

Report of the Executive Committee to the Annual General Meeting of the Australian Institute of Administrative Law for the period November 2008 to November 2009

1. Introduction

2009 has been a busy and successful year for the Institute. It has also been an important year in the development and reform of Administrative Law both by government and the Courts. At the Commonwealth level FOI reform and privacy law reform are still under way while the High Court has handed down a number of important decisions during the year, perhaps most notably the decision in *Lane v Morrison*, which held invalid the Government's legislation establishing the Australian Military Court.

The Institute has continued to play a leading role in promoting knowledge of and interest in Administrative Law and providing a forum for the exchange of information about Administrative Law and practice. Regular lunch time seminars, our National Administrative Law Forum (held in August 2009), our publication, the *AIAL Forum* and the Institute's website all played an important role in pursuing the Institute's objects during the course of the year.

It is also pleasing to report that some of our State chapters have been able to engage in projects aimed at promoting Administrative Law that go beyond the traditional lunchtime or after-work seminars. For example:

- The Queensland chapter has been involved in the development of a pilot program called "Unhappy with a Government Decision? What You Can Do!" for schools/community groups on the role of Administrative Law;
- The NSW chapter has used some of its accumulated funds to support the Toongabbie Legal Centre in producing a "citizens' resource" in relation to the imposition of fines; and.
- The SA chapter has continued its sponsorship of the Administrative Law Student's Forum which involves 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.

2. Main Activities in 2008-2009

Not surprisingly the key event for 2009 was the National Administrative Law Forum held on 6 and 7 August at the *hotel realm* in Canberra. The theme for this year's Forum was "Administrative Law Reform" and the opening address was delivered by Senator the Hon Joe Ludwig, Cabinet Secretary and Special Minister of State, who outlined key aspects of the Government's reform of the FOI Act. Senator Ludwig's address included a discussion of a number of key aspects of the reforms proposed including the proposed role of the information Commissioner, a revamp of the obligation on Commonwealth agencies to publish information about their operations and the introduction of a new single form of public interest test described by the Senator as one that would be weighted towards disclosure. Senator Ludwig's address set the stage for the Forum's first plenary session on "FOI Reform or Political Window Dressing?"

Other plenary sessions during the Forum included:

- "Whistle Blower Protection: A Comprehensive Scheme for the Commonwealth Public Sector";
- "Recent Evolutions in Australian Ombudsmen";
- "Control in Immigration Litigation";
- "Evidence (and other perspectives on fact finding) in Administrative Law"; and
- "Future Directions".

As befits its status as the major national annual administrative law conference, the Forum attracted a wide range of key speakers including (in addition to Senator Ludwig), Mark Dreyfus, QC MP, Chair of the, House of Representatives Standing Committee on Legal and Constitutional Affairs, Dr David Solomon, Queensland Integrity Commissioner, Professor John McMillan, Commonwealth Ombudsman, Jillian Segal, President of the Commonwealth Administrative Review Council, Philip Hack SC, the Deputy President of the Commonwealth Administrative Appeals Tribunal, Karen Curtis, the Federal Privacy Commissioner and Denis O'Brien, Principal Member of the Migration Review Tribunal and Refugee Review Tribunal.

The success of the Forum owed much (yet again) to the hard work of Stephen Argument as conference director. Stephen's vast experience in organising previous forums resulted in a conference that was both interesting and financially successful. Stephen was assisted by a sub-committee of the Executive made up of Jonathan Aleck, Sarah Todd and myself but undoubtedly Stephen took on the lion's share of the work involved in producing an excellent conference.

Jenny Kelly and Jessica Keyes ensured that the administrative side of the conference ran smoothly and efficiently - as we have become used to. Sadly from the Institute's point of view, the 2009 National Administrative Law Forum was Jenny's last and I would like to put on record the Institute's sincere appreciation for her cheerful and thoughtful assistance both with the Forum, and more generally with the running of the Institute, over many years.

The conference papers were made available again on CD to conference participants and key papers will be published in forthcoming editions of the *AIAL Forum*.

The 2010 Administrative Law Forum, the 20th to be run by the Institute, will be held in Sydney and planning for the Forum is well under way by the NSW chapter. Next year's Forum is to be held on 22 and 23 July 2010 at the new Law School Building at the University of Sydney and promises to be another great conference.

2009 AIAL Essay Prize in Administrative Law

The AIAL Essay Prize was run again this year and was won by Tristan Robinson with an essay entitled "Federal FOI Reform and Media Access to Government Information: A Transparency Revolution or Just a Better Foothold?" The competition winner received a cash prize of \$2000 and will have their essay published in a forthcoming edition of the *AIAL Forum*.

Many thanks to Robert Orr QC who looked after the running of the competition this year as well as to Stephen Goggs and Sarah Todd who helped Robert with the judging of the entries.

3. Executive Committee

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

- Mr Alan Bradbury, President
- Mr Stephen Argument, Secretary
- Mr Peter Sutherland, Treasurer

Vice-Presidents

- Dr Jonathan Aleck
- Mr Robert Orr QC

Officers

- Ms Linda Crebbin
- Professor Robin Creyke
- Mr Stephen Goggs
- Mr David Fintan
- Professor John McMillan
- Ms Claressa Surtees
- Ms Sarah Todd
- Mr Michael Will

The Executive met over the past year on eleven occasions with minutes being kept of all meetings.

4. National Council

The National Council is made up of the (National) Executive Committee and two representatives of each chapter of the Institute and determines the policy of the Institute. It last met in Canberra on 6 August 2009 on the morning before the commencement of the 2009 Forum. The following is a summary of reports from the Chapters at that meeting.

New South Wales

Professor Mary Crock reported that the NSW chapter committee had continued to meet frequently in 2008-09 and that the chapter was in a healthy position, in terms of members and also funds (approximately \$50 000). She advised that the chapter had used some of its accumulated funds to support the Toongabbie Legal Centre in producing a “citizens’ resource” in relation to the imposition of fines. Professor Crock advised that a total of \$8 000 had been contributed, in 2 instalments.

Professor Crock advised that the chapter had also been active in holding seminars, noting that the chapter’s 2009 Seminar series had been held between May and July 2009, consisting of the following seminars:

- “Administrative law implications of the Commonwealth Emissions Trading Scheme” – presented by Melissa Perry QC, Matthew Baird and Ilona Millar; and
- “Administrative law implications of automated decision-making” – presented by Jillian Segal and Professor Robin Creyke (seminar conducted jointly with the NSW Chapter of the Council of Australasian Tribunals).

Professor Crock advised that a 3rd seminar, scheduled for 2 July 2009, with Stephen Lloyd SC, Ron Merkel QC and Edward Santow to address the topic of “Implicating administrative law in the human rights debate: Bills of Rights and the NT Intervention” (a seminar to be conducted jointly with the Administrative Law Section Group of the NSW Bar Association) had, unfortunately, been deferred, owing to clashes with activities related to the National Human Rights Consultation.

Queensland

The then Secretary of the Queensland chapter, Sandra Kerr, reported that a “changing of the guard” would occur following the next AGM of the Queensland chapter with Sandra moving to Melbourne, the then current chairperson, Dr Max Spry, being unable to continue in that role and Geoff Airo-Farulla looking to move on from his role as Treasurer.

Ms Kerr reported that the Commonwealth Ombudsman’s Office had provided the free use of a training room for seminars which had been well attended. Seminars held in the previous year included the following:

- “Review of the Queensland FOI laws”, presented by Dr David Solomon;
- “Dr. Haneef and his Friends at the AFP: An Administrative Lawyers’ Feast Day?” – presented by Stephen Keim SC;
- “Parliamentary Privilege in Queensland: A Need for Reform?” – presented by Dr Dan Morgan
- “Administrative Law Challenges – an Ombudsman Perspective” – presented by Professor John McMillan;
- “Administrative decision-makers self-correcting their decisions: The use of s. 24AA of the Acts Interpretation Act 1954 (Qld) and s. 33(3) of the Acts Interpretation Act 1901 (Cth)” - presented by Mr Mark Plunkett.

Ms Kerr also reported that 2 additional seminars had been planned:

- “Reforming Social Welfare in Australia: More Trials for Aboriginal Families?” – to be presented by Dr Peter Billings; and
- “A seminar on the newly created Queensland Civil and Administrative Tribunal (QCAT)” - to be presented by Justice Dutney, newly appointed President of the Tribunal

Ms Kerr reported that funding from the Queensland Legal Practitioner Interest on Trust Account Fund enabled a pilot program to be developed called “Unhappy with a Government Decision? What You Can Do!” for schools/community groups on the role of

Administrative Law. Following a seminar to school students the material was adapted and presented to a group of migrants in conjunction with the refugee and immigration legal service. The seminars had been well received.

Sandra also reported that the Queensland Chapter had hoped to conduct a remote seminar during the course of the year but this had not yet eventuated. A seminar in Townsville where there is a law school, community legal centre, military and commonwealth agencies/lawyers as well as various estate agencies was considered to be a suitable possible destination.

Victoria

Mr Stephen Moloney, chairperson of the Victorian chapter, reported that the Victorian chapter had conducted a number of successful seminars over the course of the year including the following:

- “Enhancing Australian Democracy with a Federal Charter of Rights” - Justice Kevin Bell (Supreme Court, Victoria and President, VCAT); and
- “Three Ombudsmen in Sixty Minutes” – Mr Simon Cowen (Transport Industry Ombudsman) Deidre O’Donnell (Telecommunications Ombudsman) and Fiona McCloud (Energy and Water Ombudsman).

Mr Moloney also reported that the Hon. Michael Kirby AC, CMG would be giving a seminar on his role in the early development of the Administrative Law of the Commonwealth on 1 September 2009 and that the chapter was awaiting advice concerning the availability of Senator Ludwig to give a postponed seminar previously arranged with Senator Faulkner concerning FOI Reform. Mr Moloney also reported that Justice Tony Cavanough of the Supreme Court of Victoria would be guest speaker at the Victorian chapter AGM on 19 November 2009.

Mr Moloney reported that the prospects for successfully running seminars remained strong provided the speakers were good and the topics were of sufficient interest. He noted that the AIAL in Victoria had now established its name and brand very well. Mr Moloney also reported that the Victorian chapter had engaged an administrative assistant to assist in sending out flyers for seminars and banking receipts.

Mr Moloney reported that the Victorian chapter continued to sponsor prizes at each of the universities and continued to work collaboratively with the Law Institute and the Victorian Bar. He noted that the chapter had a strong committee with a mixture of academics, government practitioners, tribunal members, and private practitioners and that the expansion of the size of the committee from six to eight had worked very well. The chapter continued to receive significant support from the large law firms in Melbourne in the staging of seminars which hosted them generally free of cost. He reported that Minter Ellison hosted committee meetings with Freehills and DLA Phillips Fox also providing support.

Mr Moloney reported that the 2008 Forum had been a success both financially and as an exercise in professional development. He noted that it was a big undertaking for the chapter and resulted in considerable good will.

Finally, Mr Moloney indicated his intention to stand down as the chair of the Victorian chapter after four years at the helm. On behalf of the (National) Executive Committee I would like to pass on my thanks to Mr Moloney for his hard work in developing the profile of the institute in Victoria and for his huge contribution in relation to the organisation of the 2008 Administrative Law Forum held in Melbourne last year.

Western Australia

Mr Richard Hooker, chairperson of the WA chapter, reported that the WA chapter had continued its ongoing commitment to the objectives of the Institute over the past year. He reported that the chapter had hosted a number of successful functions over the year including:

- “Harmonising Administrative Law” – presented by Justice Michael Barker;
- “Aspects of Recent Developments in Immigration Law” – presented by Senator Chris Evans; and
- “Rethinking the Separation of Powers” – presented by Professor John McMillan.

Mr Hooker reported that a fourth seminar “Tightening the Noose on Administrative Law Standards: A Risk Management Approach?”, which was to have been presented by Professor Robin Creyke, was unfortunately cancelled due to Professor Creyke becoming indisposed at short notice.

Several other events were foreshadowed and partly organised including a Christmas Quiz Night/Review of the Administrative Law Year, but were unfortunately not proceeded with due to competing professional commitments of committee members of the WA chapter.

Foreshadowed for later in 2009 are seminars concerning:

- Aspects of Military Law;
- Contemporary Perspectives on the Role of the Ombudsman;
- Current Issues Concerning the Corruption and Crime Commission

The WA Chapter also maintains its commitment to close collaboration with the UWA Law School and the WA Chapter of the IPAA.

As at the end of the 2009 financial year, the WA chapter had \$1,375 cash at bank, no assets of any substance, and no liabilities. Mr Hooker reported that those limited finances pose certain difficulties to the chapter in funding applications to the WA Legal Practice Board for accreditation for the purpose of the Board’s Continuing Professional Development programme.

South Australia

Ms Margaret Boylan, chairperson of the SA chapter reported that the SA chapter had again been active over the previous year. The SA chapter had run a successful series of free lunch time seminars with very good attendances and it also continued its support of the Administrative Law Students Forum held annually at the University of Adelaide Law School.

Lunch time seminars had included the following:

- “The Operation of Privative Clauses in State Jurisdiction Post Plaintiff S157/2002 v Commonwealth” – presented by Mr Michael Wait;
- “Freedom of Information” – presented by Ms Beverly Wilson;
- “The Nature of Administrative Review in the Administrative Appeals Tribunal – Drake Revisited” – presented by Ms Dale Watson; and
- “Delegations” – presented by Mr Greg Parker.

Ms Boylan also described recent activities involving the Administrative Law Student’s Forum which involves 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. The Student Forum has been held annually since 2002 and the AIAL offers up to \$500 in sponsorship, although this amount has never been fully called upon.

5. Membership

Membership figures remain have dropped over the year, with the total membership as at today standing at 452 (compared to 594 this time last year).

Receipts from membership fees are also correspondingly lower with \$35,611 collected so far this year compared to \$48,188 for a similar period last year.

The incoming executive will need to examine these figures more carefully and determine what (if any) action is necessary to address the issue.

6. National Executive Seminars

The following seminars were held over the past year:

- “The High Court’s decision in *Shi v Migration Agents Registration Authority*” – presented by Mr N Poynder with Ms Sarah Todd as commentator;
- Lunch round table with Baroness Scotland, Attorney-General for England and Wales and Northern Ireland involving discussion on human rights in administrative decision making, reform of the tribunal system and the role of the Attorney-General;
- “The ALRC review of royal commissions and the framework for executive inquiries” – presented by Professor Les McCrimmon and Mr Ian Carnell
- “The High Court decision in *Lane v Morrison*” – presented by Ms Kathryn Cochrane and Mr Henry Burmester QC;
- “The Ombudsman’s report on the Scheme for Compensation for Detriment caused by Defective Administration” – presented by Professor J McMillan, Mr Michael Will and Mr Guy Verney

7. Publications

The editor of the *AIAL Forum*, Ms Alice Mantel resigned during the course of the year after several years looking after the publication of the forum. In this regard I would like to place on record the Institute’s gratitude for her assistance in maintaining the quality of the Institute’s premier publication over several years.

I am pleased to announce that a new editor has now been engaged, Elizabeth Drynan, who is currently hard at work on her first edition. The Institute looks forward to a long and mutually rewarding relationship with Elizabeth.

8. Finance

The Treasurer will report separately but the end result of the AIAL financial year is very pleasing with a modest deficit of \$1,754 (National Executive loss of \$7,803). This is an excellent result given that we had an unexpected payment to IPAA for Secretariat fees

(for which IPAA had not invoiced the Institute in the previous year) over the course of the year.

National cash deposits as at 30 June 2009 were \$70,000 and consolidated cash across the Chapters \$190,000.

My sincere thanks go to our Treasurer, Mr Peter Sutherland, who has done a sterling job at keeping the Institute's finances under control during what we all know have been difficult economic times..

9. Institute Home Page

There have also been some changes in relation to the Institute home page during the course of the year and there are more changes to come. Ms Sarah Todd and Mr Peter Sutherland have continued to look after the Institute's home page and the Executive thanks them sincerely for their efforts. It is worth saying that keeping the home page up to date is a very difficult and sometimes frustrating job. The accuracy of the information posted on the Institute's website depends very much on information coming from the various State chapters and I urge all chapters to ensure that they have appointed someone to be responsible for ensuring that information about their chapter is regularly reviewed and kept up to date.

The Institute has also found a new webmaster, Thor Solutions, during the course of the year. Peter and Sarah are working with our new webmaster to improve the quality and functionality of the website and members can look forward to some further changes in the year ahead.

10. Conclusion

It has been a busy year for the (National) Executive Committee, with the annual National Administrative Law Forum being held in Canberra this year and all that this entails. I would like to thank each and every one of the members of the 2009 Executive for their hard work and assistance during the course of the year.

It has been a great pleasure and honour to be the Institute's President this year. Thank you for your attendance at the AGM.

Alan Bradbury

President

Canberra

26 November 2009