



Administrative Review Council: Social Security Inquiry

National Legal Aid Submission

26 September 2025

Summary of recommendations

National Legal Aid (NLA) strongly supports two-tiers of review for matters in the Administrative Review Tribunal (ART). This two-tier system was a long-standing and effective feature of the former Administrative Appeals Tribunal for social security and child support matters. We have advocated to retain this system as we consider it's the best forum to ensure a trauma-informed, non-adversarial approach to resolve social security and child support matters for clients in the ART. This also provides efficiency for legal assistance services, Government and the ART, in maintaining an efficient process to resolve matters in Tier 1.

NLA does not believe that adequate time has passed to review the implementation of the two tiers within ART under the new legislation, particularly without Practice Directions differentiating between the two tiers. We have recommended that we be given the opportunity to provide further feedback closer to the delivery date of the review, once more time has elapsed.

Recommendation 1: Maintain the two-tier system of review for matters in the Administrative Review Tribunal.

Recommendation 2: Continue Tier 1 matters as a non-adversarial process, without government representation.

Recommendation 3: Develop Practice Directions for the two-tier system in the Administrative Review Tribunal.

Recommendation 4: Develop an Administrative Review Tribunal referral system for all matters to legal assistance providers.

Recommendation 5:

- a) Improve Authorised Review Officer internal review process timeframes and explanation of reasonings.
- b) Improve processes for the internal review of decisions under the *Child Support Assessment Act 1989 (Cth)* by amending legislation to allow representatives to lodge the applications/responses on behalf of their clients.
- c) Introduction of statutory time limits for the delivery of an ARO decision, we suggest a 90-day limit like the NDIS.
- d) Introduction of a customer service guarantee, like the NDIS.

Recommendation 6: Implement a trauma-informed approach for NDIS matters in the Administrative Review Tribunal.

Recommendation 7: Provide opportunity for further feedback closer to the delivery of the review in 2026.

Internal review processes

Legal Aids experience prolonged delay in Authorised Review Officer (ARO) decisions with some decisions taking years to be made. Legal Aids' experience of ARO reviews, consistent with long-standing evidence and reports on the issue, including through Robodebt, is that there are significant delays in the ARO system and opportunities for improvements including statutory time limit on ARO decisions (e.g. 90 days), clearer decisions and better engagement with the person seeking the review (noting there is currently no requirement to engage). We have recently seen some extreme delays between people lodging and receiving their ARO decisions, including two matters on advice recently where there was a 4 – 5 year delay between ARO request and decision. Our practice experience in child support matters also shows there is no effective timelines for decision-making and the final COA or Objection decision can take months to resolve.

We are particularly concerned about delays around decisions regarding entitlement to a payment, such as the Disability Support Pension. Whilst waiting for the decisions, the person may continue to have onerous mutual obligation requirements and lack access to payments that might be critical to their ability to obtain treatment, support their family or access the community.

This prolonged time for decisions, or unclear time limits, has adverse impacts on clients experiencing financial hardship. There is a need for improvement in government decision making and improvement in reasonings provided, including simplifying the review decisions and using plain language. Where Applicants have been assisted in their internal review (either COA, Objection) by a lawyer/representative, a copy of the decision should be provided by Services Australia to the lawyer. Current experience is that copies of decisions are not sent to the lawyer, and this can negatively impact on the party's access/right to seek review as it can result in timeframes to lodge review being missed.

There is also a need for clear referral pathways for vulnerable self-represented parties to appropriate legal help – i.e. to Legal Aids, Community Legal Centres or non-legal support services at an early stage.

Child support

In relation to child support, Legal Aids also observe a lack of discretion and screening processes by Delegates to manage applications that are frivolous and vexatious as the child support scheme is often weaponised to perpetuate financial abuse post-separation. This is demonstrated in this case study below.

CASE STUDY

Sarah's story: Child support, family violence and systems abuse

Sarah has been to the ART three times as her former partner kept applying for reviews of child support. His reviews were unsuccessful each time and Sarah thinks that the ART should not have accepted and listed his review applications.

Sarah obtained a successful outcome in the ART, but says her former partner has now lodged another review internally with Services Australia Child Support. She fears this later review will

not be investigated thoroughly enough, given her former partner has been permitted to lodge so many reviews, both internally and in the AAT/ART, in the past.

Sarah sees her former partner's behaviour as a sustained example of family violence and financial control. She says that she cannot rectify the situation through the ART, as she cannot afford legal representation for an appeal and is too unwell to represent herself due to having cancer.

We recommend changes to the internal review of decisions under the *Child Support Assessment Act 1989 (Cth)* by amending legislation to allow representatives to lodge the applications/responses on behalf of their clients. Currently this is not permitted, and our experience is that the legislation is strictly applied by Services Australia (Child Support) in that they reject applications made on behalf of a client by a legal representative. This has negative impacts on priority clients who struggle to access review avenues and perpetuates client disadvantage.

ART social security and child support review structure

NLA has consistently identified the effectiveness of Tier 1 within the Administrative Appeals Tribunal Social Security and Child Support Division which is also demonstrated in the newly established Administrative Review Tribunal.

We consider those features to be:

- Independent from Services Australia;
- Specialist, in that the Members have facility with and understand the complexity of social security law, as well as the discretions that can be exercised under social security law by decision-makers;
- Speedy, with written decisions in the past being made within an average of 9 weeks after application, including a full hearing;
- Informal, with Members providing a forum that is accessible, non-legal, and non-adversarial;
- User centred and responsive to applicant needs, allowing an opportunity for applicants to participate fully on their own terms, and be properly heard in an environment that is less intimidating;
- Informed, in that Members review all of the relevant documents beforehand;
- Provides opportunities for legal representation, but the nature of the proceedings does not make it necessary (for example there is no respondent legal team, no requirement for parties to provide written submissions, evidence can be provided in an informal context and arranged on the day);
- Reviewable, with an automatic right to seek a more formal review through Tier 2.
- Given the ART objective in section 8 of the ART Act to be responsive to the diverse needs of parties, we consider it also provides the best opportunity to provide trauma-informed and client centred processes.

The current model with two tiers of review for social security matters is working effectively to ensure fair, efficient and effective resolution of social security matters.

ART Tier 1

Legal Aids consider that the ART Tier 1 is functioning effectively as an efficient and independent form of review, with specialist Members providing a forum that is accessible, responsive, non-legalistic and non-adversarial.

Tier 1 provides opportunities for legal representation for Applicants, but the informal nature of the proceedings and the absence of a respondent representative or legal team means that in many matters Applicants can navigate their matter to an outcome themselves. It is also effective, in that between 84% and 88% of matters resolve without any request for further appeal.

There are clear benefits of expeditious resolution to the Tribunal and its users. This is particularly so considering the high rates of success at ART Tier 1, so clients do not have to experience the delays of the general division while waiting for a first case event, only to have their matter settle during those ART2 proceedings probably at same point after the first case event.

In our experience, decisions appear to be being issued by ART Tier 1 quickly, within 2 weeks and ART Tier 2 decisions are taking more than three months.

The following case studies demonstrate the independent, specialist, speedy, informal, informed, responsive and effective operation of the first tier of review.

CASE STUDIES

1. Help to resolve Centrelink debt

A Legal Aid received a warm referral from a financial counsellor of a client who had a Centrelink debt of more than \$80,000. She had limited literacy and numeracy, four children in her care, and lived with schizophrenia complicated by recent post-natal depression. She and her children were living in transitional housing following a period of homelessness. She had previously lived in a women's shelter following separation from her violent partner and was regularly requiring assistance from charities to put food on the table due to having to pay off her Centrelink debts in addition to her other financial commitments.

We worked with her to understand the basis for the debt calculations, and prepared a detailed statement setting out her circumstances, the reasons for the debts and her genuine attempts to comply with her obligations under social security law. The ART1 listed the matter for a short hearing where legal aid represented the client, and where the Tribunal Member had reviewed the Centrelink file and the supporting material we filed and asked questions of our client and their representative. Within eight days of the hearing our client received a clear six-page written decision advising that her Centrelink debt was waived. There was no need for involvement from Services Australia, and the process was quick, informal and responsive to her needs.

2. Financial hardship, child support and Family Tax Benefit debt – Daniel's story

In this case, the parties had separated and Daniel (a legal aid client) had assumed care of four children, one of whom had special needs. The parties had registered child support collect under a private arrangement, with Daniel instructing he had agreed to a private collect arrangement because of family violence concerns and the other party being unemployed and on Centrelink.

The other party never paid any child support to Daniel who was on a low income. The other party was retrospectively assessed by Services Australia (Child Support) as having a higher taxable income of \$160 000 per annum for the financial year 2018-2019, potentially due to an error or fraud, and thus increasing their child support liability to our client for this period by \$40 000. Our client was deemed to have collected this child support, thereby incurring a significant FTB debt of \$16000.

The other party had no assets, had otherwise been on a Centrelink income and therefore no reasonable grounds for success to pursue her for enforcement of the child support arrears in the Federal Circuit and Family Court of Australia. The Child Support Legal Service assisted Daniel at Tier 1 AAT to obtain a successful outcome and his FTB debt of \$16000 was waived.

The matter was resolved efficiently, without the need for Services Australia to be involved, the informal and efficient process allowed Daniel to have certainty and financial relief at a stressful time

ART Tier 2

Our experience of ART Tier 2 is that it provides an opportunity for the roughly 10% matters that do not appear to resolve at Tier 1 to be ventilated through formal dispute resolution, and via hearings in a more traditional adversarial mode, usually involving the obtaining of formal evidence, the exchange of detailed submissions, and a contested hearing where parties and their witnesses are cross-examined. These types of matters generally benefit from legal representation for applicants given the power imbalance with representation, and the increased formality of the processes.

Many Tier 2 matters do resolve prior to hearing, often because Tier 1 and ADR processes have narrowed the issues in dispute, clarified evidentiary gaps, or prompted the exchange of further information. The structure of the 2 tier system ensures that only the small proportion of cases requiring formal adjudication proceed to hearing, preserving procedural fairness while supporting efficient use of Tribunal resources.

CASE STUDIES

1. Two tiers of review working effectively to ensure access to the Disability Support Pension

A Legal Aid received a referral for a client by the Administrative Review Tribunal (ART) for a matter at ART 2 where the client had been refused access to the Disability Support Pension (DSP).

Our client had applied for the DSP in May 2023 on the basis multiple medical issues, in particular mental health. She experienced serious delays with the ARO review, which resulted in her spending a significant period with a lack of access to payments that were critical to her ability to obtain treatment and engage in the community.

Due to the decision of the specialist Member at first review, along with an analysis of the T-Documents, we were able to assist our client to obtain a psychiatric report that confirmed she lived with severe impairments that meant she was not required to complete a Program of Support and that she lived with those impairments in 2023 when she applied to Centrelink.

Shortly after filing the report, the legal representative for Services Australia sent an offer of settlement and the matter was finalised without the need for final hearing, with our client getting access to the Disability Support Pension backpaid to 2023, enabling her to access financial stability and focus on her mental health and wellbeing.

NLA strongly recommends that the components of Tier 1 are retained in the ART, recognising that the ART has only been in operation for one year and is still developing new organisational structures to support the new Tribunal.

Given how early it is in the transition from the AAT to the ART, there remain important opportunities to better align current processes with the initial vision for two tiers, including timelines for Tier 1 decisions (back to 14 days from hearing date as under AAT), options for early resolution and dispute resolution, and enabling access to LACs and other legal assistance providers.

To improve the two-tier system, we recommend Practice Directions that differentiate between first and second tier review. This will assist ongoing improvement to the ART in being an accessible decision-making arm of government.

NLA also recommends the development of a referral system to legal assistance providers, so that we can properly deal with matters and provide efficiency to the ART.

Child support

In relation to child support, the two-stage review is available for limited child support matters and in particular care decisions and is working well overall. We recommend that complex matters with overlapping issues (for example, matters relating to both child support and social security entitlements) be referred directly to Tier 2. A direct referral would help to ensure that sufficient expertise and time is dedicated to the matter and would save parties from having the added stress of prolonged proceedings through two stages.

Implement a trauma informed approach for NDIS matters

Legal Aids' experience of running NDIS appeals matters is that people with NDIS appeals are significantly disadvantaged and experience barriers to access at the ART due to the legalistic, adversarial and extended process for appeals, with most of them not able to access legal representation.

In NDIS appeal matters we have observed:

- A formal, increasingly adversarial environment with Government agencies legally represented in the context of some applicants being self-represented;
- Lengthy waits for matters to be listed and decided and a significant backlog of matters and
- The option of the Federal Court to appeal any ART decision, leading to cost implications, further stress and delays for applicants.

Legal Aids observe that this has caused significant distress for Applicants in these proceedings, who are people with their disabilities and their families seeking access to the scheme to get support, or access to particular supports they need. For example, self-represented Applicants being brought to tears from aggressive cross-examination by NDIA barristers. In one instance, a Tribunal Member was moved to apologise to the Applicant for how adversarial the hearing had been. Legal Aids also report NDIA barristers using technical arguments in proceedings which cause obstacles to reaching the correct and preferable decision, and leave Applicants feeling they have not had a fair hearing.

The increasingly adversarial nature of NDIS appeal matters is demonstrated by the following case examples.

CASE EXAMPLES: Increasingly adversarial nature of NDIS Appeals

1. In a recent matter, the NDIA sought interlocutory hearings to prevent a particular practitioner from giving evidence, and a second interlocutory hearing was held after the hearing to prevent the Applicant from filing further evidence which responded to an issue raised in the evidence by the NDIA's witness at the hearing for the first time. That barrister consistently objected to questions during the hearing on the basis of their relevance, it transpired later on the basis of an incorrect understanding of the state of the law. A non-adversarial approach to the conduct of that matter would have been greatly beneficial to allow the Applicant to put forward his case without technicalities, and to ensure that he felt his case had been fairly heard.
2. In a matter in which there were some questions about how objective the Applicant's witnesses were, the NDIA made threats to report the Applicant's witnesses to AHPRA. While it is possible these professionals did not understand the line between advocacy and being an expert witness, these threats are counter-productive to applicants being able to obtain evidence of any kind, and cause significant anxiety and distress to applicants, particularly when compared to the standard of witnesses briefed by the NDIA.

The increasingly adversarial nature of NDIS appeals reflects a broader need to improve NDIA conduct during reviews in general, to ensure processes are trauma-informed and facilitate effective progress of litigation. Legal Aids observe consistent re-traumatisation of Applicants through non-trauma informed approaches from the Respondent agency, or misunderstandings of the issues which cause alienation and distress. Some examples of this are:

- The use of 'step down approaches' to funding supports for adult children who have profound disabilities, with families regularly being told, on the basis of no evidence, that with capacity building funding they will no longer require supports – for example in relation to toileting where there is no evidence an adult child who is not toilet trained is going to suddenly be able to develop this capacity.
- Evidence being disregarded to reach highly insensitive conclusions, for instance a paraplegic client with a spinal cord injury was told by the NDIA in ADR processes that their impairments were not permanent, when all the evidence said the client would never walk again.

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- Approaches which are highly critical of people applying for supports. For instance, during ADR processes, the NDIA made repeated references to an Applicant's alleged non-compliance with medical advice, based on very limited evidence that this had occurred. There was no evidence that the Applicant's alleged inability to completely follow medical advice had in any way affected the Applicant's recovery, and how their disability had developed was not relevant to the proceedings given the NDIS it is not a fault-based scheme. This conduct from the Agency made the Applicant feel they were being blamed for their own disability and caused significant distress which negatively impacted on her capacity to pursue her appeal.
 - During an ADR event, an NDIA case officer told legal aid client who is a wheelchair user that they did not need an exercise physiologist, they should 'just go for a walk'.
 - The NDIA made an offer during a conciliation and then after the Applicant agreed to resolve the matter on that basis, rescinded it. No reason was given for this. Legal aid made a model litigant complaint, as to make the offer in the first place the NDIA must have been satisfied that the support was reasonable and necessary. The complaint was not investigated, and we were told to raise the issue with the case manager who was the subject of the complaint.

The experience of NDIS appeals matters highlights the need for client centred and informed decision making in the ART and consideration of less adversarial approaches.

Role of the Department of Social Services ("DSS") in the ART

The non-adversarial process is important for non-represented people appearing in tier one matters and other people experiencing disadvantage and vulnerability. This process is accessible, responsive, allows applicants to be heard.

Tier 2 can prioritise access to legal assistance and participation of Government – maintaining safeguards of Tier 1 being much less onerous. We recommend the continuation of Tier 1 as a non-adversarial process, without government representation.

In the child support jurisdiction, the role of Services Australia (Child Support) is reduced to providing the section 23 documents ("T" documents) in the First Review stage. The Agency does not actively participate at the First Review stage, and it is our view that this does not negatively impact on the ART's ability to resolve matters in accordance with its statutory objectives for financial matters which focuses on the exchange of disclosure between the two parties.

However, for more complex matters with overlapping child support and Centrelink issues, the expertise and technical knowledge of the Child Support Registrar in the Second Review stage is relied upon.

The availability and use of alternative dispute resolution (ADR)

Child support

Through our practice experience, we typically only see directions hearings and case conferences occur in child support matters prior to hearing.

We recommend the use of alternative dispute resolution in child support matters, particularly for change of assessment (reason 8) reviews where family violence or other client priority factors are not an

influencing factor. ADRs will be less appropriate for care disputes. The appropriateness of ADRs would need to be assessed on a case-by-case basis.

Legal Aids have concerns that these processes can result in financially unfair outcomes for vulnerable parties who are not legally represented. Legal Aids have been involved in matters where full financial disclosure is absent, and the responding party is being asked to consider agreeing to resolve a matter by consent where they have not had the opportunity to review all the relevant financial information (because it has not been disclosed by the applicant).

We recommend that if parties do not provide full financial disclosure (particularly if they are the applicant), then the application should be dismissed. If the matter does not resolve at Conference stage, the Case Managers should have the discretion to dismiss the matter if directions to disclose financial information have not been complied with prior to the hearing.

The following case study demonstrates the need for legal assistance in these matters.

CASE STUDY

The Applicant was seeking review of an Objection decision affirming a Change of Assessment (COA) decision that his child support liability be increased. The applicant was self-employed, and a COA investigation had found that his financial resources were such that it was just and equitable, for his child support liability to be increased.

There was a history of family violence and financial control perpetrated by the Applicant against the Respondent. There was also a history of the Applicant seeking to avoid his child support liability (not filing tax returns, minimising his income, and not paying child support).

Legal Aid acted for the Respondent

At the Conference both parties were invited by the Case Manager to agree a resolution reducing the Applicant's child support liability, despite the Applicant having failed to produce financial information supporting his financial statement (i.e. bank statements, payslips etc).

The matter did not resolve.

A subsequent decision by the Tribunal affirmed the original decision. It was our view that the process was flawed and the Respondent (our client) at a significant disadvantage, being asked to consider agreeing to resolve the matter in the absence of financial disclosure, and where the Applicant had a pattern of seeking to reduce his income to avoid his child support responsibilities. Full financial disclosure should be compulsory prior to or at the Conference/ADR stage, or otherwise the case dismissed prior to the ART hearing.

Further input recommendation

Given the limited timeframe in which the ART has been in operation, NLA would also like to request an opportunity to provide further feedback closer to the delivery of the review in 2026.

About National legal Aid

Who are we?

National Legal Aid (NLA) represents the directors of the eight state and territory legal aid commissions in Australia. The legal aid commissions are independent statutory bodies that provide legal assistance services to the public, with a particular focus on the needs of people who are economically and/or socially disadvantaged.

