Civil and administrative tribunals (which in this session are referred to as 'super-tribunals') commonly have mandates to resolve disputes in a way that is fair and just. Another concern of super-tribunals is probably the pressure to perform their functions in a way that is efficient and effective. Many super-tribunals employ alternative dispute resolution (ADR) as a means to attempt resolution of some of these disputes. Historically, super-tribunals have employed facilitative ADR processes, with their emphasis on self-determination by the parties to the dispute. Recently, some courts and super-tribunals have tended to consider lessening the focus on facilitative ADR processes in favour of a greater focus on evaluative ADR processes in which a tribunal member mediator provides advice as to possible tribunal findings at hearing.

Presently, some commentators are noting a gradual change in community expectations regarding problem solving responsibility. Particularly, the author anecdotally notes an increasing desire of people in dispute to have their disputes decided by a third party, rather than by the disputing parties themselves.

At the same time, some commentators believe that a loss of control, or self-determination, is linked to poorer mental wellbeing and results in feelings of anger and/or depression. Research has also shown that those with entitled attitudes often attribute the blame for their problems to others. Some of these people tend to attempt to regain, or assert, control over their world by acting aggressively or violently to intimidate and control others.

Parties who resolve their dispute through the facilitative ADR processes generally rate the substantive outcome as more ‘just’ than parties who had their dispute adjudicated by a third party.

In light of this background, as a matter of public policy, the author contends that the design of ADR processes within tribunal settings should take into account the benefits to society of

---

1 For example, Queensland Civil and Administrative Tribunal Act 2009 (Qld), s.3.
3 For example, Parry R, “The Use of Facilitative Dispute Resolution in the State Administrative Tribunal of Western Australia – Central Rather than Alternative Dispute Resolution in Planning Cases” (2010) 27 EPLJ 113 at 26.
5 For example, Semmelroth C, PhD, Smith D.E.P., PhD, “The Anger Habit: Proven Principles to Calm the Stormy Mind” (2004).
appropriately encouraging self-determination within super-tribunals. This is desirable at this time not simply because facilitative ADR processes would probably tend to often produce an outcome that is more substantively just than an outcome of evaluative ADR processes. It is desirable because at present Australian society is arguably experiencing an 'entitlement epidemic',\(^{10}\) with its symptoms of poorer mental wellbeing, depression, anger, aggression, and intimidating and controlling behaviour.

The author considers that, as a matter of systems design, facilitative ADR processes and the value of self-determination should be legislatively and/or administratively enshrined in public dispute resolution as part of a plan to protect the mental wellbeing of our society and ensure that self-determination in tribunal ADR processes is not abandoned in the face of a desire to achieve efficiency.

---

\(^{10}\) For example, McCready A. “The Me, Me, Me Epidemic: A Step-by-Step Guide to Raising Capable, Grateful Kids in an Over-Entitled World” (Jeremy P Tarcher/Penguin, 2015).