

**REPORT ON BEHALF OF THE EXECUTIVE COMMITTEE
TO THE ANNUAL GENERAL MEETING
OF THE AUSTRALIAN INSTITUTE OF ADMINISTRATIVE LAW
HELD ON 23 NOVEMBER 2011
FOR THE PERIOD NOVEMBER 2010 TO NOVEMBER 2011**

Introduction

1. The last year or so has seen administrative law issues, broadly defined, continue to be of great significance in Australia. This has included:
 - dramatic and politically sensitive review by the Courts of migration, and other, decisions;
 - expansion of constitutionally entrenched judicial review by the High Court in *Kirk v Industrial Court* (NSW) (2010) 239 CLR 531;
 - the growing relevance and reach of:
 - merits review, and other independent complaints, bodies in relation to government actions;
 - freedom of information and privacy rights; and
 - many others.
2. In this context, the year has been one of consolidation for the Australian Institute of Administrative Law (AIAL). At last year's annual general meeting, Stephen Argument retired as secretary. Alan Bradbury paid tribute to the outstanding service to the AIAL by Stephen, and a motion recognising this was passed. Stephen has subsequently and appropriately been granted honorary life membership of the Institute for his long and active service as secretary. As was also mentioned last year the Executive decided to change our secretariat from the Institute of Public Administration Australia (IPAA) to Commerce Management. There were also a number of members of the Executive Committee who did not seek renomination last year.
3. The Institute has weathered these changes and has continued over the last year to play a leading role in promoting knowledge of and interest in administrative law, broadly defined, and in providing a forum for the exchange of information and views about administrative law and practice. Regular seminars, our National Administrative Law Conference (held in July 2011), our publication, the *AIAL Forum*, the Institute's website, and other initiatives have all played an important role in pursuing the Institute's objects during the course of the year.

Executive Committee

4. The National Executive Committee elected at last year's annual general meeting was made up of the following members: Robert Orr, President; Meghann Everett, Secretary; Peter Sutherland, Treasurer; Dr Jonathan Aleck, Vice President; Linda Crebbin, Vice

President; Alan Bradbury; John Carroll; Professor Robin Creyke; Professor John McMillan; Alison Playford; Cain Sibley; Claressa Surtees; and Michael Will.

5. The Executive met on a monthly basis (except over the Christmas period) with minutes being kept of all meetings. Our thanks go to Linda Crebbin, the General President of the ACT Civil and Administrative Tribunal and a member of the AIAL Executive Committee, for making the Tribunal offices available for these meetings.

National Administrative Law Conference 2011

6. A key event for 2011 was the National Administrative Law Conference held on 21 and 22 July at the Hotel Realm in Canberra.
7. The theme for this year's Conference was 'Democracy, participation and administrative law'. This theme prompted sessions on:
 - elections, which are a pivotal part of the public life of our country. Administrative law plays an important if sometimes obscure role in elections, and a session by Dr Graeme Orr of the University of Queensland and Paul Pirani of the Australian Electoral Commission looked at elections, and raised some issues which are of relevance in a broader range of public administration;
 - Parliamentary scrutiny of government, which is also an important aspect of our system of government. A session by Daryl Melham MP, the Member for Banks and Chair of the Joint Standing Committee on Electoral Matters, and Stephen Argument considered the role of Parliamentary committees; and
 - participation in decision making, which is also an issue of growing importance. This particularly arises in the environmental law area, and a session by Dr Andrew Edgar from the University of Sydney considered judicial review of environmental decisions, and one by Dr Cameron Holley from Macquarie University considered empirical insights from the new environmental governance.
8. There were also broader talks and sessions including:
 - the opening address by Debbie Mortimer SC of the Melbourne bar;
 - consideration of the role of independent policy bodies by Gary Banks, Chair of the Productivity Commission, and Colin Neave, President of the Administrative Review Council;
 - State initiatives, which were discussed by Justice Alan Wilson, President of QCAT and Dr Sussanah Sage Jacobson from Flinders University; and
 - a discussion on human rights in decision making by Joanna Davidson.
9. At the conference the AIAL National Lecture was given by the Chief Justice of the Federal Court, Patrick Keane, also entitled 'Democracy, participation and administrative law'. This was a new initiative to have such a lecture at the Conference, open to the general public.

10. The conference papers were made available on our website, and key papers, including the National Lecture, will be published in forthcoming editions of *AIAL Forum*. I would like to thank all of the speakers for the time and effort they put into their presentations, and John McMillan and Cain Sibley, who with me made up the organising committee, and our secretariat Commerce Management, for their great work on the Conference.
11. The 2012 AIAL Annual Conference will be held in Adelaide on 19 and 20 July 2011 under the theme 'Integrity in administrative decision making'. The 2012 National Lecture will be given at that time by Justice Gummow of the High Court.

AIAL Forum

12. The Institute's journal, *AIAL Forum*, has developed strongly throughout the year. Volume 64 was published in December 2010, Volume 67 in November 2011.
13. Elizabeth Drynan has continued as editor in this period, and has done an excellent job at producing a high quality and informative publication, relevant to the range of administrative law practitioners. We are delighted that Elizabeth has agreed to continue on in that role.
14. John Carroll, Robin Creyke and Alison Playford from the National Executive have taken on the role of an Editorial Board for *AIAL Forum*, and have provided strong guidance, and support to Elizabeth in her role. Our thanks go to Elizabeth, John, Robin and Alison for their excellent work producing the Forum.
15. The *Forum* is now also published on AUSTLII. And it has also brought significant income to the Institute over the last year through additional CAL payments, which Peter Sutherland will mention in his report.

AIAL essay prize

16. The AIAL Essay Prize is conducted in alternate years and it was awarded in 2011 to Maya Narayan for her article entitled 'Creature of Statute, Beast of Burden: The Victorian Civil and Administrative Tribunal and the Heavy Lifting of Human Rights' which has now been published in (2011) 66 *AIAL Forum* 1. Maya is an advocate in the community sector, and AIAL supported her attendance at the National Administrative Law Conference at which the prize was awarded.
17. Our thanks go to Linda Crebbin who took has agreed to take the responsibility for the organization of the prize, with the able assistance of Michael Will and Jonathan Aleck.

ACT seminars

18. In addition to organising the National Conference, *AIAL Forum* and a range of other activities, 4 lunchtime seminars were held in Canberra during the last year.
 - On 9 November 2010 entitled 'Government oversight - baring the new watchdogs' with Allan Asher and Vivienne Thom, chaired by Professor John McMillan.

- 'The Report of the Review of Military Compensation Arrangements' with Major General Craig Orme, Peter Sutherland and Neil Bayles, chaired by Professor Robin Creyke, on 19 April 2011.
- 'Principles Based Regulation' by Professor John Braithwaite, chaired by Dr Jonathan Alleck, on 28 June 2011.
- 'Administrative Law Offshore: *Plaintiff M61/2010E v Commonwealth* and *Plaintiff M70/2011 v Minister for Immigration and Citizenship*' by Richard Niall SC, Craig Lenehan, and Professor John McMillan, chaired by Michael Will, on 8 November 2011.

19. These were all excellent seminars, though some had modest attendances. I think we should consider trialling some different arrangements next year. We are always looking for seminar topics and presenters, and we would welcome any suggestions for future events.

National Council

20. The National Council is made up of the 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 Canberra on the morning before the commencement of the 2011 Conference.
21. Key issues discussed included:
- The finances of the Institute;
 - National Conferences;
 - corporate membership;
 - *AIAL Forum*; and
 - The Institute home page.
22. A new initiative over the last year is to also have phone hookups of the National Council, as well as the meeting at the Conference.
23. Also at the National Council reports are provided on activities by the State Branches, as well as the Executive. These reveal how active the AIAL is across Australia in holding seminars on a broad range of administrative law issues.

South Australia

24. South Australia conducted the following lunchtime seminars:
- On 30 July 2010, the Acting Commonwealth Ombudsman, Ron Brent, presented a paper entitled 'Financial Compensation for Administrative Error' focussing on recompense for victims of administrative error through financial compensation by

way of the Commonwealth Compensation for Detriment caused by Defective Administration scheme.

- At the annual general meeting was held in early October 2010, Dr Mike Biles, the UK Housing Ombudsman, presented 'The Housing Ombudsman: A Pillar of Justice in Rented Housing'. His presentation focussed on the work of the Housing Ombudsman with respect to public rented housing in a most engaging and comprehensive manner.
- On 29 March 2011, Katherine Bean, a Senior Member of the AAT, spoke on 'Review Proceedings in the Administrative Appeals Tribunal: Why AAT Proceedings are not as Adversarial as they Might Appear'.
- On 4 May 2011, Richard Bingham, the SA Ombudsman, spoke on 'Conflict of Interest in Local Government'. This was held at a larger venue than usual as it appealed to a wider audience. It was very well attended, including by the local government sector.
- On 18 July, 2011 there was a joint seminar with COAT (the Council of Australasian Tribunals South Australia). The speaker was Professor Robin Creyke and she spoke about 'Official Notice and the Use of Experts in Tribunal Proceedings'. Again, it was held in the larger venue and was very well received.

Victoria

25. Victoria is also a very active Chapter, and held the following seminars.

- Professor John McMillan, then Australian Information Commissioner Designate, spoke on the topic, 'New Dog on the Block: the Australian Information Commissioner' on 18 October 2010, organised primarily by Emily Nance.
- The annual general meeting and annual dinner was held on 24 November 2010 with Rachel Doyle SC as the guest speaker on the topic, 'Stressed and Stressful: Administrative Law and the Unrepresented Litigant'. This seminar and dinner was organised primarily by Gabi Crafti, Jane Salveson and Fleur Cowell.
- Robert Clark MP, the new Victorian Attorney-General and Minister for Finance, spoke on 'Administrative Law', on 22 February 2011. This seminar was organised primarily through the efforts of Jane Salveson.
- Justice Terry Forrest, Supreme Court of Victoria, and the David Jones, Chairman, AFL Tribunal, spoke on 'Beyond the Melee: Tales from the AFL Tribunal' on 25 May 2011. This seminar was organised primarily through the efforts of Gabi Crafti and Jack Tracey.

26. As in the past, arrangements have been made for the award of essay prizes in Administrative Law 2010 to recipients at Deakin University and La Trobe University.

Queensland

27. The Queensland Chapter has also had a very active seminar programme over the last year.
- Linda Matthews, Qld Privacy Commissioner, spoke on 'Information Privacy Reforms in Qld' in August 2010.
 - David Solomon, Qld Integrity Commissioner, presented a seminar in October 2010.
 - Judge Fleur Kingham, Deputy President of the Qld Civil and Administrative Tribunal (QCAT), spoke on the QCAT's first year of operation in December 2010.
 - Alison Christou presented a seminar on best practice in decision-making for members of administrative tribunals in February 2011.
 - Nitra Kidson, Barrister, spoke on judicial review of migration decisions for offshore asylum seekers in April 2011.
 - Peter Sutherland, Neil Bayles and Frank Benfield presented a seminar on the 'Review of Military Compensation Arrangements' in May 2011.
 - Professor John McMillan, Commonwealth Information Commissioner, spoke on 'Open Government Reform' in June 2011.

New South Wales

28. NSW has held a number of seminars:
- John Carroll spoke about administrative law cases from the past year.
 - The new NSW Attorney-General, Greg Smith, presented a seminar on 'The role of administrative law as a foundation for good governance' on 4 August 2011, chaired by Justice Margaret Beazley.

Western Australia

29. The WA chapter has held 6 seminars this year.
- On 11 August 2010 Chief Justice of the Supreme Court of Western Australia, Wayne Martin, spoke on the topic of 'The Desirability and Potential for Reform of the Supreme Court Procedures Regarding the Prerogative Writs'.
 - A twilight seminar on 13 October 2010 co-hosted with the University of Western Australia Faculty of Law was presented by Dr Peter Johnston and Professor Simon Young and Richard Hooker on the topic of 'Recent High Court Pronouncements on Judicial Review: *Kirk*, *Saeed* and *SZMDS*'.
 - A seminar on 19 October 2010 was presented by the Western Australian Information Commissioner, Sven Bluemmel, on his recent 'Freedom of Information Review Report' tabled in Parliament in September 2010.

- A twilight seminar, together with Christmas drinks, on 16 December 2010 was presented by Dr Hannes Schoombee on the topic of 'Human Rights and Statutory Interpretation: WA and Victorian Perspectives'.
 - On 17 January 2011 a seminar was presented by Professor Robin Creyke on the topic of 'Tightening the Noose on Administrative Law Standards: A Risk Management Approach?'.
 - A seminar on 28 March 2011 was presented by Lynsey Warbey of the WA State Solicitors Office on the topic of 'The 2009 Victorian Bushfires Royal Commission - Issues for Western Australia'.
 - On 21 September 2011 Robert Cock QC presented a seminar on aspects of his undertaking of the Marlon Noble Inquiry, with commentary from Justice Narelle Johnson, chair of the Mentally Impaired Accused Review Board.
 - On 2 December 2011, the Chief Justice of the Federal Court, Patrick Keane, will be delivering a repeat of the 2011 AIAL National Lecture on the topic of 'Democracy, Participation and Administrative Law'.
30. This is a very impressive list of seminars, reflecting significant activity, enthusiasm and hard work by the State Chapters of the Institute across Australia in relation to a broad range of interesting and very relevant topics. On behalf of the Executive I would like to thank all the executives of the State Chapters for their work during the year.

Membership

31. Membership figures have risen, with the total membership as at today standing at 517, which is up from last year at 355, and the year before at 452. One factor in this increase is improved management of membership by the new secretariat, Commerce Management. It may be that further could be done in relation to membership, and this is something which the incoming executive could address.

AIAL Secretariat

32. For many years the secretariat for the AIAL was provided by the Institute of Public Administration Australia (ACT Office). As announced last year we have 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).
33. Commerce Management have provided excellent service over the last year, and I would like to thank them, in particular Sue, Kelli and Elizabeth, for their great work.

Finances

34. The Treasurer, Peter Sutherland, will report separately on our finances, but the end result for the financial year is very pleasing with a profit of \$53,760 (consolidated) and \$38,453 (for the National Executive), and a healthy level of current assets. As the

Institute does not set out to make a profit from its activities this is a very good result, though thanks on part to some extraordinary items. This means that the Institute is in a very solid position to carry on, and indeed develop and expand, its core activities.

35. My sincere thanks go to our Treasurer, Mr Peter Sutherland, who has done an outstanding job to get our accounts into shape, and realising the strong position we are now in.

Institute home page

36. Peter has also looked after the Institute's home page, and we thank him for those efforts.
37. The home page has something of an old fashioned look, and does not have some features of more modern sites. We are currently doing some research into whether improvements can be made. At the National Council meeting there was a suggestion, needless to say by a person much younger than me, that the President could establish a blog and do some tweeting. This may be going too far, but suggestions as to how to use more effectively modern social media would be welcome.

Conclusion

38. It has been a busy year for the Executive Committee. I would like to thank all the members of the 2011 Executive for their hard work and assistance during the course of the year. I have mentioned Peter in particular, and I would also like to thank very much Meghann Everett, who has undertaken the role of secretary, for her great work.
39. Alan Bradbury has indicated that he will not be standing for re-election. Alan has been a long-standing member of the Executive and was President in 2009 and 2010, which were difficult years, and which saw some major changes, some of which I have mentioned. I would like to warmly thank Alan for his great contribution to the Institute.
40. One new initiative at the 2011 Conference dinner was that in addition to a trivia quiz, there was also a limerick competition. I thought I would conclude with one entry:

We all love administrative law,
Mandamus, *Kioa* and more,
It's a little abstruse,
And its not of much use,
But the AIAL we adore.

41. Thank you.

Robert Orr
President

23 November 2011