

**REPORT ON BEHALF OF THE EXECUTIVE COMMITTEE
TO THE ANNUAL GENERAL MEETING
OF THE AUSTRALIAN INSTITUTE OF ADMINISTRATIVE LAW
HELD ON 21 NOVEMBER 2012
FOR THE PERIOD NOVEMBER 2011 TO NOVEMBER 2012**

Introduction

1. There is seldom a quiet year in the area of administrative law, and there have been many significant developments this year. One of these, the proceedings in *Williams v Commonwealth*, the Chaplains case, were described by Justice Heydon,¹ quoting Matthew Arnold, as:

So the Court was on a darkling plain, swept with confused alarms of struggle and flight,
where ignorant armies clash by night ...
2. The Institute continues to play a leading role on the plain of administrative law, hopefully not as one of the ignorant armies, but rather in promoting knowledge of and interest in the subject, and in providing a forum for the exchange of information and views. A very wide-range of seminars, our National Administrative Law Conference held in July 2012 in Adelaide, 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

3. 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 and Linda Crebbin, Vice Presidents; and John Carroll, Professor Robin Creyke, Professor John McMillan, Alison Playford, Cain Sibley, Claressa Surtees and Michael Will.
4. The Executive generally 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 Committee, for making the Tribunal offices available for these meetings.

National Administrative Law Conference 2011

5. A key event for 2012 was the National Administrative Law Conference held on 19 and 20 July at the National Wine Centre in Adelaide.
6. The theme for this year's Conference was 'Integrity in Administrative Decision Making'. There was an opening address by the Attorney-General of SA, John Rau, on this theme, and it was followed by sessions on:

¹ *Williams v Commonwealth* (2012) 86 ALJR 713 at [343].

- the integrity branch, in which Professor Robin Creyke, Dr David Solomon and Professor AJ Brown laid the foundations for the conference in discussing the concept of the integrity branch and its current health
- the integrity of institutions under State constitutional law, which was the focus of a session with Justice Chris Kourakis, Professor Geoff Lindell and Stephen Gageler SC
- integrity and local government with Associate Professor Matthew Groves, Professor Dennis Pearce and Richard Bingham, and
- integrity across different kinds of decision-making, a very lively final session with Bruce Barbour, Ombudsman for NSW, Judge Susan Cole, Justice Duncan Kerr, newly appointed President of the Administrative Appeals Tribunal and Amanda Vanstone, formerly a senior Minister in the Commonwealth government.

7. There were also broader talks and sessions including:

- jurisdictional facts and the *Malaysian declaration case*,² and
- human rights and law and decision making.

There were a wide range of excellent concurrent sessions.

8. At the conference the AIAL National Lecture was given by Justice William Gummow of the High Court, entitled 'A Fourth Branch of Government?'. This followed on from the initiative in 2012 to have such a lecture at the Conference, open to the general public. It was very fitting that this lecture be given by Justice Gummow just before his retirement from the High Court. Justice Gummow has been a major figure in Australian public law, as an academic and author, solicitor, advocate, Federal Court judge and High Court judge. It is fitting to acknowledge the great contribution he has made to Australian administrative law.
9. The key conference papers including the National Lecture, are being published in editions of the *AIAL Forum*.
10. I would like to thank all of the speakers at the Conference for the time and effort they put into their presentations. I would also like to thank the SA organising committee, Michael Wait, Dami Sheldon, Megan Philpott, Judith Bannister and Dale Mazzachi for their great work, supported by the SA Branch Committee in particular Greg Parker (Chair) and Shirley Fisher (Secretary), and our secretariat Commerce Management.
11. The 2013 AIAL Annual Conference will be held in Canberra on 18 and 19 July 2013 under the theme 'Administrative law in an Interconnected World'. This theme will allow us to look at the effect of technology on administrative law issues, but also the cross-jurisdictional fertilisation of thinking on administrative law issues. Implementing this aspect of the theme, Professor Lorne Sossin, Dean of Osgoode Hall Law School in

² *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) 244 CLR 144.

Toronto and a leading Canadian administrative lawyer has agreed to speak, and the AIAL National Lecture will be given by Dame Sian Elias, Chief Justice of the Supreme Court of New Zealand.

AIAL Forum

12. The Institute's journal, *AIAL Forum*, has developed strongly throughout the year. Volume 67 was published in November 2011, and Volume 70 has just recently been published, and includes many of the key papers from the Adelaide Conference, in particular the National Lecture by Justice Gummow.
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.
14. John Carroll, Robin Creyke and Alison Playford from the National Executive have continued to be the Editorial Board for *AIAL Forum*, and have provided strong guidance, and support to Elizabeth in her role. The last 2 editions have included a new recent developments section by Katherine Cook. Our thanks go to Elizabeth, John, Robin, Alison and Katherine for their excellent work producing the Forum.
15. The *Forum* is also published on AUSTLII.

ACT seminars

16. The AIAL arranges a range of seminars across Australia. A number of lunchtime seminars were held in Canberra organised by the National Executive during the last year.
 - '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.
 - 'Institutional integrity? – Convergence of Australian judicial systems' by Associate Professor James Stellios from ANU on 2 March 2012.
 - 'Parliamentary Joint Committee on Human Rights' with Mr Harry Jenkins MP, Chair of the Committee, Stephen Argument and chaired by Ms Claressa Surtees, Clerk Assistant Table, House of Representatives on 23 August 2012.
 - 'The European Ombudsman' by Mr Nikiforos Diamondouros, the European Ombudsman, held prior to the annual general meeting on 21 November 2012.
 - On 4 December there will be a seminar on the 'Administrative Review Council Report on Federal Judicial Review in Australia' with Professor John McMillan and Roger Wilkins, Secretary of the Attorney-General's Department.

17. These were all excellent seminars. We are using a range of venues and times for the seminars in search of a larger audience. We are always looking for seminar topics and presenters, and we would welcome any suggestions for future events.

National Council

18. 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 Adelaide on the morning before the commencement of the 2012 Conference.
19. Key issues discussed included:
- the finances of the Institute
 - the National Conference
 - corporate membership
 - *AIAL Forum*, and
 - the Institute home page.
20. Also at the National Council reports are provided on activities by the State Branches, as well as the National Executive. These reveal how active the AIAL is across Australia in holding seminars on a broad range of administrative law issues.
21. We have also had phone hookups of the National Council, as well as the meeting at the Conference.

State activities

22. State Branches conduct a large number of seminars and other activities. SA held the following seminars:
- “More integrity demands? I thought we wanted to encourage more people to stand for local government!” The discussion took place between Richard Bingham (the State Ombudsman) and Michael Kelledy (Wallmans Lawyers) in the light of the findings from the State Ombudsman’s recent investigation into councillor conduct in the City of Charles Sturt and the proposed changes publicised in the Public Integrity Review for a single and enforceable code of conduct for councillors.
 - The Attorney-General, the Hon John Rau MP, conducted a lunchtime seminar in June, when he spoke on 'Reform of the Public Integrity System in South Australia'.
 - Justice Richard White of the Supreme Court of SA spoke at the SA annual general meeting.

23. Victoria has held the following seminars:

- 'Current Issues in Occupational and Business Regulation' presented by Deputy President Catherine Aird of the VCAT on 14 September 2011 (hosted by Minter Ellison).
- 'The High Court and the Malaysian Solution: What are the implications for Decision-Makers?' presented by Kristen Walker of the Victorian Bar and Dr Michelle Foster of Melbourne University on 26 October 2011 (hosted by DLA Piper).
- At the annual general meeting on 24 November 2012, Peter Hanks QC was the guest speaker.
- Professor Roger Douglas on 'Resolving Disputes About Access to Security-sensitive Information: Australian, UK and US approaches' on 1 August 2012, at DLA Piper.
- Justice Richard Tracey on 'Administrative Law and Military Justice' in September 2012.
- Associate Professor Matthew Groves on 'Natural Justice outside Government: Who else has to be fair' on 25 October 2012.

The Victorian Chapter also an essay prize for the best Legislation Assignment in Administrative Law 2011 to the top student, Mr Neal Schwartz, on 5 July 2012.

24. NSW has held the following seminars:

- 'The Reform of the NSW Tribunal System', and afternoon conference on 30 March 2012 with a range of speakers including Justice Iain Ross, President of Fair Work Australia, Justice Alan Wilson, President of QCAT, Judge Kevin O'Connor, President of the NSW ADT, and a wide range of other speakers.
- 'Project Blue Sky: Invalidity and the evolution of consequences for unlawful administrative action' on 20 November 2012 with Justice Nye Perram and Justice John Griffiths, followed by a dinner to honour the appointment of Stephen Gageler to the High Court.

25. WA has held the following seminars:

- On 2 December 2011, the Chief Justice of the Federal Court, Patrick Keane, delivered in Perth a reprise of the 2011 AIAL National Lecture on the topic of 'Democracy, Participation and Administrative Law'.
- 'Current issues in jurisdictional error' on 1 August 2012 with Adam Sharp and Richard Hooker.
- 'Law and practice of government accountability' on 24 September 2012 with the WA Ombudsman Chris Field and Simon Young from the UWA Law School.
- Peter Johnston spoke in November on issues arising from the *Zentai* litigation.

26. Queensland has also held regular seminars. In a reinvigoration of Northern Territory activities, Dr John Lowndes spoke about the challenges of administrative law in Darwin on 4 September 2012.
27. 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

28. Membership figures have risen, with the total membership as at today standing at well over 500. One factor in this increase is improved management of membership by the AIAL secretariat, Commerce Management. It may be that further could be done in relation to membership, and this is something which the incoming National Executive could address.

AIAL Secretariat

29. Commerce Management Services provided excellent administrative support over the last year, and I would like to thank them, in particular Sue, Kelli, Ursula and Elizabeth, for their great work.

Finances

30. 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 \$79,283 (consolidated) and \$77,119 (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 in 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.
31. 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

32. Peter has also looked after the Institute's home page, and we thank him for those efforts.
33. 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, perhaps even extending to a blog and some tweeting. Cain Sibley on the Executive is helping to co-ordinate development of the site.

Conclusion

34. It has been a busy year for the Executive Committee. I would like to thank all the members of the 2012 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 demanding role of secretary, whilst also giving birth to her second child, for her great work.
35. Thank you.

Robert Orr
President

21 November 2012