

Report of the Executive Committee to the Annual General Meeting of the Australian Institute of Administrative Law – November 2006 to November 2007

1. Introduction

"The principal objects of the Institute are to promote knowledge of and interest in Australian Commonwealth, State and Territory administrative law and to provide a forum for exchange of information and opinions on all aspects of administrative law and administrative practices."

AIAL Website – November 2007

In striving to achieve these admirable objects, the Institute has continued during 2007 to maintain its position and reputation as the pre-eminent promoter of knowledge of, and interest in, administrative law across all Australian jurisdictions. It has also, during the last year, clearly met its object of providing a forum, in fact several forums nationally, for the exchange of information and opinions on administrative law.

In her report to the AGM last year, the then President Professor Robin Creyke listed what she referred to as "sectoral administrative law bodies" with which the Institute now competes. Without taking anything away from the role of such sectoral bodies, it is important to note, and to celebrate, as I did in my opening address at this year's National Administrative Law Forum, the unique combination of breadth and depth of the Institute's scholarship and administrative law outreach activities.

As the cover of AIAL Forum modestly boasts, we cover tribunals, courts, privacy, parliament, human rights, reasons, natural justice, government review, accountability, ombudsman, constitution, and freedom of information, and much more.

It is a tribute to the quality, enthusiasm, and hard work of our members and their State Chapters and National Executive (all of whom are volunteers who give considerably of their time and effort to the Institute) that the Institute can keep and improve its status and reputation across such a breadth of interests. There is arguably enough specialisation in the law already and the important role the Institute plays in moderating and cross-fertilising the emerging sub-specialties in administrative law, as well as between administrative law and other areas of law, not all of them necessarily public, must be acknowledged as a strength in itself, and maintained and nurtured.

Finally, by way of introduction and before I move on to some of the highlights of the last year for the Institute, and because I was not able to be present at last year's AGM I would like to take this opportunity of thanking Professor Robin Creyke for her work as the immediate past President of the Institute and for handing over to me an Institute and Executive in such good shape. It is one of the strengths of the AIAL that past Presidents have remained on the Executive as Robin has, and as I hope she continues to do.

2. Main Activities in 2006-2007

2007 Administrative Law Forum

The highlight of the year, intellectually, administratively, and financially, was the 2007 Administrative Law Forum, held in Canberra at the Australian Institute of Sport

on 14 and 15 June. This year's topic was "The Impact of Administrative Law". As has become traditional, the keynote address for the Forum, if not the opening, was given by the Attorney-General who acknowledged the important role of the Institute in promoting debate on administrative law, and, most pleasingly, applauded the Institute's "continued contribution to the development of an area of law so important to maintaining and improving Australia's democracy."

Some of the plenary and concurrent sessions from this year's Forum included:

- The impact of external review: Courts, tribunals and ombudsmen;
- Natural justice and national security;
- Procedural fairness: the first among equals?
- Natural Justice: Is there too much, too little, or just the right amount?
- Human Rights: Challenges and conflicts;
- Administrative Law: Improving Awareness and Increasing Impact; and
- Future Directions: How can we make administrative law more relevant?

Stephen Argument, in his usual hardworking and very effective role as conference director, was ably assisted by a sub-committee of the Executive, made up of, Robin Creyke, John McMillan, Jonathan Aleck, Robert Orr, and myself.

Jenny Kelly and Jessica Keyes from IPAA provided their usual stellar administrative support, which made the conference run as smoothly and efficiently as it always does with their expert assistance. This year, as a trial for the first time the conference papers were collated and published on CD, saving considerably on printing, collating, and handling costs of large quantities of paper. The trial appears to have been successful.

Jonathan Aleck has kindly agreed to review all of the papers from this year's Forum and report back to the sub-committee with recommendations for publication of a selection of the papers in AIAL Forum during the remainder of 2007 and 2008.

Importantly, this year's Forum provided an opportunity for the Executive to restate and reinforce a policy of encouraging newer contributions through the concurrent sessions and reserving most of the plenary sessions for more experienced and senior contributors. This policy has enabled the Institute to ensure a sustained quality of presentations and papers, while still allowing new talent a forum for their involvement in the administrative law conversation. I would commend this policy to future Executives.

The 2008 Administrative Law Forum, the 18th to be run by the Institute, will be held in Melbourne, and the planning for it is already well advanced under the very capable supervision of Stephen Moloney and a National Executive sub-committee made up of me, Jonathan Aleck and Claressa Surtees, with our Secretary, Stephen Argument, providing Stephen Moloney and his Victorian colleagues with the real source of incomparable advice and experience he has gained from his involvement in all of the last 17 conferences.

Two special features associated with the 2007 Forum warrant some further comment.

Sponsorship of Indigenous Law Students

One of the Institute's Vice-Presidents, Peter Sutherland once again took it upon himself to promote and administer, with the Executive's full support, the sponsorship of four indigenous law students at the 2007 Forum. The cost of the students' travel (from Queensland, New South Wales, and South Australia), accommodation in Canberra, and attendance at the Forum was met by the Institute and I see this now as a firmly established and very worthwhile AIAL tradition. As was the case last year, I understand that the students thoroughly enjoyed the Forum and we hope that their interest in administrative law will continue throughout their studies and into their future careers.

2007 AIAL Essay Prize in Administrative Law

The Forum dinner this year was also the venue for the presentation of the 2007 AIAL Essay Prize in Administrative Law, which is a competition conducted every other year as part of advancing the Institute's objects, particularly among law students. Alan Bradbury, the other Vice-President of the Institute, oversaw the judging panel this year, which was made up of other Executive members David Fintan (Treasurer), Stephen Goggs, and Michael Peedom.

Having been part of judging the last competition I know how difficult a task it is, but the panel did a great job of reading, comparing, short listing, and deciding on a winner which was the paper written by Rachel Harris entitled "*Avoiding the Worst of All Worlds: Government Accountability for Outsourced Employment Service*". The paper appears in AIAL Forum No. 54, along with a selection of other entries in this year's competition. Thank you to Alan and the other members of the judging panel for their work in keeping the essay prize alive during 2006/2007.

I also report on other notable events from 2007 under the headings that follow.

3. Executive Committee

The Executive Committee elected at last year's AGM was made up of the following members:

Mr Michael Will, President

Mr Stephen Argument, Secretary

Mr David Fintan, Treasurer

Vice-Presidents

Mr Alan Bradbury

Mr Peter Sutherland

Officers

Dr Jonathan Aleck

Ms Kathryn Cole

Professor Robin Creyke

Mr Stephen Goggs

Professor John McMillan

Mr Robert Orr QC

Mr Michael Peedom, and

Ms Claressa Surtees

The Executive met, in the period November 2006 to November 2007, on 11 occasions. Stephen Argument, and on occasion Stephen Goggs, minuted all meetings.

4. National Council

National Council is made up of the Executive Committee and two representatives of each Chapter of the Institute, and deliberates on the policy of the Institute. It last met before the 2007 Forum, on 14 June 2007 in Canberra, and what follows is a summary of reports from the Chapters at that meeting.

New South Wales

Linda Pearson reported that the NSW chapter had recently seen a major community project come to fruition, with the recent (and very successful) launch of the Discrimination Toolkit (see <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/87977001174956380265.pdf>). She noted that the Toolkit had been a project sponsored jointly by the NSW chapter of the Institute, the NSW Legal Aid Commission, the Elizabeth Evatt Community Legal Centre and the Kingsford Legal Centre. She noted that the NSW chapter had contributed \$5 000 to the project, by way of seed funding, representing approximately 10% of the chapter's funds.

Ms Pearson advised that the chapter's seminar program was progressing well, with good support from Minter Ellison, who assisted with premises and other support. She noted that the chapter was having success in co-hosting seminars with the NSW division of the Council of Australasian Tribunals (COAT) and also the Administrative Law Section of the NSW Bar Association. Forthcoming seminars included a seminar on State administrative law, on 21 June 2007, to be addressed by Mr M Robinson and Justice P McLellan and a seminar on recent Supreme Court decisions that were problematic for the NSW Administrative Decisions Tribunal, on 26 July 2007, to be addressed by the Hon D Kerr SC MP and Ms N Perram SC.

Ms Pearson advised that the collaborations with COAT and the Bar Association were working well, particularly given the cluttered nature of the seminar market in Sydney, as they allowed for greater co-ordination in relation to competing events in a tight seminar market.

Western Australia

Mr Hooker reported that the preceding 12 months had seen the WA chapter continue its steady progress in promoting to the appreciation of administrative law to

practitioners of all persuasions in WA. He noted, in particular, that the chapter had taken initial steps towards forging some important co-operative links with entities that shared common interests in matters of public law and public administration. He noted that the executive committee of the chapter was most optimistic that the ongoing development of these relationships would assist the chapter to continue to prosper in furtherance of its objects and functions.

Mr Hooker reported that the WA chapter has hosted 3 seminars during the preceding 12 month period. In August 2006, immediately following the chapter's Annual General Meeting, he had presented a seminar based on the paper he had previously delivered to the 2006 National Administrative Law Forum. Focussing on approaches of statutory interpretation in the resolution of the tensions inherent in the granting of protection visas under the Migration Act 1958 (Cth), the seminar promoted discussion both on this fundamental issue underpinning much of administrative law, and the practical importance of a renewed approach to statutory construction. On 22 November 2006, Dr H Schoombee, barrister and member of the Human Rights Committee of the Law Society of WA, had presented a seminar on aspects of the potential introduction of a Human Rights Act for WA. Mr Hooker reported that the topic prompted lively debate on this issue of primary legal and political importance.

Mr Hooker reported that, in May 2007, the WA chapter, in partnership with the UWA Law School, had hosted the first in what was hoped to be a series of events of a similar character in forthcoming years. He reported that the course controller of administrative law at UWA, Dr S Young, had delivered a stimulating presentation on recent developments in natural justice, with a particular focus on the reconciliation of the seemingly conflicting decisions in *Ex Parte Lam* and *Applicant NAFF of 2002*. He noted that the seminar was well attended, by members of the profession and the student and academic body alike, and was a most encouraging commencement to this new collaboration.

Mr Hooker reported that the seminars have been funded by external entities. In the first and second-named seminars, Minter Ellison, with whom the WA chapter had enjoyed a long and beneficial association, kindly provided the venue and associated refreshments. At the most recent seminar, the Dean of the UWA Law School generously agreed to reimburse refreshment costs. Mr Hooker advised that forthcoming seminars were planned to be hosted at Phillips Fox and Clayton Utz, each of which have indicated a willingness to work with the chapter from time to time in assisting the hosting of events and furtherance of the Institute's goals. Mr Hooker noted that, as a result of these collaborations, there had been minimal financial activity for the WA chapter.

Mr Hooker advised that the Chapter intended to further its association with the UWA Law School, particularly giving consideration to the creation of a website that, in addition to providing basic information about the existence and functions of the chapter, might source useful materials for the learning and discussion of administrative law. He also reported that, the seminars scheduled for the remainder of 2007 included likely presentations by, Ms D Wookey, the Information Commissioner for Western Australia, Dr B Lane, the Clayton Utz Professor of Public Law at the Queensland University of Technology, and a variety of potential presentations from senior public servants and other practitioners of public administration.

Mr Hooker advised that an exciting new development that had only just emerged was the potential for collaboration with the WA Division of the Institute of Public Administration of Australia (IPAA). He advised that details of the nature and extent of this foreshadowed partnership were still to be discussed and developed but noted that, on early indications, it presented as a refreshing and exciting opportunity for the 2 organisations to provide mutual assistance in their respective functions and furtherance of administrative law and public administration.

Northern Territory

The only activity was the presentation by John Macmillan in conjunction with IPAA. It was in September and the attendance was around 70.

Ms Pedersen reported that the NT chapter had been inactive of late. She reported that the chapter really only had 3 active members, largely because ongoing reviews of various government agencies were distracting the attention of people who might otherwise be interested in the activities of the Institute. She reported that a further issue was that the NT was a relatively small seminar market, with little focus on administrative law and with a limited range of speakers available to speak on administrative law topics. She noted that the Law Society tended to dominate the seminar market. She noted that the chapter had unsuccessfully approached the Law School at the Northern Territory University about entering into a co-operative arrangement re seminars. Ms Pedersen advised that the executive committee of the chapter had given some thought to winding-up its activities. I strongly urged Ms Pedersen to make all efforts to keep the Chapter going, and offered National Executive support to do so.

Victoria

Mr Moloney advised that the Victorian chapter had recently held the following successful seminars:

- 19 July 2006 - judicial review of ACCC/Competition Tribunal decisions - Mr B Cooper, ACCC - approximately 60 people attended;
- 13 September 2006 - National Lecture Series - Mr D Bennett QC, Commonwealth Solicitor-General - approximately 130 people attended;
- 13 September 2006 - dinner address following National Lecture Series - Justice R Tracey - approximately 80 people attended;
- 18 October 2006 - intersection of criminal and administrative law on the question of the review of the exercise of discretion in the sentencing process and the administrative decision-making process - President C Maxwell, Victorian Court of Appeal, with commentary by Mr P Holdenson QC - approximately 100 people attended;
- November 2006 - chapter's Annual General Meeting - address on Victoria's Charter of Human Rights and Responsibilities - Ms P Tate SC, Victorian Solicitor-General;

- 27 March 2007 - the question of standing in cases of public and political concern - Associate Professor R Douglas, Latrobe University - approximately 70 people attended;

- 30 May 2007 - human rights, the Victorian Charter and what is left unsaid - Dr K Stern, Melbourne Bar - approximately 100 people attended.

Mr Moloney advised that a seminar was planned for On 27 June 2007, at which Mr J Lloyd would speak about the Investigative and Prosecution Processes of the Australian Building and Construction Commission.

Mr Moloney noted that, as with previous seminars, the seminar would be held at the premises of a law firm (this time Freehills, with Minter Ellison and Phillips Fox involved in hosting previous seminars).

South Australia

Ms Fisher reported that the SA chapter SA currently had 43 members and its finances were healthy, with approximately \$13 000 in the bank. She reported that, in the last 12 months, the chapter had held the following functions:

- 4 August 2006 - address on "Administrative Law with the Australian Government Solicitor" by Mr M Kennedy, AGS;

- 1 September 2006 - Annual General Meeting - address on "The Second Round of Terrorism Legislation" by Mr M Goode, Managing Solicitor, Policy and Legislation Division of the SA Attorney-General's Department;

- 1 March 2007 - address on "Promoting Compliance with the *Privacy Act 1988*" by Professor L McCrimmon, Commissioner, ALRC;

- 12 April 2007 - address on "Freedom of Information after McKinnon's Case: Is There Anything Left?" by Mr C Finn, Adelaide Law School;

- 6 June 2007 - address on "Administrative Decision-making: The Recurring Errors" by Ms F McKenzie, Victorian Bar.

Ms Fisher reported that the following events were planned:

- 27 July 2007 - address on the administrative law jurisdiction of the Federal Court by Justice P Finn;

- October 2007 - address on privative clauses in SA legislation by Mr C Finn and Mr M Wait;

- August or September 2007 - debate on a possible Bill of Rights, planned as an evening event, with Ms W Lacey, of Adelaide Law School, confirmed as a speaker and Mr D Bennett QC, Professor H Charlesworth and Mr J Gava interested in speaking, depending on availability;

- September 2007 - Annual General Meeting - speaker and topic to be decided.

National Executive

I reported that the (National) Executive Committee had conducted the following seminars since the previous National Council meeting:

- 1 August 2006 - public law issues arising from the counter-terrorism legislation - the Hon S Sheller AO, QC, Chair of Security Legislation Review Committee;
- 22 September 2006 - the Review of ACT Tribunal Structures - Ms R Leon, Chief Executive, ACT Dept of Justice and Community Safety and Judge Kevin O'Connor;
- 10 October 2006 - FOI after McKinnon v Treasury - dead or just re-balanced? - Professor John McMillan, Commonwealth Ombudsman and Matthew Moore, FOI Editor, Sydney Morning Herald;
- 24 October 2006 - Outsourcing Legal Services? Boon or bane? – Mr I Govey, Deputy Secretary, Attorney-General's Department, Ms R de Gruchy, CEO, Australian Government Solicitor and Denis O'Brien, Partner, Minter Ellison;
- 20 March 2007 - Efficient and effective complaint handling: the powers of the Privacy Commissioner and avenues for dispute resolution - Professor L McCrimmon, ALRC Commissioner and Mr M Crompton, Managing Director of Information Integrity Solutions Pty Ltd.

I advised that a seminar was planned for 22 June 2007 on the proposed "access card" for health and welfare benefits, with Professor C Puplick and Professor G Greenleaf to speak.

I also noted that, in addition to organising seminars in the ACT, the (National) Executive Committee continued to publish AIAL Forum (for which Ms A Mantel, a former Executive Committee member, had retained responsibility) and had also recently published the proceedings of the Third National Lecture Series

5. Membership

Membership Statistics AIAL **by State**

Australia	Total
ACT	105
NSW	123
NT	13
QLD	67
SA	57
TAS	13
VIC	157

WA	69
Total Australia	604
Abroad	Total
NEW ZEALAND	1
SOUTH AFRICA	2
UK	1
UNITED KINGDOM	1
Total Abroad	5
Total	609

In the 2006/07 financial year there were a total of 88 new individual members - made up as follows:

ACT 9

NSW 12

Qld 11

SA 6

Tas 1

Vic 40

WA 9

There were also 4 new library members - 2 from the ACT, 1 from SA and 1 from WA.

There were 9 new corporate members - NSW 2, WA 2, SA 1, Vic 2, and ACT 2.

The AGM last year approved a modest increase in membership fees, as recommended by the Treasurer and the Executive. It is pleasing to note the number of new memberships notwithstanding the fee increase.

6. State and Territory Chapters

In addition to the reports and activities referred to above from the National Council meeting in June 2007 I am pleased to pass on to Members the following reports from State and Territory Chapters.

Queensland

Seminars held:

November 2006 - Freedom of Information: *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 -Michael McKinnon and Professor Bill Lane

July 2007 - Natural Justice and Public Sector Misconduct Investigations - Max Spry (I note it has been published in AIAL Forum 54)

Grant applied for/obtained:

The Chapter was successful in obtaining a grant of \$6500 from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) for the 2007-2008 financial year. Our project is named "Unhappy with a government decision? What you can do!". This pilot project is designed to introduce High School Legal Studies students/the community to the concept of administrative law and to facilitate attendance at a hearing of either the Migration Review Tribunal or Administrative Appeals Tribunal.

Victoria

The Victorian Chapter also put on a seminar on 27 June 07 on the topic: - *Investigation and Prosecution Processes – the Australian Building and Construction Industry* - John Lloyd, Aust. Building and Construction Commissioner.

Western Australia

The following seminars were held in Western Australia:

- 30 August 2006 2:00 pm *Contemporary Statutory Interpretation Made Interesting* by Mr Richard Hooker
- 22 November 2006 5:00 pm *A Human Rights Act and Judicial Review: Precedents and Prospects for WA* by Dr Hannes Schoombee
- 9 May 2007 5:30 pm *'Actual Unfairness' in the Natural Justice Doctrine: Evolution or Over-reaction* by Dr Simon Young
- 5 September 2007 1:00 pm *2007 AIAL National Forum: some of the notable presentations from the Forum* by Ms Lisa Ward
- 27 September 2007 1:00 pm *Early perspectives from Chris Field on his role as the State Ombudsman for WA* by Mr Chris Field

The WA Chapter Committee members for 2007/2008, elected at the AGM on 27 September 2007, are:

Chair - Mr Richard Hooker
Secretary – Dr Sally Raine
Treasurer – Mr Scott Moloney
Members – Mr Michael Cashman
Dr Hannes Schoombee
Mr Rob O'Connor
Mrs Jane Burn
Mr John Hockley
Ms Jean Shaw

7. National Executive Seminars

In addition to the seminars reported on during the National Council meeting in June 2007, the National Executive ran the following series of seminars in Canberra between June and October 2007 (and I thank Robin Creyke, Peter Sutherland, Michael Peedom, Robert Orr, and Stephen Argument respectively for arranging and chairing these events):

22 June 2007: *"Access Card for Health & Welfare Benefits: What are the issues?"* - Professor Chris Puplick, member of the Taskforce; Professor Graham Greenleaf, teacher at the University of NSW

1 August 2007: *"The Issue of Private Sector Licences under the Comcare Scheme"*, Mr Martin Dolan, A/CEO, Comcare and Dr Gary Rumble, Partner, DLA Phillips Fox.

20 August 2007: *"Bias in Court/Tribunal Proceedings"*, The Hon Brian Sully QC, former Justice of the Supreme Court of NSW.

11 September 2007: *"The Cole Inquiry into Certain Australian Companies and UN Oil for Food Programme: Lessons for Government"* – Mr John Agius SC, Senior Counsel assisting Commissioner Cole, and Professor Stephen Bartos, Director of the Allen Consulting Group.

30 October 2007: *"Natural Justice and investigations into public sector misconduct"* Dr Max Spry, Brisbane Barrister, and Mr Bob Cook, Partner, Minter Ellison.

8. Publications

Alice Mantel continues with her outstanding work as Editor of AIAL Forum, the Institute's flagship publication, of which she has produced a bumper crop in 2006/2007.

In recognition of the quality and quantity of Alice's work, and the fact that she is shouldering more of the editing workload herself, the Executive approved a modest honorarium for Alice for the 2006/2007 year.

Peter Prince, with the support of his former employer, the Department of Health and Ageing, has previously provided the content for the "developments in Administrative Law" segment of AIAL Forum. Peter has now changed jobs and is unable to continue with this work. We thank Peter for his contribution and the Executive is exploring options for replacing this important part of AIAL Forum.

9. Finance

As the Treasurer will report more fully in his report, the Institute is in good financial shape (showing a profit of \$19,750 for the 2006/2007 financial year), due mainly to a very successful 2007 Forum, solid membership growth, the increase in membership fees, and a modest decrease in expenditure.

Thank you to Treasurer David Fintan, and for all of the Executive and Members for helping to make this such a successful year financially for the Institute.

10. Acknowledgments

On behalf of the Institute I thank Jenny Kelly and Jessica Keyes at IPAA for their ongoing contribution to the administration of this Institute, including in particular the suggestion they have made, and which the Executive has taken up this year, for the use of EFTPOS for the payment of membership and conference fees by members, greatly reducing inefficiencies in those transactions.

Jenny and Jessica also made the further suggestion that the Executive approve the signing of cheques, by members of staff of the Institute, up to a limit of \$5,000, thereby streamlining the payment of most of the routine expenses of the Institute, and removing many of the opportunities for lost cheques, and delayed payments.

These two innovations will without doubt improve the ease of administration of the Institute's finances.

The cheque signing initiative will require an amendment to the Rules of the Institute which will be presented to the AGM tonight, and which I commend to you.

Thanks are also due to David Fintan our Treasurer for his hard work on maintaining the books of the Institute, including their auditing.

Thank you also to Kathryn Cole for her membership of and contribution to the Executive and in particular her excellent work on helping to revitalise and maintain the Institute's website. It is a tribute to Kathryn's work in this area that the website is now a much more friendly and useful place to display our wares and encourage new members and participation in AIAL activities.

Finally, I thank all Executive members, new and old, and all State and Territory Chapter Officers for their contribution to this mainstay administrative law institution, the AIAL.

Michael Will

President

Australian Institute of Administrative Law

Canberra, 7 November 2007