

Senate Legal and Constitutional Affairs Legislation Committee

Public Hearing – 30 April 2024

ANSWER TO QUESTION ON NOTICE

Department of Social Services

Topic: Legal and Constitutional Affairs Legislation Committee - Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2024 /Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Bill 2024/Administrative

Question reference number: IQ24-000026

Question asked by: David Shoebridge

Type of Question: Spoken. **Hansard Page/s:**

Date set by the Committee for the return of answer: 06 May 2024

Question:

Senator SHOEBRIDGE: Can I ask you to take that on notice. I think it's critical that we get your understanding of how these arrangements are going to work.

Ms Worswick: Yes.

Answer:

The amendments in part 5A of the Administrative Review Tribunal Bill 2024 (ART Bill) reinstate an automatic right to a second review by the Administrative Review Tribunal (ART) for social security, family assistance, paid parental leave, family household support and limited child support matters. The second review is designed to reflect the current arrangements in the Administrative Appeals Tribunal (AAT), with key differences being:

- individuals can appeal a decision directly from the ART first review to the Federal Court on a question of law without having to first obtain an ART second review decision;
- decision-makers (usually the Secretary of the Department of Social Services or the Child Support Registrar) may be required to participate in both ART first review and ART second review matters, and there will also be access to alternative dispute resolution and single party case conferencing at both ART first review and ART second review; and
- the privacy settings for hearings at first review would be maintained at second review.

Individuals with an automatic right to second review will not have the ability to apply to the guidance and appeals panel (GAP) for review. However, the President of the ART would retain a power to refer a matter to the guidance and appeals panel (at either first or second review) where it raises a matter of significance.

The Department of Social Services, in consultation with Services Australia, is planning for the introduction of these arrangements noting that the Tribunal's practice directions will be a key factor in shaping how the Tribunal's powers and procedures will be exercised. We note that the way in which Tribunal members make use of the ART's powers and procedures will influence how social security reviews are conducted and the extent to which existing practices may need to change. For example, the Bill provides Tribunal members with the ability to order a decision-maker to participate in ART first review where it will assist to resolve a matter. As a result, the Portfolio is preparing for an increase in the Secretary's participation in matters before the ART, particularly in alternative dispute resolution processes.

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Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Bill 2024
Administrative

Question reference number: IQ24-000027

Question asked by: David Shoebridge

Type of Question: Spoken. **Hansard Page/s:**

Date set by the Committee for the return of answer: 06 May 2024

Question:

Senator SHOEBRIDGE: Can you also take on notice the extent to which your department was a partner with the Attorney-General's in drafting these amendments, for both tiers. I know you've concentrated on tier 1, and I appreciate that, but could your answer address the whole of—I think it's part 5A—the two-tier review, as amended?

Ms Worswick: Yes.

Answer:

The Social Services Portfolio supported the proposal to retain two reviews for social security, family assistance, child support, paid parental leave and family household support matters so that the new Tribunal could continue to be accessible and user-friendly for this vulnerable cohort who prefer to present their case in an informal way without the department being present. The Attorney-General's Department closely consulted the Portfolio when drafting the amendments set out in part 5A. Consultation on the amendments included reviewing proposed drafting instructions and draft provisions, and providing feedback on the proposed approach.