

Administrative Review Tribunal (Litigation Supporter) Practice Direction 2025

I, the Hon Justice Emiliós Kyrou, President of the Administrative Review Tribunal, make the following Practice Direction.

Dated 12 June 2025

THE HON JUSTICE EMILIOS KYROU
President, Administrative Review Tribunal

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Part 1. Preliminary

- 1.1 This Practice Direction is made under section 36(1) of the *Administrative Review Tribunal Act 2024* (Act).
- 1.2 This Practice Direction is arranged in 6 Parts:
 - (a) Part 1 – Preliminary;
 - (b) Part 2 – Role and obligations of a litigation supporter;
 - (c) Part 3 – When a litigation supporter can be appointed and who can be appointed;
 - (d) Part 4 – Process for appointment of a litigation supporter;
 - (e) Part 5 – Process for resignation or removal of a litigation supporter;
 - (f) Part 6 – Remuneration and costs of a litigation supporter;
- 1.3 This Practice Direction commences and has effect from the date it is signed. This Practice Direction applies to all applications whether lodged before, on or after this date, and remains in effect until it is superseded or revoked.
- 1.4 The purpose of this Practice Direction is to make directions regarding the appointment and removal of litigation supporters and applies to applications for review of decisions and the conduct of proceedings in all jurisdictional areas of the Tribunal, except where stated otherwise.
- 1.5 This Practice Direction does not apply to the extent that it is inconsistent with:
 - (a) a provision of the Act or another Act or instrument under which the Tribunal has powers to review decisions;
 - (b) a provision of a regulation made under the Act or another Act; or
 - (c) a provision of a rule made under the Act.
- 1.6 If the Tribunal makes a direction in relation to a proceeding that is inconsistent with this Practice Direction, the Tribunal’s direction applies to that proceeding and this Practice Direction does not apply, to the extent of the inconsistency.
- 1.7 A failure by the Tribunal to comply with this Practice Direction does not affect the validity of anything done by the Tribunal.
- 1.8 A failure by a party or any other person to comply with this Practice Direction may have consequences for the appointment or continuation of a litigation supporter and the progress of an application for review.

Definitions

1.9 In this Practice Direction:

Act means the *Administrative Review Tribunal Act 2024*.

condition includes a disability or impairment.

litigation supporter has the same [meaning as under the Act](#).

party who does not have decision-making ability includes a person who is under the age of 18 years or has a condition, and because of their age or the condition the person is unable to make decisions about the proceeding in which they are a party, including because the person is unable to do one or more of the following (even with assistance):

- (a) understand the nature and effect of the proceeding;
- (b) mentally retain information about the proceeding;
- (c) understand available choices to the person as a party to the proceeding; or
- (d) assess the potential consequences and outcomes of the choices available to the person as a party to the proceeding.

Note: When considering whether to appoint a litigation supporter, the Tribunal will assess whether a person has decision-making ability at the time the question of the appointment of a litigation supporter is to be decided by the Tribunal. A condition which renders the person unable to make decisions about the proceeding may be a permanent condition or a temporary condition. If, after a litigation supporter is appointed, the Tribunal determines that the supported party has regained decision-making ability, the Tribunal is able, under paragraph 5.2, to remove the litigation supporter.

personal information means information or an opinion about an identified individual or an individual whose identity is apparent from the information or opinion:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in material form or not.

proceeding means a proceeding in the Tribunal.

protection order includes but is not limited to a family violence order, a domestic violence order, a restraining order, a protection order, an intervention order, an apprehended violence order and a workplace protection order.

representative means a person who is chosen to represent a party in accordance with section 66 of the Act.

Rules means the Rules made under the Act.

supported party means a party to a proceeding in respect of whom the Tribunal has appointed a litigation supporter for the purposes of that proceeding.

Tribunal means the Administrative Review Tribunal.

Tribunal Case Event has the same [meaning as under the Act](#).

Part 2. Role and obligations of a litigation supporter

Role of a litigation supporter

- 2.1 A litigation supporter is a person appointed by the Tribunal to enable a party to a proceeding who does not have decision-making ability, at the time the question of appointment of a litigation supporter is to be decided by the Tribunal, to participate in the proceeding.

Note 1: Section 4 of the Act defines ‘litigation supporter’, in relation to a party, as a person appointed to be a litigation supporter for the party under section 67 of the Act.

Note 2: A litigation supporter differs from a guardian appointed under guardianship legislation or a representative of a party chosen by a party under section 66 of the Act.

Note 3: The Tribunal may decide not to appoint a litigation supporter for a party if the Tribunal determines that, in the circumstances of a particular case, a guardian or representative appointed under a law other than the Act is able to appropriately protect the interests of the party in the proceeding.

Note 4: A litigation supporter is appointed by the Tribunal under section 67 of the Act. A representative is chosen, in accordance with section 66 of the Act, by a party or, if a party is a supported party, by the supported party’s litigation supporter. Where there is a representative and a litigation supporter for a supported party, both must act in the best interests of the supported party and, ordinarily, the representative will act on the instructions of the litigation supporter.

Note 5: Where a litigation supporter is appointed for a party, the Tribunal will treat the litigation supporter as the supported party’s representative for the purposes of section 66 of the Act unless another person is chosen as the supported party’s representative under that section.

- 2.2 A supported party may participate in the proceeding wherever possible with the support of the litigation supporter, or otherwise by their litigation supporter.

Note: See section 67(5)(a) of the Act.

- 2.3 A litigation supporter may do anything permitted to be done by the supported party in relation to the proceeding by an Act or an instrument under an Act.

Note: See section 67(5)(c) of the Act. The reference to an instrument under an Act in paragraph 2.3 includes a Practice Direction of the Tribunal.

- 2.4 Where a litigation supporter is appointed for a party to a proceeding, the Tribunal will communicate with the litigation supporter or, if the supported party is represented, with the supported party's representative. Accordingly, the litigation supporter or the supported party's representative (if any) will be required to lodge, serve and receive documents relating to the proceeding and attend Tribunal Case Events relating to the proceeding.

Note: The supported party may also attend Tribunal Case Events. The Tribunal in a particular case may determine that it and the other parties to the proceeding will also provide documents relating to the proceeding to the supported party.

Obligations of a litigation supporter

- 2.5 A litigation supporter must do anything required to be done by the supported party in relation to the proceeding by an Act or an instrument under an Act.

Note: See section 67(5)(b) of the Act. The reference to an instrument under an Act in paragraph 2.5 includes a Practice Direction of the Tribunal.

- 2.6 A litigation supporter must give effect to the supported party's will and preferences, or likely will and preferences, in relation to the proceeding. However, if to do so would pose a serious risk to the supported party's personal and social wellbeing, the litigation supporter must instead act in a manner that promotes the personal and social wellbeing of the supported party. If the supported party's will and preferences, or likely will and preferences, cannot be ascertained, the litigation supporter must act in a manner that promotes the personal and social wellbeing of the supported party.

Note: See section 67(6), (7) and (8) of the Act.

- 2.7 In addition to the obligations in paragraph 2.6, a litigation supporter must:
- (a) comply with all laws applicable to their role as a litigation supporter and act in good faith and in the best interests of the supported party in performing that role;
 - (b) maintain the confidentiality of the personal information relating to the supported party except to the extent required for the purposes of the proceeding;
 - (c) unless otherwise permitted by the Tribunal, use information received from another party to the proceeding only for the purposes of the proceeding;
 - (d) keep proper records of decisions made and actions taken in performing their role as a litigation supporter; and

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- (e) as far as practicable, consult with the supported party and keep the supported party informed about the conduct of the proceeding.

Part 3. When a litigation supporter can be appointed and who can be appointed

When a litigation supporter can be appointed

- 3.1 The Tribunal may, by order, appoint a person to be a litigation supporter for a party to a proceeding if the Tribunal considers that:

- (a) the party does not have decision-making ability; and
- (b) the appointment is necessary, taking into account the availability and suitability of other measures that would allow the party to participate in the proceeding.

Note 1: See section 67(1) of the Act.

Note 2: For an application for review of a decision under the *National Disability Insurance Scheme Act 2013*, a child representative under section 74 of that Act or a plan nominee appointed under section 86 of that Act may act as a representative of a party without being appointed as a litigation supporter in accordance with this Practice Direction.

- 3.2 In considering whether to make an order under paragraph 3.1, the Tribunal will presume that the party has decision-making ability. That presumption will not be rebutted solely on the basis that the party has a disability.

Note: See section 67(1A) and (1B) of the Act.

- 3.3 In appointing a person to be a litigation supporter for a party to a proceeding, the Tribunal is required to take into account:

- (a) the party's will and preferences, or likely will and preferences, in relation to:
 - (i) whether the Tribunal should appoint a person to be a litigation supporter; and
 - (ii) who the Tribunal should appoint to be a litigation supporter; or
- (b) if the party's will and preferences, or likely will and preferences, cannot be ascertained—the personal and social wellbeing of the party.

Note: See section 67(2) of the Act.

- 3.4 The Tribunal may appoint a person to be a litigation supporter for a party whether or not the party has a guardian or representative appointed under a law other than the Act.

Note: See section 67(4) of the Act.

Persons who may be appointed a litigation supporter

3.5 A person cannot be appointed as a litigation supporter for a party to a proceeding unless all of the following are satisfied:

- (a) the person is at least 18 years old;
- (b) the person has no conflict of interest in representing the party;
- (c) the person consents to the appointment; and
- (d) the Tribunal considers that the person is able to meet the requirements in paragraph 2.6.

Note: See section 67(3) of the Act.

3.6 The Tribunal will not appoint a person as a litigation supporter for a party where:

- (a) the person is an undischarged bankrupt;
- (b) the person has been declared a vexatious litigant or vexatious applicant by a court or tribunal (including the Information Commissioner);
- (c) an order or direction has been made by a court or tribunal (including the Tribunal) that the person cannot make an application for review or commence any other proceeding without the permission of the court or tribunal;
- (d) the person has been convicted of a criminal offence involving fraud, dishonesty or violence which, in the opinion of the Tribunal, makes the person unsuitable for appointment as a litigation supporter;
- (e) a protection order is in force against the person for the protection of another person, including the party;
- (f) the person has been the subject of a finding by a court, tribunal, regulatory authority or professional conduct body relating to the person's honesty or character which, in the opinion of the Tribunal, makes the person unsuitable for appointment as a litigation supporter;
- (g) in the opinion of the Tribunal, the person does not have sufficient capacity – whether due to the degree of their understanding of the proceeding, the circumstances or interests of the party to be represented or for any other reason – to perform the role of litigation supporter;
- (h) in the opinion of the Tribunal, the circumstances of the person are such as to make the person unsuitable for appointment as a litigation supporter; or

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- (i) the person does not satisfy any conditions prescribed by the Rules for the purposes of section 67(3) of the Act.
- 3.7 To assist the Tribunal to assess the eligibility and suitability of a person to be appointed as a litigation supporter for a party, the person must complete the litigation supporter eligibility and consent form which is available on the Tribunal's website at www.art.gov.au.
- 3.8 Where:
- (a) a person satisfies the requirements of paragraph 3.5;
 - (b) the person is not excluded from appointment as a litigation supporter by paragraph 3.6;
 - (c) no law precludes the person from being appointed a litigation supporter; and
 - (d) there is no other reason which, in the opinion of the Tribunal, makes it inappropriate to appoint the person as a litigation supporter,

the Tribunal may appoint the person as the litigation supporter for a party.

Note: Examples of a person who may be appointed as a litigation supporter for a party include:

- (a) a guardian of the party;
- (b) a lawyer for the party;
- (c) a family member or a close personal friend of the party; or
- (d) an advocate of the party.

Part 4. Process for appointment of a litigation supporter

- 4.1 The Tribunal may appoint a litigation supporter on its own initiative or upon application by a party.
- Note:** The Tribunal may appoint a litigation supporter without the consent of the supported person where the requirements of paragraph 3.1 are satisfied.
- 4.2 An application for the appointment of a litigation supporter may be made at any time during the relevant proceeding.
- 4.3 Unless the Tribunal otherwise directs in a particular case, an application for the appointment of a litigation supporter must be made in writing and sent to the Tribunal either:
- (a) by post or otherwise delivered to a registry specified on the Tribunal's website at www.art.gov.au; or

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- (b) by email to reviews@art.gov.au.
- 4.4 The following information must be included in an application for the appointment of a litigation supporter:
- (a) the name and contact details of the person making the application and their connection with the proceeding;
 - (b) the name of the party in respect of whom the application is made;
 - (c) the Tribunal proceeding reference number;
 - (d) the reasons why the person making the application says that it is appropriate that a litigation supporter be appointed;
 - (e) information and documentation that will enable the Tribunal to determine whether the requirements in section 67 of the Act for the appointment of a litigation supporter, as set out in Part 3 of this Practice Direction, are satisfied; and
 - (f) any other information and documentation that may be relevant to the Tribunal's consideration of the application.
- 4.5 For the purposes of paragraph 4.4(e), relevant documentation about the party for whom the application for the appointment of a litigation supporter is made may include:
- (a) medical reports regarding the decision-making ability of the party;
 - (b) statements of individuals with close connections to the party (such as close personal friends, family members, support workers, work colleagues and health care professionals) setting out their interactions with, and observations of, the party.
- 4.6 For the purposes of paragraph 4.4(f), other information about the party for whom the application for the appointment of a litigation supporter is made may include:
- (a) whether the party is subject to a guardianship order, administration order, or a mental health treatment order and, if so, a copy of the relevant order;
 - (b) a copy of any instrument of enduring guardianship, enduring power of attorney or advance medical directive made by the party;
 - (c) the age of the party; and
 - (d) what supports are already available to the party.
- 4.7 If an application to appoint a litigation supporter is made by someone other than the party for whom the appointment is sought, the Tribunal will provide that party an opportunity to respond to the application before the Tribunal decides whether to appoint a litigation supporter. The Tribunal may require that a copy of
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the application and the supporting documentation be provided to the party to assist the party to respond to the application.

Part 5. Process for resignation or removal of a litigation supporter

- 5.1 A litigation supporter who does not wish to continue in that role may resign by giving the Tribunal a written resignation at any time during the proceeding.
- 5.2 At any time during the proceeding, the Tribunal may, by order, remove a supported party's litigation supporter if:
- (a) the supported party requests a different person be appointed as litigation supporter for the party; or
 - (b) the Tribunal considers that the supported party has, or has regained, decision-making ability; or
 - (c) the Tribunal considers that:
 - (i) the litigation supporter has a conflict of interest in representing the supported party; or
 - (ii) the litigation supporter has not complied with paragraph 2.6 of this Practice Direction; or
 - (iii) representation of the supported party by the litigation supporter presents a safety risk to any person; or
 - (iv) representation of the party by the litigation supporter presents an unacceptable privacy risk to any person; or
 - (v) the litigation supporter is otherwise impeding the Tribunal.
- 5.3 Where a person resigns as a litigation supporter or is removed by the Tribunal, the person must provide any documents held by the person in relation to the proceeding to any person specified by order or direction of the Tribunal, which may include:
- (a) the supported party;
 - (b) where the supported party has a representative – the representative; or
 - (c) where the Tribunal appoints another person as litigation supporter for the supported party – the new litigation supporter.

Part 6. Remuneration and costs of a litigation supporter

- 6.1 The Tribunal does not have power to pay remuneration to a litigation supporter or to reimburse them for any costs incurred by them.
- 6.2 Issues concerning remuneration and costs of a litigation supporter are matters for agreement between a party and a litigation supporter.
- 6.3 A party may be able to apply to the Attorney-General of the Commonwealth for legal or financial assistance in respect of a proceeding under section 294 of the Act.

Note: Further information is available on the Attorney-General's Department website: <https://www.ag.gov.au/legal-system/legal-assistance-services/commonwealth-legal-financial-assistance>.

Litigation supporter eligibility and consent form

Administrative
Review Tribunal



Section 67(3) of the *Administrative Review Tribunal Act 2024* provides that the Tribunal may appoint a person as a litigation supporter for a party to a proceeding only if certain conditions are satisfied. You should use this form to provide relevant information to the Tribunal to assist it to assess your eligibility and suitability to be appointed as a litigation supporter.

Section 1 – Details of party for whom a litigation supporter is proposed

Use this section to provide details of the party for whom appointment of a litigation supporter is proposed and information about the Tribunal proceeding in which they are a party.

Tribunal case number(s):	<input type="text"/>
Party Name:	<input type="text"/>
Party Role:	<input type="checkbox"/> Applicant <input type="checkbox"/> Respondent <input type="checkbox"/> Other party
Other (please specify):	<input type="text"/>

Section 2 – Details of proposed litigation supporter

Use this section to provide your details as the proposed litigation supporter for the above party.

Name:	<input type="text"/>
Address:	<input type="text"/>
Date of birth:	<input type="text"/>
Relationship to the party for whom a litigation supporter is proposed:	<input type="text"/>

Section 3 – Considerations relevant to eligibility and suitability

Use this section to provide information that is relevant to the Tribunal's consideration of your eligibility and suitability to be appointed as a litigation supporter for the above party.

Are you at least 18 years old?

☐ Yes ☐ No

Do you have any conflict of interest in representing the party as the party's litigation supporter?

☐ Yes ☐ No

Are you an undischarged bankrupt?

☐ Yes ☐ No

Have you ever been declared vexatious by a court, tribunal or the Information Commissioner?

☐ Yes ☐ No

Have you ever had an order made that you cannot commence a proceeding in a court or tribunal without the permission of that court or tribunal?

☐ Yes ☐ No

Have you ever been convicted of a criminal offence involving fraud, dishonesty or violence?

☐ Yes ☐ No

Is there a protection order currently in force against you for the protection of another person?

☐ Yes ☐ No

Has an adverse finding ever been made by a court, tribunal, regulatory authority or professional conduct body relating to your honesty or character?

☐ Yes ☐ No

Are you currently subject to any guardianship or administration orders?

☐ Yes ☐ No

Are there any other matters which may affect your suitability to act as a litigation supporter?

☐ Yes ☐ No

Section 4 – Acknowledgement and consent of proposed litigation supporter

Use this section to make some acknowledgements and to provide your consent to act as a litigation supporter for the above party in the above proceeding.

I understand the nature of the above proceeding:

☐ Yes ☐ No

I have read the Litigation Supporter Practice Direction and understand my role and obligations as set out in the Practice Direction.

☐ Yes ☐ No

I will give effect to the above party's will and preferences, or likely will and preferences. If these cannot be ascertained, I will act in a manner that promotes the above party's personal and social wellbeing.

☐ Yes ☐ No

I consent to the appointment as a litigation supporter for the above party for the purposes of the above proceeding.

☐ Yes ☐ No

Section 5 – Signature

Signature:

Date: