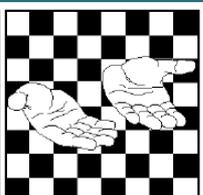




Above Board



PUBLIC ACCOUNTABILITY FORUM

Minds and Machinery

Saturday, 24th May 2008 – 9.30am to 3.30pm
John Curtin School of Medical Research
The Australian National University

Event Brief



Minds and Machinery

Foreword

**Justice
Michael Kirby**
High Court of Australia



Justice Kirby on stage last year with Melbourne rap impresario, *Elf Tranzporter*. Kirby J ably delivered a WB Yeats poem accompanied by a human beatbox.

I love administrative law. Why? Because it is about the control of power and improvement of the governance of our society. It also mixes the mind games of high legal theory with the practical outcomes of promoting more accountability and transparency in decision-making.

I also like administrative law because I know quite a lot about it. From 1976, it was my privilege to participate in the Administrative Review Council. I was there when the new federal administrative law was created. The *Administrative Appeals Tribunal Act 1975*, the *Ombudsman Act 1976*, the *Administrative Decisions (Judicial Review) Act 1977*, the *Freedom of Information Act 1982*, the *Privacy Act 1988* and many more laws and policies were adopted to improve federal administration in Australia.

It was an exciting time. Much was achieved. I learned a lot about the theory and practice of this corner of the law. When I get a case concerned with administrative law, my heart leaps up!

All branches of government at every level should be accountable to the people. In the case of the executive government, the provisions of the *Constitution*, especially s 75(v), help to make this so. I encourage the participants who are taking part in this Forum, especially the young participants. For they will have the responsibility of continuing the advance of accountability so that democracy in Australia is a reality and not merely an empty boast.

A handwritten signature in black ink, which appears to be "Michael Kirby".

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Matt Stevens

The maintenance of responsible government in the Westminster system depends upon a combination of people of high integrity and robust public accountability mechanisms. Just how we are able to achieve and maintain a regime of accountability most suitable to the Australian situation in 2008 is the very focus of this Forum. With the election of a new Federal Government and the continued focus on the development of '*the* Australian story', as well as the myriad of stories of individual Australians, we are well placed to vigorously explore this aspect of democratic governance.

In devising the topics for examination at the event, we have sought to cover some aspects of social and legal policy which have the greatest impact upon the maintenance of honesty and integrity in government. The usual constraints of time and resources preclude us from delving too deeply into each and every facet of public accountability, but we hope that at very least we inspire you, the participants, to think critically about the measures in place which are designed to hold our public officials to account. It is also a chance to reflect upon the character and behaviour of these individuals.

The broad theme of *Minds and Machinery* refers to the synergy required between the occupation of public office by individuals of high integrity, each of whom carry their own personal story, and the maintenance of institutions which permit them to undertake their duties in the most accountable fashion. With a *Constitution* and a Federation within which the procedural gaps are filled by conventions and precedents, the ambit of governmental behaviour permitted by us, the people in whom sovereignty is ultimately vested, must be continuously and conscientiously revised.

It is hoped that events like this, complementarily to formal academic studies, proliferate across the country in order to promote and encourage the engagement of young people in the accountability debate. It is, after all, the relationships between the State and the citizen, and those among the citizens themselves, which we are shaping. We owe a similar duty to those who will follow us, to that owed to us by our public representatives. We are merely custodians of the land for future generations, be that the land itself or the rules which govern it. That is a responsibility which may not be abdicated nor undertaken recklessly. So, let's take this and every given opportunity ***to exercise our right to scrutinise.***

Keynote Speakers



Dr Allan Hawke

ANU Chancellor since February 2006

- High Commissioner to New Zealand 2003–2006
- Secretary, Department of Defence 1999–2002



Melissa Parke MP

Federal Member for Fremantle since Nov 2007

- Senior United Nations Lawyer 1999–2007
- Community Legal Centre Solicitor 1994–1997



Stephen Keim SC

Senior Counsel, Queensland Bar since 2004

- Barrister-at-Law since 1985
- Defence Counsel for Mohamed Haneef 2007



Sushi Das

Staff Writer with *The Age* since 1995

- Features Writer and Columnist since 2005
- Melbourne Press Club Best Columnist 2006

Guest Panelists



Kim Robbins

Partner with DLA Phillips Fox since 2006
– Former Adviser to Commonwealth and NSW Ministers
– Former Journalist for Sydney metropolitan newspapers



Professor George Williams

Anthony Mason Professor of Law, UNSW School of Law
– Visiting Fellow, ANU College of Law 2008
– Foundation Director, UNSW G+T* Centre of Public Law

*Gilbert + Tobin



Professor John Warhurst

Adjunct Professor, ANU School of Social Sciences
– Author of *Behind Closed Doors: Politics, Scandals and the Lobbying Industry* – Deputy Chair, ARM*

*Australian Republican Movement



Fiona McKenzie

Barrister at the Victorian Bar since 2006
– Teacher of Administrative Law: adminlaw.com.au
– Former Solicitor, Blake Dawson Waldron and AGS*

*Australian Government Solicitor



Sue Tongue

Visiting Fellow at the ANU College of Law
– Senior Member, ACT Administrative Appeals Tribunal
– Head of the Migration Review Tribunal 1995–2000



Philip Moss

Law Enforcement Integrity Commissioner since 2007
– Fmr Asst Inspector-General of Intelligence & Security
– Fmr Senior Assistant Commonwealth Ombudsman

Guest Panelists *cont.*



Peter Faris QC

Independent Barrister, Queen's Counsel since 1986
– Barrister-at-Law since 1970 – Blogger: farisqc.com
– Chairman, National Crime Authority 1989–1990



Ian Carnell

Inspector-General of Intelligence & Security since 2004
– Member of the Administrative Review Council
– Fmr Deputy Secretary, Attorney-General's Department



Bert Mowbray FM

Federal Magistrate since 2004
– Member, Administrative Appeals Tribunal 2001–2004
– General Counsel (Immigration), AGS* 1993–2001

*Australian Government Solicitor



Hedley Thomas

Head of Corporate Communication, Qld Gas Company
– Gold Walkley Award for Excellence in Journalism 2007
– Journalist 1985–2008 in Australia, London & Hong Kong



Virginia Haussegger

Presenter of ABC TV News Canberra since 2001
– UN Association of Australia Media Peace Prize 1996
– Author of *Wonder Woman: The Myth of Having it All*



Brett Solomon

Executive Director of GetUp! since 2005
– Founder, Oxfam International Youth Parliament 1999
– Former Campaign Coordinator, Amnesty International

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Running Order

| | | |
|-------|---|-------------------|
| 09.30 | Registration and Refreshments | |
| 09.45 | Welcome & Introduction – Matilda House & Matt Stevens | |
| 10.00 | Keynote Address | Dr Allan Hawke |
| 10.15 | Panel: <i>Accountability in Government and Parliament</i> | |
| | • Kim Robbins, Prof. George Williams and Prof. John Warhurst. | |
| 10.40 | Keynote Address | Melissa Parke MP |
| 10.55 | Panel: <i>Promoting Accountability at Home and Abroad</i> | |
| | • Sue Tongue, Fiona McKenzie and Philip Moss. | |
| 11.20 | Morning Tea | Vanilla Bean |
| 11.35 | Small Workgroups | Morning Session |
| | • Break out into 4 groups of 15 participants and 2 guest panelists. | |
| 12.15 | Lunch | Vanilla Bean |
| 13.05 | Keynote Address | Stephen Keim SC |
| 13.20 | Panel: <i>Lessons in Accountability from Security Cases</i> | |
| | • Peter Faris QC, Bert Mowbray FM and Ian Carnell. | |
| 13.45 | Keynote Address | Sushi Das |
| 14.00 | Panel: <i>Media: Role & Responsibilities in Accountability</i> | |
| | • Hedley Thomas, Virginia Haussegger and Brett Solomon. | |
| 14.25 | Afternoon Tea | Vanilla Bean |
| 14.40 | Small Workgroups | Afternoon Session |
| | • Break out into 4 groups of 15 participants and 2 guest panelists. | |
| 15.20 | Concluding Remarks | Matt Stevens |
| 15.30 | Forum Close | |

Briefing Notes

Accountability in Government and Parliament

In October 2001, the *Children Overboard* affair involved public allegations by Government Ministers that sea-faring asylum seekers had thrown children overboard in a presumed ploy to secure rescue and passage to Australia. The government's handling of this, in the lead-up to a Federal election, and other events involving unauthorised arrivals worked to its advantage.

It was later found by Senate inquiry that the 'children overboard' claim was untrue and that the Government knew this prior to the election, which has ensured that the incident has remained controversial. Allan Hawke was the Secretary of the Department of Defence at the time of the incident, after which he tendered his resignation to the Minister, which was refused. In his speech today, Allan will consider these crucial questions:

- What happened, who was responsible and what lessons have emerged?
- What was the interaction between the Australian Defence Force, the public service, Ministers and the Parliament

Promoting Accountability at Home and Abroad

The United Nations Ethics Office was established in January 2006 to serve some 29,000 personnel worldwide. Its objective is to assist the Secretary-General in ensuring that all staff members perform their functions consistent with the highest standards of integrity required by the Charter of the UN through fostering a culture of ethics, transparency and accountability.

Prior to her election to Federal Parliament, Melissa Parke was instrumental in the creation of the Ethics Office. Her keynote address will set out the background to the Office's establishment and briefly discuss the following:

- What are integrity and ethics for public servants around the world?
- In an ever-changing and increasingly interconnected world, what are the management challenges for the United Nations and what mechanisms have been put in place to meet these challenges?
- What efforts have been made by other international, inter-governmental and non-governmental bodies, and UN Member States to counter corruption and have they been successful?

Briefing Notes *cont.*

Lessons in Accountability from Security Cases

The case of Dr Mohamed Haneef dominated headlines during mid-2007. Since his arrest, detention, interrogation, the cancellation of his visa and his return to his native India, a judicial inquiry has been launched into Dr Haneef's treatment by Australian authorities. Stephen Keim represented Haneef in court and in the media, and his keynote address will focus on the decision to cancel the doctor's visa as an exercise of ministerial discretion in the context of rule of law expectations, while considering these questions:

- What is the role of discretion vested in ministers in our society, and to what extent should such discretions be reviewable?
- To what extent should such discretions be able to be exercised by reference to political considerations?
- Should ministers be forced to disclose all the information on which they exercised the discretion, and what guidelines should govern the withholding of information?
- How does one guard against bad faith by the minister or by those who supply information to the minister?

Media: Role and Responsibilities in Accountability

A free and active press is an essential component of any validly functional democracy. This is reflected by the series of High Court cases which have developed and refined the implied constitutional freedom of political communication. Journalists routinely face obstructions as they endeavour to obtain information in order to hold governments and their agencies accountable.

Award-winning journalist Sushi Das has written widely on subjects including national security, government media manipulation and cross-cultural issues. In her speech today, she will specifically examine:

- Media spokespeople and the tricks they use, including the use of language and lies to spin the news;
- How 'operational and security reasons' are used as an excuse to keep the public in the dark; and
- The nature of news and how it allows governments to avoid scrutiny.

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Small Workgroups

Participants may choose a colour on arrival, subject to a cap on each group.

Morning Session

Accountability in Government and Parliament

Group Chairs: Matt Sherman, Vicki Mallon and Matt Stevens

Blue Group: Allan Hawke and Kim Robbins

Green Group: George Williams and John Warhurst

Promoting Accountability at Home and Abroad

Group Chairs: Heidi Willems, Netta Goussac and Louise Parrott

Yellow Group: Melissa Parke and Sue Tongue

Orange Group: Philip Moss and Fiona McKenzie

Afternoon Session

Lessons in Accountability from Security Cases

Group Chairs: Louise Parrott, Heidi Willems and Matt Stevens

Blue Group: Stephen Keim and Peter Faris

Green Group: Bert Mowbray and Ian Carnell

Media: Role and Responsibilities in Accountability

Group Chairs: Netta Goussac, Vicki Mallon and Matt Sherman

Yellow Group: Sushi Das and Hedley Thomas

Orange Group: Virginia Haussegger and Brett Solomon

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Acknowledgments

Keynote Speakers

- Allan Hawke
- Melissa Parke
- Sushi Das
- Stephen Keim

Guest Panelists

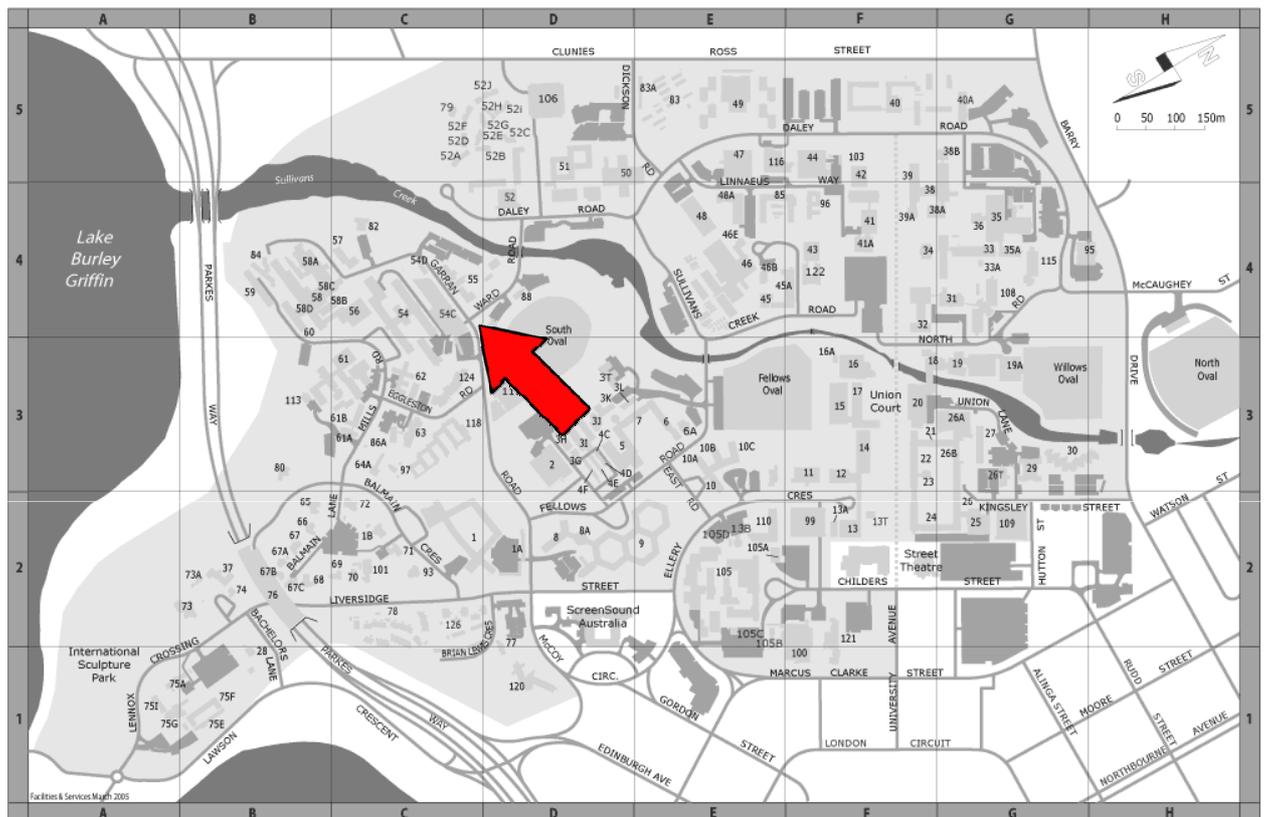
- Kim Robbins
- John Warhurst
- Sue Tongue
- George Williams
- Peter Faris
- Bert Mowbray
- Ian Carnell
- Fiona McKenzie
- Hedley Thomas
- Brett Solomon
- Philip Moss
- Virginia Haussegger

AboveBoard Working Party

- Jess Casben
- Matt Sherman
- Aparna Rao
- Kirsten Burns
- Heidi Willems
- Louise Parrott
- Vicki Mallon
- Netta Goussac



Venue Location



The Finkel Theatre and the Vanilla Bean Café are located in the John Curtin School of Medical Research which is building **54C** on the ANU campus, at the corner of Garran and Ward Roads. There is free parking nearby and the no. 34 bus stops there on the hour: Click: http://www.action.act.gov.au/2006NewRoutes/Route_34.pdf

