

## **FUTURE DIRECTIONS FOR TRIBUNALS IN OUR TERRITORY**

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I would like to thank the Council of Australasian Tribunals and the Australian Institute of Administrative Law, the joint hosts of this seminar, for inviting me here today to speak about future directions for tribunals in our Territory.

First, I would like to recognise the members of tribunals across the ACT. You play a very important role in helping many Canberrans to access justice. For that I commend and thank you.

In talking about the future of tribunals in the ACT, I would like to emphasise that I am talking about improvements to the system that further enhance access to justice and equity for our community – to the benefit of us all.

In considering potential reforms, my Government acknowledges that tribunals in the ACT are highly regarded and invaluable to the community. However, within any organisation there is always an opportunity to improve and my Government also has an obligation to examine developments and reforms in other jurisdictions and changes in the needs of the community.

### **Views on Justice and ACT Tribunals**

Before we discuss tribunals in particular, I would like to outline my views on the justice system in Canberra – a system in which our tribunals play an integral role.

The justice system should be not only accountable, but should be built upon the principles of equity and accessibility. I believe that a robust and fair justice system allows for, and indeed encourages, community participation in the matters that affect the lives of individuals – without of course being knee-jerk or succumbing to occasional pressures to establish a punitive law and order regime.

My Government has demonstrated its commitment to reform. We have introduced major reforms to human rights, discrimination against minority groups, civil law and the criminal code among many others.

There is more to be done in the area of unfair contracts, fair trading and the structure of the justice system itself, that is, the legal profession and the courts and tribunals that administer the law.

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The second term of a Labor Government will impact on ACT tribunals as each of us working within the system searches for ways to enhance the operations of our tribunals – focusing on the critical elements of independence, fairness, impartiality, accessibility and cost effectiveness.

As you know, tribunals fulfil a special function in the Australian justice system – enhancing access to justice and providing an accessible, affordable and streamlined alternative to the courts.

Since their inception tribunals have operated in a way that essentially complements the role of the courts. In certain specialist jurisdictional areas, this role has been extended to replace the courts.

I do not believe that anyone would argue that courts should be a ‘last port of call’ in matters of conflict and dispute.

The development of alternative dispute mechanisms over the last decade or so is as a direct result of the cost and delays associated with the use of courts.

Alternative dispute mechanisms such as tribunals also offer the benefit of enhanced accessibility and simplicity. The less formal operation of tribunals means that legal representation may not be necessary or non-legal representation may be allowed. I would venture to take this a step further and suggest that in some tribunals lawyers should not be permitted other than as presiding members.

Due to the manner of their evolution, tribunals were not established with any consistent reference to a specific model and therefore perform a mixture of judicial and quasi-judicial functions and a variety of roles from merit review, statutory oversight and regulatory functions to dispute resolution.

The differences between each of the tribunals reflect their ability to deal with cases in a targeted way. It also means that tribunals have the skills to be sensitive to the complexities of every case, however big or small.

For instance, the Mental Health Tribunal is chaired by Magistrates, but also has psychiatrists, psychologists, and members of the community as its members. (I am advised that psychologists are not used as frequently as might be expected but I trust that is an issue the President is addressing.)

The issues that arise are specific to each individual, invariably complex and require a range of skills and perspectives that falls outside the expertise of legal professionals. The Mental Health Tribunal has 22 members from the courts, the medical profession and the community, ensuring that decisions are well informed and have been examined from a variety of perspectives.

The Essential Services Consumer Council, on the other hand, has no magistrates but instead includes members from industry and the community who collectively have qualifications or experience in law, business, consumer affairs, or helping people suffering financial hardship. The Council has a distinctly community-based feel reflecting the consumer-based service it provides.

No matter what their structure or composition, tribunals have made a significant contribution and our focus is now on maximising and enhancing that contribution.

### Future Directions for Tribunals

In considering the future direction of tribunals it is paramount that we continue to ensure that tribunals:

- are independent, open, fair and impartial;
- are accessible to users;
- have the needs of users as their primary focus;
- offer cost effective procedures;
- are properly resourced and organised; and
- are responsive to the needs of all sections of society.

Despite the excellent track record of tribunals in the ACT, there are areas of concern in the current system. For example, there are too many points of contact.

We have a number of tribunals operating in isolation from each other, most of which use separate registry or secretariat services. This leads to duplication and inefficiency in the system.

Given the investment by Government and the community, not only in housing tribunals but in providing administrative support, we should ask whether the return for the community and members would be greater if some form of rationalisation were to occur.

In talking about rationalisation I am not simply talking about cost cutting but about exploring ways of better using resources. The benefits of a carefully planned approach could include better access for the community and improved support for tribunal members.

Rationalisation also makes sense in such a small community as the ACT. We have a number of specialised jurisdictions where the relevant tribunal may rarely have cause to meet. This places enormous pressure on tribunal members, and the small number of cases can impede professional development and limit the opportunity to refine processes and procedures.

How we proceed is obviously a matter for debate. The options include consolidating tribunals, rationalising jurisdictions or rationalising tribunal registries. I gather that some observers prefer that any rationalisation occur through a consolidation of the tribunals themselves or through a rationalisation of jurisdictions.

Of course, some consolidation of jurisdictions has already occurred. For instance, the Consumer and Trader Tribunal is an example of an ACT tribunal that has a number of separate jurisdictions. This Tribunal is responsible for hearing disciplinary matters relating to the agents and security industries and appeals against licensing and registration decisions for these industries.

In the future, this Tribunal will be expanded to cover other industries regulated by the Office of Fair Trading, such as the Dispute Resolution Committee for the motor vehicle service and repair industry, the Complaints Resolution Committee for the fitness industry and the Liquor Board. This consolidation avoids duplicating existing committee and board functions.

Expanding the jurisdiction of the Tribunal to replace these other committees will also ensure consistency of process and produce economies of scale.

And the Health Professions Tribunal, which will soon commence operations, will consolidate the hearing of complaints against a variety of different health professionals including surgeons, nurses and chiropractors. It will assess serious complaints and reports about the standard of practice of a health professional and review decisions of a health profession council.

The Tribunal will be empowered to take action in relation to a health professional's registration including the sole power to suspend or cancel registration.

This Tribunal is an example of the consolidation of specialised, though related, jurisdictions. What remains however is a question of whether the tribunal should itself remain as a separate entity operating independently under the supervision of the courts.

In consolidating jurisdictions we cannot lose sight of the need to ensure that tribunals continue to be composed of the 'right' mix of professionals and experts.

The Consumer and Trader Tribunal, for example, has a pool of people with skills and experience in industry, community representation, finance and the law, so that the most appropriate member or panel of members can sit on a case. If the jurisdiction is expanded, it follows that the breadth of skills and experience on the tribunal would also need to expand.

I would also, at this point, like to discuss the issue of membership of legal professionals - those panel members who have been chosen because of their expertise in the law. I know that there is a strong view that legally trained members are often in a better position to fulfil and understand the legal requirements of natural justice and decision-making within the context of the broader justice system which includes tribunals.

I do not disagree with this. It is one of the reasons why magistrates preside over some tribunals and why some tribunals come under the supervision of the courts. My concern with continuing to place such a strong emphasis on the need for legally trained and supervised members is that we risk losing sight of the value of tribunals as flexible, responsive bodies whose accessibility to the community stands in contrast to the court system.

This contrast exists essentially because of the balance between legalistic and non-legalistic operation.

We also need to bear in mind the question of the separation of powers. If tribunals are part of the Executive as some say we must, at some stage, ask whether it is appropriate to have them headed by members of the Judiciary? That is a question I will leave for the future.

There has been some speculation about potential models that would combine the ACT's tribunals into one organisation so that they operate as a 'super' tribunal.

It has in fact been suggested to me that we should create a single tribunal with a number of divisions featuring common infrastructure and support mechanisms with a single broad hearing methodology. This would ensure we maintain the unique characteristics of existing tribunals or jurisdictions, for example, allowing flexibility in the type of hearing that a particular matter requires.

In such a model, a division of administrative decisions would replace the current Administrative Appeal Tribunal jurisdiction over the merit review of ACT Government agency decisions. This would exist along side a consumer and trading division dealing with the merit resolution of consumer and trader disputes. This division could consolidate and rationalise eight separate tribunals over seven separate jurisdictions.

This model would incorporate two other divisions, one being a community services and social welfare division covering such matters as discrimination and housing amongst many others. The other would be an occupational division, covering the professions and tradespersons, for instance, lawyers, health professionals, architects, electricians, plumbers, and the security industry.

This model makes sense and clearly has some appeal but, as with all major restructures, it requires much deeper examination – a process I will discuss a little later.

But clearly one of the factors we would need to consider would be the impact of a separate tribunal structure on the workloads and therefore terms and conditions of magistrates.

Another issue which would need to be canvassed in any rationalisation is the location of the tribunal. A large number of our tribunals are currently located within the Magistrates Court.

One view states that court supervision ensures the due process of the law thereby protecting human rights. But any rationalisation proposal would also need to consider if there are grounds for locating tribunals outside of the courts, to ensure their separation from the courts while still maintaining their flexibility and accessibility.

### **Conclusion**

I have only touched on the broad picture of the future of tribunals and really only identified one direction of rationalisation and consolidation and the advantages of this potential approach.

If my Government is re-elected we will be looking at the operation of the legal system, including tribunals, early in the next term. We have already begun work to ensure that the structure of the legal profession, including its disciplinary procedures, and the courts and tribunals all meet 21<sup>st</sup> century needs and expectations.

To further progress and extend this work, I have asked the Department of Justice and Community Safety to develop a range of options for Government consideration. I envisage that the Department will engage an external consultant to develop a discussion paper on what those options may be. I propose that the terms of reference extend also to a review of the operations of the Magistrates Court. Obviously we will consult fully with interested parties and bodies in both the development of options and implementation of any resulting reforms.

The options for further reform of tribunals would need to preserve, and possibly strengthen, the advantages and strengths of current tribunals such as their independence, their fair and impartial decision-making and their responsiveness to the needs of the community in a legal, physical and social environment that is constantly changing.

I look forward to your cooperation and contributions to the development of future directions for Territory tribunals.