

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
OPENING REMARKS
ADT MEMBERS' CONFERENCE
FRIDAY 15 NOVEMBER 2013

1. Thank you very much for inviting me to make some short opening remarks on this very significant occasion. It is my great pleasure to welcome you to what will be the final annual members' conference of the New South Wales Administrative Decisions Tribunal. In the minutes that I have available this afternoon I would like to briefly reflect on the achievements of the Tribunal during the 15 years that it has operated and to express my gratitude on behalf of the judges of the Supreme Court to everyone who has contributed to the work of the Tribunal throughout its lifetime.
2. The ADT has unquestionably become an important and respected component of the system of courts and tribunals in New South Wales. The standing in which the ADT is held and the standard of decisions that it has produced is a reflection of the tireless work of the Tribunal's members. I know that later today Richard Lancaster and Chris Wheeler will review the contribution of the ADT to administrative justice in this State. However, while I do not want to cross too far into their territory, it would be remiss of me on an occasion such as today's to not return briefly to the origins of the ADT, its objectives and what it has achieved during its life.
3. The most obvious starting point is 6 October 1998 when the Tribunal commenced operations, or perhaps May 1997 when the relevant enabling legislation was introduced into Parliament. However, the ADT's history extends much further back to the early 1970s, when the first of a series of

reviews and reports recommended the introduction of a unified and consistent administrative appeals system. These long held objectives were reflected 25 years later when the then-Attorney General in his address to the opening session of the Tribunal commented that

“There was a clear need to provide a general mechanism for administrative appeals on the merits of a decision and for those appeals to be conducted in an open and accessible form, guided by principles of procedural fairness.”¹

In this sense, while there were innovative elements of the ADT when it was formed, the need for a body in New South Wales in the form of the ADT was effectively well established.

4. One particularly pioneering feature of the ADT was the inclusion of an internal appellate level. The Appeal Panel is a significant component of the Tribunal that has allowed applicants to appeal decisions while retaining the benefits that the ADT offers in terms of accessibility, cost consequences and procedural informality. The Appeal Panel’s importance was acknowledged in 2003 when its jurisdiction was extended to include the Guardianship Tribunal. The Appeal Panel has contributed to the consistency of the ADT’s decisions and the current Bill before Parliament to include an internal appeal jurisdiction as part of the New South Wales Civil and Administrative Tribunal recognises the value of such a function.
5. The original jurisdiction of the ADT included the transfer of large tribunals such as the Equal Opportunity Tribunal and the Legal Services Tribunal, and also far smaller bodies including, for instance, the Boxing Appeals Tribunal. In preparing for this morning I must admit that I conducted several quick searches and was very pleased to discover that the ADT did

¹ JW Shaw QC, “The Administrative Decisions Tribunal of New South Wales” (1999) 6 *Australian Journal of Administrative Law* 155.

indeed hear a number of boxing-related matters in the early 2000s. These by all accounts were knockout decisions in favour of the Boxing Authority and are rulings that reinforce the ADT as heavy hitting jurisdiction in this State.

6. When introducing the Administrative Decisions Tribunal Bill, the then-Attorney General referred to a number of matters that are essential to good administration including: that reasons be given for decisions; that remedies are available and accessible to correct wrong decisions; and that there is a review process that adheres to principles of natural justice. These objectives – along with providing a clearly recognisable forum with less formal procedures so as to increase accessibility – are goals of administrative review that the ADT has both achieved and exceeded. Tribunals play a vital role in ensuring access to justice in New South Wales by creating accessible and comprehensible environments in which applicants can seek recourse quickly, cheaply and without a need for legal representation. The ADT has remained informal and accessible, with a website that provides clear and detailed guidance to assist applicants. In addition, the ADT has maintained a strong focus on case conferences and mediation to assist parties to resolve disputes prior to full hearing.
7. Technology and the publication of decisions is an area that the Tribunal embraced from the outset. From its creation the ADT had its own website and published its reserved decisions using the CaseLaw NSW website. The ADT's strong commitment to the publication of reasons undoubtedly played an important role in fostering transparency and consistency, while also ensuring that the Tribunal's decisions were widely accessible to both practitioners and members of the community. To date, more than 5,000 of the ADT's decisions have been published on the CaseLaw website. This is a testament to the work of the Tribunal's members and will no doubt continue to guide tribunals and primary decision-makers into the future.

8. One significant feature of many tribunals is the use of panels that include both lawyers and members with non-legal backgrounds. The latter often bring specialised expertise and technical insight to the decision making process. The ADT has made great use of non-legal members and I understand that present today are around 25 legal and 30 non-lawyer members, including veterinary practitioners, architects, expert accountants and those with an in depth understating of issues relating to community welfare and retail leasing. The decisions produced by the Tribunal have benefited greatly from the particular skills and insights that both legal and non-legal members have brought to the decision making process.
9. Most of you will be surprised to learn that for around three years I was a member of the Legal Services Tribunal during the period in which it was transferred to the ADT, becoming what is now the Legal Services Division. I must confess that my membership was largely nominal. I was asked to sit on the Tribunal on perhaps three or four occasions; for one I had a prior commitment, and for the others I had conflicts. I 'retired' from the Tribunal in late 2000. I think my resignation only benefited the Tribunal.
10. Today's Conference also gave me a reason to look back through the Tribunal's annual reports, and not only to admire the hairstyles of the late 1990s. I was particularly struck by the 2001 Year in Review, where the President observed that "State Governments have been exploring the desirability of greater integration of tribunals into single super-Tribunal structures" and that the ADT is a "small example of that trend". These were prophetic words indeed. The ADT has no doubt been an important influence in the formation, structure and procedures of NCAT. Both the President and Steering Committee of NCAT will I am sure look to the ADT for guidance and also as a pilot in terms of the consolidation of tribunals. In addition, and as I previously mentioned, I have no doubt that the decisions of the ADT will continue to assist practitioners and members of

NCAT.

11. On behalf of the judges of the Supreme Court I would like to express my thanks to the Divisional Heads, the judicial and non-judicial members and the Registry staff of the Tribunal. You have each made an invaluable contribution to the efficient review of administrative decisions in this State.
12. I would also like to acknowledge and give particular thanks to Judge Kevin O'Connor and Magistrate Nancy Hennessy. Judge O'Connor and Magistrate Hennessy have acted as President and full-time Deputy President respectively throughout the life of the ADT. The success of the Tribunal is due in large part to their hard work, guidance and leadership.
13. This afternoon you have an excellent program to look forward to and are privileged to have a distinguished series of speakers including Professor Triggs and the Attorney General, the Honourable Greg Smith. I hope that today's Conference is a great success and that the gala dinner this evening is a fitting celebration of the ADT's work over the last 15 years. Let me once again thank you for the contribution that the Administrative Decisions Tribunal has made to the justice system in New South Wales and wish you the very best for your conference this afternoon.