

Report of the Executive Committee to the Annual General Meeting of the Australian Institute of Administrative Law - November 2007 to November 2008

1. Introduction

The Institute continues to maintain its pre-eminent position in administrative law in Australia, through its conferences, seminars, publications and other activities (set out and reported on in more detail below) promoting and fostering knowledge and interest in administrative law.

As I said in my opening remarks at this year's conference in August in Melbourne:

"Not many of our competitors in this increasingly crowded market have produced the sort of quality that you will experience today and tomorrow from speakers representing the executive, legislative and judicial arms of government, including Attorneys-General, judges, ombudsmen, commissioners, barristers, solicitors, academics and tribunal members, with the usual full and rich spectrum of perspectives that the AIAL continues to offer after 18 years of practising our goal of promoting knowledge of, and interest in, administrative law."

Administrative law, its maintenance, development, and reform is clearly on the Rudd Government's agenda with announcements this year of major FOI reform, a review of secrecy provisions, and administrative law generally has seen developments at both the State and Territory levels with a significant report on FOI in Queensland, and the establishment of our new ACAT omnibus tribunal here in the ACT.

The National Executive met monthly throughout 2007 and 2008, with strong contributions from all members who give of their time willingly, and voluntarily, to advance the Institute's and its membership's interests and I take this opportunity to thank them all for their support and contribution throughout the year.

2. Main Activities in 2007-2008

2008 Administrative Law Forum "Practising Administrative Law"

Not unexpectedly the major event of the year for the Institute was the 2008 Administrative Law Forum hosted this year at the Sofitel Hotel in Melbourne by the Victorian Chapter of the Institute. The Victorian Attorney-General the Hon. Rob Hulls opened the Forum, the President of the Victorian Court of Appeal Justice Chris Maxwell, presented the first plenary session, and the Attorney-General for Australia, the Hon. Robert McClelland gave the Keynote Address.

Some of the excellent plenary presentations included Justice Maxwell's paper on reasons, Stephen Moloney's on the finality of administrative decision making, John McMillan's and John Carroll's presentation on the Ombudsman, and Robin Creyke's on soft law.

Of the concurrent sessions, Alan Bradbury's paper on environmental disputes was thorough and engaging.

I reiterate my comments from last year that the policy behind the plenary/concurrent split in presentations should be continued as it has proven to be a strong feature of the Forum. Indeed the overall structure of the Forum is a sound and well-tried one, and should not be interfered with lightly.

The feedback received about the 2008 Forum was that it was an outstanding success and as Stephen Argument has reported in a summary of the 2008 Forum to be published in *AIAL Forum* this was so on all levels: content, attendance, and financial outcome for the Institute.

I was fortunate enough to chair the planning sub-committee for the Forum, very capably assisted by Claressa Surtees and Jonathan Aleck and the Executive particularly thanks Claressa for her efforts in securing the Attorney-General as the keynote speaker, but by far the majority of the work on the Forum was done by the Victorian Chapter, particularly Stephen Moloney who should feel particularly proud of such a successful event, and Stephen and the Executive have acknowledged the invaluable and tireless assistance given to him by Stephen Argument (as he has done for all 18 Forums) on all aspects of the organisation and running of this great AIAL tradition.

Jenny Kelly and Jessica Keyes from IPAA looked after all of the myriad administrative tasks in their usual efficient and expertly helpful way (as they do throughout the year in providing all the membership and other administrative support for the Institute).

The Institute provided the papers again on CD this year which now seems to have gained acceptance.

The Victorian Chapter will receive, as has been the practice, half of the profits of the Forum, once the costs of publication of the papers in *AIAL Forum* has been deducted.

The 2009 Forum will be held in Canberra, with initial planning including the selection of a venue already underway as is the planning for 2010 with strong interest at present from New South Wales for the 2010 event.

3. Executive Committee

The Executive Committee elected at the AGM in November 2007 was:

Mr Michael Will - President

Vice-Presidents

Mr Alan Bradbury

Mr Peter Sutherland

Mr Stephen Argument - Secretary

Mr David Fintan - Treasurer

Officers

Dr Jonathan Aleck, Professor Robin Creyke, Mr Stephen Goggs, Professor John McMillan, Mr Robert Orr QC, Mr Michael Peedom, Ms Claressa Surtees and Ms Sarah Todd.

As I mentioned above, my fellow members of the Executive have contributed very well to the ongoing success of the Institute in 2008 and I commend their efforts to the members.

4. National Council (Meeting - 7 August 2008)

A National Council meeting was held on Melbourne on 7 August just before the 2008 Administrative Law Forum, and the following reports on State Chapter activities were received at that meeting.

New South Wales

Mr Esparraga reported that, in the past year, the NSW chapter had had success in co-hosting seminars with the NSW Division of the Council of Australasian Tribunals (**COAT**) and the Administrative Law Section of the NSW Bar Association. He reported that the following seminars had been held:

- 21 June 2007 - Mr M Robinson and Justice P McLellan, on NSW State administrative law.
- 26 July 2007 - Hon D Kerr SC MP and Mr N Perram SC, on NSW Administrative Decisions Tribunal decisions.
- 22 May 2008 - Hon R McClelland MP, Attorney General for the Commonwealth, on "Transparency and Accountability in Government".
- 26 June 2008 - Hon Justice J Basten and Hon Justice B Preston, on "Administrative Law – Musings from the Bench".
- 24 July 2008 - Professor J McMillan, Commonwealth Ombudsman, on "Administrative Values and Cultural Change".

Mr Esparraga reported that, in the following 12 months, the NSW chapter was proposing to provide seed funding of up to \$8 000 toward a major community project.

Mr Esparraga reported that the NSW chapter had retained its practice of charging for seminars, including a student rate of \$10. He advised that the cost of the annual 3-seminar series was \$65.

Victoria

Mr Moloney reported that the Victorian chapter had held the following seminars:

- 27 June 2007 - Mr J Lloyd spoke about the Investigative and Prosecution Processes of the Australian Building and Construction Commission. Held at the offices of Freehills. Approximately 80 attendees.
- 15 November 2007 - Annual General Meeting dinner addressed by Justice R Tracey on "Reflections on Administrative Law".
- 28 May 2008 - Seminar on "Advising clients compelled to appear before Commissions of Inquiry and ASIC Investigations" addressed by Mr J Beach QC. Approximately 100-110 attendees.

Mr Moloney reported that, in the Continuing Professional Development (**CPD**) environment existing in Victoria, provided that the speakers are good and the topics are of sufficient interest (either wide or specialist), then the prospects for successfully running seminars remained strong. He noted that this had been a trend now for 2-3 years and that he saw no reason why it ought to change.

Mr Moloney advised that the Institute had now established its name and brand in Victoria.

Mr Moloney reported that the costing of seminars was an issue that the Victorian chapter which was now addressing. He reported that the executive committee was currently considering increasing attendance fees for seminars, in order to ensure that there was a margin for profit.

Mr Moloney reported that, administratively, the Victorian chapter had engaged a person (Ms L Evans) to perform the work of sending out flyers and also to look after banking. He reported that he had worked with Ms Evans in other organisations and that she was most and charged reasonable commercial rates (with the effect that the costing of seminars had to be undertaken with this overhead in mind).

Mr Moloney noted that a trend that he had discerned from the attendees at the current Forum was that attendees from Victoria are of a different profile. He noted that Victorian attendees at seminars are happy to pay \$30-\$40 to attend a seminar but that many of those same people would not attend the Forum. He suggested that, while there was a reasonably strong attendance from Victoria, the success of the Victorian chapter's seminars had not necessarily translated into attendance at the Forum. Mr Moloney suggested that the lesson from this was that the work for the Forum is truly a national thing. He suggested that, while there were certain benefits for a State chapter in hosting a Forum, the workings of a State chapter (and its success), if the Victorian experience was any guide, was something for the chapter.

Mr Moloney reported that the Victorian chapter continued to sponsor essay prizes at each of the Melbourne universities.

Mr Moloney reported that the Victorian chapter was working collaboratively with the Law Institute and the Victorian Bar.

Mr Moloney reported that the Victorian chapter had migrated all its member data electronically and that it mailed material out to members via e-mail, except where the recipient had no e-mail address. He advised that this had taken some time. He reported that there were about 130-150 on the member database and about 500-600 on the non-member database.

Mr Moloney reported that the Victorian chapter had a strong executive committee, with a mixture of academics, government practitioners (Federal and State), tribunal members, a good representation from the large private firms (Minter Ellison, Phillips Fox, Clayton Utz, Freehills), as well as private practitioners and members of the Bar. He reported that the expansion of the committee members from 6 to 8 had worked very well.

Mr Moloney reported that the Victorian chapter continued to receive significant support from the large law firms in Melbourne in the staging of seminars. He advised that firms hosted seminars, in the main, without charge. He reported that Minter Ellison hosted executive committee meetings. He reported that Freehills also supported the chapter and that the chapter also had good relations with the Victorian Government Solicitor.

Mr Moloney reported that the Victorian chapter continued to increase membership and was always looking at ways to do so. He advised that the chapter used seminars to capture new members and this was an effective strategy.

Mr Moloney reported that the work of organising the Forum had been, as expected, the significant task for the Victorian chapter for the year. He reported that the Forum would be a success. He reported that, while he had assumed overall responsibility for the time-consuming process of organising the Forum, he had been well supported by his committee.

Mr Moloney reported that both he and his committee had worked very hard in the past 12 months, in order to establish a varied and interesting seminar programme and to further raise the Institute's profile. He advised that he could confidently say that the profile of the Institute, both at the Bar and on the Bench (Supreme Court and Federal Court) is quite high.

Queensland

Mr O'Gorman reported that the Queensland chapter had been somewhat "unwell" and that he had been experiencing difficulty in convening executive committee meetings, let alone organising seminars. He noted, however, that a member of the executive committee had recently obtained a grant of \$7 500 from the Queensland Attorney-General, for a project to provide courses to schools about how administrative decisions could be challenged. He also reported that 2 seminars were planned in the next 6 weeks, one of FOI reform, to be addressed by Dr D Solomon and one to be addressed by Mr S Keim SC.

Mr O'Gorman reported that the strategy for dealing with the chapter's "malaise" was to try to organise for an influx of new people on to the executive committee.

I note here that Dr Max Spry has now been elected as the new Chairman of the Queensland Committee and the National Executive expects that this will have a positive effect on some of the issues raised by Mr O'Gorman.

Western Australia

Mr Hooker reported that the WA chapter was "well". He reported that the chapter had continued to hold seminars in much the same format as previously, although (with the departure of Mr G Castledine) the chapter no longer had a relationship with Minter Ellison. He advised that seminars not alternated between the premises of Phillips Fox and those of the State Ombudsman.

Mr Hooker reported that a seminar had been held on 24 July 2008, addressed by Justice M Barker and that a seminar was planned for late October, to be addressed by Professor McMillan. He reported that other seminars were planned on military discipline and on changes to immigration laws.

Mr Hooker reported that the chapter was actively investigating the possibility of having a collaborative relationship with the WA Division of the Institute of Public Administration Australia (**IPAA**).

South Australia

Ms Fisher reported that the SA chapter had again been active over the previous year. She reported that the chapter had continued to run its successful series of free lunchtime seminars and that, in addition, had held a high-profile debate on the subject of a Bill of Rights. The chapter had also continued to support the Administrative Law Students Forum, held annually at the University of Adelaide Law School.

Mr Fisher provided the following details on the chapter's seminar programme:

- 30 August 2007 - Debate on "The Bill of Rights: Democratic Development or Judicial Power-grab?", with Professor J Allan, Dr D Bennett QC, Dr W Lacey and Professor G Williams, with closing remarks from Hon JJ Doyle, Chief Justice of the Supreme Court of South Australia. Approximately 200 attendees. A follow-up piece was written for the Law Society of SA Bulletin.
- 20 July 2007 - "The Administrative Law Jurisdiction of the Federal Court", presented by the Hon Justice Paul Finn. Approximately 50 attendees.
- 13 March and 29 May 2008 - "The Power to Direct Independent Agencies - Can Government have its Cake and Eat it Too?", presented by Mr G Parker, Deputy Crown Solicitor, SA (and executive committee member of the SA chapter). Approximately 70 attendees for each seminar (with waiting lists!!).
- 23 April 2008 - "The Model Litigant Obligation of the Commonwealth: Its application in the administrative law context", presented by Ms K Bean, General Counsel, Australian Government Solicitor. Approximately 60 attendees.
- 30 July 2008 - "*Hall v Burnside*: The Role of Private Law Remedies to Right Public Law Wrongs", presented by Mr S Henry and Mr M Roder, of the SA Bar. Approximately 40 attendees.

Ms Fisher noted that the Administrative Law Students Forum had now been held annually since 2002. She reported that the Students Forum involved the SA chapter offering up to \$500 in sponsorship but that this full amount had never been called upon, as the student organisers sought a range of other sponsors, both in cash and in kind. She reported that the Students Forum itself involved selected students from the Administrative law class at the University of Adelaide law School presenting their papers in front of an audience of lawyers, academics, judges and other students. She noted that the event was organised by a student committee, which sought sponsorship, developed the programme, sent out flyers, etc and ran the event on the night, including organising catering and introducing the speakers.

Ms Fisher reported that the 2007 Annual General Meeting of the chapter was held on 11 October 2007 and that Professor McMillan addressed the meeting, on the topic of "Natural Justice, Too Much, Too Little or Just Right?". She reported that, at the meeting, Mr C Finn was re-elected as chairperson, she was re-elected as secretary and Mr G Parker was elected as treasurer, taking over from Ms D Gray.

Ms Fisher reported that Mr Finn had advised that he would not be seeking re-election as chairperson at the 2008 annual general meeting.

Ms Fisher reported that, at 30 June 2008, the SA chapter's bank balance stood at just over \$10 000. She noted that this balance had been in slow decline since 2000, when the SA chapter hosted the Forum. She noted that the decline in the balance was a direct consequence of the executive committee's view that the chapter's funds existed for use in relation to Institute purposes and should not be hoarded. This approach was reflected in the fact that the SA chapter did not charge for attendance at seminars, etc and preferred to maximise attendance

rather than retain funds. Ms Fisher advised that the SA chapter expected to replenish its funds at some point in the future, by hosting another Forum at some point in the not-too-distant future.

5. Membership

Membership figures continue to improve, with the membership figure as at October 2008 just under 600 at 594, primarily made up of individuals (438) with the balance being honorary, not-employed and retired, student and corporate members. Receipts from membership fees as at October totalled \$48,188.

6. National Executive Seminars

Three seminars were held during 2008 (with a further one planned for next week on the *Shi v MARA* decision):

- Sporting Tribunals and the Harbhajan Singh Affair - 12 March 2008 presented by Mr Saul Fridman and Professor Dennis Peach - approximately 50 attendees, organised by Dr Aleck and Mr Orr.
- FOI Reform - 14 August 2008 - presented by Dr David Solomon and Professor John McMillan - approximately 50 attendees, organised by Professor McMillan.
- ADR in Administrative Law - presented by Mr Simon Daley, Mr Dom Sheil, Ms Alysoun Boyle, and Dr Jonathan Aleck, approximately 50 attendees, organised by Mr Michael Will.

The Executive would also like to report to members that Justice Paul Finn of the Federal Court of Australia has agreed to conduct a seminar in Canberra after February 2009 (due to some present hearing commitments he has) on the topic of proposals for amendments to case management and procedures of the Federal Court of Australia.

Mr Sutherland has reported to the Executive that the ACT may be about to introduce mandatory CLE for ACT lawyers, and if that happens the Institute should become accredited, as this would significantly assist us with attendances at our regular seminar programme.

7. Publications

Ms Alice Mantel continues in her strong editorial role with *AIAL Forum*, with issue No.58 having been published in September 2008. In recognition of the work Ms Mantel is doing on the Recent Developments section of *AIAL Forum*, material which has previously been produced by paid contributors, the National Executive has approved remuneration of \$2,000 per edition to be paid to Ms Mantel, and thanks her for her continuing efforts in maintaining the quality of the Institute's masthead publication.

Thanks are also due to Dr Jonathan Aleck for his assistance to the President in reviewing for publication the papers from the 2007 Administrative Law Forum.

The papers from the 2008 Administrative Law Forum will start to be published soon.

8. Finance

The Treasurer has reported separately, but the Executive notes that it approved the audited accounts of the Institute at a special telephone meeting of the National Executive held on 28 October 2008.

It also notes that the reason for the discrepancy in revenue from previous years is the fact that neither the 2007 Administrative Law Forum (held in June 2007) nor the 2008 Administrative Law Forum (held in August 2008) fell within the 2007/08 financial year. The Forum, along with membership fees, are the main source of revenue for the Institute and not having that revenue accounted for in the relevant financial year meant that the overall figures showed a small loss for this year. The overall financial position of the Institute remains sound.

The resolution passed at the last AGM for Ms Jenny Kelly to be a signatory on cheques up to \$5,000 (with email approval by Executive members) has been implemented and is working efficiently and ensuring that payments are made to suppliers and others on time.

The Executive thanks David Fintan for his work as Treasurer during the year, and in particular looking after the important task of having the accounts audited.

9. Institute Home Page

Ms Sarah Todd and Mr Peter Sutherland continue to shoulder the burden of keeping the Home Page relevant and up to date, and the Executive thanks them for these efforts. Ms Todd has been asked to obtain ideas and quotations from the site's webmaster, for refreshing and re-vamping the website to ensure that it provides the membership and others with the necessary information in an easily accessible and convenient format and layout.

10. Northern Territory Chapter

The situation with the Northern Territory Chapter (essentially a lack of activity due to a relatively small administrative law population) has been kept under close review by the National Executive throughout the year. At the meeting in October the Executive again reviewed the situation and decided that the Chapter should not be wound up but rather that it continue operating on a more informal basis as needed from time to time. To that end, it was proposed that the bank account of the Chapter would be closed and the funds returned to the National account and that there be no formal executive committee positions, rather nominated contact points.

The Secretary will consult further with the present NT office bearers before implementing these proposals, and I commend them to you as a sensible way of dealing with the situation.

11. Acknowledgements

The Executive has worked well together this year to keep the Institute at the forefront of administrative law in Australia, and I thank all members for their hard work.

It has been a pleasure and an honour to be the Institute's President again this year and I give my best wishes to the incoming President. Thank you all for attending the AGM and I look forward to continuing on the Executive as an officer in the coming year.

Michael Will

President, AIAL

Canberra, 3 November 2008