



LAUNCH OF THE CIVIL AND ADMINISTRATIVE TRIBUNAL OF NEW SOUTH WALES

Robertson Wright¹

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Mr Attorney, Elder Allen Madden, Chief Justice, Chief Magistrate, Director General, Deputy and Assistant Directors General, Commissioner for Fair Trading, Presidents of the Bar Association and the Law Society, other distinguished guests, members and staff of the Tribunal, your presence here today marks the significance of this occasion, the launch of the Civil and Administrative Tribunal of New South Wales which, to quote the almost affectionate words of s 7(1) of the *Civil and Administrative Tribunal Act 2013*, “*may also be called NCAT*”.

Today represents a culmination of hard work towards a goal: the hard work of laying the foundations, both systemic and physical, for NCAT at its launch today; the goal that access to NCAT should be simple and readily available for the benefit of all in the community.

It is important, at the outset, to appreciate NCAT’s role and nature. NCAT’s principal functions are to review decisions of the executive, to quell disputes between citizens and between government and citizens, to assist to supervise professions and occupations and to exercise part of the *parens patriae* jurisdiction of the State. These are all functions of government. If these powers were not exercised by NCAT or some other judicial and quasi-judicial body, the alternative is for those affected to take matters into their own hands, often literally, and rely on self-help. This alternative has the potential to become a threat the existence of a peaceful and ordered society.

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NCAT performs its functions aided by flexibility and informality of procedures and the participation of professional, lay and community representatives in its decision making.

Thus, it is not particularly enlightening to attempt to assimilate NCAT to the paradigm of a business supplying a product, namely tribunal services. Nor can the parties to proceedings before NCAT be thought of as consumers of tribunal services who have the right to accept or reject those services. Parties before NCAT are participating in the processes of government.² The parties are bound by the decisions of NCAT. In these circumstances it is natural and fitting that NCAT bears corresponding responsibilities as an instrument of government. The Tribunal has the primary responsibility of ensuring that its decisions are just, in the sense of being in accordance with law, and also prompt, accessible and affordable. Furthermore, to justify the confidence of citizens in their instruments of government, NCAT should be appropriately open and accountable in its operations.

It was in October 2012 that the New South Wales Government gave its response to the Report of the Standing Committee on Law and Justice Inquiry into Opportunities to consolidate tribunals in NSW. Barely 14 months later, the New South Wales Civil and Administrative Tribunal is being launched. Twenty-two tribunals and similar bodies have been consolidated into one Tribunal.

Achieving such a consolidation in such a short period of time did not occur without much hard work. It is appropriate to acknowledge on this occasion that your support in particular, Mr Attorney, and that of your Department have been essential in bringing the NCAT project to fruition.

The implementation of NCAT was guided by the Steering Committee led for most of the project by Mr Laurie Glanfield, while Director General of the Department of the Attorney General and Justice, and subsequently by Mr Brendan Thomas, Acting Director General until December last year. They both provided leadership and direction of the highest order.

² These ideas are not original. They were expressed in a slightly different context by Keane JA (as his Honour then was) in a paper entitled "*Access to Justice and other Shibboleths*" presented at the JCA Colloquium in Melbourne on Saturday, 10 October 2009.

The practical work of implementing NCAT was carried out by a small project team led by Sian Leathem, who (I am delighted to note) has become the Principal Registrar. Her team was made up of Lisette Rudge, Kellie Blakemore and Peter Brandt. Their contribution to NCAT is quite disproportionate to the size of the team and cannot be understated.

In addition, the successful establishment of NCAT owes a significant amount to the members and staff of the tribunals and bodies which have been combined to form NCAT, and to those with a direct and legitimate interest in the functioning of those tribunals and bodies. The contribution they each made, especially through the Reference Group, was invaluable. Many people have commented to me, and I also observed after my appointment in late October last year, that the Reference Group worked together in an especially positive, co-operative and productive way. Whilst this is no doubt attributable to the experience and good sense of all the participants, it is also a reflection of the great skill, charm and judgment of Commissioner Linda Pearson who chaired the Reference Group and managed its business so successfully.

There are also many others whose efforts have been essential to bringing NCAT into existence. These are much appreciated. Closest to home, however, can I thank in particular, the members of the various tribunals and bodies who have become members of NCAT and the registry and other staff who have become part of the NCAT team.

NCAT is by no means an easy or simple policy solution to the issue of how this State's tribunal system should be structured. Rather it involves a deliberate and balanced amalgamation of specialist tribunal bodies into a single Tribunal while seeking to preserve the expertise, appropriate procedures and accumulated wisdom of those bodies through the distinct Divisions of NCAT. In this regard, it is important to note that the NCAT legislation has wisely continued the participation of professional and community representatives in the Tribunal's decision making processes.

The effective administration of justice through a tribunal such as NCAT has inherent in it the tension between a great ideal: prompt, affordable and accessible justice; and, the difficulties of implementation in the real world. The importance of getting

the tribunal system right cannot be understated since, for many in New South Wales, NCAT is the primary means they have of obtaining access to justice, of having their complaints and issues heard and of receiving the help that they need.

NCAT now sets out on its challenging journey of becoming the single, superior Tribunal for New South Wales by building upon the experience of the pre-existing tribunals in this State, as well as those outside NSW. It must do so in a way that ensures that justice in the Tribunal is in fact prompt, affordable and accessible. What has worked in the past will not be sufficient if there are more effective ways to provide the services of the Tribunal to those who need them.

The challenges can be met with experience, diligence and flexibility. NCAT is particularly fortunate to have its Divisions headed by Deputy Presidents and Divisional Registrars who have extensive knowledge of their particular areas of responsibility but who also have been willing to innovate and to adapt their systems and procedures so as better to serve the interests of those who come before them. It also has the benefit of the former President of the Administrative Decisions Tribunal as Deputy President with specific responsibility for managing appeals. My experience is that the staff who have joined NCAT have a great willingness to contribute their effort and ideas to developing NCAT into a pre-eminent tribunal.

Being able to build upon the expertise of a previous tribunal and extend the benefits across NCAT gives this Tribunal a significant advantage in a number of areas. The Appeal Panel of the Administrative Decisions Tribunal established an enviable reputation as an appellate review body within the tribunal system. The NCAT Appeal Panel in effect replicates what occurred in the ADT but extends it so that now most substantive decisions of NCAT will be appealable to the Appeal Panel as of right on a question of law and by leave on other grounds. Thus, the quality of NCAT decision making will be overseen and enhanced without appellants and respondents being required to proceed through the court system.

Similarly the existing use of technology is being extended. NCAT operates in an environment in which users expect to be able to engage with the Tribunal online. This is reasonable and appropriate. Indeed meeting this expectation is part of providing accessible and affordable justice. The former Consumer Trader and Tenancy Tribunal developed its case management system so that much of the work

of the Tribunal could be managed electronically and parties could lodge their applications and receive documents online. This system is being extended and developed so that more of NCAT's work can be computerised and so that the availability of online lodgement and service of documents is more widely available across the Divisions.

NCAT has also inherited a network of NCAT registries in the Sydney CBD, metropolitan areas and in regional locations. These provide access to NCAT's services across the State. In addition, the fact that all the Divisions of NCAT are now within the Department of the Attorney General and Justice creates the potential for the Departmental resources such as court houses and offices to be made available for use by NCAT, when required, in a greater number of locations especially in regional and rural areas.

Whilst it may be pleasant, there is a danger in listening only to congratulatory speeches about oneself. In NCAT's case, I expect these speeches will cease after today. Nonetheless, in order to avoid becoming entirely self-referential and self-congratulatory, NCAT needs to hear the views and experiences of those who appear before it or have a legitimate interest in its functioning. To this end, we are establishing regular meetings to allow an exchange of views and information between the Tribunal and its users and other interested parties concerning the operations and processes of the Tribunal. These meetings will include an NCAT-wide liaison group largely based upon the members of the Reference Group but not limited to that membership. At the Divisional level, there will be regular consultative forums which will focus upon the specific jurisdictions or areas of responsibility of each Division. NCAT is committed to being responsive to the views and information it receives.

Finally, it is probably appropriate to end by asking a hard question: How should the future performance of NCAT be judged? May I answer that question this way: NCAT will perform its governmental functions properly and beneficially and NCAT will be a success:

- if tribunal users can gain simple and affordable access to tribunal services that respond to their varied needs;

- if NCAT's procedures and processes are flexible and proportionate to the nature and subject matter of the claims before it;
- if NCAT's decisions are just and prompt; and
- if NCAT's operations are accountable and transparent.

Having said that, Mr Attorney, it is now my honour to invite you formally to launch the NSW Civil and Administrative Tribunal.