



Committee Secretary
Senate Legal and Constitutional Affairs Committee
By email only: legcon.sen@aph.gov.au

18 March 2024

2nd Supplementary submission to Inquiry into the Administrative Review Tribunal Bill 2023 [Provisions] and related bills

1. Thank you for the opportunity to appear before the Senate Legal and Constitutional Affairs Committee Inquiry into the Administrative Review Tribunal Bill 2023 (Provisions) and related bills on Friday 15 March 2024.
2. At the hearing on Friday 15 March 2024, Senator Shoebridge extended an invitation to Economic Justice Australia to provide further case examples to support our recommendation that the Bill be amended to retain the two-tier structure for social security matters. In response to this invitation, we now provide the following case studies for the Committee's further consideration.

Economic Justice Australia's Member Centre Case Studies

Case Study 1 – From Economic Justice Australia's Opening Statement

One of Economic Justice Australia's members'¹ client contacts today with a Centrelink debt. She has had a review by an Authorised Review Officer (ARO - internal review) and the debt was affirmed. After speaking to her quickly it is apparent that she has grounds to seek waiver of the debt as the debt was caused by administrative error and she has special circumstances. Neither of these grounds were considered by the ARO. Our member centre's advice is that if she seeks first tier review today (Social Services and Child Support Division of the Commonwealth Administrative Appeals Tribunal) she will receive the hearing papers within 28 days and then can have a hearing listed in a week or so after that. The hearing can be by phone – an in-person hearing will take longer to organise. The only people on the call will be

¹ Economic Justice Australia is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. EJA members have provided people with free and independent information, advice, education and representation in the area of social security for over 30 years.

the Tribunal member and her. Centrelink will not be represented. She can explain her circumstances and the Tribunal member will ask her questions. She may get a decision on the day or a written decision within 14 days. The decision will not be published. If she disagrees with the decision, she has a further right of appeal and can call EJA's member centre back to assist with that. They then run through with her the issues she should raise at the hearing and answer any questions she has.

If the proposed changes are introduced, EJA's member centre would instead tell her that after she lodges the request for review the matter will be listed for one or more conferences, Centrelink may be represented by a lawyer, and the decision may be published. This is her only opportunity to have the decision reviewed unless the Administrative Appeals Tribunal (AAT) decision contains an error of fact or law. The client says she does not wish to go ahead as all her interactions with Centrelink have been traumatic.

Case Study 2 – Current First Tier Review- When Properly Constituted Accessible for Clients in Remote Area

EJA's member centre, Welfare Rights and Advocacy Service WA (WRAS) had a client who was an Aboriginal woman in a regional area. She had parenting payment, family tax benefit and childcare subsidy debts raised against her. She contacted WRAS for advice, and they identified that there was a technical issue and administrative error that had caused all the debts. The ARO decided to waive the family tax benefit debts but not the parenting payment and childcare subsidy debts. The decision did not explain why a different outcome had occurred. WRAS assisted their client to request a first-tier review of the AAT – she had experienced significant family and domestic violence and was involved in family court proceedings as well as a contested hearing to get a final order family violence order at the time and was very intimidated by the lawyer acting for the other party.

WRAS represented her at the first-tier review hearing which was able to be listed quickly and a decision to waive her debts was made on the day of the hearing. Centrelink then raised 2 more debts and this time she was able to lodge the appeal to the AAT and represent herself. She said that because she knew there would be no Centrelink lawyer there and she had experienced the process and understood how quick and informal the hearing was she was confident to represent herself. The new debts were waived immediately after the hearing.

Case Study 3 – Informality of First Tier Review – Deciding Factor in Client Lodging a Request for Review

EJA's member centre's client escaping family and domestic violence had a large debt raised on the basis that she had received payments as a single person while she was partnered. She had asked for review of the debt as she was in severe financial hardship, but it was affirmed by the ARO. When she sought advice from EJA's member centre, she disclosed family and domestic violence for the first time, and was advised that EJA's member centre could lodge at the first-tier review level of the AAT and provide evidence that the debt should be set aside on the ground that she should not be considered a member of a couple. She was resistant to asking for a review which she assumed would be like 'going to court'. Once it was explained how first tier review operates and that there would be no one there

from Centrelink she agreed to seek review of the decision. A decision was made setting aside the debt.

Case Study 4 – Importance of Two-Tier Review Structure Where Client Only Understands Decision and Gets Advice After First Tier Review Stage

A client applied for Disability Support Pension, but the claim was rejected. Both the ARO and first tier level of review affirmed the decision, but the first-tier decision maker explained each of the qualification criteria and why the claim was rejected. The client sought legal advice, and one of EJA's member centres were able to get a further medical report and provide submissions contending that the existing evidence met the requirements. The second-tier decision maker agreed, and the client's claim was granted.

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