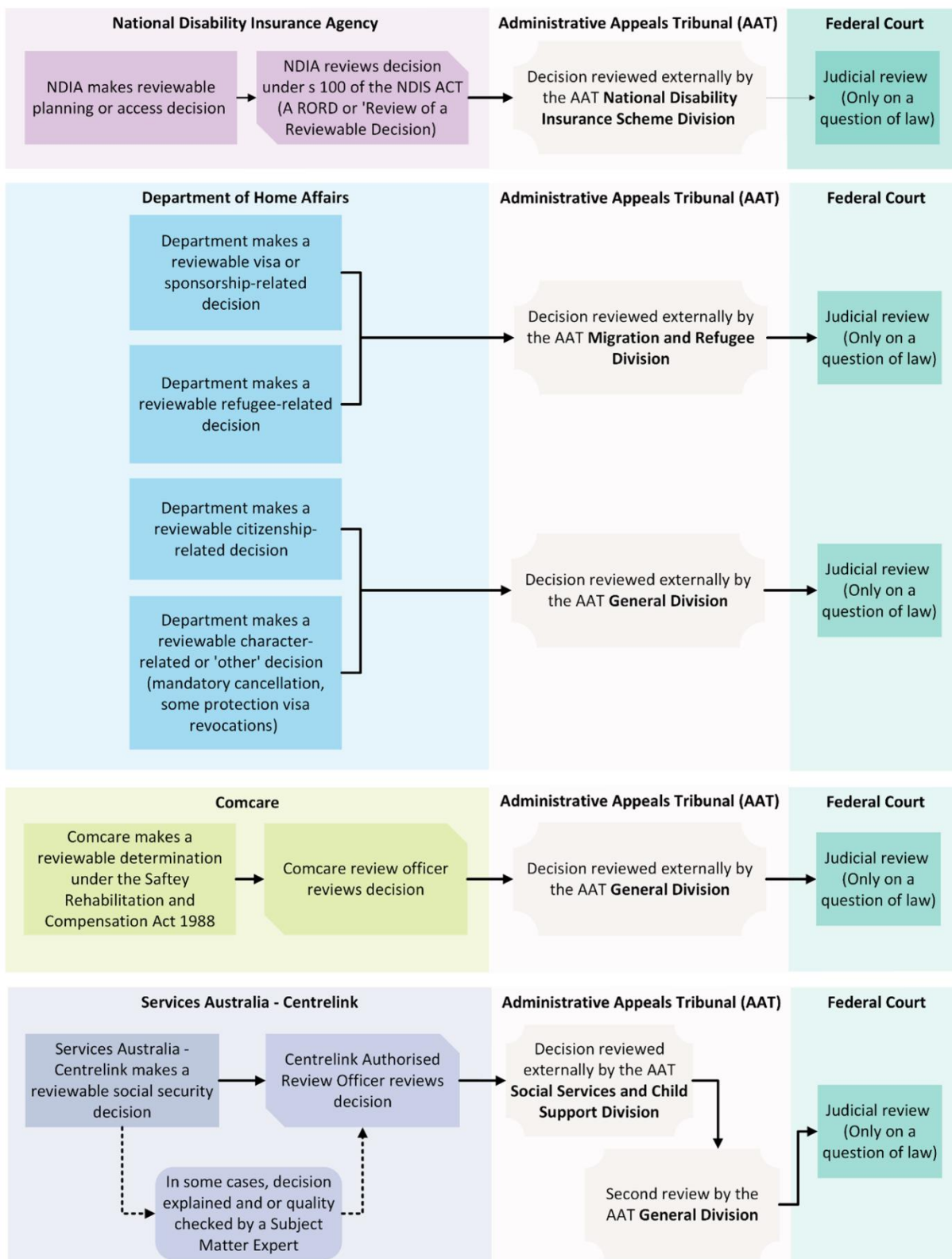
The National Disability Insurance Agency administers the National Disability Insurance Scheme. The Tribunal can review a range of decisions made under the *National Disability Insurance Scheme Act 2013* (Cth) including decisions made not to approve an application to access the Scheme and various decision made in respect of a participant's plan.

Services Australia

Services Australia delivers a range of Commonwealth social services through Centrelink, Medicare and the Child Support Agency. Our investigation considered Services Australia's engagement with Tribunal reviews of Centrelink decisions (these cover, for example, social security pensions, benefits and allowances). There are two levels of review by the Tribunal: first review of a Centrelink decision in the Social Services & Child Support Division, and second review of most decisions by the General Division.



Appeal process flowchart - former Administrative Appeals Tribunal



* This diagram is intended only as a general overview of the AAT prior to the ART's start date. Not all decision types are listed. Some decisions may not be reviewable, may be reviewable in a different forum than indicated, or have additional review pathways that are not listed. The introduction of the ART may have changed these pathways or added additional ones. More specific information about the ART's jurisdiction is [available on its website](#).



Appendix B

Information regarding ATO Test Case Litigation Program

In the 1995/96 tax year, the ATO received ministerial approval to provide litigation funding for cases that involve contentious areas of tax law, a program that has continued since then.³⁵ Specifically, the test case program assists taxpayers to fund cases which:

- Involve issues that create uncertainty or contention about how taxation law operates
- Involve tax, superannuation or debt related issues.
- Are significant to a section of the public or hold significant commercial implications for an industry
- It is in the public interest to litigate

The aim of the program is to develop legal precedent to improve agency decision-making and provide guiding principles on how specific tax law provisions should be applied more broadly.

The ATO assists taxpayers to meet 'reasonable' litigation costs, and pre-litigation costs in some cases. Potential applicants can apply via the ATO's website.

The ATO maintains an active register of 'test case' litigation, [available on its website](#).

The ATO reports on strategic litigation and cases funded under its Test Case Litigation Program in its annual reports.

³⁵ See Inspector-General of Taxation, *Review of Tax Office Management of Part IVC litigation*, 28 April 2006, chapter 6.





OFFICIAL:Sensitive

EC24-006206

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr ^{Iain}Anderson,

Thank you for providing your draft report *Learning from merits review: Best practice principles for agency engagement with merits review*. I appreciate the opportunity to review the report and respond to its recommendations.

The Department values the insights provided in the report and has carefully considered the recommendations. The Department's response is attached.

Should your staff wish to discuss any aspects of the response, they can contact [REDACTED]

Alternatively, you are welcome to contact me directly.

Yours sincerely,

[REDACTED]
Stephanie Foster PSM

5 December 2024

OFFICIAL:Sensitive

Editorial Comments (errors of fact or omissions):

Page/paragraph	Commonwealth Ombudsman statement	Home Affairs comments
Page 21 - 2.19	The Department of Home Affairs engages in ADR processes infrequently. Business areas responsible for granting visas rarely, if ever, engage in ADR. Primarily, this is because the Minister is unrepresented in first-stage appeals before the Tribunal's Migration and Refugee Division (MRD). As with Services Australia, it is our understanding that this is a standing work convention primarily due to workload considerations: the MRD is the Tribunal's largest division, with approximately 20,000 cases finalised in the 2022-23 financial year.	<ul style="list-style-type: none"> Business areas responsible for granting visas do not (rarely, if ever) engage in Alternative Dispute Resolution (ADR) processes in applications for review of a visa decision in the MRD. Primarily this is because the Minister is not a party to the application for review of a visa decision in the MRD and this is how that division was designed.
Page 43 - 6.21	We understand and acknowledge that the Department faces challenges with regards to the review and evaluation of its decisions, given the way that the Department was formed in 2020 as an amalgamation of multiple other agencies with different responsibilities and work practices.	<ul style="list-style-type: none"> Home Affairs was formed in 2017

Operationally sensitive matters

No operationally sensitive matters have been identified in the report.

Recommendation 1:

Agencies should commit to learning from merits review. They should publish an accompanying statement that includes a list of concrete steps for how they will give effect to that commitment. This commitment should be actively promoted to staff

The Department **accepts** Recommendation 1. The Department is committed to learning from merits review.

Specialist areas within the Department currently review Administrative Review Tribunal (ART) decisions relevant to their functional role. The Department also recognises there is value in taking a systemic approach to the review of these decisions and commits to having a draft action plan by mid-2025.

Recommendation 2:

Agencies should incorporate the new referral and escalation powers available under the ART reforms into their policies and procedures. This should include guidance to staff on the options available for the treatment of potential test cases in the Tribunal. Agencies should provide comprehensive training to staff who engage with Tribunal matters on the new referral and escalation powers available under the ART reforms.

The Department **accepts** Recommendation 2. The Department has incorporated the new referral and escalation powers available under the ART reforms into its policies and procedures. A draft Merits Review Policy Statement, Merits Review Procedural Instruction and information about the new Guidance and Appeals Panel (GAP) has been disseminated to program areas and other key stakeholders. The materials are expected to be finalised in the coming weeks. The Department has updated relevant Departmental factsheets. Training on merits review is provided to staff on an annual basis as part of a suite of training topics, with additional training available as required.

Recommendation 3:

Agencies should incorporate and embed Tribunal outcomes (including both decisions and settled applications) into continuous improvement by:

- a) *Distributing the following information to agency decision makers and other relevant staff, and reporting it quarterly to Senior Executives:*
 - I. *Themes and trends in Tribunal decisions, including settlements.*
 - II. *Information relating to agency-wide management of matters before the Tribunal, including at a minimum: active caseload numbers, median time to finalisation, the rate of overturning of agency decisions, settlement and withdrawal rates, summaries of significant matters, and matters being appealed by the agency.*
- b) *Using the information in 3(a) to:*
 - I. *Clearly define and document priority areas for business improvement to engage with the Tribunal and learn from Tribunal decisions.*
 - II. *Define measurable objectives for improvement, and a plan to achieve these objectives in priority areas.*
 - III. *Measure and report on performance toward these objectives to the agency head.*

The Department **accepts** Recommendation 3.

The Department will deliver quarterly reporting to Senior Executives covering data analysis of tribunal outcomes. The Department will also undertake a pilot to deliver quarterly assessments of significant matters and caseload trends to feed into continuous improvement, taking into account the diversity of the portfolio, the volume of matters to be considered and expertise required to analyse tribunal outcomes.

Suggestion 1:

All agencies investigated should analyse if there are lessons that can be learned from Tribunal matters that settle or are withdrawn after the agency provides a better explanation of its decision during Alternative Dispute Resolution processes.

The Department **accepts** Suggestion 1. Where matters are in the General Division and the Minister is a party, should the matter settle after a further explanation from the Department, the Department accepts there is scope to consider lessons learned from the subsequent settlement or withdrawal. This will be considered as part of the new review mechanism noted in response to Recommendation 1 above.

As per page 21, paragraph 2.19, corrected above, the Report acknowledges the Department does not engage in ADR processes in relation to visa decision making in the Migration and Refugee Division (MRD) where the Minister is not a party to the application for review.

Suggestion 2:

The branches within the Department of Home Affairs that are involved in Tribunal liaison, or the conduct, analysis or implementation of Tribunal decisions, should convene a regular forum. The aim of these forums should be to support a whole-of-agency approach to learning from Tribunal decisions, as well as sharing processes relating to Tribunal decisions.

The Department **accepts** Suggestion 2. The Department is committed to learning from merits review and will convene a regular forum comprising all program areas involved in the conduct, analysis and implementation of Tribunal decisions.



GPO Box 700
Canberra
ACT 2601
1800 800 110
[ndis.gov.au](https://www.ndis.gov.au)

Office of the CEO

Mr Iain Anderson
Commonwealth Ombudsman
Via email: [REDACTED]

Cc: [REDACTED]

Dear Mr Anderson

Thank you for your letter of 31 October 2024 regarding the draft report on your multi-agency Own Motion Investigation into how agencies engage with, and implement improvements from, Tribunal decisions. The NDIA appreciates the opportunity to respond to the draft report.

The NDIA welcomes the findings directly related to the NDIA and accepts the recommendations in the report. Our formal response to the recommendations is provided at **Appendix A** to this letter.

The NDIA is pleased the report acknowledged that the Agency has appropriate processes, governance arrangements and in-house litigation practices, including through the establishment of the Appeals and Litigation Oversight Committee, to strengthen processes around reporting and awareness of risks associated with Administrative Review Tribunal (ART) matters. The Agency is also committed to incorporating new mechanisms under the ART into its policies and practices to guide participants and the Tribunal on the correct interpretation of the NDIS legislation and promote consistency in Tribunal and NDIA decision-making.

As noted in the findings, the Agency is also implementing initiatives in the NDIA's Dispute Resolution Improvement Strategy. These initiatives will continue to strengthen the NDIA's capability and drive continuous improvement in its decision making to better inform operational and policy reform.

Thank you again for providing the NDIA with the opportunity to formally respond to the draft report, and the valuable feedback to improve the Agency's engagement with merits review.

Yours sincerely

[REDACTED]
[REDACTED]
Rebecca Falkingham
Chief Executive Officer
National Disability Insurance Agency
15 November 2024



Delivered by the
National Disability
Insurance Agency

Appendix A: National Disability Insurance Agency (NDIA) response to recommendations

Recommendations	NDIA Position	NDIA Comments
<p>Recommendation 1</p> <p>Commit to learning from merits review</p> <p>Agencies should commit to learning from merits review. They should publish an accompanying statement that includes a list of concrete steps for how they will give effect to that commitment. This commitment should be actively promoted to staff.</p>	<p>Accept</p>	<p>The NDIA is committed to learnings from merits review and will publish communications about additional steps to action that commitment by 30 June 2025.</p> <p>The NDIA has existing processes in place to communicate and manage learnings from merits review through the Agency’s Dispute Resolution Improvement Strategy, which will form the basis for continuous improvement in learnings from merits review.</p> <p>The Agency currently has arrangements for reporting on adverse Tribunal decisions to the CEO and internal policy partners. Agency decisions, including learnings from Tribunal outcomes, are also included in risk, performance and significant issues reporting to the Executive/Senior Leadership Team and NDIA Board. A dashboard of data on Tribunal decisions and outcomes is also provided to Senior Executives on a 3-weekly basis to the Appeals Litigation and Oversight Committee (ALOC).</p> <p>Learnings from matter outcomes are discussed in internal engagements between key stakeholders within the Chief Counsel Division, and as part of the continuous improvement feedback mechanisms with the Internal Review Branch, Technical Advice and Practice Improvement Branch and other meetings with policy officers, including ALOC and the Department of Social Services.</p> <p>The Agency will build on these arrangements through consolidated quarterly reporting that will better inform legislative amendments, test cases, policy and consistent operational implementation.</p>
<p>Recommendation 2</p> <p>Incorporate ART powers into policies, procedures and training</p> <p>Agencies should incorporate the new referral and escalation powers available under the ART reforms into their policies and procedures. This should</p>	<p>Accept</p>	<p>NDIA policies and processes have been updated, and training has been provided to all staff affected by the new Administrative Review Tribunal (ART).</p> <p>Through the NDIA’s engagement with the ART and the Attorney-General’s Department, the Agency will update policies, processes, and training, as necessary, to support staff in matters referred to the Guidance and Appeals</p>

Recommendations	NDIA Position	NDIA Comments
<p>include guidance to staff on the options available for the treatment of potential test cases in the Tribunal. Agencies should provide comprehensive training to staff who engage with Tribunal matters on the new referral and escalation powers available under the ART reforms.</p>		<p>Panel (GAP) and engagement with the Administrative Review Council (ARC) under the new ART.</p> <p>The NDIA will apply to the GAP to give guidance around the correct and preferable interpretation of the NDIS Act, to promote consistency in Tribunal and NDIA decision-making, and in changes to NDIA policies and practices, if and as necessary. In doing so, the NDIA will seek to ensure streamlined arrangements to reduce impacts on participants and potential participants.</p> <p>The NDIA is incorporating legislative reforms into its policies and practices, including through comprehensive arrangements for updated legislative Rules. Under this new framework, the NDIA recognises the GAP as a new mechanism which enables greater clarity for the ART, participants, and their representatives. The NDIA will work with the ART to ensure appropriate NDIS matters are referred to the GAP, to realise the value of these reforms. Implementation of this recommendation will be ongoing.</p>
<p>Recommendation 3</p> <p>Incorporate Tribunal Outcomes into continuous improvement processes</p> <p>Agencies should incorporate and embed Tribunal outcomes (including both decisions and settled applications) into continuous improvement by:</p> <p>a) Distributing the following information to agency decision makers and other relevant staff, and reporting it quarterly to Senior Executives:</p> <p>i. Themes and trends in Tribunal decisions, including settlements.</p> <p>ii. Information relating to agency-wide management of matters before the Tribunal, including at a minimum: active caseload numbers, median time to finalisation, the rate of overturning of agency decisions, settlement and withdrawal rates,</p>	<p>Accept</p>	<p>In addition to updated quarterly reporting as set out in the response to Recommendation 1 above, the NDIA commits to incorporate learnings from Tribunal outcomes into the Service Delivery Continuous Improvement Model by 30 June 2025. This will ensure Tribunal continuous improvement opportunities are prioritised and incorporated into frontline staff learnings. The Model reviews priorities on a quarterly basis and creates action plans against each priority, which include measures of success that are agreed to by the Service Delivery Leadership Team.</p> <p>The Australian National Audit Office's 2023–24 audit of the NDIA's complaint handling recommended that <i>"the NDIA plan and undertake a program of quarterly reviews of complaints data, matched with other service delivery performance data, including participant satisfaction surveys, to support identification of areas for continuous improvement"</i>.</p> <p>The NDIA will explore opportunities to incorporate insights from Tribunal matters into a consolidated continuous improvement approach that takes account of feedback and learnings from across the Agency's functions.</p>

Recommendations	NDIA Position	NDIA Comments
<p>summaries of significant matters, and matters being appealed by the agency.</p> <p>b) Using the information in 3(a) to:</p> <ul style="list-style-type: none"> i. Clearly define and document priority areas for business improvement to engage with the Tribunal and learn from Tribunal decisions. ii. Define measurable objectives for improvement, and a plan to achieve these objectives in priority areas. iii. Measure and report on performance toward these objectives to the agency head. 		
<p>Suggestion 1</p> <p>All agencies investigated should analyse if there are lessons that can be learned from Tribunal matters that settle or are withdrawn after the agency provides a better explanation of its decision during Alternative Dispute Resolution processes.</p>	<p>Accept</p>	<p>The Chief Counsel Division is proposing to expand its quality assurance and reporting functions to include thematic analysis of ART matters which are resolved by consent (settled) or withdrawn, with a particular focus on causation. This analysis will be incorporated into regular reporting and continuous improvement mechanisms already utilised (as mentioned above), as well as the Service Delivery Continuous Improvement Model to ensure that learnings are communicated to the broader Agency.</p>

19 November 2024

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

By email: [REDACTED]

Dear Ombudsman

I refer to your letter of 31 October 2024 to the Administrative Review Tribunal (ART) President, the Hon Justice Emiliios Kyrou AO, regarding your draft report into agency responses to Tribunal decisions. The President has asked that I respond to your letter on his behalf.

Thank you for the opportunity to review the draft report prior to its publication. I confirm the ART has not identified any errors of fact or omission in the draft report relevant to the ART's involvement. Further, the ART agrees, in principle, with the recommendations made in the draft report.

Yours sincerely,

[REDACTED]

Michael Hawkins AM
Chief Executive Officer and Principal Registrar



Australian Government

Comcare

19 November 2024

Iain Anderson
Commonwealth Ombudsman

By email: [REDACTED]

[REDACTED]

Dear Mr Anderson,

Thank you for your letter of 31 October 2024 providing Comcare the opportunity to respond to the draft Own Motion Investigation report Learning From Merits Review - *Best practice principles for agency engagement with merits review* (the Report).

It is pleasing that the Report reflects Comcare's well-established and integrated approach to litigation and lessons learned.

Comcare acknowledges and accepts all three recommendations (the Recommendations) made in the report.

- Recommendation 1 – Commit to learning from merits reviews
- Recommendation 2 – Incorporate ART powers into policies, procedures and training
- Recommendation 3 – Incorporate Tribunal Outcomes into continuous improvement processes.

Comcare intends to establish an internal working group to ensure implementation of the Recommendations. This group will also seek to identify any additional enhancements we can deliver in Comcare's current practices consistent with the Report. Comcare is committed to continuous improvement and welcomes your Office's review into our progress on implementation in 12 months.

I would like to extend my thanks to you and your investigation team for your efforts during this investigation. I look forward to ongoing cooperation and continued collaboration between our agencies.

Yours sincerely

[REDACTED]

Greg Vines

Chief Executive Officer



Australian Government
Department of Social Services

Ray Griggs AO CSC
Secretary

Ref: EC24-003074

Mr Iain Anderson
Commonwealth Ombudsman
By email: [REDACTED]

Dear Mr Anderson

Iain,

Thank you for your letter of 31 October 2024 providing a draft of your report into agency responses to Tribunal decisions.

As the policy owner for Services Australia, the Department of Social Services (the Department) appreciates the opportunity to:

- advise of any errors of fact or omissions in the draft report.
- address whether the recommendations are accepted by the Department.
- advise of the estimated date by which we expect to have implemented each accepted recommendation.

The Department has taken the opportunity offered by you to develop a response to the proposed recommendations (Attachment A), and to provide details of factual errors, together with observations, on certain aspects of the draft report (Attachment B).

I acknowledge that under the Administrative Arrangement Orders, I also have responsibility for legislation and policy administered by the National Disability Insurance Agency (NDIA). Whilst not required, I have taken the opportunity to briefly comment with respect to this, given the significance of the case load before the Tribunal and the importance of these matters.

I note Services Australia and the NDIA will provide you with separate responses.

I will continue to update your office on our progress, including on the implementation of your recommendations.

If you wish to discuss any aspect of the response, please do not hesitate to contact me directly.

Yours sincerely

[REDACTED]
21 November 2024



**Response from the Department of Social Services (the Department) to
Ombudsman Draft Report: *Learning from merits review: Best practice principles
for agency engagement with merits review*
22 November 2024**

The Department of Social Services (the Department or DSS) is committed to learning from merits review matters that have progressed through the Administrative Review Tribunal (ART).

While the Department was not investigated as part of the Commonwealth Ombudsman's own motion investigation, it appreciates the opportunity to provide a response to the draft report.

The Department notes that both Services Australia and the National Disability Insurance Agency (NDIA) were investigated as part of the Ombudsman's own motion investigation. The Department has a unique relationship with both Services Australia and the NDIA, as the Administrative Arrangement Orders provide that DSS has responsibility for the relevant legislation and policy, however the operational delivery of services is provided separately by each agency.

There are also differences in how Tribunal matters are managed. Services Australia performs the majority of its functions, inclusive of social security decision making and merits review, on behalf of the Secretary as his powers are delegated under relevant legislation, and therefore the Department instructs in review and appeal matters. Conversely, the NDIA undertakes its functions in the name of the Chief Executive Officer, NDIA, and therefore the Department's role in litigation is more limited to policy oversight and legislative design. Accordingly, the Department notes that Services Australia and the NDIA have provided their own responses to the report and recommendations, and the below should read in conjunction with those responses.

The lessons and systemic issues that can be identified through Tribunal decisions are of importance to good policy design and development more generally. For that reason, while the Department's response is focused on Services Australia's delivery of social security merits review matters, it also notes the application and opportunities for all of the Department's policy responsibilities, including the National Disability Insurance Scheme (NDIS).

RECOMMENDATION 1: Commit to learning from merits review

Agencies should commit to learning from merits review. They should publish an accompanying statement that includes a list of concrete steps for how they will give effect to that commitment.

This commitment should be actively promoted to staff.

- Accepted**
 Not accepted

Response:

The Department accepts the recommendation.

The Department of Social Services (the Department or DSS) will publish a statement on its website outlining its commitment to learning from merits review in all areas of policy and legislative responsibility. This will acknowledge the importance of the merits review system, and the in-depth analysis of relevant policy and legislation it often provides. This plays a key role in identifying areas of policy or legislation that may be misapplied or have unintended consequences that are not reflective of policy objectives.

In relation to the specific arrangements with **Services Australia**, the Department's public statement will outline the existing arrangements and concrete steps the Department will take, including in ensuring processes and procedures are in place to:

- facilitate fulsome review of decisions where the Tribunal disagrees with the Secretary's decision, noting this would primarily fall to the responsibility of Services Australia.
- ensure the Department is made aware of decisions that have potential policy or legislative implications.
- internally escalate Tribunal decisions that are significant or indicative of a systemic issues to ensure responsible senior executives can consider and respond accordingly. responsible policy officials can consider and respond.
- incorporate robust feedback loops to ensure policy, service delivery and legal officials are joined up in their understanding and awareness of potentially significant or systemic issues.

With respect to the **NDIA**, the Department does not have an active role in matters before the Tribunal, however, it is committed to ensuring its NDIS policy officials implement concrete steps to ensure awareness and knowledge of systemic issues and trends arising from Tribunal decisions in the NDIS jurisdiction. The Department's public statement will reflect this, and it will be of particular importance following the introduction of new NDIS legislation in October 2024.

Expected timeframes: Early 2025

Justification for timeframes: To allow sufficient time to draft, consult and publish.

RECOMMENDATION 2: Incorporate ART powers into policies, procedures and training

Agencies should incorporate the new referral and escalation powers available under the ART reforms into their policies and procedures. This should include guidance to staff on the options available for the treatment of potential test cases in the Tribunal.

Agencies should provide comprehensive training to staff who engage with Tribunal matters on the new referral and escalation powers available under the ART reforms.

Accepted

Not accepted

Response:

The Department accepts the recommendation and notes it has been partially implemented.

Work to date

The Department led the portfolio's engagement with the Attorney-General's Department on the design and implementation of the new Tribunal and tracked portfolio entities' readiness for the commencement of the ART from 14 October 2024.

Specifically, to the Department, all DSS policy guides and manuals, which are publicly available, have been reviewed and updated to reflect the new referral and escalation powers of the ART. The revised guides came into effect upon commencement of the ART on 14 October 2024 and include the:

- Social Security Guide
- Paid Parental Leave Guide
- Family Assistance Guide
- Child Support Guide

In October 2024, officials across the whole portfolio who engage with the Tribunal attended an information session run by the Attorney-General's Department on the new ART reforms.

In addition, the Department worked with an external legal services provider to develop and deliver a training to all senior executives in the Department, which highlighted the new process and procedures that the new Tribunal introduces.

Further work to implement the recommendation

The various DSS guides and manuals will be subject to ongoing review and amendment, where necessary. The Department is also developing:

- internal fact sheets on the new ART, and merits review more generally.
- a training module on the new ART that will be made available to all new and existing staff in the Department's online training suite.

Expected timeframes: Early 2025

Justification for timeframes: While the Department has partly implemented this recommendation, further time is required to finalise fact sheets and a training module. The products will also have the benefit of the Department's experience to date with new Tribunal processes.

The Department will also review and update its policy guides on an ongoing basis.

RECOMMENDATION 3: Incorporate Tribunal Outcomes into continuous improvement processes

Agencies should incorporate and embed Tribunal outcomes (including both decisions and settled applications) into continuous improvement by:

- a) *Distributing the following information to agency decision makers and other relevant staff, and reporting it quarterly to Senior Executives:*
- Themes and trends in Tribunal decisions, including settlements.*
 - Information relating to agency-wide management of matters before the Tribunal, including at a minimum: active caseload numbers, median time to finalisation, the rate of overturning of agency decisions, settlement and withdrawal rates, summaries of significant matters, and matters being appealed by the agency.*
- b) *Using the information in 3(a) to:*
- Clearly define and document priority areas for business improvement to engage with the Tribunal and learn from Tribunal decisions.*
 - Define measurable objectives for improvement, and a plan to achieve these objectives in priority areas.*
 - Measure and report on performance toward these objectives to the agency head*

Accepted

Not accepted

Response:

The Department accepts the recommendation and notes it has been substantially implemented.

3(a) and 3(b): In relation to **Services Australia**, the Department already provides regular reporting on child support and social security Tribunal outcomes to policy areas, senior executives and the Secretary via weekly, monthly and ad hoc reporting. A number of these reports are prepared and provided by Services Australia to the Department, including:

- Significant Litigation Report (DSS matters)
- Reasons for Outcomes
- Outcomes Report YTD
- DSS Litigation Report: Debt & Prosecutions
- DSS Litigation Report: Secretary Appeals

In addition, the Department's legal team meets weekly to review and discuss the latest issues and/or trends observed in Tribunal decisions, and to determine matters requiring engagement or escalation with policy officials.

At the senior executive level, the legal team meets with Executives, inclusive of the Department's Secretary, Deputy Secretaries, Group Managers and Chief Counsel monthly to discuss the reports and any significant or systemic issues that are identified. The meetings are supplemented by the provision of ad hoc updates sent directly to the Secretary on any significant issues that arise.

A copy of Services Australia's significant litigation report is also sent monthly to relevant policy holders for their consideration, identification and resolution of any significant or system issues and thematic trends.

Recently, the Department and Services Australia also established a significant and systemic issues forum in which the Department's and Services Australia's legal teams discuss significant issues observed in Tribunal decisions. This forum meets monthly

Noting the opportunities the new Tribunal brings, the Department and Services Australia are working together to ensure reporting captures trends that may arise as a result of the Tribunal's new functions and powers, such as the Guidance and Appeals Panel.

In relation to the **NDIA**, the Department's and the NDIA's legal teams meet monthly to discuss significant issues, including litigation relevant to the NDIS legislation. The Department will also liaise with the NDIA to obtain copies of its regularly Tribunal reporting and trends analysis to ensure responsible policy officials can consider any implications for NDIS policy or legislation.

Expected timeframes:

3(a): Ongoing

3(b): Ongoing

Suggestion 1:

All agencies investigated should analyse if there are lessons that can be learned from Tribunal matters that settle or are withdrawn after the agency provides a better explanation of its decision during Alternative Dispute Resolution processes.

- Accepted**
 Not accepted

Response: The Department notes the trial **Services Australia** is establishing to track any Tribunal matters that settle or are withdrawn in order to understand any lessons from such decisions. The Department will actively engage with Services Australia on the outcomes of this trial, which will feed into ongoing improvements to the Standing Operational Statements and the Department's overarching instructions to Services Australia regarding the management of Tribunal matters.

Expected timeframes: Ongoing

Suggestion 2:

The branches within the Department of Home Affairs that are involved in Tribunal liaison, or the conduct, analysis or implementation of Tribunal decisions, should convene a regular forum.

The aim of these forums should be to support a whole-of-agency approach to learning from Tribunal decisions, as well as sharing processes relating to Tribunal decisions.

- Accepted
- Not accepted
- N/A

Response: Not applicable to the Department.



Australian Government
Services Australia

Your Ref: A2416555
Our Ref: EC24-003582

Chief Executive Officer
David Hazlehurst

Mr Iain Anderson
Commonwealth Ombudsman
GPO BOX 442
CANBERRA ACT 2601


Dear Mr Anderson

Draft Report on Own Motion Investigation - Agency responses to Tribunal decisions

Thankyou for your letter of 31 October 2024 enclosing your draft report, *Learning from merits review – Best practice principles for agency engagement with merits review*.

We value your diligent and comprehensive investigation of Services Australia's (the Agency's) merits review process prior to the implementation of the Administrative Reviews Tribunal (ART). We appreciate the opportunity to review your report to identify any errors of fact (Attachment A) and provide a response to your recommendations and suggestion, including actions we propose to take and expected timeframes (Attachment B).

In your report, you make 3 recommendations and one suggestion for the Agency. I confirm the Agency accepts the recommendations and suggestion and will take action to implement them.

Prior to the commencement of the ART on 14 October 2024, the Agency has worked very hard to include the new review process into the day-to-day actions of staff across the Agency. We will continue to align our internal and external resources with ART requirements.

Moving forward, the Agency will ensure we are embedding learnings from ART outcomes into our continuous improvement journey. We will publish a statement of commitment in 2025 to this effect and will continue to provide staff with additional and ongoing refresher training to support their engagement with ART matters. The Agency will also look to develop performance measures to demonstrate our achievements in embedding learnings from merit reviews processes.


The Agency's contact for this matter [REDACTED]
contacted via email [REDACTED]

Yours sincerely

[REDACTED]

David Hazlehurst

22 November 2024



Attachment B – own motion investigation into agency responses to Tribunal decisions

Services Australia – Learning from merits review

Services Australia welcomes the Ombudsman’s own motion investigation into agency responses to tribunal decisions. Services Australia is committed to ensuring that learnings from merits review processes are embedded in our management of Administrative Review Tribunal (ART) matters.

The Ombudsman has called for a clear public commitment from agencies to demonstrate how they will give effect to learning from merits review.

As part of the Government’s response to the Robodebt Royal Commission (RRC) recommendations 19.1, 20.1 and 20.2, Services Australia has already commenced work to improve its learnings from tribunal decisions.

In early 2024, Services Australia advised the Ombudsman’s Office that it was progressing this work with the Department of Social Services (DSS).

Services Australia provides regular training to its in-house lawyers on the core duties and responsibilities as set out in its Legal Practice Standards.

Services Australia also ensures that tribunal cases involving significant legal or policy issues are referred to senior officials within Services Australia and the relevant policy department. This ensures awareness of possible systemic issues, enabling them to be addressed effectively.

Services Australia ensures that legal officers involved in preparing advice related to tribunal decisions receive training on the requirements in the Standing Operational Statement (SOS) agreed with DSS, to ensure matters which raise significant legal and policy issues are brought to the attention of senior officials in both agencies.

In responding to the Ombudsman’s November 2024 recommendations, Services Australia is pleased to report the following.

Key actions taken:

Strengthened executive governance of tribunal matters

At the enterprise level, DSS and Services Australia have already refreshed executive governance of reporting on significant legal and policy issues arising from ART or court matters.

This has been achieved by:

- Updates to the DSS–Services SOS
- Updates to the Legal Services Protocols under the DSS–Services Australia Bilateral Management Agreement, which provides for escalation of issues as required.
- Establishing an agreed framework between DSS and the Agency for regular monthly reporting on significant tribunal and court matters. This includes reporting on all sensitive matters in second tier level or courts; reporting on other significant matters as agreed between DSS and the Agency; and reporting on first and second tier level outcomes and reasons for outcomes.
- Clarifying, within Services Australia, guidance on ‘significant issues’ and legal risk reporting to DSS (and other portfolio agencies) and to external bodies such as the Office of Legal Services Coordination within the Attorney–General’s Department.

Staff Training and preparation for ART Transition

To ensure staff readiness ahead of transitioning to the ART on 14 October 2024, the Agency also put considerable effort into preparing its staff and operational guidance to align with ART management practices and procedural guidance.

- Core Agency staff attended Attorney–General’s Department training on 4 September 2024 about the ART reforms and changes that will impact the Agency.
- Core Agency staff have received information and training to provide customers with information about their ART review rights.
- To support our staff in specific Centrelink and Child Support related appeals work, these teams received specific training in September and October 2024.
- To support our Litigation Branch staff, these staff completed training and workshop sessions ahead of the ART’s commencement in October 2024.

The Agency has developed operational guidance and procedural guides for staff involved in ART litigation and appeals work.

We accept the Ombudsman’s 3 recommendations and Suggestion 1, which is relevant to this Agency.



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Attachment B – own motion investigation into agency responses to Tribunal decisions

Recommendation	Entity response to recommendations/suggestions	Action entity proposes to take and expected timeframes for implementation of recommendations/suggestions
	<p>Please indicate your response to each recommendation/suggestion. If you do not accept a recommendation/suggestion, please provide reasons.</p>	<p>Please provide particulars of any action you propose to take to implement the recommendation/suggestion and expected timeframes for implementation, including justification for the timeframes.</p>
<p>Recommendation 1:</p> <p>Agencies should commit to learning from merits review. They should publish an accompanying statement that includes a list of concrete steps for how they will give effect to that commitment.</p> <p>This commitment should be actively promoted to staff.</p>	<p><input checked="" type="checkbox"/> Accepted <input type="checkbox"/> Not accepted If not accepted, please provide reasons:</p>	<p>Proposed action:</p> <p>Services Australia (the Agency) will publish a statement on our website giving effect to our commitment to learning from merits review.</p> <p>The statement will outline concrete steps the Agency will take to give effect to our commitment. These steps will include:</p> <ul style="list-style-type: none"> • Review all ART decisions where the ART disagrees with Services Australia’s decision. • Report on and escalate internally and to policy owners, issues that are identified in ART decisions.

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		<ul style="list-style-type: none"> • Commit to an ongoing maturing of its reporting and escalation structures when issues are identified in ART decisions. • Explore opportunities for data and technology to assist in the identification of issues in ART decisions. <p>Expected timeframes: Early 2025</p> <p>Justification for timeframes: To allow sufficient time to draft and publish.</p>
<p>Recommendation 2:</p> <p>Agencies should incorporate the new referral and escalation powers available under the ART reforms into their policies and procedures. This should include guidance to staff on the options available for the</p>	<p><input checked="" type="checkbox"/> Accepted <input type="checkbox"/> Not accepted If not accepted, please provide reasons:</p>	<p>Proposed action:</p> <p>The Agency has incorporated the new referral and escalation powers under the ART reforms into our policies and procedures, including staff guidance materials, and Operational Blueprint.</p> <p>Key stakeholders from across the Agency attended the Attorney-General's Department's information session on the ART reforms for Commonwealth agencies in the Social Services</p>

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<p>treatment of potential test cases in the Tribunal.</p> <p>Agencies should provide comprehensive training to staff who engage with Tribunal matters on the new referral and escalation powers available under the ART reforms.</p>		<p>Portfolio on 6 September 2024. to hear more about the new ART and changes that would impact the Agency.</p> <p>Core Agency staff have been provided with information and are trained to provide customers with information about their ART review rights:</p> <ul style="list-style-type: none"> • Training for Child Support Appeals Support Teams (AST) was held on 3 September 2024 and 17 September 2024. • Training for Centrelink staff within the Appeals Branch, including AST was held on 24 September 2024, 25 September 2024, 1 October 2024 and 3 October 2024. • Training and workshop sessions for Litigation Branch were also completed ahead of the ART's commencement on 14 October 2024. <p>On 7 September 2022 and 19 July 2023, core staff attended Master Classes delivered by Service Australia's Legal Services Division on the role of the Administrative Appeals Tribunal and the obligation to act as a model litigant. Refresher Master</p>

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		<p>Classes with respect to the Administrative Reviews Tribunal will be delivered in 2025, which will also be utilised for new starters.</p>
<p>Recommendation 3:</p> <p>Agencies should incorporate and embed Tribunal outcomes (including both decisions and settled applications) into continuous improvement by:</p> <p>a) Distributing the following information to agency decision makers and other relevant staff, and reporting it quarterly to Senior Executives:</p> <p>i. Themes and trends in Tribunal decisions, including settlements.</p>	<p><input checked="" type="checkbox"/> Accepted <input type="checkbox"/> Not accepted If not accepted, please provide reasons:</p>	<p>3(a) - Proposed action: The Agency already provides significant reporting on Tribunal outcomes both internally and to the Secretary, Department of Social Services (DSS), the party to the proceeding and the Department with administrative responsibility for the legislation.</p> <p>The Agency provides monthly reports to DSS, including:</p> <ul style="list-style-type: none"> i) Litigation Report (DSS matters) ii) Reasons for Outcomes iii) Outcomes Report YTD iv) DSS Litigation Report: Debt & Prosecutions v) DSS Litigation Report: Secretary Appeals <p>In addition to this, each Practice Director in the Agency's Litigation Branch has regular meetings with their internal program area. At these meetings, the latest issues that have arisen in the Tribunal are discussed including any issues relevant</p>

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<p>ii. Information relating to agency-wide management of matters before the Tribunal, including at a minimum: active caseload numbers, median time to finalisation, the rate of overturning of agency decisions, settlement and withdrawal rates, summaries of significant matters, and matters being appealed by the agency.</p>		<p>to the particular program area. These meetings are supplemented by the provision of reports on numbers of matters in the ART.</p> <p>The Agency publishes and distributes internally a bi-annual Newsletter which reports on important cases arising out of the Tribunal and shares learnings.</p> <p>A Quarterly Report is under development which will be provided to Senior Executives and will include data of matters that have come through ART second review.</p> <p>Services Australia will implement an agency-wide approach to learning from customer engagement, including merits review. Legal Services Division will also set achievable, measurable objectives to harness learning opportunities in the Legal Services Standards published on the Agency's intranet.</p> <p>Services Australia's Legal Services Division (LSD) is establishing a Reviews function to enable collaboration, feedback and escalation of issues arising from litigation, program advising,</p>

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		<p>privacy assurance advice, Ombudsman complaints and identified defective administration.</p> <p>Each Branch within LSD includes strategic objectives in their Business Plans. For the Litigation Branch, this will include Quarterly internal reporting on tribunal matters to relevant business areas on thematic analysis. Development of this process, and feedback loop into the agency-wide Customer 360 work will facilitate development of concrete steps for how the Agency will meet its commitment to learning from customer engagement, including merits review.</p> <p>3(a) - Expected timeframes: Ongoing</p> <p>3(a) - Justification for timeframes: The Agency is continuing to develop and improve its escalated reporting, including through data analytics.</p>

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<p>b) Using the information in 3(a) to:</p> <ul style="list-style-type: none"> i. Clearly define and document priority areas for business improvement to engage with the Tribunal and learn from Tribunal decisions. ii. Define measurable objectives for improvement, and a plan to achieve these objectives in priority areas. iii. Measure and report on performance toward these objectives to the agency head. 		<p>3(b) - Proposed action: Insights from merits review outcomes will be embedded into the Agency’s Customer 360 model. Customer 360 is a central and organising concept that leverages insights from both customers and staff to drive how the agency delivers against its priority customer experience goals and uplifts business capabilities to provide customers with a seamless and connected experience.</p> <p>As part of Customer 360, work is underway to optimise how we integrate timely and actionable customer insights to improve how we listen, learn and manage customer experiences across our products and services. Merits review outcomes are a source of insights. The Agency’s Reviews team will share data and information about litigation learnings with the relevant Customer 360 teams.</p> <p>The Customer 360 program of work reports directly to the Tier 1 Customer Committee on progress and development.</p> <p>3(b) - Expected timeframes: 6-month trial period commencing early 2025.</p>

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		<p>3(b) - Justification for timeframes: Services Australia has established Customer 360 as a program of work, with an endorsed program roadmap.</p> <p>The Litigation Branch and Reviews Team are working on how best to incorporate feedback on systemic or priority issues arising from merits review into Customer 360. This includes a documented process for registering issues and tracking implementation of service recovery, process change and/or outcome implementation.</p> <p>The trial should be for a period that will enable sufficient data for analysis – i.e. at least 6 months.</p>
<p>Suggestion 1:</p> <p>All agencies investigated should analyse if there are lessons that can be learned from Tribunal matters that settle or are withdrawn after the agency provides a better</p>	<p><input checked="" type="checkbox"/> Accepted</p> <p><input type="checkbox"/> Not accepted</p> <p>If not accepted, please provide reasons:</p>	<p>Proposed action: Services Australia will set up a trial to track any Tribunal matters that settle or are withdrawn to analyse what lessons could be learned from such decisions. This will feed into the Customer 360 work noted above. The trial should be for a period that will enable sufficient data for analysis – i.e. at least 6 months.</p>

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<p>explanation of its decision during Alternative Dispute Resolution processes.</p>		<p>Expected timeframes: 6-month trial period commencing early 2025.</p> <p>Justification for timeframes: The trial should be for a period that will enable sufficient data for analysis – i.e. at least 6 months. The trial would involve recording all Services Australia matters resolved in conference, or through settlement – including debt settlement.</p>
<p>Suggestion 2:</p> <p>The branches within the Department of Home Affairs that are involved in Tribunal liaison, or the conduct, analysis or implementation of Tribunal decisions, should convene a regular forum.</p>	<p><input type="checkbox"/> Accepted <input type="checkbox"/> Not accepted If not accepted, please provide reasons:</p> <p>Not for Services Australia to action</p>	<p>Proposed action:</p> <p>Expected timeframes:</p> <p>Justification for timeframes:</p> <p>Not for Services Australia to action</p>

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<p>The aim of these forums should be to support a whole-of-agency approach to learning from Tribunal decisions, as well as sharing processes relating to Tribunal decisions.</p>		

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