

21 October 2024

Ms Lyn Beverley
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretary

I refer to your letter of 14 October 2024 providing an opportunity to respond to comments in Mr Bob Buckley's submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Administrative Review Tribunal (Miscellaneous Measures) Bill 2024.

In his submission, Mr Buckley raises a number of matters relating to the National Disability Insurance Scheme, in particular about the conduct of the agency administering that scheme (the National Disability Insurance Agency (NDIA)), and the conduct and outcome of reviews of NDIA decisions by the former Administrative Appeals Tribunal (AAT). Mr Buckley also refers to correspondence to the AAT to which he did not receive a reply.

I note Mr Buckley has previously raised a range of matters with the AAT, and acknowledge his concern to ensure the best outcomes for NDIS participants, and in particular children with autism. I also acknowledge that seeking review of a government decision about matters of such significance to their lives can be stressful for both applicants and their families.

My response to Mr Buckley's submission focuses on matters relating to the operation of the Administrative Review Tribunal (the Tribunal) and the former AAT, excluding the outcome of applications for review, as these decisions are made by independent members and it would not be appropriate for me to comment on them.

Response to correspondence

Mr Buckley states in his submission that he wrote to the then AAT President, the Hon Justice Fiona Meagher on 15 November 2022 about delays in finalising NDIS review applications and did not receive a reply. I note that our records indicate the AAT responded to this and earlier correspondence from Mr Buckley in a single letter dated 6 December 2022.

The review process

Mr Buckley indicates that to succeed in relation to matters involving autistic children, the Tribunal will need to radically improve on the AAT's performance; notably the Tribunal needs to be timely, fair and respectful of applicants. He also provides examples of AAT decisions which he considers support his view.

Under the *Administrative Review Tribunal Act 2024* (the Act), the Tribunal must pursue the objective of providing an independent mechanism of review that, amongst other things:

- is fair and just
- ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before it permits
- is accessible and responsive to the diverse needs of parties to proceedings.

In a proceeding, the Act requires the Tribunal to act with as little formality and technicality as a proper consideration of the matters before it permits. As far as practicable, the Tribunal must also conduct each proceeding in a way that is accessible to those before it. This requires consideration of each party, their circumstances and what support they need to meaningfully apply for and participate in a review (e.g. an interpreter, physical accessibility arrangements, a litigation supporter, or virtual hearings). Further, the President of the Tribunal can make practice directions to promote accessibility and responsiveness to parties to proceedings.

In the 2024–25 Budget, \$9.6 million was provided over the forward estimates, and \$1.0 million per year ongoing from 2028–29, to assist the Tribunal to improve access to our services. This funding includes \$2.5 million over 2 years for a User Experience and Accessibility Team to improve accessibility for all users. We have published our [*Commitment to Accessibility and Inclusion*](#), which was informed by consultation with a broad range of stakeholders and is the first step in our Accessibility and Inclusion Framework. It aligns with the Act and the objectives of the Tribunal. The *Commitment to Accessibility and Inclusion* will guide the development of a strategy and a supporting program of work, which will be progressed shortly.

The Act provides the Tribunal with powers and functions to support timely, informal and inexpensive decision making, including:

- a new structure that groups cases into jurisdictional areas and lists, which provides more harmonised procedures in the different jurisdictions of the Tribunal, and more flexible allocation of cases and resources
- powers to give directions about the Tribunal's procedures and consequences for failure to comply with them
- circumstances where a matter can be resolved without a hearing
- the ability for an agency party to elect not to participate in the proceeding, and powers for the Tribunal to order them to participate if necessary
- powers to refer matters to dispute resolution and to make decisions by agreement of the parties
- the ability for certain powers and functions to be performed by authorised persons within the Tribunal, with appropriate safeguards.

With the large number of review applications transferred from the AAT, the timely processing of applications will be an ongoing challenge for the Tribunal. As part of our commitment to pursuing a review mechanism that is timely, we are also implementing new initiatives focussed on the management of our substantial caseload, which include an Annual Whole-of-Tribunal Caseload Strategy and a National Listing Model. The Tribunal also has a new sustainable, demand-driven funding arrangement to support timely decision making across all its jurisdictions. This will allow us to allocate member effort and other resources more flexibly, ensuring they are placed where the need is greatest.

Vision for the Tribunal

Both the President and I are committed to the Tribunal developing a reputation for excellence and we will be working hard to achieve this. We want the Tribunal to be known as one which has efficient, transparent and user-friendly processes. A tribunal which has empathetic staff who are committed to assisting parties who need help using our services, and experienced and dedicated members who conduct fair and inclusive hearings promptly after applications for review are lodged, and who make high-quality and easy to understand decisions within a short time after a hearing concludes.

We will welcome public and judicial scrutiny as well as feedback from our users, as this assists us to enhance our delivery of merits review.

Yours sincerely

Michael Hawkins AM

Chief Executive Officer and Principal Registrar