



ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

**Australian Institute of Administrative Law Forum**  
**Sofitel Hotel, Melbourne**  
**Thursday 7 August 2008, 3.45pm**

CHECK AGAINST DELIVERY

**[Acknowledgements]**

- **First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.**

**[Other Acknowledgements]**

- **Chair – Stephen Moloney, Chair of the Victorian chapter of the AIAL**
- **Michael Will, President of the AIAL**
- **The Honourable Duncan Kerr MP**
- **Members of the judiciary and other distinguished guests**
- **Ladies and gentlemen**

## **[Introduction]**

- 1. Since becoming Attorney-General, I've spoken on a number of occasions about my priority to make sure that all Australians have access to justice. Accessibility of justice is particularly important in the area of administrative law.**
- 2. It's crucial for a strong democracy that all Australians have a genuine opportunity to challenge decisions of the government in the most effective and efficient way possible.**
- 3. This ensures that decision-makers are acting lawfully and fairly and that the government is accountable and transparent.**
- 4. I am, however, concerned that the rising cost of Australia's justice system has created barriers to accessible justice.  
And I am determined to address this problem.**
- 5. This means exploring innovative methods of justice administration – especially those that look to the resolution of problems, rather than litigation.**

- 6. In fact, I think it would be beneficial for our entire civil justice system to have more of a ‘resolution culture’ than an adversarial culture. And in many ways, administrative law practitioners are well placed to facilitate such a shift.**

**[A Range of Mechanisms]**

- 7. We are fortunate in Australia to have a developed administrative law system, which has a range of mechanisms for individuals to challenge decisions of the government.**
- 8. Freedom of Information laws, the Ombudsman, merits review and judicial review each provide different ways for administrative decisions to be scrutinised.**
- 9. One of the roles of an administrative law practitioner is to help individuals choose the right avenue of redress for their particular complaint.**
- 10. This may be as simple as assisting or advising an individual to request reasons for a decision, or to**

request relevant documents under the *Freedom of Information Act*.

11. On this, I'd like to note that the Rudd Government remains committed to our election promise to get our FOI laws right.
12. The Government has already agreed to abolish conclusive certificates, and Senator Faulkner plans to introduce legislation to effect this later in the year.  
  
This will mean that all decisions refusing access to documents under the FOI Act will be subject to full merits review by the AAT.
13. Senator Faulkner also has plans to progress broader FOI reform to improve the FOI Act and enhance government transparency.  
  
The Government intends to issue an exposure draft of the legislation and engage in broad consultation before the bill is introduced next year.
14. So, an FOI request may be sufficient to show an aggrieved individual that their application was

**carefully considered by government decision-makers, and that the decision was made fairly and in accordance with the law.**

- 15. Or, as demonstrated by a number of his recent reports, the Ombudsman is also well placed to investigate systemic issues, such as recurring instances of poor decision-making in a particular department.**
- 16. Merits review in Commonwealth tribunals is also available for a large number of decisions. It can provide a cheap and effective way of challenging a decision of government, on its merits, legality or both.**
- 17. And judicial review is obviously available to correct errors of law.**
- 18. Sir Anthony Mason has referred to judicial review as *a safeguard of individual rights*. However, as I'm sure most of you know, even where an error is found, judicial review can't always provide the substantive remedy that an aggrieved individual is seeking.**

**[Practitioners]**

**19. Clearly, with such a range of mechanisms, and with each having benefits and limitations, the role of the practitioner is very important.**

**It's up to them to examine the options in light of an individual's situation and make sure they're able to make full use of the methods available to receive effective and efficient justice.**

**20. As such, administrative law practitioners need to have a range of skills.**

**Their focus can't just be on court processes and litigation – they also need negotiation, dispute resolution, mediation and inquiry skills.**

**21. This breadth of knowledge and experience is both admirable and invaluable.**

**22. I spoke earlier about rising costs creating barriers to accessible justice.**

**I think that particularly in the area of administrative law, practitioners have a significant role to play in encouraging cheaper,**

**less formal ways of resolving disputes than court-based litigation.**

- 23. In order for us to change the culture of our civil justice system, all practitioners will need to be more receptive to out-of-court methods of dispute resolution.**

**[Other Participants]**

- 24. Of course, it's not just the role of legal practitioners to ensure access to administrative justice.**

**This involves a range of participants.**

- 25. For example, there needs to be a commitment from government that public servants will actively assist tribunals in resolving disputes, and not simply protect their decisions.**

- 26. This is why last month, I announced the commencement of some significant reforms to the Legal Services Directions.**

**These promote the efficient resolution of disputes involving Commonwealth agencies, and now**

**place greater emphasis on Alternative Dispute Resolution.**

- 27. The Ombudsman's office also plays a crucial role in administrative law practice – in explaining administrative decisions to people as well as examining complaints against government agencies.**
- 28. So too, it's important to remember that tribunal registrars, members and judges share the responsibility for managing administrative law matters in an efficient and effective way.**
- 29. In fact, all of these groups and participants are critical to an administrative law framework that is fair and just.**

### **[Alternative Dispute Resolution]**

- 30. Access to administrative justice also means being able to resolve matters early and at minimal cost to the individual and to government.**
- 31. This is why, in addition to the recent changes to the Legal Services Directions, I've asked the**



**National Alternative Dispute Resolution Advisory Council to look into strategies that would remove barriers to Alternative Dispute Resolution by providing incentives to ensure its greater use, as an alternative to and during litigation.**

- 32. Administrative law practitioners are in the fortunate position of already having a great deal of exposure to a range of ADR techniques. Merits review tribunals were some of the earliest adopters of ADR, and have shown just how successful it can be.**
- 33. I've been encouraging, and continue to encourage, tribunal members to explore innovative ADR techniques, and to keep abreast of best practice in this area. I've also made sure that government lawyers and public servants have a responsibility to use ADR where appropriate.**
- 34. And I see administrative law being well positioned to lead the way in the continued development of ADR in Australia.**

**[Legal Assistance]**

- 35. Of course any commitment to improving access to administrative justice must address the needs of the most vulnerable members of our society.**
- 36. This is why I was very pleased to announce earlier this year, the largest ever investment in the Commonwealth Community Legal Services Program.**
- We have provided it with additional one-off funding of \$10 million.**
- 37. This will help disadvantaged Australians access independent information, advice and assistance – including those seeking to appeal an administrative decision made by a government agency.**
- 38. I also think it's particularly noteworthy that our administrative law system has developed effective ways for unrepresented individuals to challenge decisions of the government.**

- 39. The procedures in a number of Commonwealth tribunals, like the Social Security Appeals Tribunal, are specifically designed so that people can appeal without the assistance of a lawyer.**
- 40. And in courts and those tribunals which have more formal procedures, the work of registry staff in providing assistance and outreach services to unrepresented individuals is invaluable.**
- 41. Judges, magistrates and tribunal members play a significant role in ensuring that unrepresented persons receive a fair hearing and are assisted to understand court and tribunal procedures.**  
**I am well aware of the enormous effort many of them put into that role.**
- 42. The complaints investigation services of the Commonwealth Ombudsman are also designed to give Australians access to administrative justice without the need for a lawyer.**

- 43. I also think it's commendable that we have practitioners who provide pro bono assistance in administrative law matters.**
- 44. This is why the recent changes to the Legal Services Directions include reforms to make sure that federal agencies don't discriminate against service providers who perform pro bono legal work in matters against the Commonwealth.**
- 45. The next step is to consider what the Government can do to actively encourage providers to perform pro bono work.**
- And my department is currently consulting and considering submissions on various options.**

### **[Conclusion]**

- 46. As I have said in relation to our reforms to judicial appointments, the competent administration of justice is fundamental to the rule of law.**

- 47. Legal practitioners have an invaluable role to play in promoting the rule of law and exploring innovative models of judicial administration.**
- 48. You are also in a great position to help ensure Australia's legal system is practical, cost efficient and facilitates the timely resolution of disputes.**
- 49. The Rudd Government wants to work with you to ensure access to justice for all, and foster a culture of resolution in the Australian legal system.**
- 50. Thank you for your participation in this year's forum.**

**I wish you all the best for the rest of the proceedings and look forward to hearing the outcomes.**