



Administrative  
Appeals Tribunal

# The Independent Review of the National Legal Assistance Partnership (2020–25)

Submission from the Administrative Appeals  
Tribunal

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## Introduction

The Administrative Appeals Tribunal (**AAT**) welcomes the opportunity to provide a submission to The Independent Review of the National Legal Assistance Partnership 2020–25 (**NLAP**). The submission provides information about:

- the AAT's role in providing external merits review of administrative decisions made under Commonwealth laws
- representation in the AAT, including available information about types of representation
- how the AAT assists self-represented applicants and partners with legal assistance providers, and the availability of Commonwealth legal assistance schemes, and
- observations about areas of unmet legal needs in the AAT.

## About the AAT

The AAT gives individuals and organisations the opportunity to seek an independent review of decisions made under more than 400 Commonwealth Acts and legislative instruments.

The role of the AAT is to review a decision 'on the merits'. It considers afresh the relevant facts, law and policy relating to the decision. The AAT considers not only the information that was available to the original decision-maker, but also any new information it is given during the review process. The AAT has the power to:

- affirm, or agree with, the decision under review
- vary the decision
- set aside the decision and either substitute a different decision or remit the matter to the decision-maker for reconsideration with any directions or recommendations of the Tribunal.<sup>1</sup>

The AAT does not determine whether the original decision-maker made an error based on the information before them. Rather, it is making a new decision with the benefit of all of the available evidence and using processes which generally differ from those used by the original decision-maker.

Applications made to the AAT are managed in one of 9 divisions:

- Freedom of Information Division (**FOI Division**)
- General Division
- Migration & Refugee Division (**M&R Division**)
- National Disability Insurance Scheme Division (**NDIS Division**)
- Security Division
- Small Business Taxation Division
- Social Services & Child Support Division (**SS&CS Division**)
- Taxation and Commercial Division, and
- Veterans' Appeals Division.

The AAT's funding is comprised of a single, annual appropriation with an adjustable component which responds to variations in the number of cases finalised in the M&R Division. The AAT does not receive Commonwealth funding under the NLAP.

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<sup>1</sup> Section 43 of the *Administrative Appeals Tribunal Act 1975* (**AAT Act**).

## Representation in the AAT

### Legislative framework

Parties to reviews in the AAT may appoint a person to represent them and act on their behalf in relation to the review.<sup>2</sup> However, there are some legislative restrictions in relation to representation at a hearing.

The AAT Act provides that, in most divisions, a party is entitled to be represented by another person at the hearing.<sup>3</sup> Any other person required to appear before the Tribunal, such as in answer to a summons, may be represented with the Tribunal's permission.<sup>4</sup>

In the M&R Division, an applicant may have another person present at the hearing to assist them but is not entitled to be represented at the hearing.<sup>5</sup> The Tribunal may, however, invite or permit a representative to present arguments or otherwise address the Tribunal.

In the SS&CS Division, a party (other than the agency party) may with the Tribunal's permission be represented by another person at the hearing.<sup>6</sup> When deciding whether to grant permission, the Tribunal must have regard to its objectives, the wishes of the parties and the need to protect their privacy.<sup>7</sup>

### Representation and advocacy

The types of representation vary across different caseloads in the AAT and include lawyers, accountants, advocates, migration agents and tax agents. Parties may be represented by a family member and, in divisions other than M&R Division, by a friend.

In relation to legal representation, parties may engage a private lawyer or be represented by a lawyer from a legal aid commission or community legal centre. In some caseloads, including veterans' appeals, a private lawyer may be funded by legal aid.

In the M&RD, applicants may be assisted by registered migration agents who for a fee can represent them or help them prepare their case. Some migration agents work for voluntary organisations and may provide assistance to applicants free of charge.

In certain caseloads, applicants have the opportunity to access assistance and representation through specialised advocates who are part of government sector-led arrangements.

In the NDIS Division, applicants may be supported by government-funded independent disability advocates under the NDIS Appeals Program. Support provided by disability advocates is outlined on the Department of Social Services [website](#)<sup>8</sup> and includes helping to prepare documents and attending AAT conferences and hearings to assist applicants present their case.

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<sup>2</sup> In the M&R Division, immigration assistance, which includes representing an applicant before the AAT, can only be provided by certain persons, including lawyers and registered migration agents.

<sup>3</sup> Section 32(1) of the AAT Act.

<sup>4</sup> Section 32(4) of the AAT Act.

<sup>5</sup> Sections 366A and 427(6)(a) of the *Migration Act 1958 (Migration Act)*.

<sup>6</sup> Section 32(2) of the AAT Act.

<sup>7</sup> Section 32(3) of the AAT Act.

<sup>8</sup> Australian Government, Department of Social Services, NDIS Appeals Program, 30 June 2023, <https://www.dss.gov.au/disability-and-carers/programs-services/for-people-with-disability/ndis-appeals>.

In the Veterans' Appeals Division, applicants may be assisted by trained advocates who have undertaken nationally recognised training to provide support and representation at Tribunal hearings. Advocates are generally volunteers who work for one or more ex-service organisations and are included on a national Advocacy Register facilitated by the Department of Veterans' Affairs.

A significant proportion of applicants in the AAT are self-represented or represented by family or friends, and not assisted by a lawyer, advocate or other professional representative.

Tables 1-3 below set out information about representation in the AAT for the financial years 2020–21, 2021–22 and 2022–23. The information has been collected across 3 legacy case management systems that reflect varied approaches to representation across caseloads. Variation may also occur about how representation is identified and captured by staff in the case management systems. The information is therefore not easily comparable across caseloads. However, it does illustrate some general themes about representation in the AAT:

- jurisdictions which do not involve the decision-making agency participating in the proceedings, such as in the M&R Division and the SS&CS Division, reflect high proportions of self-represented applicants
- caseloads such as NDIS and veterans' appeals, where there are specialised advocacy services available, have higher proportions of advocate representation
- caseloads where the AAT can order that a successful applicant's costs be paid and grants of legal aid are available, such as workers' compensation and veterans' appeals, reflect a higher proportion of representation by a private solicitor/legal firm.

**Table 1 – Representation of parties (other than decision-makers) in applications finalised, 2020–21 – Number by representation type<sup>a</sup>**

DIVISION/CASELOAD	LEGAL REPRESENTATIVE <sup>b</sup>									TOTAL <sup>d</sup>	
	Barrister	Community Legal Centre	Legal Aid	Private Solicitor/ Legal Firm	Lawyer/ Solicitor	Legal, Legal Other	Legal practitioner	ADVOCATE OR AGENT <sup>c</sup>	FRIEND, RELATIVE OR OTHER		SELF-REPRESENTED
<b>Freedom of Information</b>	1	2	0	18	-	-	-	3	4	26	54
<b>General</b>	33	60	62	1,634	-	-	-	313	478	2,783	5,363
<i>Australian citizenship</i>	2	4	3	99	-	-	-	134	146	331	719
<i>Centrelink (2<sup>nd</sup> review)</i>	1	33	47	66	-	-	-	72	225	1,498	1,942
<i>Visa-related decisions relating to character</i>	11	22	11	159	-	-	-	54	24	179	460
<i>Workers' compensation</i>	0	0	0	1,017	-	-	-	9	20	225	1,271
<i>Other</i>	19	1	1	293	-	-	-	44	63	550	971
<b>Migration and Refugee</b>	-	-	-	-	-	-	-	13,093	506	9,647	23,246
<i>Migration</i>	-	-	-	-	-	-	-	12,054	473	5,161	17,688
<i>Refugee</i>	-	-	-	-	-	-	-	1,039	33	4,486	5,558
<b>National Disability Insurance Scheme</b>	0	69	235	21	-	-	-	716	357	356	1,754
<b>Security</b>	0	0	0	2	-	-	-	0	0	1	3
<b>Small Business Taxation</b>	1	0	0	106	-	-	-	92	19	201	419
<b>Social Services and Child Support</b>	-	-	-	-	64	254	-	460	1,338	12,831	14,947
<i>Centrelink (1<sup>st</sup> review)</i>	-	-	-	-	36	154	-	436	1,256	8,819	10,701
<i>Child support</i>	-	-	-	-	28	100	-	23	55	3,832	4,038
<i>Paid parental leave</i>	-	-	-	-	0	0	-	1	27	180	208
<b>Taxation and Commercial</b>	7	0	0	511	-	-	-	98	22	275	913
<i>Taxation</i>	7	0	0	407	-	-	-	96	22	217	749
<i>Other</i>	0	0	0	104	-	-	-	2	0	58	164
<b>Veterans' Appeals</b>	0	0	5	60	-	-	-	54	10	86	215
<b>TOTAL</b>	42	131	302	2,352	64	254	195	14,634	2,734	26,206	46,914

<sup>a</sup> These figures relate to representation status at the time the application was finalised. Figures may differ slightly from other reports published by the AAT due to differing run dates for the reports.

<sup>b</sup> 'Legal representative' types: in the FOI, General, NDIS, Security, Small Business Taxation, and Taxation and Commercial Divisions, they are categorised as 'Barrister', 'Community Legal Centre', 'Legal Aid', and 'Private Solicitor/ Legal Firm'; and in the SS&CS Division they are categorised as 'Lawyer/ Solicitor', 'Legal' and 'Legal – Other'. For the M&R Division, a separate 'Legal Practitioner' category was only created during 2021–22 when lawyers were no longer required to be registered migration agents.

<sup>c</sup> This category includes accountants and financial advisors, disability advocates, migration agents, veterans' advocates, welfare advocates and other non-legal advocacy organisations. For the M&R Division, this category also includes lawyers who were registered migration agents.

<sup>d</sup> A single application can involve more than one party other than the decision-maker and a single party may have more than one representative. As a result, the total is higher than the number of finalised applications.

**Table 2 – Representation of parties (other than decision-makers) in applications finalised, 2021–22  
– Number by representation type<sup>a</sup>**

DIVISION/CASELOAD	LEGAL REPRESENTATIVE <sup>b</sup>										TOTAL <sup>d</sup>
	Barrister	Community Legal Centre	Legal Aid	Private Solicitor/ Legal Firm	Lawyer/ Solicitor	Legal, Legal Other	Legal practitioner	ADVOCATE OR AGENT <sup>c</sup>	FRIEND, RELATIVE OR OTHER	SELF-REPRESENTED	
<b>Freedom of Information</b>	2	0	0	11	-	-	-	5	3	56	77
<b>General</b>	26	55	60	1,430	-	-	-	233	423	2,442	4,669
<i>Australian citizenship</i>	4	7	4	120	-	-	-	88	121	351	695
<i>Centrelink (2<sup>nd</sup> review)</i>	8	32	41	46	-	-	-	53	208	1,203	1,591
<i>Visa-related decisions relating to character</i>	9	13	15	142	-	-	-	49	11	124	363
<i>Workers' compensation</i>	2	1	0	1,005	-	-	-	7	39	215	1,269
<i>Other</i>	3	2	0	117	-	-	-	36	44	549	751
<b>Migration and Refugee</b>	-	-	-	-	-	-	-	11,340	638	8,914	20,892
<i>Migration</i>	-	-	-	-	-	-	-	10,231	595	4,247	15,073
<i>Refugee</i>	-	-	-	-	-	-	-	1,109	43	4,667	5,819
<b>National Disability Insurance Scheme</b>	4	102	289	90	-	-	-	1,392	1,080	916	3,873
<b>Security</b>	0	0	0	6	-	-	-	0	0	1	7
<b>Small Business Taxation</b>	2	0	0	104	-	-	-	47	5	140	298
<b>Social Services and Child Support</b>	-	-	-	-	55	238	-	365	1,115	11,979	13,752
<i>Centrelink (1<sup>st</sup> review)</i>	-	-	-	-	32	142	-	355	1,047	8,098	9,674
<i>Child support</i>	-	-	-	-	23	95	-	10	49	3,723	3,900
<i>Paid parental leave</i>	-	-	-	-	0	1	-	0	19	158	178
<b>Taxation and Commercial</b>	16	0	0	334	-	-	-	113	18	212	693
<i>Taxation</i>	13	0	0	266	-	-	-	106	14	157	556
<i>Other</i>	3	0	0	68	-	-	-	7	4	55	137
<b>Veterans' Appeals</b>	1	0	5	53	-	-	-	57	4	81	201
<b>TOTAL</b>	51	157	354	2,028	55	238	1,352	12,200	3,286	24,741	44,462

<sup>a</sup> These figures relate to representation status at the time the application was finalised. Figures may differ slightly from other reports published by the AAT due to differing run dates for the reports.

<sup>b</sup> 'Legal representative' types: in the FOI, General, NDIS, Security, Small Business Taxation, and Taxation and Commercial Divisions, they are categorised as 'Barrister', 'Community Legal Centre', 'Legal Aid', and 'Private Solicitor/ Legal Firm'; and in the SS&CS Division, they are categorised as 'Lawyer/ Solicitor', 'Legal' and 'Legal – Other'. For the M&R Division, a separate 'Legal Practitioner' category was only created during 2021–22 when lawyers were no longer required to be registered migration agents. Data for that category is not available for all applications finalised in 2021–22.

<sup>c</sup> This category includes accountants and financial advisors, disability advocates, migration agents, veterans' advocates, welfare advocates and other non-legal advocacy organisations. For the M&R Division, this category also includes lawyers for this financial year.

<sup>d</sup> A single application can involve more than one party other than the decision-maker and a single party may have more than one representative. As a result, the total is higher than the number of finalised applications.

**Table 3 – Representation of parties (other than decision-makers) in applications finalised, 2022–23 – Number by representation type<sup>a</sup>**

DIVISION/CASELOAD	LEGAL REPRESENTATIVE <sup>b</sup>										
	Barrister	Community Legal Centre	Legal Aid	Private Solicitor/ Legal Firm	Lawyer/ Solicitor	Legal, Legal Other	Legal practitioner	ADVOCATE OR AGENT <sup>c</sup>	FRIEND, RELATIVE OR OTHER	SELF-REPRESENTED	TOTAL <sup>d</sup>
<b>Freedom of Information</b>	0	0	0	27	-	-	-	6	5	38	76
<b>General</b>	14	52	48	1,508	-	-	-	237	343	2,268	4,470
<i>Australian citizenship</i>	0	3	4	101	-	-	-	58	106	303	575
<i>Centrelink (2<sup>nd</sup> review)</i>	0	19	11	39	-	-	-	53	148	1,007	1,277
<i>Visa-related decisions relating to character</i>	13	26	28	212	-	-	-	62	13	172	526
<i>Workers' compensation</i>	0	0	0	1,067	-	-	-	6	15	180	1,268
<i>Other</i>	1	4	5	89	-	-	-	58	61	606	824
<b>Migration and Refugee</b>	-	-	-	-	-	-	2,285	8,757	614	8,986	20,642
<i>Migration</i>	-	-	-	-	-	-	1,776	7,545	540	4,072	13,933
<i>Refugee</i>	-	-	-	-	-	-	509	1,212	74	4,914	6,709
<b>National Disability Insurance Scheme</b>	0	128	333	160	-	-	-	2,313	1,858	1,609	6,401
<b>Security</b>	0	0	0	5	-	-	-	0	0	3	8
<b>Small Business Taxation</b>	6	0	0	47	-	-	-	35	7	103	198
<b>Social Services and Child Support</b>	-	-	-	-	54	237	-	268	1,076	11,281	12,916
<i>Centrelink (1<sup>st</sup> review)</i>	-	-	-	-	30	139	-	262	1,009	7,584	9,024
<i>Child support</i>	-	-	-	-	24	96	-	6	42	3,504	3,672
<i>Paid parental leave</i>	-	-	-	-	0	2	-	0	25	193	220
<b>Taxation and Commercial</b>	7	0	0	257	-	-	-	76	24	156	520
<i>Taxation</i>	7	0	0	190	-	-	-	69	22	126	414
<i>Other</i>	0	0	0	67	-	-	-	7	2	30	106
<b>Veterans' Appeals</b>	0	0	2	54	-	-	-	35	7	82	180
<b>TOTAL</b>	27	180	383	2,058	54	237	2,285	11,727	3,934	24,526	45,411

<sup>a</sup> These figures relate to representation status at the time the application was finalised. Figures may differ slightly from other reports published by the AAT due to differing run dates for the reports.

<sup>b</sup> 'Legal representative' types: in the FOI, General, NDIS, Security, Small Business Taxation, and Taxation and Commercial Divisions, they are categorised as 'Barrister', 'Community Legal Centre', 'Legal Aid', and 'Private Solicitor/ Legal Firm'; in the M&R Division, they are categorised as 'Legal Practitioner'; and in the SS&CS Division, they are categorised as 'Lawyer/ Solicitor', 'Legal' and 'Legal – Other'.

<sup>c</sup> This category includes accountants and financial advisors, disability advocates, migration agents, veterans' advocates, welfare advocates and other non-legal advocacy organisations.

<sup>d</sup> A single application can involve more than one party other than the decision-maker and a single party may have more than one representative. As a result, the total is higher than the number of finalised applications.



## Fee reduction/waiver where an applicant receives legal aid

Fees relating to applying for a review are prescribed in:

- Part 6 of the *Administrative Appeals Tribunal Regulation 2015 (AAT Regulation 2015)* for divisions other than the M&R Division, and
- Part 4 of the *Migration Regulations 1994* for the M&R Division.

They are subject to annually indexed increases.

Applicants are exempt from having to pay a fee in relation to certain types of cases.<sup>9</sup>

Where an applicant is required to pay a fee in a division other than the M&R Division, the AAT may reduce the fee to \$100 in a range of circumstances, including where:

- the applicant has been granted legal aid under a legal aid scheme or service established under Commonwealth or State law or approved by the Attorney-General<sup>10</sup>
- the applicant is the holder of a concession card, is in detention, is a minor, is in receipt of youth allowance or Austudy or benefits under the ABSTUDY scheme<sup>11</sup>, or
- the Registrar determines that payment of the full fee would cause, or has caused, financial hardship to the applicant.<sup>12</sup>

In the M&R Division, where a fee is payable at the time of application, the fee can be reduced by 50% if the Registrar decides that paying the fee would cause severe financial hardship.<sup>13</sup>

## Power to award costs for legal representation

The AAT does not have a general power to award costs and the usual position is that parties to a review must bear their own costs. However, there are limited exceptions where the AAT has the power to order the decision-maker to pay the costs incurred by a claimant who has received a more favourable decision in:

- reviews of military compensation and workers' compensation decisions<sup>14</sup>
- certain reviews undertaken in the Security Division.<sup>15</sup>

In certain types of cases, the AAT may make a recommendation to the Attorney-General that an applicant's costs be paid by the Commonwealth, including under the *Freedom of Information Act 1982* where the person is successful, or substantially successful<sup>[OBJ]</sup>, in their application for review.<sup>16</sup>

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<sup>9</sup> These include Centrelink decisions, first review in the SS&CS Division of child support decisions, military compensation and veterans' entitlements decisions, certain migration decisions where the applicant is placed in immigration detention, NDIS decisions, refugee decisions where the applicant is successful on review and workers' compensation decisions.

<sup>10</sup> Regulation 20(3) and s 21(a) of the AAT Regulation 2015.

<sup>11</sup> Regulation 21(b)–(g) of the AAT Regulation 2015.

<sup>12</sup> Regulation 21(h) of the AAT Regulation 2015.

<sup>13</sup> Regulation 4.13(4) of the *Migration Regulations 1994*.

<sup>14</sup> See s 357 of the *Military Rehabilitation and Compensation Act 2004*, s 67 of the *Safety, Rehabilitation and Compensation Act 1988*, s 67 of the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* and s 92 of the *Seafarers Rehabilitation and Compensation Act 1992*.

<sup>15</sup> These include applications for review of security assessments made by the Australian Security Intelligence Organisation: see s 69B of the AAT Act.

<sup>16</sup> See s 66 of the *Freedom of Information Act 1982*.

## Assisting self-represented applicants

The AAT must pursue its objective of providing review that, amongst other things, is accessible and informal.<sup>17</sup> Regardless of whether a party is represented by another person or self-represented, the AAT assists parties to participate in review proceedings through several different means, including by providing:

- accessible information products
- outreach and referral to legal assistance and support services
- opportunity for early dispute resolution, and
- a flexible approach to review procedures, including at hearing.

The AAT's procedures are intended to give an applicant, and any other party to a review, a reasonable opportunity to participate in the review and present their case.

### Information about AAT processes

The AAT offers a range of information on its [website](#) about its procedures and what parties can expect during review proceedings. Written materials include guides and fact sheets in plain English and in a number of community languages, a series of videos available in English and a number of community languages, an accessible video with Auslan interpretation and subtitles/closed captions.

### Outreach

Following lodgement, applications are processed by registry staff, which often includes making initial contact with the applicant either by responding to an inquiry, by making proactive contact in some types of cases to explain Tribunal processes or identifying where support such as interpreter services or other assistance may be needed. At this point, while not providing legal advice, staff may also provide an applicant with information about the availability of free legal assistance services, including if referral to a legal advice clinic conducted by legal aid commissions and community legal centres is available for their type of case.

Other than in the M&R Division, an application may then be referred for an alternative dispute resolution (ADR) process, or a directions hearing to clarify the issues in dispute and prepare for hearing.

### Opportunity for early dispute resolution

The main type of ADR used in the Tribunal is conferencing where AAT staff known as conference registrars assist the parties and/or their representatives to clarify and narrow the issues in dispute, identify relevant evidence and, where possible, reach an agreed outcome. Some applications may also be referred to conciliation.

ADR processes provide a forum to explore issues in dispute which is less formal for many parties than a hearing before a Tribunal member. Where an agreed outcome is not reached, the refining of issues and case preparation undertaken as part of the ADR process may assist parties to prepare for hearing and shorten the duration of a hearing.

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<sup>17</sup> Section 2A of the AAT Act.

## Procedural flexibility, including at hearing

If an application is not resolved through the pre-hearing process, it will generally be referred to a member for further case management and hearing.

The hearing gives the parties an opportunity to provide evidence and present arguments about the decision under review. It also allows the AAT to ensure that all issues arising in the review are addressed. The Tribunal may be constituted by up to 3 members,<sup>18</sup> but most reviews are conducted by a single member. When the AAT identifies that a review involves novel legal questions or complex issues, the President of the AAT may seek to have a judicial Deputy President, generally a judge of the Federal Court of Australia, or a non-judicial Deputy President constitute the Tribunal.

## Appealing from an AAT decision

There are 3 primary pathways for appealing an AAT decision.<sup>19</sup> A party may appeal to the Federal Court of Australia on a question of law from most AAT decisions.<sup>20</sup> An appeal may be made to the Federal Circuit and Family Court of Australia (Division 2) from decisions of the Tribunal in relation to child support first reviews.<sup>21</sup> For decisions relating to visas under the Migration Act, an application for judicial review must be made to the Federal Circuit and Family Court (Division 2).<sup>22</sup>

Table 4 below identifies the number of appeals lodged by caseload across 2020–21, 2021–22 and 2022–23 and the proportion this represents against the total number of appealable AAT decisions within each respective caseload.

The proportion of appeals against decisions of the AAT in the federal courts has remained relatively stable during the last 3 financial years with a higher percentage of appeals lodged consistently occurring within the following caseloads:

- visa-related decision relating to character
- migration, and
- refugee.

**Table 4 – Court appeals lodged and finalised against decisions of the AAT – By division and major caseloads within divisions, 2020–21, 2021–22 to 2022–2023**

DIVISION/CASELOAD	COURT APPEALS LODGED					
	Lodged <sup>a</sup>		Lodged <sup>a</sup>		Lodged <sup>a</sup>	
	Proportion of total AAT decisions <sup>b</sup>		Proportion of total AAT decisions <sup>b</sup>		Proportion of total AAT decisions <sup>b</sup>	
	2020–21	2021–22	2020–21	2021–22	2020–21	2021–22
No	%	No	%	No	%	
Freedom of Information	2	10%	1	3%	3	9%

<sup>18</sup> Section 19B(1)(a) of the AAT Act.

<sup>19</sup> In addition to the standard pathways, judicial review may be sought in respect of certain decisions made during the review process through invoking the *Administrative Decisions (Judicial Review) Act 1977*, section 39B of the *Judiciary Act 1903* or section 75(5) of the Constitution.

<sup>20</sup> Section 44 of the AAT Act.

<sup>21</sup> Section 44AAA of the AAT Act.

<sup>22</sup> Part 8 of the Migration Act.

DIVISION/CASELOAD	COURT APPEALS LODGED					
	Lodged <sup>a</sup>		Lodged <sup>a</sup>		Lodged <sup>a</sup>	
	Proportion of total AAT decisions <sup>b</sup>		Proportion of total AAT decisions <sup>b</sup>		Proportion of total AAT decisions <sup>b</sup>	
	2020–21		2021–22		2022–23	
	No	%	No	%	No	%
<b>General</b>	<b>140</b>	<b>7%</b>	<b>141</b>	<b>8%</b>	<b>159</b>	<b>9%</b>
<i>Australian citizenship</i>	2	1%	6	2%	6	2%
<i>Centrelink (2nd review)</i>	8	1%	8	1%	4	1%
<i>Visa-related decision relating to character</i>	105	25%	110	34%	129	44%
<i>Workers' compensation</i>	13	9%	10	6%	10	6%
<i>Other</i>	12	3%	7	2%	10	3%
<b>Migration and Refugee<sup>d</sup></b>	<b>4,467</b>	<b>23%</b>	<b>3,812</b>	<b>22%</b>	<b>3,201</b>	<b>18%</b>
<i>Migration</i>	3,012	20%	1,769	14%	1,472	12%
<i>Refugee</i>	1,455	29%	2,043	41%	1,729	35%
<b>National Disability Insurance Scheme</b>	<b>3</b>	<b>2%</b>	<b>7</b>	<b>3%</b>	<b>5</b>	<b>2%</b>
<b>Security</b>	<b>0</b>	<b>0%</b>	<b>1</b>	<b>100%</b>	<b>0</b>	<b>0%</b>
<b>Small Business Taxation</b>	<b>1</b>	<b>1%</b>	<b>1</b>	<b>1%</b>	<b>1</b>	<b>1%</b>
<b>Social Services and Child Support<sup>e</sup></b>	<b>22</b>	<b>1%</b>	<b>16</b>	<b>1%</b>	<b>17</b>	<b>1%</b>
<b>Taxation and Commercial</b>	<b>12</b>	<b>5%</b>	<b>11</b>	<b>5%</b>	<b>5</b>	<b>2%</b>
<i>Taxation</i>	6	4%	6	3%	4	2%
<i>Other</i>	6	11%	5	9%	1	2%
<b>Veterans' Appeals</b>	<b>6</b>	<b>8%</b>	<b>1</b>	<b>2%</b>	<b>0</b>	<b>0%</b>
<b>TOTAL</b>	<b>4,653</b>	<b>19%</b>	<b>3,991</b>	<b>18%</b>	<b>3,391</b>	<b>16%</b>

<sup>a</sup> These figures include some appeals lodged in relation to decisions made in a previous year.

<sup>b</sup> These figures represent the number of appeals lodged as a proportion of all AAT decisions made in that reporting year that could have been appealed to the courts.

## Partnering with legal assistance providers

### Legal advice clinics

In the ACT, New South Wales, Queensland, South Australia, Victoria and Western Australia, the AAT has partnered with legal aid commissions and community legal centres to establish legal advice clinics for self-represented parties in certain types of cases.

Assistance provided by the AAT to facilitate the clinics includes:

- referral to the provider and, in some locations, confirming an appointment
- with an applicant's consent, sending key documents provided to the Tribunal relating to the decision and issues in dispute, and
- in some registries, giving providers onsite access to interview rooms and telephones to conduct interviews with applicants.

More detail about the partnering arrangements for each AAT registry is set out in Table 5 below.

**Table 5 - Arrangements for accessing legal assistance and support from providers**

State/Territory	Division and application type	Arrangements
Australian Capital Territory	NDIS Division	The AAT has a Memorandum of Understanding with <b>Legal Aid ACT</b> . Registry contacts applicants to discuss their application and the Legal Aid ACT service. With the applicant's consent, registry makes a referral to Legal Aid ACT with an electronic copy of the Tribunal documents. Legal Aid ACT contacts the applicant directly to make an appointment, which is held offsite.
	SS&CS Division (Centrelink single-party cases)	The NSW Registry, which manages Canberra SS&CS Division cases, has a referral process with <b>Canberra Community Law (CCL)</b> . An outreach letter is sent to the applicant offering a telephone appointment. Registry sends electronic copies of the Tribunal documents to CCL. If requested, in person appointments can be accommodated in Canberra registry.
New South Wales	General Division (Centrelink and character-related visa cases) and NDIS Division	An appointment with <b>Legal Aid NSW</b> may be booked following an outreach call by a Tribunal Officer or following referral by a Conference Registrar (roster arrangement applies). Registry sends Legal Aid NSW electronic copies of the Tribunal documents.
	SS&CS Division (generally Centrelink cases and other single-party cases)	Registry sends an outreach letter to the applicant offering a telephone appointment with <b>Legal Aid NSW</b> (roster arrangement applies). In-person appointments can be accommodated where requested and have previously been held in the registry. Registry sends Legal Aid NSW electronic copies of the Tribunal documents.
Queensland	General Division (Centrelink cases), NDIS Division and SS&CS Division (Centrelink cases)	<b>Legal Aid Queensland (LAQ)</b> and <b>Basic Rights Queensland (BRQ)</b> provide appointments for NDIS Division cases and for Centrelink cases in the General and SS&CS Divisions. Appointments may be booked by Registry at the request of an applicant or following referral by a Conference Registrar. Registry sends a list of appointments and electronic copies of Tribunal documents to LAQ and BRQ. Appointments are generally held offsite by telephone.
Northern Territory	NDIS Division and SS&CS Division (Centrelink cases)	Adelaide Registry provides applicants with a list of legal assistance providers.
South Australia	General Division and NDIS Division	Registry may refer a matter to the <b>Legal Services Commission of SA</b> for a telephone advice session. Registry sends the Commission an electronic copy of the Tribunal documents and the Commission provides general advice to the applicant.
	SS&CS Division (Centrelink cases)	Registry may refer a Centrelink matter to <b>Uniting Communities</b> for telephone advice. Registry sends Uniting Communities an electronic copy of the Tribunal documents.
Tasmania		Hobart registry provides applicants with a list of legal assistance providers.
Victoria	General Division (Centrelink and citizenship cases) and NDIS Division	Regular standing telephone appointments with <b>Victoria Legal Aid (VLA)</b> are available following referral by a Conference Registrar. Registry provides VLA with copies of the Tribunal documents.

State/Territory	Division and application type	Arrangements
	SS&CS Division	If VLA is representing or assisting an applicant and requests a copy of the hearing papers, Registry provides these to VLA.
Western Australia	General Division (Centrelink and veterans' cases) and NDIS Division	<p>Outreach phone calls are made by Registry, who discuss the <b>Legal Aid WA</b> service and book in an appointment where requested. Appointments in NDIS cases are usually conducted by telephone. If the applicant wants an in-person or video appointment. Legal Aid WA calls the applicant to discuss this with them directly.</p> <p>Appointments for General Division cases are in person at the registry or by telephone. The duty lawyer attends the registry and uses an interview room for in-person appointments and has access to an AAT telephone for telephone appointments. Registry sends Legal Aid WA a list of the appointments and electronic copies of the Tribunal documents the week before the appointment is scheduled.</p>
	SS&CS Division (Single-party cases)	<p>Registry may refer an applicant to <b>Legal Aid WA</b> for legal advice. Registry will book an appointment if the applicant consents. Appointments are in person at the registry or by telephone. The duty lawyer attends the registry and uses the interview room for in person appointments and has access to an AAT telephone for telephone appointments. Registry sends Legal Aid WA a list of the appointments and electronic copies of the Tribunal documents the week before the appointment is scheduled.</p>

### Private practitioners and pro bono legal assistance

The AAT and the Australian Bar Association (ABA) have established a Legal Assistance Referral Scheme (the Scheme) to facilitate referring applicants seeking review in the Small Business Taxation Division and the Taxation and Commercial Division of the AAT to private practitioners who provide pro bono legal advice.

Where an applicant requests referral for legal assistance under the Scheme, the AAT undertakes an assessment of certain criteria before a referral and Tribunal documents are provided to the Chair of the ABA Taxation Committee. The Chair (or their delegate) then identifies and appoints counsel who are willing to assist. Once the brief is accepted, the parties to the AAT proceedings are notified.

The Scheme is currently operating as a pilot and is at an early stage of implementation.

## Commonwealth legal assistance schemes available to AAT applicants

### Application to the Attorney-General

Section 69 of the AAT Act provides that a person may apply to the Attorney-General for legal and financial assistance if:

- they have made, or propose to make, or are otherwise a party to, an application to the AAT for review of a decision, or
- they propose to institute, or are otherwise a party to, a proceeding before a court in respect of a matter arising under the AAT Act.

Upon application, the Attorney-General must be satisfied that to refuse the application would cause financial hardship to the applicant and that in all the circumstances it is reasonable to grant the application. Assistance may be granted unconditionally or subject to conditions. Information about applications made to the Attorney-General under section 69 of the AAT Act is available from the Attorney-General's Department.

From time to time, a significant legal question can arise in Tribunal proceedings that would benefit from judicial consideration. The AAT may seek to constitute the case before the President or a judicial Deputy President. The AAT Act also provides for a referral of a question of law to the Federal Court either at the request of a party or by the Tribunal in divisions other than the M&R Division.<sup>23</sup> The President of the AAT must agree to the referral being made.<sup>24</sup>

In practice, in cases where an issue would benefit from judicial consideration, legal representation of all parties is of considerable assistance in framing the question and presenting submissions to the Tribunal or the court.

If a case is identified as a potential test case and is not being heard in the M&R Division or the SS&CS Division, an applicant may apply to the Attorney-General for legal or financial assistance under section 69 of the AAT Act, as discussed above.<sup>25</sup>

### AAT matters funded under the NLAP

Under the NLAP 2020–25, Commonwealth funding must be prioritised for the delivery of frontline legal assistance services and is largely quarantined for Commonwealth law matters. Commonwealth service priorities under the NLAP include the following civil law priorities that are relevant to the AAT's jurisdiction:

- migration matters, and
- social security law matters (including matters relating to military entitlements and military compensation claims).

In addition to providing legal advice for applicants about their AAT case, the National Legal Aid submission to the Administrative Review Reform<sup>26</sup> refers to grants of assistance made for representation at hearings in the AAT in social security and child support matters, migration matters, NDIS matters, and veterans' matters. The figures provided for representation at AAT hearings is consistent with the AAT's observation that legal aid representation at AAT hearings is very limited.

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<sup>23</sup> Section 43C of the AAT Act.

<sup>24</sup> Section 45 of the AAT Act.

<sup>25</sup> Section 69(1) and (3) of the AAT Act.

<sup>26</sup> National Legal Aid submission to the Attorney-General's Department, dated 12 May 2023.

## NDIS Appeals Program

The NDIS Appeals Program is administered through the Department of Social Services and helps people access support when seeking review of decisions in the NDIS Division. Support available under the Program includes access to disability advocates and to funding for legal services where there is wider community benefit and/or disadvantage that would substantially benefit from legal representation. Legal aid commissions have responsibility for assessing applications and determining eligibility for funding for these legal services.

## ATO Litigation funding program and legal advice

The Australian Taxation Office (ATO) administers a test case litigation funding program which was established to fund cases that have broader implications beyond the particular dispute. The ATO invites parties to a taxation dispute to make an application for litigation funding where the case:

- involves issues where there is uncertainty or contention about how the law operates, or
- is in the public interest to be litigated.

Applications for litigation funding are considered by a panel consisting of 3 external experts and two senior ATO executives.

There are also special ATO arrangements in place for assisting small business taxpayers where the Commissioner obtains external representation in AAT proceedings.

Arrangements for litigation funding are administered by the ATO and were considered in a recent report of the Inspector-General of Taxation, [Improving the operation of the Small Business Litigation Funding Program](#).<sup>27</sup>

## Observations about unmet legal need

The following examples are circumstances where the AAT has observed that the access of particular groups to merits review would be significantly enhanced with targeted legal assistance.

### Minor assistance with document preparation

Where legal advice clinics are available (see Table 5), access to an appointment with a lawyer usually occurs shortly after an application has been made and the decision-making agency has lodged documents relevant to the review.

In many cases, conferencing is the first case event in a review and involves an informal, private meeting to discuss the issues in dispute, further information that could be provided, arrangements for any further ADR (such as conciliation), and preparation for hearing. Sometimes, self-represented parties will be asked by the Tribunal to prepare an outline of the issues in addition to lodging further evidence for discussion at the conference.

While representation is not needed to participate in conferencing, the AAT considers there would be significant value if self-represented applicants were to receive minor

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<sup>27</sup> Australian Government, Inspector-General of Taxation - Taxation Ombudsman, Improving the operation of the Small Business Litigation Funding Program: Recommendations to the Australian Taxation Office, August 2023, <https://www.igt.gov.au/wp-content/uploads/2023/08/IGTO-report-and-annexures-SBTD-litigation-funding-program.pdf>.



legal assistance to help them obtain relevant evidence and prepare documents for conferencing. This would help to maximise opportunities to resolve their application or narrow issues in dispute at an early stage, particularly at conferencing.

By way of example, LawRight is an agency in Queensland which links lawyers providing pro bono services to assist people appearing before the Queensland courts by not only providing legal advice but also assistance with drafting documents such as applications, statements of claim, defences, affidavits and submissions. This assistance is limited and does not include representation or communication with the court, other parties or their legal representatives on the person's behalf.

### Vulnerable women trial

As part of early case assessment which occurs for applications lodged in the M&R Division, the AAT has recently trialled identifying cases involving women in particularly vulnerable circumstances allowing for such cases to be progressed with priority.

The trial has focused on women experiencing circumstances of significant mental ill health, family violence and/or homelessness continuing to affect them in Australia. Often these circumstances do not come to the AAT's attention through existing prioritisation processes which rely on applicants disclosing information about their circumstances they believe to be relevant at the time of their application.

Instead, the trial targets cases where applicants have made gender-based claims and relies on internationally-recognised country rankings on gender and security to identify the cohorts most likely to experience severe vulnerability. Case files are then reviewed by AAT staff for indicators of specific vulnerabilities where extended delays may exacerbate the applicants' circumstances.

For financial year 2023–24 the AAT projects approximately 50 cases will be identified for priority under this trial. At the time leading up to this submission there were 20 cases that had been assessed and prioritised – of these cases, the applicants in five of those cases (25%), were self-represented.

The AAT sees significant value in partnering with appropriately funded legal assistance providers to refer applicants who have been identified by the AAT as vulnerable women applicants in the M&R Division.

### Indigenous engagement with administrative review

The AAT does not comprehensively capture information about applicants who identify as Aboriginal and Torres Strait Islander in AAT review proceedings. However, it is the AAT's observation that participation rates are low.

The AAT is unable to comment on whether there are legal assistance service gaps that are impacting on participation by Aboriginal and Torres Strait Islander peoples in AAT proceedings. However, the AAT notes that, in general, a valid application for review to the AAT (other than second review of Centrelink and child support decisions in the General Division) is dependent on an applicant having already accessed internal review of the primary decision within the agency.

We suggest that consideration of greater engagement by Aboriginal and Torres Strait Islander peoples with administrative review take a holistic approach, such as also examining the flow-through impacts of improving access to administrative review at an earlier point in the decision-making process.

## Issues identified by recent inquiries

### [A new system of federal administrative review - Litigation guardians](#)

In an issues paper (**the Paper**) released for public consultation on a new system of federal administrative review, the Attorney-General's Department raised the absence of power for the AAT to appoint a litigation guardian where a party is unable to meaningfully participate in proceedings without a representative. The Paper noted there are established models for the appointment of a litigation guardian in the federal courts and in civil and administrative tribunals in the Australian Capital Territory, New South Wales and South Australia.<sup>28</sup>

The AAT considers it highly desirable to enable more effective participation in review proceedings by an applicant through appointment of a litigation guardian where they are required. Noting the reflections of [Chapter 6](#) of the Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability,<sup>29</sup> the AAT is conscious of the particular vulnerabilities of applicants who may present as unable to meaningfully participate in proceedings without a representative. The AAT considers appointment of a litigation guardian to be a mechanism of last resort.

In other jurisdictions a panel of specialist and experienced practitioners is available for appointment, such as the Independent Children's Lawyer in the Federal Circuit and Family Court and the Guardian ad Litem (GAL) Panel for NSW courts and tribunals.

When an order for an Independent Children's Lawyer is made by the Federal Circuit and Family Court, it also requests the legal aid commission in the respective State or Territory to make an appointment of a lawyer to the case. Legal aid commissions are funded to provide these services, and each have in-house lawyers who are qualified as Independent Children's Lawyers. Legal aid commissions also operate panels of private practitioners who are qualified and appointed to undertake this work.

In NSW, the Department of Justice operates a panel of suitably qualified persons to be eligible for appointment as a GAL. The Department administers the appointment of a GAL to court and tribunal proceedings, manages the recruitment of new GALs and facilitates training for existing GALs.

The AAT considers there would be considerable benefit in the establishment of a panel of this kind for the AAT, and potentially other federal courts and tribunals, where there may be no other appropriate person to appoint as a litigation guardian.

### [Royal Commission into the Robodebt Scheme](#)

Recommendation 12.4 of the [Report of the Royal Commission into the Robodebt Scheme](#)<sup>30</sup> reflects on the importance of the public interest role played by legal aid commissions and community legal centres.

Legal assistance providers engage in public interest advocacy when representing participants in test cases or proceedings where there is potential to provide ongoing guidance to improve decision-making. The AAT suggests that there are opportunities

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<sup>28</sup> Attorney-General's Department, Public Issues Paper, *A new system of federal administrative review*, April 2023, p.89.

<sup>29</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Enabling autonomy and access*, September 2023, <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%206%2C%20Enabling%20autonomy%20and%20access.pdf>

<sup>30</sup> Royal Commission in the Robodebt Scheme, Report, 7 July 2023, <https://robodebt.royalcommission.gov.au/publications/report>

for improving decision-making through guidance reflected in Tribunal proceedings such as when the Tribunal identifies a test case to be constituted at the AAT or where a question of law may be referred to the Federal Court (discussed on p.15).

In cases where there are significant issues of public interest to be tested, access to legal representation for applicants is critical to their participation and the robustness of outcomes to inform future practices. We suggest that, similar to the ATO test case litigation funding program, there would be broader benefits to ensuring parties have access to legal assistance and representation in significant cases of any type before the AAT which may provide future guidance to decision-making.

## **Conclusion**

Independent review of government decisions is an important means of access to justice for many Australians, including groups who experience disadvantage and vulnerability. Administrative review operates most effectively when parties are empowered to actively participate in review proceedings, such as through the provision of appropriately targeted legal assistance and representation. The AAT looks forward to the Independent Reviewer's report and recommendations.