

## Response ID ANON-3K7B-GF1H-W

Submitted to Administrative Review Tribunal Rules 2024 – Public Consultation  
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### Consent to publish your submission

Do you give permission for your response to be published?

Yes – I give permission for my response/submission to be published.

### Questions about you

What is your name?

Name:  
People with Disability Australia

What is your email address?

Email:  
lisai@pwd.org.au

Do your views officially represent those of an organisation?

Yes

If yes, please specify the name of the organisation:  
People with Disability Australia

### Comment on the Administrative Review Tribunal Rules 2024

What are your views on the proposed drafting of the Administrative Review Tribunal Rules 2024 relating to timeframes to apply for review?

Enter your response below:

People with Disability Australia's (PWDA) individual advocates report that the 28 day timeframe is grossly inadequate and must be extended to 90 days in section 5 and 6 of the Rules. The reasons for this position were highlighted during our consultation with the Attorney-General's Department on 2 August 2024, and include:

- PWDA's clients are often in a state of panic when they receive their decision notice and need time to process and understand legalistic information
- People with disability need time to seek individual advocacy, which is underfunded and subject to wait-times
- The 28 day time frame exacerbates the stress and pressure that our clients are already feeling, particularly for people with intellectual and/or psychosocial disability

As discussed during the online consultation, the option to request an extension to the 28 day timeframe does not adequately address this problem. The 28 day timeframe has a 'chilling' effect, causing people to abandon their appeal because they are unaware of their right to apply for an extension. Others may be aware of their right to apply for an extension, but lack access to the support needed to make an application and provide appropriate evidence.

Section 18 of the Administrative Review Tribunal Act 2024 (Cth) (the Act) does not appear to limit the ability of the Attorney-General's Department to specify a 90 day application timeframe in the Rules. Section 18(3) of the Act states that the timeframe must be at least 28 days and Section 18(4) of the Act states that the Rules can prescribe different periods for different classes of application.

To ensure that the Rules are consistent with the Tribunal's statutory objectives to be 'fair and just' and 'accessible and responsive to the diverse needs of parties to the proceedings', we recommend that:

Recommendation 1: The Attorney-General's Department amends Sections 5 and 6 of the draft Rules to provide a 90 day timeframe for applying for a review in the NDIS division of the ART.

What are your views on the proposed drafting of the Administrative Review Tribunal Rules 2024 relating to election and participation notices?

Enter your response below:

While PWDA does not have any specific comments about the provisions concerning election and participation notices, we do wish to raise the issue of the NDIA's practice of sending lawyers, rather than NDIA decision-makers to case conferences. Our advocates report that the NDIA commonly sends lawyers to case conferences without authority to make decisions. This delays and interferes with genuine efforts to resolve disputes in a timely matter.

We recommend that:

Recommendation 2: The Rules, practice directions or other authoritative documents direct that the representative attending on the decision-maker's behalf has full authority to make decisions and cannot delay negotiations by reverting decisions back to the decision-maker.

What are your views on the proposed drafting of the Administrative Review Tribunal Rules 2024 relating to witness fees?

Enter your response below:

What are your views on the proposed drafting of the Administrative Review Tribunal Rules 2024 relating to notices of decision?

Enter your response below:

Many people with disability are not aware of the option to access funded non-legal advocacy services, or where to find these services. To ensure that people with disability are presented with their full range of advocacy support options, recommend that:

Recommendation 3: Rule 15(4)(g) is amended to include specific reference to non-legal advocacy services and a list of funded providers.

What are your views on the proposed drafting of the Administrative Review Tribunal Rules 2024 relating to authorisations?

Enter your response below:

What are your views on the proposed drafting of the Administrative Review Tribunal Rules 2024 relating to fees?

Enter your response below:

PWDA strongly supports the full fee exemption for NDIS appeals applications.

We also wish to highlight that people with disability are disproportionately affected by the lack of financial support provided to applicants to attend case conferences and other processes at the Tribunal.

People with disability who require support worker assistance to attend in person are faced with a choice to either use up their NDIS plan support hours (if they have any) or attend an online case conference. Online case conferences can place clients at a significant disadvantage as the ART and NDIS personnel are unable to see and understand the person's disability and the support they need.

We therefore recommend that:

Recommendation 4: The Attorney-General's Department amends the NDIS Rules, or includes in the ART practice directions or other authoritative documents, a requirement that the NDIS pays for the extra support needs that people with disability require to attend the ART.