

Ph 1800 033 660 | E [bca@bca.org.au](mailto:bca@bca.org.au) | W [bca.org.au](http://www.bca.org.au/) | ABN 90 006 985 226

**Response to the Administrative Review Reform Issues Paper**

Lodged via: <https://consultations.ag.gov.au/legal-system/administrative-review-reform-issues-paper/consultation/>

Author: Corey Crawford (National Policy Officer)

[corey.crawford@bca.org.au](mailto:corey.crawford@bca.org.au)

1st May 2023

Developed through consultation with Peta Hogan (National Advocacy

Projects Officer)

**Contents**

[Response to the Administrative Review Reform Issues Paper 1](#_Toc133421094)

[Contents 2](#_Toc133421095)

[1. Introduction 2](#_Toc133421096)

[1.1 About Blind Citizens Australia (BCA) 2](#_Toc133421097)

[1.2 About people who are blind or vision impaired 3](#_Toc133421098)

[2. Submission Context 3](#_Toc133421099)

[3. Blind Citizens Australia’s Submission 4](#_Toc133421100)

[3.1 Design of the new review body 4](#_Toc133421101)

[3.2 Membership of the new review body 5](#_Toc133421102)

[3.3 Case management, directions and conferencing 6](#_Toc133421103)

[3.4 Supporting parties with their matter 7](#_Toc133421104)

[4. Recommendations 10](#_Toc133421105)

**1. Introduction**

**1.1 About Blind Citizens Australia (BCA)**

Blind Citizens Australia (BCA) is the peak national representative organisation of and for the over 500,000 people in Australia who are blind or vision impaired. For nearly 50 years, BCA has built a strong reputation for empowering Australians who are blind or vision impaired to lead full and active lives and to make meaningful contributions to our communities. BCA provides peer support and individual advocacy to people who are blind or vision impaired across Australia. Through our campaign work, we address systemic barriers by promoting the full and equal participation in society of people who are blind or vision impaired. Through our policy work, we provide advice to community and governments on issues of importance to people who are blind or vision impaired. As a disability-led organisation, our work is directly informed by lived experience. All directors are full members of BCA and the majority of our volunteers and staff are blind or vision impaired. They are of diverse backgrounds and identities.

**1.2 About people who are blind or vision impaired**

There are currently more than 500,000 people who are blind or vision impaired in Australia with estimates that this will rise to 564,000 by 2030. According to Vision Initiative, around 80% of vision loss in Australia is caused by conditions that become more common as people age.[[1]](#endnote-1)

Australians who are blind or vision impaired can live rich and active lives and make meaningful contributions to their communities: working, volunteering, raising families and engaging in sports and other recreational activities. The extent to which people can actively and independently participate in community life does, however, rely on facilities, services and systems that are available to the public being designed in a way that makes them inclusive of the needs of all citizens – including those who are blind or vision impaired.

**2. Submission Context**

BCA welcomes the opportunity to make a submission to the Attorney-General’s Department regarding the creation of a new federal administrative review body to replace the existing Administrative Appeals Tribunal (AAT). This submission addresses questions 1, 2, 17, 18, 39, 61, 63, 64 and 65 from the Issues Paper.

BCA’s submission is based on existing legislation and frameworks:

* Administrative Appeals Tribunal Act 1975 (Cth)
* National Disability Insurance Scheme Act 2013 (Cth)
* Australia’s Disability Strategy 2021–2031 (the Strategy)
* United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Australia’s formal commitment to the UNCRPD and the development of the Strategy have driven greater engagement by people with disability in determining how they live and are supported.

Article 12 of the UNCRPD stipulates that signatory nations ‘shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.’

Article 13 of the UNCRPD requires signatories to ‘ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.’

As articulated in Outcome Area 3 (Safety, Rights and Justice) of the Strategy:

Effective access to justice for people with disability requires consideration of individual needs. Without this there can be no equitable or equal participation. This requires appropriate strategies, including aids, equipment, and accessible legal information and advice to facilitate equal and effective participation in all legal proceedings. In addition, greater awareness of disability is needed among some parts of the judiciary, legal professionals and court staff.

BCA’s response is based on extensive consultations with members and other people who are blind or vision impaired, and our ongoing advocacy work in the disability sector.

**3. Blind Citizens Australia’s Submission**

**3.1 Design of the new review body**

BCA believes the principles of fairness, equality and transparency must guide the approach to a new federal administrative review body.

The scope and powers of the new body should be broader than those of the existing AAT. BCA has often observed the AAT’s inability to enforce the directions it has set for the National Disability Insurance Agency (NDIA).

The NDIA may be instructed to provide an update within a certain timeframe, for example, but there is no compulsion for it to actually meet the deadline. BCA believes the NDIA uses the AAT’s lack of enforcement power as a deliberate tactic to stall the progression of a case and frustrate the applicant.

**Recommendations:**

1. The new body should be guided by the principles of fairness, equality and transparency.
2. The new body should have a mechanism to enforce the directions it sets for respondents such as the NDIA.

**3.2 Membership of the new review body**

BCA agrees that members of the new body should have specific expertise relevant to the matters they determine. Legal qualifications are certainly important but they do not engender lived experience of disability. Accordingly, the new body should include members who understand the intricacies of disability, as well as members who understand the intricacies of the law.

BCA has found the lack of understanding from members of the AAT to be troubling, if not offensive, at times. Assistive technology, for example, is essential for helping people who are blind or vision impaired live better lives, yet members of the AAT often appear unaware of this.

This has resulted in people who are blind or vision impaired being subjected to ill-informed questioning about the utility of voice-to-text software and the higher random-access memory (RAM) needed to operate such software. BCA has also had to assist applicants explain the benefits of occupational therapists and orientation and mobility specialists to the AAT.

In order to create a more even playing field than has been the case with the AAT, BCA proposes the new body have the ability to provide applicants with sufficient legal support. The NDIA is represented by a bevy of solicitors (and barristers at final hearings), whereas applicants often cannot afford legal representation. Even when applicants can afford a lawyer, they likely lack expertise in disability matters.

As an example, BCA is currently providing advocacy in a case over a $3,000 laptop. Having already run for five months, the associated legal costs far outstrip the value of the laptop in question, with an NDIA solicitor involved from the outset and a barrister set to be appointed.

Furthermore, whilst BCA provides advocacy, we are aware that people with other disabilities have gone without, as their particular representative organisations have been overwhelmed. In order for the new body to be more equitable, applicants should receive adequate legal assistance or else the NDIA should forego its legal representation.

That BCA often observes the NDIA ultimately settle at conciliation in such cases only exacerbates the sense of frustration and futility. Indeed, there can be no precedent set without a formal hearing, which only increases the likelihood of future cases in which time and resources are squandered. BCA urges that the new administrative body address these shortfalls.

**Recommendations:**

1. The new body should include members who understand the intricacies of disability, as well as members who understand the intricacies of the law.
2. The new body should have the ability to provide applicants with sufficient legal support.

**3.3 Case management, directions and conferencing**

BCA believes there should be several powers or procedures available to the new body to expedite the resolution of matters. As mentioned above, there should be a mechanism to enforce the directions set for the NDIA.

There should also be a compulsion for respondents to respond in a timely manner. It takes three months from the point of application for a case conference to be heard, yet the NDIA routinely dumps documents on BCA’s advocacy officer the night before the conference. The need to read the documents causes the parties to request an adjournment the following day, often delaying the conference by several months.

The frequency with which ‘document dumping’ occurs leads BCA to believe it is a deliberate stalling tactic. Applicants often become increasingly frustrated and disillusioned during the waiting period, causing some to withdraw from the process. Some applicants already have anxiety, depression and/or other significant mental health conditions, and the interim programs they are placed on during the delay period often exacerbate their stress.

Having advocated for many applicants, BCA considers a 10–12-month AAT process to be a best-case scenario. BCA has advocated in cases which have run for 30 months. It is exceptionally difficult for applicants who are blind or vision impaired to live their best lives during this time.

To expedite the resolution of matters, BCA proposes a three-week timeline for the presentation of new evidence by respondents such as the NDIA.

**Recommendation:**

1. The new body should compel respondents to respond in a timely manner (within three weeks, for example) and not dump documents the night before a case conference.

**3.4 Supporting parties with their matter**

#### Services to help parties fully participate in processes under the new body

Firstly, the new body should appoint and fund an advocate for users during the application stage and a legal representative at the conciliation stage. The AAT does provide funding for a one-off phone call with a legal expert prior to conciliation, but no legal representation is provided at the conciliation meeting. This makes it difficult for applicants without a legal background to know what is occurring during the meeting.

Secondly, the new body should offer mental health support at the earliest stage possible. The AAT process is very stressful, even for people without pre-existing mental health conditions, and early intervention could alleviate much suffering for applicants.

Thirdly, the NDIA often requests specialist reports from occupational therapists, physiotherapists and other medical experts; it can take 12–18 months for them to produce a report, if they choose to respond at all. BCA is aware of allied health professionals refusing to help applicants on the basis of not wanting to be scrutinised at the AAT. The new body will need to be friendlier to such experts.

Fourthly, BCA has observed that the case conference is often a complete waste of time. With the new body, the applicant could instead attend with their advocate and be given an overview of the process by a member of the tribunal without the NDIA being involved at all. Such an introductory session could greatly reduce the anxiety felt by many applicants.

**Recommendations:**

1. The new body should appoint and fund an advocate for users during the application stage and a legal representative at the conciliation stage.
2. The new body should offer mental health support to applicants at the earliest stage possible.
3. The new body should interact more congenially with occupational therapists, physiotherapists and other medical experts.
4. The new body should reframe the case conference as an introductory session for applicants.

#### How to protect applicants who have experienced or are at risk of trauma or abuse

The members of the new body should receive awareness training with regard to disability and trauma. Importantly, the case load of members should be such as to provide them time to actually read the case notes and the written evidence before them. This would spare applicants from having to repeat their story over and over again. As previously noted, mental health support would reduce the suffering of applicants who have to talk about deeply personal and distressing topics.

**Recommendation:**

1. The new body should provide its members with awareness training around disability and trauma, and enough time to read the written evidence before them.

#### A legislated obligation to promote accessibility for all users

The NDIA and the AAT often submit documents, such as information in tables, which cannot be read by people who use screen readers. This makes the affected applicant heavily reliant on their advocate, if they have one, to disclose all the relevant information in their case.

This is an ongoing and deeply frustrating problem. As such, BCA believes user accessibility must be enshrined in the enabling legislation for the new body. Furthermore, a portion of funding should be set aside for the employment of accessibility compliance officers at the new body.

**Recommendation:**

1. The new body should have user accessibility enshrined in its enabling legislation and funding set aside for the employment of compliance officers.

#### Supporting a party with a disability to participate in the proceedings in their own capacity

Recognising it is a crucial way to build independence and confidence, BCA actively encourages people with disability to self-advocate. Self-advocacy is not feasible, however, when applicants who are blind or vision impaired are repeatedly excluded from their own hearings at the AAT.

As noted above, the inaccessibility of documents requires a legislative remedy. People who are blind or vision impaired should also be allowed to attend conferences in whichever way they can.

People who are blind or vision impaired should not be forced to attend an in-person hearing in an unfamiliar building. Nor should they be required to teleconference through the Microsoft Teams platform, where they often feel at a severe disadvantage as the only party who cannot see what is happening.

Telephone conferences should be an option for people who are blind or vision impaired. For those who are willing to attend an in-person hearing, mobility and transport support must be provided.

**Recommendation:**

1. The new body should provide documents which can be read by screen readers and offer support to people who are blind or vision impaired to allow them to attend hearings either in person or through digital platforms.

**4. Recommendations**

In order to provide equal access to applicants who are blind or vision impaired, BCA recommends that the new federal administrative review body:

1. Be guided by the principles of fairness, equality and transparency.
2. Have a mechanism to enforce the directions it sets for respondents such as the NDIA.
3. Include members who understand the intricacies of disability, as well as members who understand the intricacies of the law.
4. Have the ability to provide applicants with sufficient legal support.
5. Compel respondents to respond in a timely manner (within three weeks, for example) and not dump documents the night before a case conference.
6. Appoint and fund an advocate for users during the application stage and a legal representative at the conciliation stage.
7. Offer mental health support to applicants at the earliest stage possible.
8. Interact more congenially with occupational therapists, physiotherapists and other medical experts.
9. Reframe the case conference as an introductory session for applicants.
10. Provide members of the new body with awareness training around disability and trauma, and enough time to read the written evidence before them.
11. Have user accessibility enshrined in the enabling legislation and funding set aside for the employment of compliance officers.
12. Provide documents which can be read by screen readers and offer support to people who are blind or vision impaired to allow them to attend hearings either in person or through digital platforms.

1. Vision 2020 Australia, “Eye Health in Australia,” accessed 31 January 2023,  
   <http://www.visioninitiative.org.au/common-eye-conditions/eye-health-in-australia>  
    [↑](#endnote-ref-1)