



# Administrative Review Tribunal replaces Administrative Appeals Tribunal

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In 2022, the Australian federal government recognised the need to effect a major overhaul of the system of review of administrative decisions in Australia. On 14 October 2024, the Administrative Review Tribunal (AAT) ceased to exist and was replaced by the Administrative Review Tribunal (ART).

In this blog, we take a look at:

a brief history of the old AAT;

why the federal government decided there was a need to abolish the AAT and set up a new review body, the ART; and

the more important changes that have been put in place with the establishment of the new ART.

## Brief history of the Administrative Appeals Tribunal (AAT)

The AAT was established by the *Administrative Appeals Tribunal Act 1975* and began operation in 1976. It was a Tribunal (as opposed to a Court of law) set up to conduct independent 'merit review' of administrative decisions made under a number of commonwealth laws.

The AAT did not have its own jurisdiction to hear appeals per se, but rather, the various individual statutes (Acts of Parliament) granted the AAT jurisdiction to review decisions subject to the operation of that particular statute. Over 400 separate Acts of Parliament have conferred jurisdiction on the ART (previously the AAT).

The AAT consisted of a President and 'members' who were appointed as:

Deputy Presidents;

Senior Members; or

Members.

The President had to be a judge of the Federal Court. Appointments of Deputy Presidents, Senior Members or Members were purely a political affair of the government of the day. There were some basic criteria, but these were usually easily met by the particular political appointee.

## Purpose of the Administrative Review Tribunal (previously the AAT)

The ART makes what are called 'merit-based' decisions. In a nutshell, this means that it considers all relevant material (facts, evidence, etc) and makes what it considers is the 'correct or preferable decision' by applying the appropriate/applicable laws and any relevant procedures in accordance with the relevant Act.

The ART is able to consider all material that was before the original decision-maker but is also able to receive and consider new material/evidence which comes to light after the relevant decision was made. For example, in [Comcare matters \(the federal workers' compensation scheme\)](#), Applicants and Comcare may obtain additional evidence (usually in the form of specialist medical reports) to place before the Tribunal in support of their respective positions.

## Why was the AAT replaced with the ART?

The 'Robodebt' debacle (which resulted in the [Royal Commission into the Robodebt Scheme](#)) brought the less-than-adequate state of affairs which existed in the AAT to a head, and in early 2022, the newly elected Albanese Government declared it was to abolish the AAT and replace it with a new Tribunal.

A perception that the AAT had become a place for friends of the political party in power at the time (through the appointment of members) was also noted as a reason for an overhaul of the AAT. The Albanese Government recognised this as something that occurred when both major parties were in power since the inception of the AAT in 1976. The government acknowledged that a more transparent and independent process for the selection of members needed to be put in place.

As part of the process of installing the new ART, all members of the old AAT were required to apply for positions under the new procedure provided by the *Administrative Review Tribunal Act 2024*. The new President of the ART, Justice Kyrou, noted that of the approximately 290 members of the old AAT who applied to become members of the ART, a substantial number were successful.

# Process for appointing members to the Administrative Review Tribunal (ART)

Any applicant seeking to be appointed as a member of the ART, including Deputy Presidents and Senior Members, are to be initially assessed as being 'suitable' candidates for the position.

This assessment is undertaken by an Independent Panel established under the new legislation. The panel reviews applications and then provides the federal government (the Attorney General) with a 'shortlist' of names, noting each as either suitable for appointment or not. It remains for the Attorney General, as the duly appointed representative of the executive arm of government, to then appoint members from this shortlist.

Whilst a substantial number of original AAT members who re-applied to be members of the ART were successful, the President recently noted that quite a few were not declared 'suitable for appointment'.

## Establishment of Tribunal Advisory Committees to the ART

An important development of the new ART is the introduction of Tribunal Advisory Committees. Each area of review will have a specific committee that will oversee its particular jurisdiction (e.g. migration, compensation, NDIS, etc) and will have a Jurisdictional Area Leader appointed.

Time will tell how effective these committees will be, but the theory is that they're charged with the task of maintaining a vigil over their respective jurisdictions. They will be proactive in terms of highlighting (for any relevant governmental department), issues which are presenting in the ART that they consider need to be addressed.

This is in response to what happened with the 'Robodebt debacle'. The AAT dealt with many Robodebt issues (rectifying them), but due to privacy restrictions was not able to either publish its decisions. It also did not have the necessary legislative power to alert the then Morrison Government of the extent of the debacle. Hundreds of applications were being dealt with by the then AAT, essentially declaring the debts void in many instances. Had the new laws/rules of the ART been in place at the time, the then President would have been able to formally notify the government of the systemic problem it was seeing and recommend measures for the government's consideration.

## Establishment of a Guidance and Appeals Panel to the ART

Another important development with the introduction of the new Administrative Review Tribunal is the establishment of a Guidance and Appeals Panel. This panel will be constituted by the ART President and two other members (either a Deputy President and a Member or 2 Members).

The Panel is probably one of the more important developments in the move to the new system. It provides the President of the ART with the ability to decide particular cases that involve issues that appear to have a wider impact on administrative decision-making. It will also be able to decide cases which were previously decided by another Member of the ART, that it considers may contain errors which it considers affected the original decision.

This is a brand new development for administrative decision review in Australia, and can only result in more robust decision making and less appeals to the Federal Court.

## What can we expect from the Administrative Review Tribunal?

As of the date of publishing this blog (late October 2024), the new ART has been operational for about two weeks. The above observations about changes implemented with the introduction of the ART are based on very limited information. We will be providing updates to either correct and/or clarify commentary about the ART as decisions and updates are provided by the Tribunal itself.

But, as 'D:Ream' would sing, 'things can only get better' from what was in place with the old AAT. So, we continue to watch this space.

## Are you looking to appeal your Comcare decision to the Administrative Review Tribunal (ART)?

We've worked with many injured workers who have received adverse decisions related to their Comcare workers' compensation claims. Often, these decisions can be appealed to the ART. We have significant expertise and experience with appealing Comcare decisions. We offer free initial advice and run claims on a 'no win, no fee' basis. So, it costs you nothing to find out where you stand.

## More reading on Comcare workers' compensation

[What to do if Comcare ceases your worker's compensation claim](#)

[Loss of wages in Comcare claims - how are they calculated?](#)

[AAT decides Australia Post must pay workers' compensation to bullied employee](#)

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