



Consultation Paper

August 2025

# Proposed amendments to the ART Rules – authorisations for registrars and staff

The Attorney-General proposes to amend the *Administrative Review Tribunal Rules 2024* (ART Rules) to expand the powers and functions which registrars and staff members of the Administrative Review Tribunal (Tribunal) may be authorised by the President to exercise or perform.

This paper sets out the proposed amendments, and invites comments on the proposal.

## Background – authorisations to exercise Tribunal powers and functions

A key element of the legislative reforms to establish the Tribunal involved enabling registrars and staff to exercise more of the Tribunal's procedural and administrative powers, in order to streamline the Tribunal's pre-hearing case management processes and enhance its ability to progress matters before they are heard by a member. This enables members to focus on conducting hearings and making substantive decisions.

Where the *Administrative Review Tribunal Act 2024* (ART Act), or another Act, confers a power or function on the Tribunal, the power or function is conferred on the **Tribunal as constituted for a particular matter**. However, the ART Act gives the President an ability to authorise **members, registrars or staff members** to perform or exercise functions and powers conferred on the Tribunal (see Division 4 of Part 11 of the ART Act). This recognises that, although the Tribunal as constituted will generally have control over how a proceeding is conducted, there may be circumstances where it is appropriate to draw on other members, registrars or staff to resolve a matter as efficiently as possible. In addition, it may be appropriate and convenient for members, registrars or staff to perform or exercise certain functions and powers before the start of a hearing of a matter, when the Tribunal may not yet have been constituted or taken carriage of the matter. This is consistent with the overall objective of improving the efficiency of the Tribunal.

Currently, the Tribunal powers and functions which the President may authorise members, registrars and staff to exercise or perform are identified in the ART Act (see sections 284-286) and the ART Rules (see sections 17-19).

These authorisations are structured so that the functions and powers that a person can perform or exercise steadily increase in accordance with the person's level of seniority:

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- Powers and functions that require a greater degree of analysis and significant exercise of discretion can be exercised by **members**.
- Powers and functions that require the exercise of some discretion can be exercised by **registrars**.
- Powers and functions that require the exercise of minimal discretion, or are administrative in nature, can be exercised by **staff**.

### Proposed amendments to the ART Rules

The Australian Government is committed to ensuring that the Tribunal has the tools and resources it needs to operate efficiently and effectively. Based on the Tribunal's experience since its commencement in October 2024, the Tribunal has identified that it could further improve its efficiency in managing its significant caseload if registrars and staff were able to exercise or perform a number of additional powers and functions (which are currently only exercisable by members).

Accordingly, the Attorney-General proposes to amend the ART Rules to specify additional Tribunal powers under the ART Act, the ART Rules and the *Migration Act 1958* (Migration Act) which the President may authorise registrars or staff to perform. The additional powers and functions largely represent routine case management or administrative functions that would be appropriate for registrars or staff to perform. The additional powers and functions are as follows:

Tribunal power/function	Currently authorised	Proposed additions
<b><i>Administrative Review Tribunal Act 2024</i></b>		
<b>Subsection 19(5)</b>	Members and registrars	Staff members
<b>Subsection 21(3)</b>	Members and registrars	Staff members
<b>Subsection 32(2)</b>	Members	Registrars
<b>Subsection 32(6)</b>	Members	Registrars
<b>Subsection 62(1A)</b>	Members	Registrars
<b>Subsection 63(2)</b>	Members	Registrars
<b>Subsections 68(2)-(3)</b>	Members and registrars	Staff members
<b>Subsection 70(1)</b>	Members	Registrars
<b>Subsection 70(2)</b>	Registrars	Registrars
<b>Subsection 74(1)</b>	Members and registrars	Staff members
<b>Section 99</b>	Members	Registrars
<b>Subsection 113(1)</b>	Members	Staff members
<b>Subsection 270(4)</b>	Members and registrars	Staff members
<b><i>Administrative Review Tribunal Rules 2024</i></b>		
<b>Subsection 25</b>	Members and registrars	Staff members
<b>Subsection 26</b>	Members and registrars	Staff members
<b><i>Additional Tribunal powers under the Migration Act 1958</i></b>		
<b>Section 359A</b>	Tribunal as constituted for the matter	Registrars
<b>Section 368C(5)</b>	Tribunal as constituted for the matter	Registrars

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The proposed amendments would not automatically authorise registrars or staff to perform or exercise these additional functions or powers. There must also be a valid authorisation by the President in place. The amendments will enable the President to make authorisations in relation to these powers and functions.

Further information about each of the proposed powers and functions is set out below.

### **Registrars – proposed additional powers and functions**

#### **Subsections 32(2) and (6) of the ART Act**

Section 32 of the ART Act provides that a decision will continue to operate regardless of an application being made to the Tribunal for review of the decision. However, the Tribunal may make an order staying or otherwise affecting the operation or implementation of the decision.

**Subsection 32(2)** provides that, on application by a party to a proceeding, the Tribunal may make an order staying or otherwise affecting the operation or implementation of the decision if the Tribunal considers that it is desirable to do so for the purpose of ensuring the effectiveness of the review.

**Subsection 32(6)** provides that, on application by a party to the proceeding, the Tribunal may, by order, vary or revoke the order made under subsection 32(2).

Currently, only *members* may be authorised to exercise this power. It would be appropriate for registrars to exercise this power in certain circumstances. There would be a condition on authorisations for registrars to exercise this power: registrars could only exercise this power in circumstances where both parties have agreed to an order being made, varied or revoked, or when the application in relation to the order is unopposed.

#### **Subsection 62(1A) of the ART Act**

Section 62 of the ART Act provides that, on occasion, a decision-maker who has elected not to participate in a kind of proceeding in its entirety may identify a particular proceeding in which their participation may be beneficial. This could be, for example, where an application for review raises an issue of particular interest for the agency, or where the agency identifies an opportunity to arrive at a negotiated outcome that is favourable to the applicant. In these circumstances, enabling the decision-maker to participate in the proceeding promotes the objective of efficient review.

**Subsection 62(1A)** provides that if a non-participating party to a Tribunal case event gives the Tribunal written notice that the party wishes to participate in the Tribunal case event, the Tribunal must decide whether or not the party is to participate in the Tribunal case event.

Currently, only *members* may be authorised to exercise this power. It would be appropriate for registrars to exercise this power in certain circumstances. There would be a condition on authorisations for registrars to exercise this power: registrars could only exercise this power in circumstances relating to participation in a case event *conducted by a registrar*. That is, registrars could not be authorised to decide whether a non-participating party is to participate in case events conducted by a member.

#### **Paragraphs 63(2)(a) and (b) of the ART Act**

Section 63 of the ART Act provides ways that a non-participating party may participate in a particular proceeding.

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**Subsection 63(2)** provides that the Tribunal may order a non-participating party to appear before the Tribunal at a Tribunal case event in relation to the proceeding (paragraph 63(2)(a)), or give the Tribunal written submissions in relation to the proceeding or a Tribunal case event in relation to the proceeding (paragraph 63(2)(b)), if the Tribunal considers it would assist in progressing the proceeding or in making the correct or preferable decision.

Currently, only *members* may be authorised to exercise this power. It would be appropriate for registrars to exercise this power in certain circumstances. There would be a condition on authorisations for registrars to exercise this power: registrars could only exercise this power in circumstances relating to participation or the requirements of participation of a non-participating party in a particular way in a case event *conducted by a registrar*. That is, registrars could not be authorised to decide whether a non-participating party is to participate or do something relating to a case event conducted by a member.

### Subsections 70(1) and 70(2) of the ART Act

Section 70 of the ART Act empowers the Tribunal to restrict the publication or disclosure of certain information.

**Subsection 70(1)** provides that the Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure of information that might reveal the identity of parties, witnesses, and persons related or otherwise associated with them.

**Subsection 70(2)** provides that the Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure of information relating to the proceeding that comprises evidence, or is information given to the Tribunal.

Currently, only *members* may be authorised to exercise this power. It would be appropriate for registrars to exercise this power, as such directions are made as a matter of course for certain caseloads in the Tribunal. For example, the *Administrative Review Tribunal (Child Support) Practice Direction 2024* provides that in child support matters, or matters involving minors, directions of this kind must be made at the earliest opportunity to protect the confidentiality of personal information acquired through the review. The making of such orders by registrars would be guided by standard internal Tribunal procedures relating to the issuing of confidentiality orders.

### Section 99 of the ART Act

**Section 99** of the ART Act provides that the Tribunal may dismiss an application if the applicant fails to appear at a Tribunal case event and the Tribunal is satisfied that the applicant received appropriate notice of the date, time and place of the Tribunal case event.

Currently, only *members* may be authorised to exercise this power. The Government considers it appropriate for registrars to be authorised to exercise this power for the following reasons:

- This would be consistent with the existing authorisation enabling registrars to dismiss applications in circumstances where the applicant fails to proceed with their application or comply with a Tribunal order (under section 100 of the ART Act). Registrars are aware of the significance of exercising the power to dismiss an application, and the need to appropriately consider the risks to vulnerable applicants before dismissing an application.

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- In circumstances where an applicant's matter is dismissed – whether by a member or a registrar – an applicant can apply to the Tribunal to have their application reinstated. Applicants do not have to pay a fee when applying to have their matter reinstated. This process involves simply contacting the Tribunal, usually via email. Reinstatement applications are considered by members, ensuring appropriately senior oversight of the reinstatement process following a dismissal.

### Section 359A of the *Migration Act 1958*

**Section 359A of the Migration Act** provides that the Tribunal must give applicants who are seeking review of a reviewable migration decision the particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review, and inviting the applicant to comment on this information.

Currently, only *the Tribunal as constituted for a matter* may perform this function. The proposed amendment would enable the President to authorise registrars to perform this function prior to the Tribunal being constituted for a matter.

The Government considers it appropriate for registrars to perform this function:

- Enabling registrars to perform this function would enhance the Tribunal's ability to efficiently case manage migration and protection reviews.
- There are important safeguards to ensure this function is performed appropriately by registrars. Any comments provided by an applicant in response to an invitation given by a registrar under section 359A must be considered by the member. This ensures members have oversight of, and consider, the relevant information provided through the process under section 359A, regardless of whether the invitation for comment was issued by a registrar or a member. The Tribunal as constituted for a matter must be satisfied that section 359A has been complied with before making its decision.
- Reforms to the Migration Act in 2024 mean the Tribunal can no longer dismiss an application if a person does not provide comments in response to an invitation issued under section 359A. Accordingly, the performance of this function does not carry the potential risk of loss of hearing rights for applicants to a reviewable migration decision.

### Section 368C(5) of the *Migration Act 1958*

**Section 368C(5) of the Migration Act** provides that, if an applicant fails to apply for reinstatement within 28 days of the Tribunal dismissing their application, the Tribunal must confirm the decision to dismiss the application by a written statement given under section 368.

Currently, only *the Tribunal as constituted for a matter* may perform this function. It would be appropriate for registrars to exercise this power, as this is a routine function that does not involve the exercise of a discretion. The function of confirming a dismissal is mandatory step that rests on an objective fact (the applicant has not submitted an application for reinstatement within 28 days). A registrar would be able to perform this function if the hearing for the matter has not commenced (which will be the case in many circumstances in which a matter has been dismissed).

## Staff members – proposed additional powers and functions

### Subsections 19(5), 21(3), 68(2) and (3) of the ART Act

Section 19 of the ART Act provides the Tribunal with the power to extend the timeframe for applying to the Tribunal for review of a decision. **Subsection 19(5)** allows the Tribunal to notify any other person of the extension application, or require the applicant to notify any other person of the extension application that the Tribunal considers is affected by the extension application.

Section 21 of the ART Act provides that the Tribunal is required to notify certain people when an application for review of a decision is made. **Subsection 21(3)** provides that if an application is made to the Tribunal for review of a decision and the Tribunal considers that another person's interest may be affected by the decision, the Tribunal may give to the person, or require the applicant to give to a person, a written notice of the application and the person's right to apply to become a party.

Section 68 of the ART Act provides that the Tribunal may appoint an interpreter for a party or a witness appearing before the Tribunal. The section aims to promote the accessibility of the Tribunal and provide support for a diverse range of users, including those with limited English language skills or with a hearing impediment. **Subsection 68(2)** provides that the Tribunal must appoint an interpreter if requested by a person appearing before the Tribunal, unless the Tribunal considers that the person does not need an interpreter to communicate with the Tribunal or to understand evidence. **Subsection 68(3)** provides the conditions in which the Tribunal must appoint an interpreter for a person appearing at a Tribunal case event, where the person does not request an interpreter.

Currently, only *members and registrars* may be authorised to exercise these powers. It would be appropriate for staff members to exercise these powers as they are administrative in nature, and relate to arrangements the Tribunal makes to facilitate the efficient progress of matters before being heard by a member.

### Subsection 74(1) of the ART Act

Section 74 of the ART Act provides that the Tribunal may summon a person to provide information, or produce documents or things, that are relevant to a proceeding in the Tribunal. **Subsection 74(1)** provides that, if the Tribunal has reasonable grounds to believe that a person has information, or a document or thing, relevant to a proceeding in the Tribunal, the Tribunal may summon, in writing, a person to appear before the Tribunal to give evidence and/or produce any document or thing specified in the summons on the day, time and place specified in the summons.

Currently, only *members and registrars* may be authorised to perform this function. It would be appropriate for staff members to perform this function. Summonses are issued as a matter of routine practice, as part of an administrative process which ensures that Tribunal proceedings continue to progress.

### Subsection 113(1) of the ART Act

**Subsection 113(1)** provides that the Tribunal may publish Tribunal decisions and the reasons for them.

Currently, only *members* may be authorised to perform this function. It would be appropriate for staff members to perform this function, as it is entirely administrative in nature. This would ensure that staff can take the necessary actions to publish decision on the Australasian Legal Information Institute's (AustLII) website, which is the primary method of publication of Tribunal decisions.

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### Subsection 270(4) of the ART Act

Section 270 of the ART Act provides that a person who has requested a statement of reasons from a decision-maker under section 268, but not received one, may apply to the Tribunal for a decision about whether the decision-maker should give the person the statement. **Subsection 270(4)** provides that, if the Tribunal decides that the decision-maker should give the person the statement of reasons, the decision-maker must give the person the statement of reasons within 28 days after the Tribunal notifies the decision-maker of the Tribunal's decision.

Currently, only *members and registrars* may be authorised to exercise this power. It would be appropriate for staff to exercise this power as it is administrative in nature, and decisions of this kind are made as a matter of course.

### Sections 25 and 26 of the ART Rules

**Section 25 of the ART Rules** provides that the Tribunal may make orders that an applicant pay the prescribed fee (rather than a lower application fee), if the Tribunal considers that the amount in dispute is less than \$5,000. **Section 26 of the ART Rules** provides that the Tribunal may make orders that an applicant pay the prescribed fee (rather than a lower application fee), if the Tribunal considers that the applicant is not a small business entity.

Currently, only *members and registrars* may be authorised to exercise these powers. It would be appropriate for staff members to exercise these powers, as the making of these orders involves an objective assessment about whether the decision under review concerns a tax dispute not less than \$5000 (section 25), or whether it relates to a small business entity.