Chapter 7

More Reasons for Giving Reasons

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The potential benefits of requiring the provision of reasons for a decision have frequently been the subject of curial and academic discussion. In *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme*,[1] Kirby J discussed the rationales commonly identified for requiring the provision of reasons. In summary, these were, first, that reasons amount to a 'salutary discipline' for those who make decisions which affect others, in that they discourage a decision-maker from merely 'going through the motions' and guard against arbitrary decision-making. Secondly, reasons encourage better and more disciplined decision-making, in that they encourage a careful examination of the relevant issues, elimination of extraneous considerations and consistency in decision-making. Thirdly, reasons provide guidance for future decisions of a similar kind. Fourthly, reasons facilitate the work of the courts in performing their supervisory role. Finally, reasons promote the acceptance of decisions once they are made, and promote public confidence in, and the legitimacy of, the administrative process.

Notwithstanding the potential benefits of providing reasons for decision, the common law position, affirmed by the High Court in *Public Service Board of New South Wales v Osmond*[2] and more recently in *Wingfoot Australia Partners Pty Ltd v Kocak*[3] is that, save perhaps in exceptional circumstances, there is no general rule that requires reasons to be given for all administrative decisions.

In many Australian jurisdictions, the practical significance of that common law position has been ameliorated by the creation of a statutory right to the provision of reasons, at least when judicial or merits review of a decision is sought.[4] However, those statutory rights are often subject to exceptions.[5] Further, in some jurisdictions,

1 (2003) 216 CLR 212, 242 [105] (Kirby J).

2 (1986) 159 CLR 656.

3 (2013) 252 CLR 480, 497-8 [43] (French CJ, Crennan, Bell, Gageler and Keane JJ).

4 See, eg, r 59.9 of the *Uniform Civil Procedure Rules 2005* (NSW); s 13 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). As to the content of reasons, in the Federal context, see *Acts Interpretation Act 1901* (Cth) s 25D.

5 By way of example, the *Administrative Decisions (Judicial Review) Act 1977* (Cth) provides that there is no right to reasons in respect of decisions falling within the scope of Sch 2. In New South Wales, the right to request reasons under s 49(1) of the *Administrative Decisions Review Act 1997* (NSW) does not apply to decisions made under a statute which does not confer administrative review jurisdiction on the New South Wales Civil and Administrative Tribunal (such as decisions made under the *Mining Act 1992* (NSW): see, eg, *Minister for Resources and Energy v Gold and Copper Resources Pty Ltd* (2015) 89 NSWLR 134, [59] Sackville AJA (Ward JA and Bergin CJ in Eq agreeing).