

# A short history of the Australian Institute of Administrative Law

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Robert Orr\*

*We all love administrative law,  
Mandamus, Kioa and more,  
It's a little abstruse,  
And it's not of much use,  
But the AIAL we adore.<sup>1</sup>*

*I heard one hundred drummers whose hands were a-blazin'.<sup>2</sup>*

This is the 100<sup>th</sup> edition of the *AIAL Forum*, in which most of the articles consider current key issues in administrative law. But this also seems an appropriate moment to look backward and reflect on the history of the Australian Institute of Administrative Law (AIAL or Institute), including the *AIAL Forum*, and its role in Australian public law and administration.

In this article I first consider the origins of the AIAL. Secondly, I summarise its key activities — in particular, the *AIAL Forum* and national administrative law conferences. Thirdly, I note some significant issues which the activities of the Institute have considered. An appendix at the end of the article sets out some basic information about its office holders and activities. In writing this article I have looked at the historical records of the AIAL, although, given the nature of the organisation as one principally run by volunteers, these records are limited in some respects. Further, because many important memories are fading, I have interviewed a number of prominent figures — some of these interviews are available as podcasts on the AIAL website — and also obtained information from a range of people.<sup>3</sup> The choice of key events and issues referred to in this article reflects these interviews and in part my own views. I certainly do not purport to speak for the Institute, its many past and current office holders and its very many past and present members. However, I do seek to acknowledge the work of those office holders and of the many others who have supported the undertakings of the AIAL — in particular, by speaking on, writing about and discussing Australian administrative law.

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\* Robert Orr QC is a special counsel at AGS; a part-time senior member and acting presidential member at the ACT Civil and Administrative Tribunal; and a former President of AIAL.

1 An entry in the limerick competition held at the AIAL national administrative law conference in Canberra in 2011. Unfortunately, the name of the author has been misplaced. See the President's report 2011.

References to reports and minutes of meetings in this article are to AIAL reports and AIAL meetings.

2 Bob Dylan, 'A hard rain's a' gonna fall', *The Freewheelin' Bob Dylan* (1963).

3 The podcasts with Robin Creyke and John McMillan are on the AIAL website, <<http://www.aial.org.au/>>, under 'News'. The written interviews were with Stephen Argument, Dennis Pearce and Peter Sutherland. These people have also generously read and provided comments on the article. I have also obtained information from officers of state chapters — namely, Rebecca Heath of Western Australia; Jeffrey Barnes and Emma Turner of Victoria; Shirley Fisher, Dami Sheldon and Richard Dennis of South Australia; and Andrew Chalk and Justice Rachel Pepper of New South Wales. Research assistance in relation to the citation of AIAL publications in cases was provided by Birgit Hofer. The appendix is incomplete, and some references and dates are educated guesses: if anyone can provide further information, I will put a more developed version of the article on the AIAL website. Any errors are mine, and I would be very grateful if readers could tell me about them.

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## Origins

Somewhat inauspiciously, the AIAL began on 1 April 1989 at the Hyatt Hotel, Canberra, after an ACT Law Society seminar. There had been a recent major conference on administrative law at the Australian National University (ANU),<sup>4</sup> and at the ACT Law Society seminar a question was raised as to what might be done to give the so-called ‘new administrative law’<sup>5</sup> some form of broad-based, non-partisan, institutional support. Derek Emerson-Elliott,<sup>6</sup> a Canberra barrister, articulated what he described as ‘the obvious answer’, and John Griffiths, then Director at the Administrative Review Council (ARC) and now a Federal Court judge, and Robert Todd,<sup>7</sup> one of the first members of the Administrative Appeals Tribunal (AAT), buttonholed him after the event and suggested he might ‘put some effort where his mouth was’.<sup>8</sup>

Derek wrote that little effort was in fact needed. By 3 May 1989 there was a respectable meeting of those interested in the creation of the Institute, which included four past, present or acting Commonwealth Ombudsmen, three professors, two members of the AAT, the presidents of both the Australian Law Reform Commission (ALRC) and ARC, ‘plus a plethora of experts, activists and archivists — and perhaps the odd healthy anarchist’. Robert Todd chaired the meeting and it was agreed that the organisation should not be a lobbying group, should not be confined to lawyers and should not be just a Canberra group. A working party was established, chaired by Robert Todd, which met four times. Geoff Kolts QC, former First Parliamentary Counsel, Office of Parliamentary Counsel (OPC) and Ombudsman, drafted the Rules. At a meeting on 5 July 1989, at which there were apparently a range of amendments moved from the floor, the Institute was voted into existence in the ARC Conference Room, Canberra.<sup>9</sup> It was formally incorporated in the ACT on 23 March 1990.<sup>10</sup> The first President was Geoff Kolts, after Professor Jack Richardson, former Ombudsman, apparently withdrew his nomination to avoid an election, although Geoff resigned early and Jack Richardson took over. Jack was then appointed as Samoan Ombudsman, and Professor Dennis Pearce<sup>11</sup> was elected president at the first annual general meeting on 26 September 1990 at the

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4 AIAL Podcast No 2: Interview with Professor John McMillan; *Administrative Law: Retrospect and Prospect* (1989) 66 *Canberra Bulletin of Public Administration* 29.

5 See generally ARC, *Report of the Commonwealth Administrative Review Committee* (Kerr Review) (Parliamentary Paper No 144, 1971), which led to the *Administrative Appeals Tribunal Act 1975* (Cth), *Ombudsman Act 1976* (Cth), *Administrative Decisions (Judicial Review) Act 1977* (Cth), *Freedom of Information Act 1982* (Cth) and *Privacy Act 1988* (Cth) and their state and territory equivalents.

6 Derek Emerson-Elliott had been Aide-de-Camp to the Governor-General Lord Casey and has had a range of roles as a lawyer in Canberra, including at the University of Canberra. He has recently written two novels: *In the Mouth of the Tiger* with Lynette Silver (2014), based on the life of his father; and *The Immortality Project* with M Elizabeth Fini (2020).

7 Robert Todd was a barrister in Melbourne before he was appointed as a full-time senior member and then Deputy President of the AAT. He was also president of the ACT Administrative Appeals Tribunal and the Legal Aid Commission (ACT). He was a president and life member of AIAL. See Allan N Hall, ‘Vale Robert Todd’, (2020) 98 *AIAL Forum* 9; and Fiona Todd, ‘Robert Todd’ (2020) 67 *Victorian Bar News* 80–81.

8 Derek Emerson-Elliott, ‘Our Beginning: An Historical Footnote’ (1989) 1 *AIAL Newsletter* 2–3.

9 Ibid; AIAL Podcast No 1: Interview with Professor Robin Creyke.

10 Minutes of the national executive committee meeting on 27 September 1989; Australian Institute of Administrative Law Incorporated certificate of incorporation.

11 Dennis Pearce was Professor of Law at ANU and Commonwealth Ombudsman from 1987 to 1991. He was and remains a prolific author — see especially *Administrative Appeals Tribunal* (4<sup>th</sup> ed, 2015) and *Statutory Interpretation in Australia* (9<sup>th</sup> ed, 2019) and earlier editions. He was a President of AIAL and is a life member.

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Hyatt Hotel in Canberra. The meeting included an address by Justice Deidre O'Connor, President of the AAT, and was followed by a dinner. The first secretary was Derek Emerson-Elliott and the first treasurer Dr Gary Rumble of Blake Dawson Waldron, formerly of the Attorney-General's Department.<sup>12</sup>

Broadly, the Institute had the purpose of promoting knowledge of and interest in administrative law. Its structure involved an executive — essentially, a national executive committee constituted to manage and control its affairs, elected at an annual general meeting. This national executive committee has comprised generally Canberra residents, reflecting the genesis of the AIAL, and it generally meets monthly. An amendment made to the Rules at the 1990 annual general meeting provided for state and territory chapters.<sup>13</sup> This federal-like structure predictably has been the subject of much debate and some tension over the years, especially as the state chapters were established and membership from those chapters grew and their activities developed. This came to a head in 1994 and led to a major amendment of the Rules at the annual general meeting on 20 September 1994 to provide for a national council which consists of the officers of the national executive committee and two representatives of each chapter. The national council's functions include making recommendations to the annual general meeting as to fees, how those fees should be remitted to the chapters, generally how funds should be used, and future directions for the organisation. The council must meet once a year and has usually met twice — once in person at the national administrative law conference and at another time by phone.<sup>14</sup>

The first public meeting of the AIAL was held in Canberra on 30 August 1989. At that meeting, Jeffrey Lubbers, Director of the Administrative Conference of the United States of America, a body similar to the ARC, spoke on the framework of the American system of administrative law, with particular emphasis on the function and status of administrative law judges.<sup>15</sup> It was not long before the first edition of the *AIAL Newsletter* was published in late 1989.

But it was said — in particular, by Robert Todd — that financially the Institute started off on 'spindly legs'. Stephen Argument<sup>16</sup> has noted that when he took over as secretary there was about \$300 in the bank — he had to think twice about buying a roll of stamps to do a mail-out to members, and he had to affix the stamps himself. This poor financial position came to a head when John Nethercote, secretary of the ACT division of the Royal Australian Institute of Public Administration Australia (RAIPA, and then IPAA) suggested a conference run by the two organisations. But the RAIPA took the view that AIAL could only share in the profits of the conference if it put up the same money to support the event as RAIPA — namely, \$5,000. AIAL did not have this money, but Dennis Pearce successfully approached Phillips Fox for

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12 Minutes of the annual general meeting on 26 September Ibid.

13 Ibid.

14 Minutes of the annual general meeting on 20 September 1994; interview with Stephen Argument; Australian Institute of Administrative Law Incorporated Rules.

15 'United States Administrative Law' (1989) 1 *AIAL Newsletter* 4–6.

16 Stephen Argument worked as a research officer for the Senate Standing Committee on Constitutional and Legal Affairs and later other Commonwealth and ACT parliamentary committees, including as Secretary of the Senate Standing Committee for the Scrutiny of Bills, and government agencies. He is the author, with Dennis Pearce, of *Delegated Legislation in Australia* (5<sup>th</sup> ed, 2017) and earlier editions, and has been a prolific writer for AIAL (see below). He was secretary of AIAL from 1991 to 2010 and is a life member.

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a loan.<sup>17</sup> The conference was held on 29–30 April 1991 at the Lakeside Hotel in Canberra. It was so successful that AIAL was able to pay back the loan and have a healthy bank balance. As Stephen Argument stated, the AIAL never looked back.<sup>18</sup>

Institute chapters were established in New South Wales and Queensland in 1991 and then South Australia, Victoria and Western Australia in 1992. A chapter in Tasmania was later established in 1996, and one in the Northern Territory in 1999,<sup>19</sup> although these are currently dormant. Membership rose fairly quickly to about 450<sup>20</sup> and then 570.<sup>21</sup>

These early developments illustrate some themes which have continued throughout the story of the AIAL. First, its principal aim was to be a forum for discussion of administrative law issues and not a lobby group for particular positions on these issues. Of course, discussion of administrative law issues has generally assumed the continued existence of a rigorous, principled and fair administrative law regime, and at least implicitly the Institute has stood for that continued existence. Geoff Kolts wrote at an early stage that the Institute was important because the federal institutions had been the subject of ill-informed criticism and a more insidious attack by being starved of adequate resources to carry out their statutory functions.<sup>22</sup> There has been some tension in the organisation about how much to support the elements of the new administrative law, such as the ARC.<sup>23</sup> Secondly, while law has been its focus, other perspectives were welcomed and discussed. Administrative decisions impact on every aspect of Australian life; those who make such decisions and those who are affected by such decisions are generally not lawyers; factors other than the law, such as policy, politics, and values, are very relevant to such decisions. In acknowledgement of this a range of voices beyond those of lawyers have been heard in Institute activities. Thirdly, while the Institute was based in Canberra, state and territory chapters have had a vital role in its activities. The Institute has developed as a national community of people interested in administrative law and undertaking a wide range of activities across Australia.<sup>24</sup> Fourthly, the AIAL emerged at a particular time, driven by a generation born during and after the Second World War, often called 'baby boomers', and reflecting the legal and cultural concerns of this generation.<sup>25</sup> One of the challenges for the AIAL has been and will continue to be how to engage and address the concerns of following generations.

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17 Minutes of national executive committee meeting on 7 February 1991; interview with Dennis Pearce; interview with Stephen Argument.

18 Dennis Pearce, 'Overview of the Forum' in Stephen Argument (ed), *Administrative Law: Are the States Overtaking the Commonwealth?* (AIAL, 1996); interview with Stephen Argument; interview with Dennis Pearce; minutes of the national executive committee meeting on 6 June 1991.

19 Minutes of the national executive committee meetings on 7 February 1991 (NSW); 11 March 1991 (Qld); 3 February 1992 (SA, Vic and WA); 9 April 1996 (Tas); and 4 August 1999 (NT).

20 Letter from Dennis Pearce to Commonwealth Attorney-General, 18 August 1992.

21 President's report 1993.

22 'From the President' (1989) 1 *AIAL Newsletter* 2.

23 Interview with Stephen Argument.

24 AIAL Podcast No 1: Interview with Professor Robin Creyke.

25 Robert French, 'Administrative Justice — Words in Search of Meaning' (Opening Address, AIAL National Conference, 22 July 2010) especially the opening paragraph; n 2 above.

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## Activities

### *AIAL Forum*

The predecessor to the *AIAL Forum* was the *AIAL Newsletter*, the first edition of which was published in late 1989. It was edited by Allan Anforth, then a solicitor with the Welfare Rights & Legal Centre in Canberra and now a barrister based in Canberra and senior member of ACT Civil and Administrative Tribunal (ACAT). The layout was by Melissa Freeman. The first issue contained a summary of the first AIAL seminar by Jeffrey Lubbers, as well as an article by Robert Todd entitled 'On Being Reasonably Judicial' and one by Geoff Kolts, 'When Should Rules be Made in Primary, Rather Than Subordinate, Legislation'. There was an editorial advisory committee made up of Robert Todd, John McMillan<sup>26</sup> and Gary Rumble.<sup>27</sup> There were 16 editions of the *AIAL Newsletter* published from late 1989 to December 1993.

The first edition of the *AIAL Forum* was published in June 1994, edited by Michael Sassella.<sup>28</sup> It contained reprints of 22 articles that originally appeared in the *AIAL Newsletter*. The second edition comprised 46 pages and set the format which has generally been followed since then. It included articles by Commonwealth Ombudsman Philippa Smith, Commonwealth Sex Discrimination Commissioner Sue Walpole, Chairman of the Australian Securities Commission Alan Cameron, and President of the ARC Dr Susan Kenny, later a Federal Court judge, as well as an article on public participation in rule making by Kim Rubenstein and one on public tenders by Nicholas Seddon, both later professors at ANU.

From 1994 until about 2006 the editor was generally a senior member of the Institute and its national executive committee, principally Michael Sassella; Kathryn Cole of the Parliamentary Library, OPC and Australian Government Solicitor (AGS); Hilary Manson of AGS; Dennis Pearce; Dr Max Spry, a barrister in Canberra and later Brisbane; and Robin Creyke.<sup>29</sup> In about 1998 an editorial board was established to assist with this process. The board comprised one representative from each of the state chapters plus two nominated by the national executive committee.<sup>30</sup> It included Michael Barker QC, chair of the Western Australian chapter and later Justice of the Federal Court; Justice Margaret Beazley, chair of the New South Wales chapter for many years and later President of the NSW Court of Appeal and now Governor of New South Wales; Geoff Airo-Farulla of the Commonwealth and Queensland Ombudsman's office, now of the Queensland Building and Construction Commission and long-term chair of the Queensland chapter; and Eugene Biganovski, South Australian Ombudsman for many years and chair of the South Australian chapter.

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26 John McMillan was Professor of Law at ANU, Commonwealth Ombudsman, Australian Information Commissioner and Privacy Commissioner and NSW Ombudsman and is the author of many publications, including for AIAL (see below) and *Control of Government Action* (5<sup>th</sup> ed, 2018) with Robin Creyke, Matthew Groves and Mark Smyth and earlier editions. John has been President of AIAL and is a life member.

27 Minutes of national executive committee meeting on 29 August 1989.

28 Michael Sassella was a senior lawyer at the Department of Social Security, other departments and the National Disability Insurance Agency; a senior member of the AAT; and long-term member of AIAL. He is now a volunteer lawyer at Legal Aid ACT.

29 Robin Creyke was Professor of Law at ANU, a senior member of the AAT and ACAT, and integrity adviser to the Australian Taxation Office. She is the author of many publications, including for AIAL and *Control of Government Action* (5<sup>th</sup> ed, 2018) with John McMillan, Matthew Groves and Mark Smyth, and earlier editions. Robin was a President of AIAL and is the current chair of the editorial board of *AIAL Forum*.

30 Minutes of national council meeting on 18 November 1998.

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In 2007, Alice Mantel, a lawyer and writer,<sup>31</sup> took over the role of sole editor. She was succeeded by professional editors Elizabeth Drynan in 2009 and then Kirsten McNeill of Apricot Zebra, the current editor, in 2016. In about 2011 the role of the editorial board was reviewed. It became a smaller group, chaired by John Carroll of Clayton Utz and then Robin Creyke, and was made up mainly of members of the national executive committee.

There have been some changes in content since 1994. A Recent Developments section, written by Ron Fraser of the Commonwealth Attorney-General's Department, commenced in 2002 and ran until 2005. Peter Prince of the Commonwealth Department of Health and Aging then took this up and authored the section between 2006 and 2007. He was followed by Alice Mantel from 2007 to 2009 and, most recently, Katherine Cook from 2012 to date. From 1991 proceedings of the national conferences were published separately and then on compact discs. But more recently many of the papers given at the national conferences have been published in *AIAL Forum*. Similarly, the early national lectures were separately published, but since 2011 these have been published in *AIAL Forum*.

Robin Creyke, who has been an editor and is now chair of the editorial committee, has said:

From its inception the Forum was never intended to be a predominately scholarly journal ... It was designed to be practical in focus dealing with day-to-day issues of practising public lawyers. ... I believe it's the journal's strength. Although the journal does offer refereeing for academics ... people who do not have academic backgrounds but do have an important point to make about an aspect of administrative law can have their views published in *AIAL Forum*.<sup>32</sup>

From 1989 to date there have been about 722 articles published in the *AIAL Newsletter* (78) and the *AIAL Forum* (644). In this discussion it is necessary to put this within the full output of AIAL and add to it the papers given at the national conferences — about 750. Some of those were published in separate AIAL publications (in particular, those from 1992 to 2004), some were in *AIAL Forum* or elsewhere and some were not published. Similarly, there were many AIAL local seminars, probably by my rough calculation over 900. Again, some of those were published in *AIAL Forum* or elsewhere and some were not published. This discussion focuses on *AIAL Forum* and *AIAL Newsletter* but also has regard to these other activities.

The *AIAL Newsletter* and *AIAL Forum* have generally been recognised as having had a substantial impact on administrative law in Australia. John McMillan has noted that, in his experience, it is his articles in *AIAL Forum*, rather than elsewhere, which are most read, referred to and discussed<sup>33</sup> — an observation backed up by the healthy copyright payments the Institute receives. Although assessing the impact of *AIAL Newsletter* and *AIAL Forum* more precisely is difficult, I note the following factors, greatly assisted by the excellent subject and author indices which have been maintained for *AIAL Forum*,<sup>34</sup> currently by Peter Sutherland.

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31 Alice has recently written *Everywoman's Guide to Retirement* (2019).

32 AIAL Podcast No 1: Interview with Professor Robin Creyke. Robin wrote an introduction to the 50<sup>th</sup> edition of *AIAL Forum* entitled 'Golden Jubilee of AIAL Forum' — see (2006) 50 *AIAL Forum* 1.

33 AIAL Podcast No 2: Interview with Professor John McMillan.

34 These are on the AIAL website at <<http://www.aial.org.au/resources/archives>>.



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First, there has been an enormous range of authors and speakers. This has included Australia's leading lawyers. Chief Justice Sir Anthony Mason and Chief Justice Robert French of the High Court of Australia have written articles for *AIAL Forum* as well as speaking at conferences and delivering national lectures. Chief Justice Gerard Brennan gave the opening address at the conference in 1998 on the AAT<sup>35</sup> and Justice Gummow gave the national lecture in 2012 at the national conference in Adelaide.<sup>36</sup> Of the current High Court members, Justice Stephen Gageler has written for *AIAL Forum*<sup>37</sup> and spoken at a number of conferences, and Justice Keane gave the national lecture in 2011.<sup>38</sup> The former Chief Justice of New Zealand Dame Sian Elias gave the national lecture in 2013.<sup>39</sup> Very many Federal Court and Supreme Court justices have also been prominent in writing and speaking for AIAL.

Public law academics have been major contributors to *AIAL Forum*. Robin Creyke and John McMillan have done so extensively, as noted above and below. Professor Mark Aronson of the University of NSW (UNSW)<sup>40</sup> has written for *AIAL Forum* on nullity<sup>41</sup> and spoken at national conferences. Justice Michael Kirby and Professor Michael Taggart wrote an article celebrating the career of Mark Aronson in the 50<sup>th</sup> edition of *AIAL Forum* in 2006. Professor Matthew Groves of Monash University and now Deakin University has written a number of articles, spoken often at conferences and seminars, and wrote an obituary for Professor Enid Campbell in *AIAL Forum*.<sup>42</sup> Associate Professor Greg Weeks of ANU has an article in this issue of *AIAL Forum* and is currently a member of the national executive committee. Professor Dennis Pearce has also been a major figure in the Institute and written extensively for it. Professor Margaret Allars (and now also of the New South Wales bar); Professor Mary Crock from the University of Sydney; Professor Susan Kneebone from Monash and now Melbourne University; Associate Professor Jeffrey Barnes from La Trobe University and long-time secretary of the Victorian chapter; Associate Professor Chris Finn of University of Adelaide; and Professor Bill Lane of the Queensland University of Technology have been active writers, presenters and supporters of the AIAL.

From the executive, Commonwealth, state and territory Attorneys-General and other ministers have written for *AIAL Forum* and spoken often at AIAL functions, as have leading members of the Commonwealth public service, including Mike Codd as Secretary of the Department of Prime Minister and Cabinet; Pat Brazil, Henry Burmester QC and Rob Cornall from the Commonwealth Attorney-General's Department; Chris Conybeare as Secretary of the Department of Immigration; Peter Shergold as Public Service Commissioner; Denis Richardson as head of the Australian Security Intelligence Organisation (ASIO); Gary Banks, chair of the Productivity Commission; and Mike D'Ascenzo, Commissioner of Taxation. Many state and territory public servants have also written and spoken. Of course, many executive government reviewers have contributed significantly — almost every President

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35 John McMillan (ed), *The AAT — Twenty Years forward* (AIAL, 1998) 4.

36 (2012) 70 *AIAL Forum* 19.

37 (1999) 22 *AIAL Forum* 37.

38 (2012) 68 *AIAL Forum* 1.

39 (2013) 74 *AIAL Forum* 11.

40 See in particular Mark Aronson, Matthew Groves and Greg Weeks, *Judicial Review of Administrative Action and Government Liability* (6<sup>th</sup> ed, 2016) and earlier editions.

41 (2004) 40 *AIAL Forum* 19.

42 (2010) 63 *AIAL Forum* 1.

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of the AAT and every Commonwealth Ombudsman has written or spoken for AIAL, as have many equivalent state and territory officers.

In addition, a range of other perspectives have been provided — for example, Sandra Koller from the Welfare Rights Centre, Sydney, on what consumers can expect from administrative justice;<sup>43</sup> Andrea Durbach, from the Public Interest Advocacy Centre (PIAC), on public litigation;<sup>44</sup> Kathleen McEvoy on public housing decisions;<sup>45</sup> Katie Miller, from Victoria Legal Aid, on robodebt communities;<sup>46</sup> and Peter Sutherland, from the Legal Aid Clinic in the ACT, on social security overpayments.<sup>47</sup> As Peter Sutherland has noted, the emergence of legal aid and community legal centres has been absolutely essential to administrative justice in Australia.<sup>48</sup> But, as even this brief overview shows, there have not been as many contributions from these more diverse and broader perspectives — in particular, from beyond governments, courts and tribunals, private lawyers and academia — as was perhaps anticipated when AIAL was founded or as seems appropriate now. That is an issue I return to at the end of this article.

There have been some very prolific contributors to the *AIAL Newsletter* and *AIAL Forum*. I have left out of these calculations Recent Developments articles and notes about AIAL activities. People who have written four to eight articles include Zac Chami of Clayton Utz, Sydney; Professor Nick Seddon of ANU and now Ashurst; Dr David Solomon, journalist and then Queensland Integrity Commissioner; Dr Max Spry; Dr Alan Freckleton QC, barrister in Melbourne and member of many tribunals; Sir Anthony Mason; Professor Matthew Groves; Justice John Basten of the Supreme Court of New South Wales and currently chair of the New South Wales chapter; Bronwyn McNaughton, who worked for parliamentary committees, ministers and later the Commonwealth Superannuation Corporation; and Denis O'Brien of Minter Ellison and later the Migration Review Tribunal (MRT) and Refugee Review Tribunal (RRT). Even more prolific writers, at nine or more articles, are Professor Robin Creyke; Chris Wheeler; the Deputy NSW Ombudsman; Mick Batskos of FOI Solutions, Melbourne; Professor Dennis Pearce; Robert Lindsay, a barrister in Perth; and Professor John McMillan. But the most prolific has been Stephen Argument, who has written six articles for the *AIAL Newsletter* and 14 for *AIAL Forum*, including his popular quartet 'Legislative Instruments Bill — RIP?', 'The Legislative Instruments Bill — Lazarus with a Triple By-pass', 'The Legislative Instruments Bill Still Lives!' and, finally, 'The Legislative Instruments Act 2004 — Is It the Cherry on the Top of the Legislative Scrutiny Cake?'.<sup>49</sup> Stephen has also written numerous reports on AIAL activities and key people for *AIAL Forum*.

AIAL articles and other publications are regularly cited in Australian courts and tribunals. A review of those most cited by the High Court, Federal Court, state Supreme Courts and major

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43 Robin Creyke and John McMillan, *Administrative Justice: The Core and the Fringe* (AIAL, 2000) 150.

44 (1998) 17 *AIAL Forum* 31.

45 'Building Secure Communities: Delivering Administrative Justice in Public Housing' (2011) 65 *AIAL Forum* 1; see also, with Chris Finn, (2010) 62 *AIAL Forum* 30.

46 'Connecting the Dots: A Case Study of Robodebt Communities' (2017) 89 *AIAL Forum* 50.

47 'Social Security Overpayments and Debt Recovery: Key Developments' (2017) 89 *AIAL Forum* 69.

48 Interview with Peter Sutherland.

49 (1998) 17 *AIAL Forum* 37; (2003) 39 *AIAL Forum* 44; (2004); 40 *AIAL Forum* 17; (2006) 48 *AIAL Forum* 35; with a recent sequel at (2019) 95 *AIAL Forum* 37.



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tribunals includes, unsurprisingly, Sir Anthony Mason's lectures,<sup>50</sup> the national lecture by Justice Keane,<sup>51</sup> Robin Creyke on judicial review<sup>52</sup> and John McMillan on merits review.<sup>53</sup> But there are important articles on more neglected areas which are also cited multiple times. An early article by Mick Batskos, 'Natural Justice and the Constitution of Tribunal Membership',<sup>54</sup> is one example. An article by Professor Jim Davis, 'Misfeasance in Public Office, Exemplary Damages and Vicarious Liability', is a second;<sup>55</sup> Professor Roger Douglas's article 'Collateral Attacks on Administrative Decisions: Anomalous But Efficient' is a third;<sup>56</sup> and the article by Graeme Hill, a Melbourne barrister, 'Applying Project Blue Sky',<sup>57</sup> is another. Duncan Kerr's talk given at a New South Wales seminar in 2013, 'Keeping the AAT from Becoming a Court', is also referred to several times. Two articles on revisiting decisions are also quite popular: 'Perfecting Judgments and Inherently Angelical Administrative Decisions: The Powers of Courts and Administrators to Re-open or Reconsider Their Decisions' by Professor Margaret Allars<sup>58</sup> and 'Don't Think Twice? Can Administrative Decision Makers Change Their Mind?' by Robyn Brieze and me.<sup>59</sup> I thought these last two articles might also be in the running for the catchiest title, but there is some competition from 'Review of Collegiate Decisions: Judicial Protection for "Pissants"', by Vincenzo Salvatore Papro, an AIAL essay competition entrant;<sup>60</sup> 'The Prerogative: Boris and the "Girly Swot"' by Robert Lindsay;<sup>61</sup> and 'ADJR at 40: In its Prime or a Disappointment to its Parents?' by Greg Weeks.<sup>62</sup>

### ***AIAL national administrative law conferences***

The second major activity of the Institute has been the annual national administrative law conference. For a long time these were called national administrative law forums, but more recently they have been called conferences so they will not be confused with the journal (and I use this latter term). The first national conference was held on Monday 29 and Tuesday 30 April 1991 at the Lakeside Hotel in Canberra. It was entitled *Fair & Open Decision Making*. As noted, it was conducted jointly with the ACT Division of RAIPA. The keynote address was given by the Commonwealth Attorney-General, the Hon Michael Duffy MP, and this was followed by a wide range of plenary sessions and one group of concurrent talks on what would become familiar titles and themes, including 'Administrative Law — The State of Play', 'The Cost of it All', 'Can Review Bodies Lead to Better Decision-Making?', 'Freedom of Information' and, of course, the eternal 'Future Directions'. The after-dinner entertainment was a debate on the proposition 'There Has Been Too Much Law and Not Enough Justice'. Jack Waterford, Deputy Editor of *The Canberra Times* and Clare Petre of the Redfern Legal Centre were for the proposition; and Justice Brian Beaumont of the Federal Court of

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50 (2001) 31 *AIAL Forum* 45.

51 (2012) 68 *AIAL Forum* 1.

52 (2003) 37 *AIAL Forum* 42.

53 McMillan (ed), above n 35, 32.

54 (1998) 16 *AIAL Forum* 22.

55 (2010) 64 *AIAL Forum* 59.

56 (2006) 51 *AIAL Forum* 71.

57 (2015) 80 *AIAL Forum* 54.

58 (2001) 30 *AIAL Forum* 1.

59 (2002) 35 *AIAL Forum* 11.

60 (2005) 47 *AIAL Forum* 65, quoting the former Mayor of Sydney Frank Sartor.

61 (2020) 98 *AIAL Forum* 13.

62 (2018) 92 *AIAL Forum* 103.

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Australia and Robert Todd from the AAT were against.<sup>63</sup> Jack Waterford turned his speech into a column in *The Canberra Times* with the ominous title 'Lawyerisation and Costs, Signs of a System's Illness'.<sup>64</sup> There were a number of other reports in *The Canberra Times* of particular presentations, including those by Peter Sutherland, then of the ACT Welfare and Legal Rights Centre;<sup>65</sup> Chris Conybeare, Secretary of the Department of Immigration, Local Government and Ethnic Affairs, who was challenged in relation to his comment that changes to migration regulations were simply 'continuing fine-tuning';<sup>66</sup> Ann Forward, Director of the Merit Protection and Review Agency, who argued against new Commonwealth whistleblowing legislation; and Professor Paul Finn of ANU, who maintained that Commonwealth legislation on whistleblowers was in compelling need of reform.<sup>67</sup> The papers from these proceedings were edited by John McMillan, H McKenna and John Nethercote and published in (1991) 66 *Canberra Bulletin of Public Administration*.

This conference format has continued since then and has involved a mix of plenary and concurrent sessions dealing with a wide range of topics by a wide range of speakers. The conferences have circulated around Australia. Every second year they have been in Canberra, but they have also been held in Brisbane (1994, 2016), Surfers Paradise (2006), Sydney (1996, 2010, 2018), Melbourne (1998, 2008), Adelaide (2000, 2012), Fremantle (2002) and Perth (2014), and Hobart (2004). AIAL also co-sponsored a conference on *The AAT — Twenty Years Forward* in 1996 at the ANU in Canberra. There is a list of the national conferences in the appendix at the end of this article.

John McMillan has stated that a striking feature of AIAL national conferences has been that they have brought together a broad audience of people from academia, government, community legal practice, tribunals, the judiciary and other professions to consider administrative law issues and developments. He thought that they were unique in that respect and noted that visiting academics have been struck that Australia has this organisation that brings all elements of the community together, with their diverse perspectives. He also thought that the publications which emerged from the conferences were read and referenced by this broader audience.<sup>68</sup> Stephen Argument has noted that part of the success of the conferences was a result of listening to what ordinary members of the AIAL wanted, which involved trying to keep the more academic themes in check or at least balanced with more practical presentations. Another key to success, he thought, was a focus on making the conferences enjoyable, at least in part — for example, by activities such as the administrative law trivia quiz, discussed below, but also by providing opportunities for catching up with other people involved in administrative law.<sup>69</sup> I also note the obvious and important educative role of the conferences and the other AIAL activities. In my view, they have been very influential, particularly in helping public sector officers and lawyers to reflect on their roles and do their work better; and helping those outside government to understand how government works as well as how its decisions can be tested and challenged.

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63 AIAL, *Fair & Open Decision Making*, National Administrative Law Conference, Programme, 1991.

64 *The Canberra Times*, 5 May 1991, 8.

65 *The Canberra Times*, 1 May 1991.

66 *The Canberra Times*, 30 April 1991.

67 *The Canberra Times*, 3 May 1991, 4.

68 AIAL Podcast No 2: Interview with Professor John McMillan.

69 Interview with Stephen Argument.

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There have been a range of activities at the conferences other than discussion of administrative law. This has included debates, after-dinner speeches, music (including by the Shiny Bum Singers and Shortis and Simpson, who performed some songs from their musical on the *Constitution*) and limerick competitions.<sup>70</sup> But a favourite has been the administrative law trivia quiz during the conference dinner. Many of the questions in the quiz took a not very flattering approach to some of the colourful identities involved in administrative law. I think it best to leave those behind. Another group of questions involved providing photos and asking: 'lawyer or serial killer?'. Stephen Argument reports that photos of Gary Rumble and Rick Snell were quickly dispatched by many into the latter category. Another common theme was noting the excursions into high, and even occasionally popular, culture in decisions.<sup>71</sup> Unsurprisingly, many contests were very hard fought. I thought we could reminisce with a few characteristic questions:

1. Prior to entering federal Parliament, Paul Keating managed a rock band. What was its name: (a) The Scumbags; (b) Paul Revered and the Raiders; (c) The Ramrods; or (d) The Silver Bodgies?
2. In the 2003 quiz, it was noted that there was a fast-developing trend among judges to invoke images of Kafka to describe administrative decision-making. With 17 references in the past five years, most could be attributed to one High Court judge, one Federal Court judge and one Victorian Supreme Court judge. Can you name them?
3. In 2005, we fondly waved goodbye to Senate power, and the quiz reflected on the Senate's sterling performance in delaying passage of the Legislative Instruments Bill: (a) in what year was it first introduced; (b) how many times was it introduced/reintroduced before finally being passed; and (c) in what year was it passed?
4. Julian Assange was born in which town in which Australian state or territory? Where did he live from 2012 to 2019? Where does he live now?
5. Who wrote an article entitled 'Dolores Umbridge and the Concept of Policy as Legal Magic'?
6. *Isbester v Knox City Council* [2015] HCA 20 concerned the procedural fairness rights of a dog owner. What was the name of the dog: (a) Fido; (b) Kev; (c) Izzy; (d) Pluto; or (e) Max?

The answers are at the end of this article.

### **National lectures**

The AIAL national lectures began as a series by Sir Anthony Mason, former Chief Justice of the High Court and an original member of AIAL, in Perth, Canberra and Sydney in 2001.<sup>72</sup> The first lecture was on the foundations and the limitations of judicial review, the second

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<sup>70</sup> See above, n 1.

<sup>71</sup> See, for example, *Commissioner of Police v Tanos* [1958] HCA 6; 98 CLR 383, 395–6; *TCN Channel Nine Pty Ltd v Network Ten Pty Ltd (No 2)* [2005] FCAFC 53; 216 ALR 631 [1], [28]; *Momcilovic v The Queen* [2011] HCA 34; 245 CLR 1 [453].

<sup>72</sup> (2001) 31 *AIAL Forum* 1.

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was on the scope of judicial review and the third compared Australian administrative law with overseas models. These have been described as a 'tour de force' and 'extraordinary, scholarly publications'.<sup>73</sup> The second national lecture series was given in Sydney, Adelaide and Brisbane in 2004 by Chief Justice James Spigelman of the Supreme Court of New South Wales, who focused on the integrity branch of government.<sup>74</sup> The third national lecture series was given in 2006 by Walter Sofronoff QC, Solicitor-General for Queensland, in Brisbane on constitutional writs; Michael Sexton SC, Solicitor-General for New South Wales, on investigative bodies; and former Solicitor-General for New South Wales Justice Keith Mason on judicial review at the state level, both in Sydney, and David Bennett QC, Solicitor-General of Australia, in Melbourne on natural justice.<sup>75</sup> Since then the national lectures have been given at the national conference. Speakers have included Dame Sian Elias, then Chief Justice of New Zealand (Canberra, 2013);<sup>76</sup> Peter Hanks QC (Canberra, 2017);<sup>77</sup> and Justice Margaret Beazley, President of the NSW Court of Appeal (Sydney, 2018).<sup>78</sup> Details of all the lectures are set out in the appendix.

### **Local seminars**

In addition to national events, the national executive and the chapters have organised a wide range of local seminars. It is difficult to assess just how many AIAL seminars there have been, but I estimate over 900. The first seminars run by the chapters are set out in the appendix. A few snapshots indicate the number and range of activities:

- In 1996–1997 there were 32 seminars across Australia: six in Perth, six in Melbourne, three in Tasmania, two in Adelaide, 10 in Sydney and five in Canberra.<sup>79</sup>
- In 2006 there were 45 seminars across Australia: nine in Canberra, six in Sydney, five in Adelaide, two in Darwin, three in Brisbane, seven in Adelaide, one in Tasmania, seven in Melbourne and five in Perth.<sup>80</sup>
- In 2019 there were 14 seminars: five in Adelaide,<sup>81</sup> three in Sydney,<sup>82</sup> three in Canberra<sup>83</sup> and three in Perth.<sup>84</sup>

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73 AIAL Podcast No 1: Interview with Professor Robin Creyke; AIAL Podcast No 2: Interview with Professor John McMillan.

74 Dennis Pearce (ed), *AIAL National Lecture Series on Administrative Law No 2* (AIAL, 2004).

75 Alice Mantel (ed), *AIAL 3rd National Lecture Series* (AIAL, 2006).

76 (2013) 74 *AIAL Forum* 1.

77 (2017) 89 *AIAL Forum* 1.

78 (2018) 93 *AIAL Forum* 1.

79 President's report 1997.

80 President's report 2006.

81 Including by the South Australian Guardian for Children and Young People Penny Wright, finding facts on merits review by the President of the South Australian Civil and Administrative Tribunal Justice Judy Hughes, parliamentary privilege, and state tribunal design and federal jurisdiction after *Burns v Corbett* [2018] HCA 15; 265 CLR 304. Also see (2019) 95 *AIAL Forum* 10.

82 Including on robodebt and automated administrative decisions; and the use and abuse of soft law in environmental decision-making.

83 Including on 'Tweet speech' by Prue Bindon, an ACT barrister; and the Michael Will address at the annual general meeting by Michael Manthorpe, the Commonwealth Ombudsman.

84 Including by Justice Debbie Mortimer of the Federal Court on preparing judicial review cases; and by the Western Australian Commissioner for Children and Young People, Colin Pettit. See generally the President's report 2019.

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Some of these seminars involved a range of speakers and resulted in publication, often in the AIAL Newsletter and AIAL Forum. These seminars are very much the engine room of the Institute and demonstrate the benefits of a federal structure, with state chapters often having good access to state officials who can talk on local initiatives and developments.

The COVID-19 pandemic is currently a major hurdle to running seminars and conferences. The 2020 national conference in Melbourne has been postponed till 2021. But a number of webinars have been run, some organised from Brisbane by David Marks QC, a Brisbane barrister, on current administrative law issues.<sup>85</sup> Others have been organised from Canberra — one on recent administrative law cases<sup>86</sup> and another on review of national security decisions<sup>87</sup> — by Jaala Hinchcliffe, the Commonwealth Integrity Commissioner. These webinars have been facilitated and supported by the Institute's secretariat, led by Sue Hart. They have proved very successful and reached a large national audience. There have also been two podcasts prepared in this period and put on the website, involving interviews with Robin Creyke and John McMillan. Webinars, podcasts and other uses of social media are likely to be important Institute activities into the future.

### **Website**

In 1998 the Institute established an internet presence. Much of the early work was done by Sue Tongue of the ALRC and Immigration Review Tribunal and then president of AIAL; and Elizabeth Goodbody, then treasurer. Demonstrating one of the benefits of a federal structure, the Tasmanian chapter was in fact the first to establish a home page.<sup>88</sup> The national webpage was maintained by Michael Sassella as 'webmaster',<sup>89</sup> then upgraded and maintained by Sarah Todd of the Therapeutic Goods Administration and Peter Sutherland. A new site was created in about 2017 under the direction of Cain Sibley of Clayton Utz, Mandy Lister of the Department of Social Services, Peter Sutherland and me. The new site contains information about AIAL activities, issues of *AIAL Forum* and some national conference publications, and further materials will be added. It also contains links to a range of online sites relevant to administrative law.

### **Essay prize**

The first national essay competition was held in 1996, organised principally by Dennis Pearce.<sup>90</sup> The winner was Daniel Stewart for an essay entitled 'Taking the Breaks Off: Applying Procedural Fairness to Administrative Investigations'.<sup>91</sup> Since then the national prize has been awarded every second year and is generally presented at the national conference dinner. In 2019 the prize, principally organised by Margaret Tregurtha, Deputy Director of IP

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85 On *Commonwealth v Snell*, at which David Marks QC and Travis O'Brien, barrister, spoke (see [2019] FCAFC 57; 370 ALR 1, and see (2020) 98 *AIAL Forum* 85), the administrative continuum with Matthew Paterson of Minter Ellison, and unreasonableness with Amelia Wheatley QC and Ben McGlade, barrister.

86 With Professor Peta Spender of ANU on bias, Geoffrey McCarthy of ACAT on merits review, Alice Kingsland of AGS on the relevance of climate change to development approvals, and Cain Sibley of Clayton Utz on materiality in judicial review.

87 By Jake Blight, Deputy Inspector-General of Intelligence Services

88 Minutes of the meeting of the national council on 12 August 1997.

89 Minutes of the meeting of the national council on 18 November 1998.

90 (1996) 10 *AIAL Forum* 40.

91 (1997) 13 *AIAL Forum* 1.

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Australia, was awarded to David Patrick Hertzberg for his topical article entitled 'The Three Forms of Executive Power and the Consequences for Administrative Law Review'.<sup>92</sup> Prize winners, and sometimes other commended entrants in the competition, have been published in *AIAL Forum*. The South Australian chapter has for many years provided administrative law prizes to final year students at the three major South Australian universities. The Victorian chapter has also awarded prizes to law students.

## **Grants**

The AIAL has from time to time funded, by grants, research on issues in administrative law and education materials. The New South Wales chapter jointly funded a publication entitled *Discrimination Toolkit: Your Guide to Making a Discrimination Complaint*, which was launched in March 2007 by Justice Elizabeth Evatt. Justice Evatt described the book as assisting complainants who were representing themselves, including whether they should begin in state or federal jurisdiction.<sup>93</sup> The New South Wales chapter also supported the Toongabbie Legal Centre's production of a resource in relation to the imposition of fines.<sup>94</sup> In 2019 the national executive funded some research and a report by Canberra Community Law and the National Social Security Rights Network entitled *Homeward Bound: Social Security and Homelessness*, which is based on the ACT experience but which in due course may be expanded into a national project.<sup>95</sup>

## **Administration**

The Institute has relied principally on its office holders to organise and undertake its activities. The principal officers are set out in the appendix. As outlined in this article, many experts in administrative law have given generously of their time in writing and presenting papers for the AIAL.

In its first few years the Institute's membership rose to well over 400, then to well over 500, and in the 2000s to over 600. In recent years it has returned to a membership of over 400. It received some grants from the Commonwealth Attorney-General's Department in the early years, but since then it has relied on membership fees. The general individual membership fee has risen from \$30 to \$110. This has been supplemented by surpluses from successful national conferences and copyright payments, some of which have been quite significant. The Institute has generally not accepted sponsorship, although it regularly holds events with other bodies, and is assisted by provision of meeting rooms, hospitality and prizes by other organisations.

The Institute has had significant support from a contracted secretariat. From 1993 to 2010 this was provided by the secretariat of the ACT division of RAIPA, then IPAA. Two people from this team need especially to be mentioned. One is Jenny Kelly, who was described as a pillar of the AIAL secretariat, organising every conference till 2009, including the 1987 conference at the ANU, and demonstrating professionalism and great organisational skills

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<sup>92</sup> (2019) 96 *AIAL Forum* 23.

<sup>93</sup> (2007) 53 *AIAL Forum* 6; President's report 2007.

<sup>94</sup> President's report 2009.

<sup>95</sup> (2020) 98 *AIAL Forum* 118.



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even when things went wrong.<sup>96</sup> Another is Kathy Malcolm, who died in 2005 while still working at the secretariat. Stephen Argument wrote that Kathy was the human friendly face of the Institute, always understanding of the follies and sometimes unreasonable demands of AIAL officers, who she forgave because, as she noted, 'they're only bloody lawyers, what can we expect'.<sup>97</sup> Commerce Management Services, led by Sue Hart, took over from 1 December 2010 and have provided very supportive secretariat services since then.

## Issues

### *Judicial review*

One of the principal reasons for the establishment of the AIAL was the recognition that administrative law in Australia had become much more than judicial review. But there can be no denying the continued relevance of judicial review as a significant area of administrative law.

*AIAL Forum*, national conferences, national lectures and seminars have traced the developments brought about by leading judicial review cases since 1989. In terms of articles on specific cases in *AIAL Forum*, the decision in *Minister of State for Immigration and Ethnic Affairs v Teoh*<sup>98</sup> seems to lead the field with five articles,<sup>99</sup> which is appropriate since it raised such fundamental issues about the relationship between international law and domestic decision-making.

There has also been significant discussion of earlier cases. At the 2010 national conference at the University of Sydney there was a fascinating session entitled 'Jason's Legacy — Impact of Immigration on Administrative Law' in relation to the decision in *Kioa v West*,<sup>100</sup> led by Professor Mary Crock. At this session Reverend Jason Kioa himself, then Moderator of the Uniting Church in Australia, spoke of his experience, as did Justice Ron Merkel, who had been his counsel; Michael Clothier, his solicitor; and Andrew Metcalfe, Secretary of the Department of Immigration and Citizenship. This provided quite a moving account of the impact of the decision on an individual litigant and also on the broader development of the law of judicial review in Australia.

Another highlight was the somewhat controversial article entitled '*Federal Court v Minister for Immigration*'<sup>101</sup> by John McMillan, published in 1999, which argued that there had been judicial overreach in relation to Federal Court migration decisions which was inimical to administrative law generally. Others disagreed, including Robert Beech-Jones, now Justice of the Supreme Court of New South Wales, in his discussion of the role of courts at the national conference in Canberra in 2007.<sup>102</sup> It is clear that the area of migration has given

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96 Stephen Argument, 'Farewell to Jenny Kelly (AIAL Secretariat)' (2009) 61 *AIAL Forum* 3.

97 Stephen Argument, 'Obituary Kathleen Anne Malcolm' (2005) 61 *AIAL Forum* 67.

98 [1995] HCA 20; 183 CLR 273.

99 Henry Burmester QC, Chief General Counsel at AGS, (1995) 5 *AIAL Forum* 6, and revisited at (2004) 40 *AIAL Forum* 33; Leslie Katz, Justice of the Federal Court, at (1998) 16 *AIAL Forum* 1; John McMillan at (1995) 5 *AIAL Forum* 10; and Neil Williams, a Sydney barrister, at (1995) 5 *AIAL Forum* 1.

100 [1985] HCA 81; 159 CLR 550.

101 (1999) 22 *AIAL Forum* 1.

102 (2007) 57 *AIAL Forum* 70.

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rise to intense legal, policy and political debate in Australia, which is reflected in the activities of AIAL. More generally, the focus by the High Court on the general concept of jurisdictional error and the sidelining, to some extent, of the *Administrative Decisions (Judicial Review) Act 1977* and state and territory counterparts, with their specified grounds of review, has also been a subject of ongoing debate.

### **Merits review**

But one of the major focuses of AIAL has been to recognise that administrative law is now much more than judicial review — that, in reality, judicial review is just one limited aspect of our modern system and that merits review in particular has grown considerably in importance. In a talk given at the national conference in Perth in 2014 and subsequently published in *AIAL Forum*, Justice Janine Pritchard of the Supreme Court of Western Australia spoke on ‘The Rise and Rise of Merits Review: Implications for Judicial Review and for Administrative Law’.<sup>103</sup> She argued that merits review is now far more significant than judicial review and discussed the range of possible reasons for this.

The nature and form of merits review has also been much considered. Michael Sassella, in a provocative talk at the 1997 national conference, raised a number of important issues — in particular, the failure, in his view, of the AAT to have proper regard to government policy and the tendency for it to be too wedded to court-like architecture.<sup>104</sup> As John McMillan has noted, it is often these more controversial interventions which are most discussed and remain most memorable.<sup>105</sup>

Of course, merits review has not been static over this period. One major development has been the amalgamation of many tribunals into what are now called ‘super’ tribunals. An early step in this direction was the Commonwealth proposal for a new Administrative Review Tribunal (ART) in 2000. AIAL organised a one-day seminar held in conjunction with the Senate Legal and Constitutional Affairs Legislation Committee at Parliament House in Canberra on 25 October 2000 to discuss that proposal. The Attorney-General, the Hon Daryl Williams MP, and Sandra Power from the Attorney-General’s Department outlined the initiative. It was discussed by a wide range of participants, including representatives of every major political party; Justice Deidre O’Connor, President of the AAT; Kathryn Cronin, Deputy President of the ALRC; Sandra Koller from the NSW Welfare Rights Centre; and a number of academics.<sup>106</sup> Robin Creyke has noted that she believes the seminar was a major factor in the government’s decision not to proceed with the ART. Later in 2015 an amalgamation at the Commonwealth level took place, but to a significant extent that had regard to many of the criticisms of the ART discussed at the AIAL seminar.<sup>107</sup>

### **Other oversight bodies**

In addition to courts and tribunals, there is now a wide range of other bodies which review executive government action. John McMillan has stated that he was particularly delighted

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<sup>103</sup> (2015) 79 *AIAL Forum* 14.

<sup>104</sup> ‘Commentary’ in John McMillan (ed), *Administrative Law under the Coalition Government* (AIAL, 1997) 65.

<sup>105</sup> AIAL Podcast No 2: Interview with Professor John McMillan.

<sup>106</sup> These are published in (2000) 27 *AIAL Forum* 1.

<sup>107</sup> AIAL Podcast No 1: Interview with Professor Robin Creyke.

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that the AIAL provided a strong forum for the work of Ombudsmen in Australia. He also noted the growing importance of independent and external complaint handling more generally and that a commitment to good complaint handling now runs through almost all organisations, public and private.<sup>108</sup>

The Institute has played a significant role in bringing to light the operation of the modern range of oversight bodies. Influentially, in the second national lecture series Chief Justice Spigelman of the Supreme Court of New South Wales focused his three talks on the concept of the integrity branch of government. Professor Mark Aronson from the University of New South Wales, Chief Justice John Doyle from South Australia and Chief Justice Paul de Jersey from Queensland were commentators in relation to these lectures. As Chief Justice Spigelman argued, 'the primary basis for the recognition of an integrity branch ... is the fundamental necessity to ensure that corruption, in a broad sense of that term, is eliminated from government ... the idea has implications for our understanding of constitutional and legal issues of broader significance'.<sup>109</sup>

The 2012 national conference in Adelaide had as its theme *Integrity in Administrative Decision Making*. One plenary session, with Justice Chris Kourakis of the Supreme Court of South Australia, Professor Geoff Lindell from the University of Adelaide and Stephen Gageler, then Solicitor-General of Australia, looked at integrity of institutions under state constitutional law. However, in the national lecture at that conference, Justice Gummow stated that he saw little utility and some occasion for confusion with the concept of the integrity branch.<sup>110</sup> The discussion continues.

Review of the executive by Parliament itself has been thought by some to be of declining significance, but, as Sarah Moulds pointed out in a recent article entitled 'Committees of Influence: The Impact of Parliamentary Committees on Law Making and Rights Protection', parliamentary committees have the potential to enhance rights compliance and the overall quality of law making.<sup>111</sup> The media is also a traditional review body, and commentators who are or have been journalists, at least at some time, have spoken and written for AIAL — for example, Jack Waterford, Michael McKinnon, John Hilvert<sup>112</sup> and Dr David Solomon.

There are, of course, a range of views about the rigour of the review mechanisms. Those outside government sometimes argue for greater review and more mechanisms. Those inside sometimes note the burden of these mechanisms. This emphasis on review mechanisms should not distract from the key role of primary decisions, many of which are not in practice subject to any review. Justice French has written, after outlining the range of review mechanisms, that:

There would be few officials today in any field of public administration who, when they reflect on these various mechanisms, would not feel the world was perched on their shoulder as they formulated their decisions. This perception may induce a level of anxiety, although my own impression is that the more

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108 AIAL Podcast No 2: Interview with Professor John McMillan.

109 Pearce (ed), above n 74, 2.

110 (2012) 70 *AIAL Forum* 19.

111 (2019) 97 *AIAL Forum* 11.

112 'A Working Journalist's Perspective on Security' (2016) 83 *AIAL Forum* 18.

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experienced officials have become enured to these levels of scrutiny as part of their normal working environment.<sup>113</sup>

### ***Administrative justice***

Despite the strong focus on the practice of administrative law in the AIAL, there are often considerations of its fundamental underpinnings. The concept of administrative justice has been much discussed. This raises issues as to what are the core values and outcomes of the administrative law system. A national conference in Canberra in 1999 had a wide range of speakers on this subject.<sup>114</sup> The conference in Sydney in 2010 returned to this theme. A particularly important contribution was by Justice Marcia Neave of the Supreme Court of Victoria, who gave a paper at the 1999 conference entitled 'In the Eye of the Beholder: Measuring Administrative Justice', which concluded that attempts to measure administrative justice should involve an ongoing dialogue between those involved in the system, politicians, administrators, tribunals, lawyers and members of the public.<sup>115</sup>

### ***Information and information technology***

The role of freedom of information and privacy legislation has been a regular theme in articles, conferences and seminars. A further issue which has emerged throughout the life of AIAL is the role of information technology in government decision-making. At the 1998 conference on the AAT, Peter Sutherland and Peter Johnson from Softlaw Corporation spoke on 'The Impact of Technology on Decision-making and Administrative Review'.<sup>116</sup> A range of others have written and spoken on this subject, including Katie Miller,<sup>117</sup> Mick Batskos<sup>118</sup> and Justice Garry Downes, President of the AAT, who noted at the final, 'graveyard' session of the 2011 national conference that the use of technology as an aid to decision-making will be one of the most significant influences on government administration in the foreseeable future.<sup>119</sup> In the 2018 national lecture Peter Hanks QC, a leading advocate at the Victorian bar and author, spoke on 'Administrative Law and Welfare Rights: A 40-Year Story from *Green v Daniels* to "Robotdebt Recovery"'. In that lecture he looked at the history of social security law and undertook a forensic and influential analysis of the legal arrangements for Robodebt scheme.<sup>120</sup>

### ***Commercial administrative law***

Another key issue has been the outsourcing and privatisation of government services and decision-making. One of the main questions considered at the national conference in Sydney in 1996 was: who will bear administrative and legal responsibility for the performance of a public function where the service provider is a private entity to whom the government has

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113 'Administrative Justice in Australian Administrative Law' in McMillan and Creyke (eds), above n 43, 21.

114 McMillan and Creyke (eds), *ibid*.

115 *Ibid* 124 at 137.

116 McMillan (ed), above n 35, 183.

117 'The Application of Administrative Law Principles to Technology Assisted Decision-making' (2016) 86 *AIAL Forum* 20.

118 'The Impact of Technology on Refusal Decisions about "Voluminous" FOI Requests in Australia and Other Jurisdictions' (2014) 76 *AIAL Forum* 43.

119 (2011) 67 *AIAL Forum* 35.

120 (2017) 55 *AIAL Forum* 1.

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contracted the function?<sup>121</sup> Professor Nicholas Seddon has written and spoken regularly on this topic. In 2000 he argued that public contracts are not the same as private contracts, that public law values do not sit easily with private law values and that the extra scrutiny of public law remedies should be brought to bear on government contracting activity.<sup>122</sup>

### ***Effects of administrative law on people***

One concern of the AIAL has been the impacts of administrative law on those affected by it. The first standalone AIAL national conference held in 1992 was entitled *Administrative Law: Does the Public Benefit?* I have mentioned the presence of Reverend Jason Kioa at the 2010 conference in Sydney. At the 2018 conference, also in Sydney, a session on the National Disability Insurance Scheme (NDIS) sought to understand the impact of that regime on those affected by it. Speakers included James Constance from the AAT, Jackie Finlay from Legal Aid NSW, Dr Darren O'Donovan from La Trobe University, and Professor Ron McCallum. It was chaired by Lauren Buttlerly of UNSW. At the 2019 conference Dr Cathy Kezelman of the Blue Knot Foundation and Francis Sullivan of the Truth Justice and Healing Council of the Catholic Church discussed their experiences of the Royal Commission into Institutional Responses to Child Sexual Abuse. At the 2016 conference in Brisbane, in a fascinating paper, Professor Matthew Groves talked on 'What is the Purpose of Fairness' and noted interesting social research on the impact of fair procedures on acceptance of the outcome and regard for the review process and the law more generally by those affected.<sup>123</sup>

### ***The silences of administrative law***

I think it is also important to reflect briefly on the issues which the Institute has not focused on and has perhaps neglected, recognising that this involves a personal perspective. Australia is a diverse society, but at times I think AIAL struggles to reflect that diversity. Zadie Smith has written that the 'only thing I ever learned about slavery during my British education was that "we" ended it'.<sup>124</sup> Public law often takes a similar approach, focusing on important developments, such as the new administrative law regime, rather than the effect of past regimes, and even present regimes, on those subject to them. AIAL has had a number of speakers who have talked about constitutional recognition of Australia's Indigenous peoples — for example, Ben Wyatt, Treasurer of WA,<sup>125</sup> Professor Megan Davis of UNSW; and Professor Asmi Wood of ANU — but there has been little consideration of the effect of the administrative state on the lives of Indigenous people. We have made efforts to demonstrate in our activities the diversity of those involved in administrative law but have said little about the effect of this system on women and minority groups such as LGBTI people. Also, while from the beginning AIAL has looked to overseas experiences, these have mainly been in the United States, Canada, United Kingdom and New Zealand. Those experiences are interesting but similar to our own; perhaps we should also look to the experiences in Asia and the Pacific as well.<sup>126</sup>

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121 Margaret Beazley, 'Introduction' in Linda Pearson (ed), *Administrative Law: Setting the Pace or Being Left Behind?* (AIAL, 1997) xi.

122 (2000) 26 *AIAL Forum* 67.

123 'The Unfolding Purpose of Fairness' (2017) *Federal Law Review* 653, 675–9.

124 'What Do We Want History to Do?' *New York Review of Books*, 27 February 2020, 10.

125 (2017) 89 *AIAL Forum* 102.

126 See Mitsuaki Usui, 'Administrative Justice in Japan' (2014) 77 *AIAL Forum* 33.

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## **The future of administrative law**

But it is the strength of the AIAL that anyone prepared to talk or write, or organise for someone to do so, on these issues has a community in which discussion can take place. This article has highlighted other issues which will clearly need to be the subject of future consideration, such as the role and form of judicial review and merits review and the effect of automated decision-making. I also note that this edition of *AIAL Forum* is published in the midst of a terrible pandemic, which has followed a season of terrible bushfires.<sup>127</sup> These raise issues as to how governments should prepare for, respond to, operate in and reflect on such events, and what place administrative law has in this. No doubt there are and will be many other issues for further discussion. In my view, AIAL clearly has a very important ongoing role in bringing together a wide range of people, many of whom are seen as combatants in other more adversarial contexts, and providing a forum for sometimes provocative, sometimes esoteric, sometimes difficult, but always relevant and respectful discussion of Australia's administrative law regime and the important issues it faces.

## **APPENDIX**

### **National presidents**

Geoffrey Kolts QC (OPC, former Ombudsman) (1989–1990); Professor Jack Richardson (ANU, former Ombudsman) (1990); Professor Dennis Pearce (ANU, Ombudsman) (1990–1992); Robert Todd (AAT) (1992–1994); Dr Gary Rumble (Blake Dawson Waldron) (1994–1996); Denis O'Brien (Minter Ellison) (1996–1998); Sue Tongue (ALRC, Immigration Review Tribunal) (1998–2000); Professor John McMillan (ANU) (2000–2002); Bert Mowbray (AGS, AAT) (2002–2004); Professor Robin Creyke (ANU) (2004–2006); Michael Will (DLA Phillips Fox) (2006–2008); Alan Bradbury (Minter Ellison) (2008–2010); Robert Orr QC (AGS) (2010–2012); Dr Jonathan Aleck (Civil Aviation Safety Authority) (2012–2014); Linda Crebbin (ACAT) (2014–2016); Cain Sibley (Clayton Utz) (2016–2018); Gary Humphries (AAT) (2018–2020).

### **National secretaries**

Derek Emerson-Elliott (1989–1991); Stephen Argument (1991–2010); Meghann Everett (2010–2013); Amanda Lister (2013–2015); Tara McNeilly (2015–2020).

### **National treasurers**

Dr Gary Rumble (1989–1992); Bert Mowbray (1992–1997); Dr Gary Rumble (1997–1998); Elizabeth Goodbody (1998–2000); Amanda Frost-Drury, then McIntyre (2000–2006); David Fintan (2006–2008); Peter Sutherland (2008–2020).

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<sup>127</sup> Perhaps as foreshadowed by n 2 above.



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## Life members

Stephen Argument

Professor John McMillan

Professor Dennis Pearce

The late Professor Geoffrey Sawyer

The late Robert Todd

## ***AIAL Newsletter / AIAL Forum***

Editors of the *AIAL Newsletter*: Allan Anforth (1989); Gary Corr (1990); Geoffrey Kolts (1990); John McMillan (1991); Robert Todd (1992); Stephen Argument (1992–1993); Michael Sassella (1993).

Editors of the *AIAL Forum*: Michael Sassella (1994); Kathryn Cole (1994–1999); Hilary Manson (1996–2002); Professor Dennis Pearce (1999–2005); Dr Max Spry (2002–2005); Alice Mantel (2005–2009); Professor Robin Creyke (2005–2006); Elizabeth Drynan (2009–2016); Kirsten McNeill (2016–2020).

Editorial committee members within the period 1998 to 2011: Michael Barker QC; Justice Margaret Beazley; Eugene Biganovsky; Peter Boyce; Kathryn Cole; Dr Susan Kneebone; Professor Dennis Pearce; Dr Gary Rumble; Chris Finn; Rick Snell; Maurice Swan; Mark Robinson; Professor Bill Lane.

Editorial committee members within the period from 2011 to 2020: John Carroll (chair); Professor Robin Creyke (chair); Alison Playford; Dr Geoff Airo-Farulla; Tara McNeilly; Peter Woulfe.

Recent Developments contributors: Peter Prince (2006–2007); Alice Mantel (2007–2009); Katherine Cook (2012–2020).

## **New South Wales chapter**

A meeting to discuss the formation of a chapter in New South Wales was held on 11 December 1990, chaired by Professor Jack Goldring, and a steering committee was appointed. The chapter was established in February 1991. At the inaugural meeting Alan Cameron, Commonwealth Ombudsman, talked on the role of the Ombudsman. Another early seminar was held on 13 June 1991 and included a paper by Keith Mason QC, Solicitor-General for New South Wales, entitled '*Attorney-General (NSW) v Quin* and the Limits on the Executive's Rights to Change its Mind', which was published in the *AIAL Newsletter*, and Denis Tracey of the ARC on 'Multiculturalism and Access to Administrative Law Review Processes'.<sup>128</sup>

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<sup>128</sup> (1991) 7 *AIAL Newsletter* 1; President's report 1992.

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Chairs: Hugh Roberts (NSW Crown Solicitor) (1993–1994); Justice Margaret Beazley (Supreme Court of New South Wales) (1994–2018); Justice John Basten (Supreme Court of New South Wales) (2019–2020).

Secretaries: James McLachlan; Mark Robinson; Melinda Jones; Pamela Madafiglio (1994–2010); Andrew Chalk (2010–2019); Justice Rachel Pepper (2020).

Treasurers: John Fitzgerald; Dr James Renwick; Gabriel Fleming; Andrew Carter.

### **Victorian chapter**

The Victorian chapter began with a preliminary meeting on 12 November 1991, organised by Professor Cheryl Saunders.<sup>129</sup> The chapter was established in February 1992 and an inaugural meeting was held on 13 May 1992, at which Professor John Evans, Osgoode Hall Law School, Toronto, Canada, spoke. Other early undertakings were a seminar on immigration decision-making with Kevin Bell, Chris Conybeare and Peter Hanks on 16 September 1992; and a significant event on 'Non-legal Members of Review Bodies; Social Welfare Jurisdictions' on 22 November 1992.<sup>130</sup>

Chairs: Julian Gardner (RRT) (1992–1995); Stephen Newman (1995–1996); Mick Batskos (FOI Solutions) (1996–2000); Amanda Watt (Minter Ellison) (2000–2002); Richard Knowles (barrister) (2002–2004); Stephen Moloney (barrister) (2005–2009); Rachel Walsh (solicitor, now a barrister) (2009–2014); Emma Turner (Russell Kennedy, Lawyers) (2014–2020).

Secretaries: Mick Batskos; Ian Cunliffe; Kevin Bell; Roz Germov; Fiona McKenzie; Rea Hearn Mackinnon; Jeffrey Barnes (2008–2020).

Treasurers: Jacky Kefford; Leo Doyle; Jane Salveson (2008–2017); Gabi Crafti (2008–2009, joint); Patrick Considine (2017–2019); Maria O'Sullivan (2019–2020).

### **South Australian chapter**

A meeting was held in Adelaide on 5 December 1991 to consider formation of a South Australian chapter. The chapter was established in February 1992 and the inaugural meeting was held on 14 April 1992.<sup>131</sup> The first seminar, on 'Is There Too Much Natural Justice', was given on 10 September 1992 by Professor Dennis Pearce, Justice Deidre O'Connor of the AAT and Justice Trevor Olsson of the Supreme Court of South Australia. Another early seminar on 7 April 1993 considered the Whistleblowers Protection Bill (SA).<sup>132</sup>

Chairs: Eugene Biganovsky (SA Ombudsman); John Harley (Public Advocate for South Australia) (1994–1995); Eugene Biganovsky; Chris Finn (University of Adelaide and then University of South Australia); Margaret Boylan (Centrelink); Greg Parker (Crown Solicitor and then President of South Australian Civil and Administrative Tribunal and Justice of the

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<sup>129</sup> (1991) 6 *AIAL Newsletter*, Members Notes.

<sup>130</sup> Publication compiled by Loula S Rodopoulos (AIAL, 1992); President's report 1992.

<sup>131</sup> (1992) 9 *AIAL Newsletter*, Members Notes.

<sup>132</sup> President's report 1992.

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Supreme Court of South Australia); Mike Wait (Crown Solicitor and then Solicitor-General for South Australia) (2017–2020).

Secretaries: Alessandro Gardini; Dianne Gray; Kristina Miller; Margaret Boylan; Edward Ireland; Chris Finn; Richard Dennis; Shirley Fisher (2004–2014); Dami Sheldon (2014–2020).

Treasurers: K Kelly; Paul White; Richard Dennis; Dianne Gray; Greg Parker; Dale Mazzachi (2012–2020).

### **Queensland chapter**

A seminar on 'Administrative Law in Queensland: A New Beginning' was held at the Hilton Hotel in Brisbane in May 1990, organised principally by Maurice Swan, and in response to the Fitzgerald Report. In February 1991 a meeting was held concerning the formation of a Queensland chapter, and in March 1991 the chapter was established. In July 1991 Justice Deidre O'Connor, President of the AAT, addressed a dinner meeting of the chapter and on 31 October Dean Wells, Attorney-General of Queensland, spoke on Queensland legislation on freedom of information and judicial review.<sup>133</sup>

Chairs: Maurice Swan (Australian Government Solicitor); Barry Cotterell (Queensland Civil and Administrative Tribunal); Dr Gary Rumble (Blake Dawson Waldron); Maurice Swan; Dr Max Spry (barrister); Dr Geoff Airo-Farulla (offices of the Commonwealth and Queensland Ombudsman) (2010–2020).

Secretaries: Michael Halliday; John Cockburn; Sandra Kerr; James Howard (2010–2020).

Treasurers: John Bickford; Martin Carey; Dan O'Gorman; Paul Kanowski; Michelle Howard (2018–2020).

### **Western Australian chapter**

A meeting in Perth to consider the establishment of a Western Australian chapter was held on 23 January 1992. The chapter was established in February 1992 and an inaugural meeting was held on 15 April 1992.<sup>134</sup> Early seminars were Robert Todd's popular lecture on 'Breaker' Morant (10 March 1993) and by Justice Deidre O'Connor, President of the AAT (1 September 1993).<sup>135</sup>

Chairs: Dr Hannes Schoombée (Murdoch University) (1992–1993); Justice Robert Nicholson (of the Supreme Court of Western Australia and then the Federal Court of Australia) (1993–1997); Michael Barker QC (barrister, later Justice of the Supreme Court of Western Australia and then the Federal Court of Australia) (1997–2003); Graham Castledine (Castledine Gregory, Law and Mediation) (2003–2006); Richard Hooker (barrister) (2006–2016); Adam

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<sup>133</sup> President's report 1992.

<sup>134</sup> (1992) 9 *AIAL Newsletter*, Members Notes.

<sup>135</sup> President's report 1992; President's report 1993.

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Sharpe (barrister) (2016–2019); Julian Misso (Western Australian State Solicitor's Office) (2020).

Secretaries: Ilse Petersen (1992–1995); Graham Castledine (1995–1997); Jane Burn (1997–2003); Frank van der Kooy (2003–2006); Sally Raine (2006–2009); Jean Shaw (2009–2015); Rebecca Heath (2015–2020).

Treasurers: Richard Fayle (1992–2002); T Caravella (2002–2003); John Hockley (2003–2006); Scott Moloney (2006–2008); Michael Cashman (2008–2010); Adam Sharpe (2010–2016); Julian Misso (2016–2019); Sean Mullins (2019–2020).

### **Tasmanian chapter**

The Tasmanian chapter was established in April 1996. The inaugural meeting, at which Sir David Williams of Cambridge University spoke, took place on 22 November 1996. (He had also spoken in Sydney and Melbourne, and in Perth by videolink, for the Institute).

Chairs: Rick Snell (University of Tasmania); D Fanning.

Secretaries: Fleur Grey; John McDonald; Jackie Gaghan.

Treasurers: John McDonald; Fleur Grey; Ray Chan.

### **Northern Territory chapter**

The Northern Territory chapter was established in August 1999. The inaugural meeting was held on 30 November 1999 in the Stranger's Bar of the Legislative Assembly. Former Justice Toohey of the High Court of Australia addressed the meeting.

Chairs: Peter Boyce (NT Ombudsman); P Shoyer.

Secretaries: Dominic Gallo; M Storey; Mark Steele; Mary Chalmers.

Treasurer: Rita Harvey.

### **National administrative law conferences**

*Fair & Open Decision Making* was held on 29–30 April 1991 at the Lakeside Hotel in Canberra, jointly with the RAIPA. The publication of the proceedings was edited by John McMillan, H McKenna and John Nethercote and published in (1991) 66 *Canberra Bulletin of Public Administration* 45–174.

*Administrative Law: Does the Public Benefit?* was held on 27–28 April 1992 in Canberra. The publication of the proceedings was edited by John McMillan (AIAL, 1992).

*Administrative Law and Public Administration: Happily Married or Living Apart under the Same Roof?* was held in Canberra on 15–16 April 1993, jointly with the IPAA. The publication of the proceedings was edited by Stephen Argument (AIAL, 1994).

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*Administrative Law: Are the States Overtaking the Commonwealth?* was held at Brisbane on 7–8 July 1994. The opening address was given by Peter Duncan, Parliamentary Secretary to the Commonwealth Attorney-General, Michael Lavarch. The publication of the proceedings was edited by Stephen Argument (AIAL, 1996).

*Administrative Law and Public Administration: Form vs Substance* was held in Canberra on 27–28 April 1995, jointly with the IPAA. The publication of the papers was edited by Kathryn Cole (AIAL, 1996). See also (1996) 79 *Canberra Bulletin of Public Administration* 15–172.

*Administrative Law: Setting the Pace or Being Left Behind?* was held in Sydney on 11–12 April 1996. The introduction was by Justice Margaret Beazley, chair of the New South Wales chapter, and the keynote address by Jeff Shaw QC, Attorney-General of New South Wales. The publication of proceedings was edited by Linda Pearson (AIAL, 1997).

AIAL also sponsored (along with the AAT and the Faculty of Law, ANU) the conference *The AAT — Twenty Years Forward* on 1–2 July 1996 in Canberra. The publication of the papers for this conference was edited by John McMillan (AIAL, 1998).

*Administrative Law under the Coalition Government* was held at the National Convention Centre, Canberra, on 1–2 May 1997, jointly with the IPAA. The first conference theme paper was given by the Hon Philip Ruddock MP, Minister for Immigration and Multicultural Affairs. The publication of proceedings was edited by John McMillan (AIAL, 1997). See also (1997) 87 *Canberra Bulletin of Public Administration* 30–134.

*Administrative Law and the Rule of Law: Still Part of the Same Package?* was held at the Hilton on the Park in Melbourne on 18–19 June 1998. The opening address was given by Justice Susan Kenny. The publication of the proceedings was edited by Susan Kneebone from Monash University (AIAL, 1999).

*Administrative Justice: The Core and the Fringe* was held at the National Convention Centre in Canberra on 29–30 April 1999. The opening address was given by Justice Robert French. The publication of the proceedings was edited by Robin Creyke and John McMillan (AIAL, 2000).

*Sunrise or Sunset?: Administrative Law in the New Millennium* was held at the Stanford Plaza in Adelaide on 15–16 June 2000. The opening address was given by Justice Keith Mason, President of the NSW Court of Appeal. The proceedings of the conference were edited by Chris Finn (AIAL, 2000).

*Administrative Law — The Essentials* was held in Canberra on 5–6 July 2001. The opening address was by Dr Peter Patmore, Attorney-General of Tasmania. The publication of the proceedings was edited by Robin Creyke and John McMillan (AIAL, 2002).

*Appraising the Performance of Regulatory Agencies* was held in Fremantle on 3–4 July 2002. The opening address was given by Jim McGinty, Attorney-General of Western Australia, and the closing remarks were by Justice Robert Nicholson of the Federal Court, a former chair of the Western Australian chapter. The proceedings were edited by Justice Michael Barker, who was Chair of the Western Australian chapter (AIAL, 2004).

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*Practical and Problem Areas of Administrative Law* was held on 3–4 July 2003 at the National Convention Centre, Canberra. Dr Peter Shergold gave the opening address, with the first plenary session on conducting inquiries by Ian Temby QC and Wayne Martin QC.

*Shaping Administrative Law for the Next Generation* was held on 1–2 July 2004 at the Wrest Point Hotel in Hobart, Tasmania. The opening address was by the Attorney-General of Tasmania, Judy Jackson.

*Administrative Law Horizons* was held in Canberra on 30 June to 1 July 2005. The opening address was by the Attorney-General of Australia, the Hon Philip Ruddock MP.

*Administrative Law: Protection of Individual and Community Interests* was held at Surfers Paradise on 22–23 June 2006. It was co-hosted by the Northern Territory chapter and the Queensland chapter of AIAL.

*The Impact of Administrative Law* was held on 14–15 June 2007 at the Australian Institute of Sport, Canberra. The keynote address was by the Attorney-General of Australia, who acknowledged the Institute's 'continued contribution to the development of an area of law so important to maintaining and improving Australia's democracy'.<sup>136</sup>

*Practising Administrative Law* was held at the Sofitel Hotel in Melbourne on 7–8 August 2008. The Attorney-General of Victoria, the Hon Rob Hulls, opened the conference. The President of the Victorian Court of Appeal, Justice Chris Maxwell, presented the first plenary session and the Attorney-General of Australia, the Hon Robert McClelland MP, gave the keynote address.<sup>137</sup>

*Administrative Law Reform* was held on 6–7 August 2009 at the Hotel Realm in Canberra. The opening address on reform of the *Freedom of Information Act 1982* was delivered by the Hon Joe Ludwig MP, Commonwealth Special Minister for State.<sup>138</sup>

*Delivering Administrative Justice* was held at the University of Sydney on 22–23 July 2010. The opening address was given by Chief Justice Robert French, High Court of Australia. The dinner speaker was Sir Anthony Mason.<sup>139</sup>

*Democracy, Participation and Administrative Law* was held at the Hotel Realm, Canberra, on 21–22 July 2011. The opening address was by Justice Debbie Mortimer of the Federal Court of Australia. The national lecture was given by Chief Justice Patrick Keane, Federal Court of Australia.

*Integrity in Administrative Decision Making* was held at the National Wine Centre, Adelaide, on 19–20 July 2012. The opening address was by John Rau, Attorney-General of South Australia. The national lecture was by Justice William Gummow of the High Court of Australia.

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<sup>136</sup> President's report 2007.

<sup>137</sup> (2008) 59 *AIAL Forum* 1.

<sup>138</sup> (2009) 61 *AIAL Forum* 1.

<sup>139</sup> (2010) 64 *AIAL Forum* 1.



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*Administrative Law in an Interconnected World* was held at the Hotel Realm, Canberra, on 18–19 July 2013. The first plenary session was given by Professor Lorne Sossin, Osgoode Hall Law School, Toronto, Canada. The national lecture was delivered by Dame Sian Elias, Chief Justice of New Zealand.

*Innovations in Administrative Law and Decision-making* was held at the University of Western Australia, Perth, on 24–25 July 2014. The opening address was by Dr Tim Soutphommasane, Commonwealth Race Discrimination Commissioner, and the national lecture was delivered by Chief Justice Wayne Martin of the Supreme Court of Western Australia.

*Administrative Law — Challenges of a New Age: Balancing Fairness with Efficiency and National Security* was held at the QT Hotel, Canberra, on 23–24 July 2015. The national lecture was given by Chief Justice Robert French, High Court of Australia.

*Administrative Law — Making a Difference: Improving Public Administration and Providing Administrative Justice* was held at the Brisbane Showgrounds on 21–22 July 2016. The national lecture was given by Chief Justice Catherine Holmes, Supreme Court of Queensland.

*Ripples of Affection — Administrative Law and Communities: Meeting Community Expectations — Ensuring Engagement and Participation — Achieving Just and Correct Outcomes* was held at the Hotel Realm, Canberra, on 20–21 July 2017. The keynote address was by Justice John Griffiths of the Federal Court of Australia. The national lecture was given by Peter Hanks QC of the Victorian bar.

*Administrative Law in the 21st Century and Beyond* was held at the University of New South Wales, Sydney, on 27–28 September 2018. The keynote address was by the Hon Mark Speakman, Attorney-General of New South Wales. The national lecture was given by Justice Margaret Beazley, President of the NSW Court of Appeal.

*People, Parliament and the Public Interest* was held at the Hotel Realm, Canberra, on 18–19 July 2019. The national lecture was given by Justice David Thomas, President of the AAT.

## **National lectures**

Sir Anthony Mason, former Chief Justice of the High Court of Australia, ‘The Foundations and the Limitations of Judicial Review’, ‘The Scope of Judicial Review’ and ‘Australian Administrative Law Compared with Overseas Models of Administrative Law’ (Perth, Canberra, Sydney, 2001).<sup>140</sup>

Chief Justice James Spigelman, NSW Supreme Court, ‘The Integrity Branch of Government’, with Professor Mark Aronson as commentator; ‘Jurisdiction and Integrity’, with Chief Justice John Doyle, SA Supreme Court as commentator; and ‘Integrity and Privative Clauses’, with Chief Justice Paul de Jersey, Queensland Supreme Court as commentator (Sydney, Adelaide, Brisbane, 2004).<sup>141</sup>

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<sup>140</sup> AIAL National Lecture Series on Administrative Law (2001) 31 AIAL Forum 1.

<sup>141</sup> Pearce (ed), above n 74.

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Walter Sofronoff QC, Solicitor-General for Queensland, 'Constitutional Writs' (Brisbane, 2006), Michael Sexton SC, Solicitor-General for New South Wales, 'The NSW Landscape: Investigative Bodies Examined' (Sydney, 2006), David Bennett QC, Solicitor-General of Australia, 'Is Natural Justice Becoming More Rigid than Traditional Justice?' (Melbourne, 2006), Justice Keith Mason, President, NSW Court of Appeal, 'The NSW Landscape: Judicial Review at State Level' (Sydney, 2006).<sup>142</sup>

Chief Justice Patrick Keane, Federal Court of Australia, 'Democracy, Participation and Administrative Law' (Canberra, 2011).<sup>143</sup>

Justice William Gummow, High Court of Australia, 'The 2012 National Lecture on Administrative Law: A Fourth Branch of Government?' (Adelaide, 2012).<sup>144</sup>

Dame Sian Elias, Chief Justice of New Zealand (Canberra, 2013).<sup>145</sup>

Chief Justice Wayne Martin, Supreme Court of Western Australia (Perth, 2014).<sup>146</sup>

Chief Justice Robert French, High Court of Australia, 'Statutory Interpretation and Rationality in Administrative Law' (Canberra, 2015).<sup>147</sup>

Chief Justice Catherine Holmes, Supreme Court of Queensland, 'Not Making a Difference: Queensland's Extension of Statutory Review' (Brisbane, 2016).<sup>148</sup>

Peter Hanks QC, Victorian bar, 'Administrative Law and Welfare Rights: A 40-Year Story from *Green v Daniels* to "Robotdebt Recovery"' (Canberra, 2017).<sup>149</sup>

Justice Margaret Beazley, President, NSW Court of Appeal, 'Administrative Law and Statutory Interpretation: Room for the Rule of Law?' (Sydney, 2018).<sup>150</sup>

Justice David Thomas, President, AAT, 'Contemporary Challenges in Merits Review: The AAT in a Changing Australia' (Canberra, 2019).<sup>151</sup>

Answers to trivia questions: 1. (c) The Ramrods; 2. Justice Michael Kirby, Justice Ron Merkel and Justice Philip Cummins; 3. (a) 1994 (b) four times — 1994, 1996, 1998 and 2003; (c) 2003; 4. (a) Townsville, Queensland; (b) The Ecuadorian Embassy, London (c) HM Prison Belmarsh, London; 5. Chief Justice Robert French (2008) 82 ALJ 322; 6. (c) Izzy.

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<sup>142</sup> Mantel (ed), above n 75.

<sup>143</sup> (2012) 68 *AIAL Forum* 1.

<sup>144</sup> (2012) 68 *AIAL Forum* 19.

<sup>145</sup> (2013) 74 *AIAL Forum* 1.

<sup>146</sup> (2014) 78 *AIAL Forum* 1.

<sup>147</sup> (2015) 82 *AIAL Forum* 1.

<sup>148</sup> (2016) 85 *AIAL Forum* 1.

<sup>149</sup> (2017) 89 *AIAL Forum* 1.

<sup>150</sup> (2018) 93 *AIAL Forum* 1.

<sup>151</sup> (2019) 96 *AIAL Forum* 1.