

Procedural Fairness and Reasonableness in “*all the circumstances*”

Liu and Comcare (Practice and procedure) [2026] ARTA 974
(29 May 2026 – ART Only)

Key Points

- The applicant claimed compensation for insomnia, anxiety and panic attacks, tension headaches, irregular heartbeat and high blood pressure. The respondent declined liability for compensation, and this decision was subject to review by the former Administrative Appeals Tribunal and subsequently withdrawn by the applicant. The applicant then submitted a new Application for Review with the Administrative Review Tribunal (**ART**) some two years and six months later.
- The Tribunal was tasked to determine whether it was reasonable to exercise discretion to extend the time period for the applicant to apply to the Tribunal pursuant to section 19(2) of the *Administrative Review Tribunal Act 2024* (Cth).
- The Tribunal refused the extension of time under section 19(2) of the *Safety, Rehabilitation and Compensation Act 1988* (Cth), explicitly stating it was unreasonable to do so in circumstances where an Application had previously been withdrawn, and the applicant did not take any further steps for close to two years.

Background

The applicant was previously employed by the Australian Taxation Office (**the ATO**). She made a claim for compensation for insomnia, anxiety and panic attacks, tension headaches, irregular heartbeat and high blood pressure in the context of an overloaded work pressure during her employment with the ATO. This claim was denied by the respondent in a reviewable decision dated 13 April 2023 pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**). The applicant, through her solicitors at the time, made an Application to the (former) Administrative Appeals Tribunal on 9 June 2023. However, on 14 June 2023, by way of email, the applicant's solicitors requested that the Application be withdrawn and it was subsequently dismissed on 16 June 2023. The respondent was not made aware of this Application at the time of the dismissal. The applicant contacted the ART on 31 March 2025 seeking to reinstate her former Application. She was advised on 26 April 2025 that her Application could not be reinstated unless the respondent requested it be so.

The applicant contacted the respondent on 14 July 2025 seeking that her Application be reinstated. This was the first time the respondent was made aware of the earlier Application that was withdrawn. The respondent recommended that the applicant contact the Tribunal to

seek leave for an extension of time to commence proceedings. This communication was repeated on numerous occasions between August and October 2025. The applicant lodged her Application for Review with the Tribunal on 18 December 2025, stating that she had not applied within the statutory time limit due to severe, medically substantiated psychological and neurological incapacity arising from workplace injury. The respondent filed a Notice of Opposing Application for Extension of Time on 18 February 2026.

The Tribunal relevantly identified it was required to determine:

1. Whether it was “*reasonable in all the circumstances*” for the Tribunal to exercise its discretion to extend the time period for the applicant to apply to the Tribunal pursuant to section 19(2) of the *Administrative Review Tribunal Act 2024* (Cth) (**the ART Act**). The Tribunal is to have regard to:
 - a. The length of the delay between notification and applying for review;
 - b. Whether there is good reason to do so in the circumstances and not simply because the applicant had rested on their rights, with consideration to what action the applicant has taken;
 - c. Whether the respondent was entitled to regard the matter as finalised and whether any prejudice is occasions against the respondent as a result of the delay, including defending these proceedings;
 - d. The merits of the substantive application; and
 - e. Whether it is fair and equitable to exercise the discretion and in the public interest
2. Secondary to the main issue, the question of whether procedural fairness allowed the applicant to pursue a review of a decision that was subject to proceedings in 2023 that were subsequently withdrawn.

The Law

Section 9 of the ART Act provides:

The Tribunal must pursue the objective of providing an independent mechanism of review that:

- (a) is fair and just; and
- (b) ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits; and
- (c) is accessible and responsive to the diverse needs of parties to proceedings; and
- (d) improves the transparency and quality of government decision-making; and

(e) promotes public trust and confidence in the Tribunal.

Sections 19(1) to 19(3) of the ART Act provides:

(1) A person (the applicant) may apply to the Tribunal to extend the period during which the applicant may apply to the Tribunal for review of a decision.

(2) The Tribunal may, by order, extend the period if the Tribunal considers that it is reasonable in all the circumstances to do so.

(3) The Tribunal may extend the period even if it has expired.

Conclusion

Regarding whether it was “reasonable in all the circumstances”

The Tribunal considered that the delay of 2 years, 6 months, and 5 days beyond the prescribed period was considerable and weighed against the applicant as it potentially goes toward significant prejudice being occasioned against the respondent. Further, the Tribunal considered that the medical evidence did not support the applicant’s contention that she was incapacitated to the extent that she was unable to pursue her legal rights for the entirety of this period.

Although the Tribunal considered there was merit to the substantive Application, the Tribunal found that there was significant prejudice against the respondent in light of the applicant considerably widening the scope of her claim. The Tribunal concluded that to allow the extension of time would be contrary to the interests of justice and the public interest and would not be consistent with the objective of section 9 of the SRC Act.

Based on this, the Tribunal refused the extension of time under section 19(2) of the SRC Act.

Lessons Learnt

While applicant’s have the right to seek an extension of time to file an Application for Review, the Tribunal must consider the objectives of Section 9 of the ART in doing so. In this particular case, the applicant’s widening of her claim, her previous withdrawal, and the extended length of time between the reviewable decision and extension of time application weighed greatly against her favour. Specifically, these factors created significant prejudice for the respondent in circumstances where they reasonable assumed the matter to have ceased. The objectives under section 9 of the ART Act, specifically those of public interest, are important considerations for all parties involved in Applications for an extension of time.

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