

## **Report of the Executive Committee to the Annual General Meeting of the Australian Institute of Administrative Law for the period November 2009 to November 2010**

### **Introduction**

The last year has been one of great change both for the Institute and for administrative law and as you will see from what I have to say tonight, it isn't over quite yet.

At last year's AGM I paid tribute to the outstanding service the Institute had received from Jenny Kelly at IPAA who had been a key figure in the provision of secretariat services to the AIAL for many years. One of the bigger changes we are facing this year is the recent decision of the National Executive to move our secretariat away from IPAA altogether.

There are also a number of current members of the executive committee who have indicated that they will not be seeking nomination for the executive next year and thankfully a number of members who have nominated to join the executive.

While of lesser importance, we have also had a change of venue for our monthly national executive meetings. After many years of meeting in the Minter Ellison Room at the College of Law at the Australian National University we have now relocated and are meeting here in the premises of the ACT Civil and Administrative Tribunal. Our thanks go to Linda Crebbin, the General President of the Tribunal and a member of the ACT Executive Committee, for making this possible.

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 July 2010), 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.

## **Main Activities in 2009-2010**

The key event for 2010 was the National Administrative Law Forum held on 22 and 23 July 2010 at the recently opened Law School Building at the University of Sydney. The theme for this year's Forum was "Delivering Administrative Justice" and the organizers were able to attract an impressive list of speakers including The Hon Robert French AC, Chief Justice of the High Court of Australia, who delivered the opening address. Other speakers included the Hon Michael Black, former Chief Justice, Federal Court of Australia, the Hon Marilyn Warren, Chief Justice of the Supreme Court of Victoria and Stephen Gageler SC, the Commonwealth Solicitor-General, to name a few.

A highlight of the conference program for many was a session celebrating the legacy of the High Court's decision in *Kioa v West* which brought together some of the people who had been involved in the case including Jason Kioa himself. Another session that was particularly well received was a session on information law that brought together the information commissioners from NSW, WA and Qld as well as the then Commonwealth information commissioner designate, our own John McMillan AO. Other key plenary sessions included:

- The human rights dimensions of administrative justice
- Challenges for Courts in delivering administrative justice
- Delivering administrative justice
- Administrative law in review

There were also a wide range of interesting and often thought provoking concurrent sessions and special mention should be made of the very entertaining after dinner speech given at the conference dinner by the former Chief Justice of the High Court of Australia, Sir Anthony Mason.

The venue for the conference was outstanding and I would like to extend a sincere thank you to the hard working members of the NSW organizing committee who did an exceptional job in putting together a very successful and enjoyable conference. I would particularly like to thank the Hon Justice Margaret Beazley AO, Linda Pearson and Pam

Madafiglio for their efforts in organizing the conference. As is sometimes said, it just wouldn't have been possible without you. Thanks must also go to our National Secretary, Stephen Argument, who again played an important role in bringing the 2010 National Forum to fruition.

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 2011 Administrative Law Forum, the 21st to be run by the Institute, will be held in Canberra on 21 and 22 July 2011 at the Hotel Realm and planning for the Forum is already well under way.

### **AIAL Essay Prize in Administrative Law**

The AIAL Essay Prize is conducted in alternate years and entries are now being invited for the 2011 Essay Prize. My thanks go to Linda Crebbin who has agreed to take the responsibility for the organization of this event.

### **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 on a monthly basis (except over the Christmas period) with minutes being kept of all meetings.

Sadly several members of the Executive are not standing for re-election.

### **Stephen Argument**

Stephen Argument, a member of the Executive since the creation of the Institute has decided that, after some 21 years involvement in the running of the Institute, it is time for a break. Anyone who has been involved in the Executive will already know of the incredible amount of work that Stephen has put in to keeping the Institute running. He has been synonymous with the AIAL within most people's living memory.

He was a founding member of the Institute on its creation in 1989 and became Secretary in 1990, a role he has held continuously ever since. He has kept the minutes of executive committee and national council meetings for all this time as well as looking after the myriad issues that arise from time to time touching on every aspect of the Institute's activities: membership inquiries, the AIAL Forum, the organisation of the Annual National Forum and arrangements with the Secretariat, to name but a few. He is the repository of enormous corporate knowledge about the Institute and this will be sorely missed.

He (together with John McMillan) was responsible for the introduction of the Administrative Law Trivia Quiz a feature of the dinner of the National Conference now for many years.

He edited the papers from two National Forums: *Admin Law and Public Administration: happily married or living apart under the same roof?* (1993) and *Admin Law: Are the States Overtaking the Commonwealth* (1994). He was never officially editor of the *AIAL Forum* but has stepped in when required to ensure the continuous publication of the Forum. At the same time he is one of the more prolific authors in that publication with some 16 articles to his credit.

Stephen's departure will create a gap that we will probably never completely fill and I would like to place on record the Institute's gratitude for all of Stephen's hard work over many many years.

### **Other departures**

Sarah Todd, who has played an important role in looking after the AIAL Website over the past few years, has also indicated that she will not seek re-nomination. Sarah has done a sterling job in ensuring that the website is kept up to date and will also be sorely missed.

David Fintan, who courageously took on the role of Treasurer for several years and Stephen Goggs, who has played an active part in executive meetings for a number of years now are also standing down and I would like to thank them both for their time and effort.

### **National Council**

The National Council is made up of the (National) Executive Committee and two representatives of each State and Territory chapter of the Institute and determines the policy of the Institute. It last met in Sydney on 22 July 2010 on the morning before the commencement of the 2010 Forum.

At this meeting there was considerable discussion about AIAL Forum as a result of which a subcommittee was formed to explore the role and status AIAL Forum. The

subcommittee comprises Dr Jonathan Aleck, Ms Alison Christou and Professor Mary Crock and will report to the National Council during 2011.

The following is a summary of reports from the Chapters at that meeting.

### **New South Wales**

Justice Beazley reported that the time of the NSW chapter had recently been taken up mainly by the organisation of the National Administrative Law Forum. She noted, however, that the chapter had continued its work in seeking to use some of its accumulated funds to provide financial assistance to worthy causes, particularly the work of community legal centres. Justice Beazley advised that the chapter had, again, put out to tender the possibility of the chapter providing project funding to administrative law-related projects. She advised that, after some initial issues, the NSW chapter was currently funding a significant project, by a community legal centre, the intention of which was to produce a “people’s guide to penalty notices, etc”. Justice Beazley noted that the project (and the chapter’s involvement in it) had been recognised in an article in the May 2010 edition of the (NSW) *Law Society Journal*.

### **Victoria**

Ms Rachel Walsh reported on the activities of the Victorian chapter. She advised that Justice A Cavanough, of the Victorian Supreme Court, had addressed the chapter’s Annual General Meeting, on 19 November 2009, offering his comments on the contribution of racing cases (and some colourful racing identities) to the development of administrative law. She noted that the AGM was attended by 24 members (who each paid \$80) and 21 non-members (who each paid \$85).

Ms Walsh reported that a seminar had been held on 18 March 2010, on “Lessons from the Ashby case: Principles and pitfalls of delegations”, at which Mr P Priest QC spoke about the Ashby case, in which he had argued that evidence given by the former Victoria Police Assistant Commissioner to the Office of Police Integrity (**OPI**) was inadmissible as evidence of perjury because of a flaw in the delegation of powers from the OPI to Mr M Wilcox QC, who had conducted the OPI hearing. Ms Walsh noted that

the Victorian Supreme Court had accepted Mr Priest's arguments and the perjury case against Mr Ashby had subsequently collapsed.

Ms Walsh reported that Mr S Bailey had responded to the Ashby case study, with a discussion of the principles of delegation and their broader application to proper governance in public agencies in both State and Federal jurisdictions. She noted that this was a free seminar, hosted by DLA Phillips Fox, with 8 members and 44 non-members attending.

Ms Walsh reported that a seminar had been held on 7 May 2010, on "Reforming Judicial Review in Victoria: Death of the Victorian Administrative Law Act?"

### **Queensland**

Ms Christou reported that the Chapter had conducted a successful seminar in June 2010, "*Jurisdictional Error and Privative Clauses in Qld Legislation after Kirk v Industrial Relations Commission*", presented by Mr D Rangiah SC.

Ms Christou noted that the following seminars were then planned:

- August 2010, presentation by Ms L Matthews, Queensland Privacy Commissioner, on "Information Privacy Reforms in Queensland", August 2010.
- October 2010, presentation by Mr David Solomon, Queensland Integrity Commissioner.
- December 2010, presentation by either the President or the Deputy President of the Queensland Civil and Administrative Tribunal (**QCAT**) on the QCAT's first year of operation.
- Early 2011, presentation by Professor J McMillan, Australian Information Commissioner.
- Early 2011, presentation by Ms Christou on best practice in decision-making for members of administrative tribunals.

## **South Australia**

On behalf of the South Australian chapter, Ms Boylan reported that, since the chapter's last report, the chapter had again been busy, presenting 7 free lunchtime seminars as, well as having a guest speaker at the 2009 Annual General Meeting of the chapter. The seminars presented were as follows:

- 21 August 2009, Dr J Bannister, an academic and a member of the executive committee of the chapter, had made a presentation entitled "Reform of Freedom of Information Legislation", discussing some of the key reforms proposed by the Commonwealth, Queensland and New South Wales.
- early October 2009, Professor McMillan had made a presentation on "Ombudsman: 200 Years of being the people's watchdog"
- 11 November 2009, Mr R Bingham, then the newly appointed SA Ombudsman, had made a presentation on "The Lay of the Land", in which he gave his initial impressions of the role and his expectations for the future.
- November 2009, Mr Tony Piccolo MP had made a presentation on "The Role of Members of Parliament in practising administrative law".
- March 2010, Mr C Finn had presented an excellent paper on "Kirk v IRC of NSW: Privative clauses: when too much is not enough".
- 20 May 2010, Ms N Charlesworth, Barrister, had made a presentation on "Confidentiality and the Crown" on 20 May 2010.
- 9 June 2010, the chair of the new Police Complaints Authority, Ms S Bolt, had presented a paper on the role of the PCA, an independent statutory authority responsible for the oversight of the investigation of complaints by members of the public against SA police officers.
- July 2010, the WorkCover Ombudsman, Mr W Lines, had presented a paper on "Promoting peace while the battle rages".



## **Membership**

Membership figures remain have dropped over the year, with the total membership as at today standing at 355 (comprising 306 individual and 49 corporate members). This is down from 452 this time last year. There has been a steady decline in membership over the past few years and the incoming executive will need to address the issue in the year ahead.

## **AIAL Secretariat**

A number of issues arose during the year in relation to the assistance the AIAL was receiving from the Secretariat which, for some years, has been run by the Institute of Public Administration Australia (ACT Office). Unfortunately this came to a head at the 2010 National Forum in Sydney with members of the organizing committee expressing considerable dissatisfaction with the level of administrative support they had received in preparing for and running the conference.

This coincided with a request by IPAA for a significant increase in the level of fees payable as a result of which inquiries were made to see what other options were available. I am pleased to announce that we have now entered into a new arrangement with Commerce Management Services, who provide secretariat services to a number of other national associations, including the National Environmental Law Association (which is of a similar size and structure to the AIAL), to provide secretariat services to the AIAL commencing 1 December 2010.

Despite the recent difficulties, it is fair to say that we have enjoyed a constructive and successful relationship with IPAA over many years and I would like to record our appreciation for the assistance they have provided during this time.

## **Publications**

We were fortunate in the last year to be able to engage the services of Elizabeth Drynan to take over the role of editor of the AIAL Forum. Elizabeth has done a great job with the Forum and on behalf of the Institute I would like to extend our sincere thanks for

her efforts over the year. Again Stephen Argument has played a key role in ensuring the AIAL Forum continues to be published on a regular basis and I would also add my thanks to him for his efforts in this regard.

### **Finance**

The Treasurer will report separately but the end result of the AIAL financial year is very pleasing with a modest deficit of \$3797 (Consolidated) and \$853 (for the National Executive). As the Institute does not set out to make a profit from its activities this is a very good result.

Consolidated national cash deposits as at 30 June 2010 were \$220,760 (\$190,000 at the same time in 2009) and, for the National Executive, \$105,992 (\$70,000 at the same time in 2009).

My sincere thanks go to our Treasurer, Mr Peter Sutherland, who has worked tirelessly to get our accounts into shape and for keeping an ever watchful eye on the state of our finances.

### **Institute Home Page**

Sarah Todd has continued to look after the Institute's home page (with some help from Peter Sutherland) and the Executive thanks them both sincerely for their efforts.

### **Conclusion**

It has been a busy year for the (National) Executive Committee. I would like to thank each and every one of the members of the 2010 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 over the past 2 years and I wish our new President and the new executive committee a successful 2011.

Alan Bradbury  
President

Canberra  
24 November 2010