THE INSTITUTE OF MUNICIPAL ADMINISTRATION

1982 ANNUAL MUNICIPAL ADMINISTRATION CONFERENCE

INTERNATIONAL HOUSE, UNIVERSITY OF MELBOURNE

WEDNESDAY 17 FEBRUARY 1982, 11.15 A.M.

RAYMOND WEST ORATION

MUNICIPAL ADMINISTRATION AND LAW REFORM

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

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RAYMOND WEST AND MUNICIPAL ADMINISTRATION

I am honoured to be invited to deliver this Oration. The tradition of an annual Oration was introduced into the Conference program in 1969 to commemorate the Founder of your Institute. Raymond West died in February 1968, before I held public office. I did not meet him. But his recorded career makes it appropriate that we should celebrate and remember his life : as an example to us all of civic dedication and enthusiasm beyond the requirements of duty.

Raymond West commenced his career in local government in Coburg. His first appointment as Shire Secretary was at Yea. In 1927 he became the first Town Clerk of the then Borough of Shepparton. In 1934 he unsuccessfully endeavoured to inaugurate an Institute of Municipal Administration in Victoria. Undeterred by initial rebuffs, he persisted. In 1936 the Institute was founded in Victoria. Other States followed. In 1952 the Institute was established as a Federal organisation and so it flourishes today.

Mr. West was never frightened of a new idea. He implemented a number of innovations in the provincial urban area. They included establishment of art galleries, new schemes for financing public street construction and drainage, the development of beneficial local swimming pools and so on. On his retirement in 1960 he was made an Honorary Fellow of this Institute. He died in 1968. Let his willingness to embrace new ideas be the theme for this address.

LOCAL GOVERNMENT : THE AUSTRALIAN STEREOTYPES

When I reflected upon what I should say to you today and upon the life of this distinguished public administrator in the area of local government, it occurred to me that you had asked a lawyer to deliver this Oration because local government and municipal administration are closely intertwined with legal regulation. Beyond this they share in common with the law a somewhat unhappy public image. It is recognised that each is necessary to perform particular (and sometimes unpleasant) tasks; and that each is helpful and useful on occasions. Yet equally the Australian panchant for cynicism and criticism of authority leads to a certain denigration of the law and of local government, of lawyers and municipal administrators, which we do well to consider and examine from time to time.

A condescending view towards municipal administration is not confined to a few malcontents, disappointed ratepayers or sceptical local inhabitants. Scholarly writing about the discipline of local government and municipal administration, as a feature of public administration in our country, has been not altogether flattering. Professor Robert Parker, Emeritus Professor of Political Science in the Institute of Advanced Studies of the Australian National University, one of the doyens of the study of the practical exercise of the administration of government in Australia, dismissed contemptuously the notion that local government in Australia, in practice, as distinct from theory, was the participation of the ordinary citizen in democracy. On the contrary, Parker asserts that 'there is some evidence that higher levels of "bureaucratisation" tend to go with greater popular participation'.[1] His view of municipal administration was, not to put too fine a point on it, distinctly negative:

> To be precise, local government in the Australian States is not government, except within a very narrow field of law enforcement. A better term would be 'local elective administration of minor services'. ... From the beginning local responsibility for these services was foisted on local property-owners against their will. ... The great bulk of councillors are not associated with political parties. ... There is truth in the general image of councillors as being predominantly local businessmen, especially shopkeepers, builders, contractors and estate agents in urban areas, and farmers and graziers in rural areas — and an increasing number of women. ... The characteristic composition of the general run of councils encourages two kinds of cynical generalisation : that people serve on councils largely to protect or further local business interests, and that councils are too vulnerable to pressures from wealthy and sophisticated firms of developers and land speculators.[2]

Just as lawyers must become increasingly sensitive to community criticism directed at their inaccessability, costliness for the ordinary citizen, irrelevance for many day-to-day disputes and indifference to justice, as distinct from law, so local administrators in Australia cannot ignore the recurring stereotypes of local government identified by Professor Parker. They are persisting and deep-seated. Unfortunately, just as the lawyer's image' problem is occasionally reinforced by front page stories of spectacular misappropriation or other professional impropriety, so in local government, the occasional evidence of impropriety tends to reinforce the cynicism. It is not really difficult to see how this happens. An average Australian citizen will see a large building or other development approved in what seems to him (perhaps wrongly) as a departure from the current standards of the environment or building code. Developers boast openly of the way in which their 'brilliant' architect managed to squeeze an extra town house on to the block of land and still secured building approval. Bare, barren, treeless suburban developments stand awaiting their mass-produced homes in the distant suburbs of our cities. People live in sometimes shoddy, new buildings, with sub-standard finishes, low ceilings and graceless common areas. No-one, of course, blames himself. It is always someone else's fault. Putting it broadly, Australians incline to blame their local government. Sharing the blame is the municipal administrator and those who work under him.

It should not be thought that Professor Parker, doyen amongst the scholars, is contributing an idiosyncratic or eccentric view. Ruth Atkins in her generally sympathetic writing on local communities and their government, views the history, geography and politics of Australia as having produced a 'weak municipal sphere in which has been vested little more than a modest range of property-related services'.[3] The coincidence of recurrent community scepticism, stereotypes that will not go away and scholarly criticism are the burdens which an Institute of Municipal Administration, concerned about its place in the world, should carefully examine. One author, in a recent commentary on these views of municipal administration in Australia, cautioned against self-perpetuating myths. The views, he said, seemed to have engendered:

> deep scepticism ... about municipal aspirations towards a more exhalted role. This scepticism has produced unfortunate effects on the morale of local government and on those who would participate in the processes of community politics. If Australians are told often enough that they and their forbears have shown no enthusiasm for the institutions of local self-government and have indeed had them foisted upon them by their State governments, they inevitably become discouraged from undertaking community endeavour.[4]

The last thing I wish to do is to reinforce critical community perceptions or popular cynicism about Australian municipal administration or local democracy. It would be a slight to the memory of Raymond West and the legion of other diligent, honest municipal administrators, to do so. But it would be an equal slight to bury our heads in the sand rather than to face and tackle (and where possible, answer) misconceptions or acknowledge problems that need to be addressed. Just as the law must find institutional ways to respond sensitively to community criticism of its inaccessability, costliness and irrelevance, so local administrators must face squarely and respond to their critics.

There is some hope that they can do so with greater conviction today than in earlier times. Things are looking up. Encouraged by a certain amount of reorganisation and new attention by the Commonwealth to its concerns, local government is now playing an increasingly important role in the system of Australian government. Nor has the access to new resources been limited to access to Federal funds. According to Professor Power of the University of Melbourne, access to new human resources are equally important:

> ... such as the skills and services of better trained officers and more highly educated councillors. Perhaps the greatest advances, however, were made in the area of morale, as increasing numbers of municipalities gained sufficient confidence to embark on innovative programs of activities aimed at meeting the needs of their local communities.[5]

The same author is at pains, patiently to answer the public's stereotypes, although admittedly with data largely derived from the South Australian and Victorian systems that may or may not apply in some of the other Australian States. To rebut Professor Parker's claim about the disproportionate influence of local business interests and the vulnerability of councils to wealthy and sophisticated developers and land speculators, Power points out that:

> The South Australian and Victorian systems ... show that a heavy majority of councillors <u>are</u> associated with political parties, and that builders, contractors and estate agents are <u>not</u> over-represented amongst their ranks. Thus there is a good deal of contrary evidence about party affiliation, and as for the other generalisation, while it is undoubtedly true that some councils have been vulnerable to pressures from developers and speculators, so too have been some State Government authorities.[6]

CONFLICTS OF INTEREST AND DUTY

The argument about State authorities falls on deaf ears. It does nothing to correct the public apprehension that local government and municipal administration are too vulnerable to say that State bodies also are. There might be some who applaud the alleged 'vulnerability' of local government in Australia as merely another word for 'sensitivity to local interests'. The need to attract investment, secure development, promote employment and encourage local services all have a negative as well as a positive side. Yet the community, and the law, expect people in local government : whether councillors or municipal administrators, to protect the general public interest, to be honest in the performance of their functions and to avoid conflicts of interest and duty. With a view to explaining, expanding and reinforcing the Victorian law on the avoidance of conflicts of councillors' interests and duties, the Victorian Attorney-General, Mr. Storey, gave wide terms of reference to the Statute Law Revision Committee of the Victorian Parliament in November 1978. The committee was instructed to review the proposal that councillors be permitted to participate in proceedings in which they have an interest but not permitted to vote thereon.[7]

The Victorian Statute Law Revision Committee is the oldest of the Australian law reform agencies. It can trace its origins back to 1916. It is a distinguished, practical body including Members of both Houses of Parliament and all political parties. In considering its report, the committee had the advantage of the definition of 'pecuniary interests' proposed by Mr. Justice Gowans in the Victorian Supreme Court:

> I would ... attribute to the words 'any direct or indirect pecuniary interest' a meaning which would have the effect of saying that a councillor has a pecuniary interest in a contract or proposed contract or matter in which the municipality is concerned, if the contract or matter would, if dealt with in a particular way, result in the payment of money to him or by him or would give rise to an expectation (so long as it was not too remote) of the payment or receipt or gain or saving or loss of money by or to him.[8]

The choices to be faced in resolving a possible conflict of interest and duty on the part of a municipal councillor were succinctly summarised in the submission of Mr. Crozier, recorded in the report of the committee. The following options were available:

. declare, retire, no discussion, no vote;
. declare, remain, no discussion, no vote;
. declare, remain, discuss, no vote;
. declare, remain, discuss and vote;
. unrestricted — no declaration — remain, discuss and vote.

Mr. Crozier supported the option which would allow the councillor, who declares an interest, to remain in the room, to participate in the debate but not to vote. The Statute Law Revision Committee received comments from 185 interested parties. In respect of Mr. Crozier's proposal, 52% supported the proposal. The main reason given for allowing a councillor with an interest to participate was that he might have relevant expertise or information to offer. The committee recommended (by a majority) that section 181 of the Local Government Act 1958 (Vic) be amended to permit a councillor to remain in the council chamber and participate in a debate upon a subject matter in which he has a pecuniary interest, but so that the councillor should be required to leave the environs of the council chamber prior to the vote in the matter. It was also recommended unanimously that the section be amended to make provision for a councillor with a pecuniary interest in a matter to give a 'full declaration' of the nature of such interest and its relevance to the matter before the council immediately prior to the discussion and that such declaration should be incorporated in the council minutes. The government, just before Parliament rose, introduced a Bill for a Local Government (Pecuniary Interests of Councillors) Act 1981 substantially to implement the recommendations of the committee. The Bill lapsed with the prorogation and dissolution of the Parliament for the elections.

Image-making in politics was the subject of a cover story in the national magazine, the Bulletin, last week. This modern analysis of image making in politics teaches such things as the indispensibility of face creams, rimless glasses, cuffless trousers, matching colour ties and flattering lens angles. It will be a great misfortune if the electronic media, which bring the advantages of more information to the electorate and potential of a better informed democracy, trivialise important issues by an undue concentration on the paraphernalia of political images. It is much more important for our democracy that we pay attention to the realities of image and how it comes about. Where images are bad, it may take more than a pot of face cream to provide the corrective. In part, we must look to ourselves to ensure higher standards of training and preparation for public officers, appointed as well as elected. We must perhaps pay more attention to self-criticism and to facing squarely public criticism : whether it is of municipal administration, the law, the media or anything else. Even the judiciary is not

beyond criticism, though it probably remains the one arm of government that still has the overwhelming confidence of the community for its independence, ability and integrity. Law reform amounts to yet another way in which 'image' can be improved, with results more lasting than a smear of grease paint. We can build into our laws, and thereby into our institutions, greater accountability and rules of conduct which set the standard of propriety, so that all who play the game will know the rules. There are some who would say that local government councillors should not need amendments to the Local Government Act to tell them of the need for caution and self-denial where they are, even remotely, involved in the subject matter before the council. But if we are to allay the stereotypes about local government councillors and set at rest public concerns about the vulnerability of local government and municipal administration in Australia to self interest, we must reform our laws to ensure that those who take part in municipal administration and local government are left in no doubt as to where their duty lies and are dealt with when they fall short of the community's stated standards.

BUREAUCRATIC LAW REFORM IN VICTORIA

For the remaining time available to me, I turn to an area in the reform of public administration which is not yet of direct and specific relevance to municipal administrators. It may come to have relevance and it is therefore important that you should be alert to it. I refer to the reforms that have come about in Commonwealth administrative law, designed to improve the standards of Commonwealth administration, its compliance with the law and its sensitivity to the needs of individual citizens 'at the counter'. All of you will be aware of the moves for a Freedom of Information Act at the Federal level in Australia. The Freedom of Information Bill is still before the Commonwealth Parliament. Legislation in Victoria on this topic also seems bound to come, whichever party wins office after the current elections, though the actual design of the legislation will apparently differ, depending upon the outcome of the polls.

Though there have been some reforms of administrative law and procedure adopted in Victoria[9] so far they are not as radical' (and therefore have not attracted the same controversies) as those raised by Federal legislation. The Administrative Law Act 1978 (Vic.) came into force on 1 May 1979. It provides a new, simplified procedure for seeking Supreme Court review of the decisions of a 'tribunal'. Further, it requires such a tribunal to furnish, upon request, a written statement of reasons for its decisions (s.8), and it overrides any provision in an earlier Act which seeks to exclude the review jurisdiction of the Supreme Court ('privative clause') (s.12). The Act does not provide for review on the merits. The establishment of a general Administrative Appeals Tribunal for Victoria was proposed in 1968 by the Victorian Statute Law Revision Committee of the Parliament, but this proposal has not so far found favour.

It may be useful for municipal administrators in Victoria to inform themselves about the 'package' of Federal administrative law reform. Some of these reforms may be suitable for export, including into the realm of municipal administration. Others will certainly have to be studied, whichever course is adopted in any freedom of information law for this State.

FEDERAL ADMINISTRATIVE LAW REFORM

The development of administrative law reform in recent years in the Commonwealth sphere represents one of the happiest features of law reform in our country. The reforms have attracted a generally multipartisan support. Major reports were commissioned during the Gorton government and tabled during the McMahon government. Their implementation began under the Whitlam government and have continued under the present administration. The 'package' of administrative law reforms is known for convenience as the 'new administrative law'. This 'package' has seen:

- the establishment of an Administrative Appeals Tribunal (AAT), designed to provide a general Federal tribunal for appeals against decisions of Commonwealth officers in matters committed to its jurisdiction;

- the creation of a general Administrative Review Council, designed to monitor current administrative law and practice in the Federal sphere and to push forward the development of a consistent system of administrative review;

- appointment of the Commonwealth Ombudsman as a general Federal commissioner for grievances;

- reform and simplification of judicial review of administrative decisions made by Commonwealth officers under Commonwealth laws, including a general right to reasons for administrative decisions;

- a promise of further legislative reforms including in respect of freedom of information, privacy protection and general minimum standards of fair procedure in Federal tribunals.

The breadth of these reforms, particularly in aggregate, has elicited gasps from some overseas observers.[10] This is even more remarkable because administrative law reform is now decidedly in fashion. One of the Ministers appointed by President Mitterand upon the change of government in France, M. Anicet Le Pors, is designated Minister for Administrative Law Reform. He is a communist, one of the three in the new French Administration. He tackles an administrative law system which is sophisticated and long-established. The Australian Federal experiment is certainly the most comprehensive

At the Australian Legal Convention in Hobart in July 1981, papers by the noted English authority, Professor H.W.R. Wade and Lord Chief Justice Lane dealt with administrative law developments in England and Australia. Lord Lane was full of praise for the operation of the Australian Administrative Appeals Tribunal, describing it as having powers 'far in excess of anything hitherto dreamed of in the United Kingdom'. He described the powers afforded to the AAT to adjudicate on the merits of a decision and even the propriety of a government policy, as radical, such that he viewed them with astonishment and admiration.[11]

The Administrative Appeals Tribunal deserves such words of approbation from this high English judicial quarter. The tribunal has coped with its establishment phase remarkably well. The establishment of a new national tribunal with wide and novel powers and a constantly growing catalogue of new jurisdiction is remarkable enough in itself. The figures provided in the annual reports of the Administrative Review Council demonstrate the large and increasing numbers of cases coming before the tribunal for review under an ever-expanding variety of Federal enactments. These enactments range from those that give rise to the controversial hearings under the Broadcasting and Television Act and Migration Act to the much more humble review of administrative decisions which takes place under the Defence Force Retirement and Death Benefits Act, the Home Savings Grant Act and various Bounty Acts. The range of Commonwealth legislation continues to expand. The variety and significance of administrative discretions expand with it. The value of independent, careful review by the AAT is sufficiently obvious to the numerous litigants who have come before it that the jurisdiction of the AAT has continued steadily to expand and the caseload to expand with it.

A high standard of individualised justice has been accorded to citizens by members of the AAT aggrieved against Commonwealth administration. Not all are judges, though some are, and all are bound to act in a judicial manner, according the parties before them a fair hearing. The tribunal is entitled to determine the appeal de novo, on the material placed before the tribunal according to the 'right or preferable' decision in the case.[12] But quite apart from these praiseworthy elements at a micro level, there are a number of macro considerations that should be weighed in assessing the value of a general administrative review tribunal. First, there is the value of such a tribunal, in those cases which do not come up for appeal, as an educator of administration. It states and explains the general principles that should be observed in fair administrative practice. Reasoned decision-making, the patient explanation of the law, the careful sifting of the facts, the application of the law to the facts and the detailed statement of the fair and impartial approach to administrative justice can have a value far beyond the facts of the particular case before the AAT.

There is no doubt that many Commonwealth departments have improved their administrative procedures either as a direct result of comments or clarification provided in an AAT decision or as a result of preventative self-scrutiny, set in place by the obligations of new accountability to judges imposed by the Administrative Appeals Tribunal Act and, for the past year, by the Administrative Decisions (Judicial Review) Act.

The second impact of the AAT which has been highly beneficial, beyond the interests of the immediate litigants, has been its facility to 'flush out' the details of administrative decisionmaking and to reduce the secretiveness of the actual rules by which Federal administrative discretions are to be exercised. That there are such rules is entirely understandable and desirable. They promote consistency of decision-making and are frequently needed because of the generality of the discretions conferred by legislation, either on a Minister or on those under him. The procedures of individualised justice in the AAT have required the justification of a particular decision. This has required the production to the tribunal of the administrative 'rules of thumb' and their justification, not only against the standard of lawfulness (as established by reference to the legislation) but also against the standard of administrative fairness (inherent in the AAT's power to substitute its conclusion for that of the administrator in reaching the 'right or preferable decision' in the circumstances). Thus, in the area of deportation appeals, it was not until the AAT began the review of deportation decisions made by the Minister under statutory language of the greatest generality, that the detailed policy instructions to immigration officers were disclosed. In turn, the criticisms and comments of AAT members in the course of reviewing particular deportation cases led on to modifications and elaborations of the ministerial policy, which has now gone through three drafts. Furthermore, the policy was considered by the Cabinet and tabled in the Parliament. In this way the AAT has contributed directly to greater openness in policy, in a manner that is beneficial not only to the litigants who come before it, but also to all potential litigants, the whole migrant community and indeed the whole Australian community, comprised as it is now of such ethnic and cultural variety.

A third contribution of the AAT is more tentatively stated. In order to cope with the nature of its jurisdiction, involving sometimes review of subject matter of relatively little financial value (such as compensation for loss or damage of items in the post) the AAT has felt forced to explore in its procedures new means of saving costs. Its innovations may come, in time, to encourage greater inventiveness in the general courts. The AAT has, for example, experimented with telephone conferences for the purpose of interviewing witnesses at long distance. In a large country, where the costs and inconvenience of travel are great, who can doubt that the future of litigation will involve the greater use of telecommunications?

Similarly, the AAT has been innovative in its use of preliminary conferences. I believe that the costs of litigation will force modifications upon at least some classes of adversary trial and that more conciliation will be encouraged by court procedures, both to cope with the pressures of business and to tackle the underlying disputes that sometimes are ignored in the application of current adversary procedures.

Both in dealing with the grievances of individual citizens in a public and reasoned way, and in contributing to the improvement of administrative justice generally, the AAT has made notable contributions in the Commonwealth's sphere. Its example should certainly have the closest possible scrutiny by State colleagues and colleagues in municipal administration. The New South Wales Law Reform Commission delivered a report in 1973 proposing a scheme of administrative review for NSW broadly similar to that now established in the Commonwealth's sphere.[13] It suggested an Advisory Council on Public Administration, with functions similar to the Administrative Review Council and a Public Administration Tribunal. Legislation has been foreshadowed to implement these proposals but no legislation has so far been introduced.[14] It is expected that in the final report on the review of New South Wales Government Administration, Professor Wilenski will propose major reforms of administrative review in New South Wales. As I have said, a general administrative tribunal was recommended for Victoria as long ago as 1968.

TIME-HONOURED PRINCIPLES UNDER THE MICROSCOPE?

The debate forced on public administrators in Victoria by the promised advent of freedom of information legislation is a healthy one. It is debate about the effectiveness of ministerial responsibility in an age of big government, where ministers simply cannot, in practice, be responsible for every decision made under their administration and in their name. But the debate is also about the courts and tribunals of our country. To what extent, in the future, in the review of particular cases of aggrieved citizens, will they enter into the frank and acknowledged territory of reviewing policy — even government policy.

As one of the foremost writers on administrative law, Professor H.W.R. Wade, pointed out 20 years ago that debate is really one about power. It is a demarcation issue, if you like, between the respective powers of the executive government, the permanent public service, the Ombudsman, the tribunals and the judicial arm of government. In working out the resolution of the debate, a number of the time honoured principles of our democracy are coming under the microscope:

- that ministers are 'responsible' for decisions actually made in their name by public servants of their administration;
- that public servants merely loyally implement the policy of elected ministers;
- that judges simply mechanically apply pre-existing principles and do not involve themselves in policy evaluation.

It cannot be expected that such a fundamental debate about institutions of government will miraculously pass by the organs and officers of local government in our country. It is likely that they too will be submitted, in due course of time, to regimes of freedom of information and standard fair procedures laid down by law. Already, in some jurisdictions of Australia, the State Ombudsman has a growing function to inquire into administration in local government. Local government has long been submitted to the scrutiny of judicial review. That scrutiny may be enhanced and its effectiveness increased by reforms in the rules governing judicial review, including the expansion of the right to reasons and simplification of the procedures and remedies of judicial review. A consolidation of tribunals into a general administrative tribunal as recommended by the Victorian Statute Law Revision Committee may come in time in this State.

A BUREAUCRATISED COUNTRY?

It has been said many times that Australia is a bureaucratised country. The Melbourne political sociologist, Alvin Davies, asserts that 'as a people, we have "a characteristic talent" for bureaucracy. Commenting on this, the American Professor of Public Administration, G.E. Caiden, asserts:

> Australians have opted for bureaucratism and they have adjusted themselves to bureaucratic imperatives. And for the most part bureaucratism has served them well, providing a high standard of living fairly equally distributed, national independence with political freedom and personal security, easy-going social relationships, and by world standards a high 'quality of life'.[15]

Caiden, however, points out that there is a price to be paid for this love of bureaucracy. The price is, at least sometimes, 'a narrow sameness, restrictions on individual enterprise and creativity, an intolerant conformity, competent but not excellent performance and an indifferent complacency'.

Numerous efforts have been made to promote reform, not least by a series of public commissions of inquiry into administration. These have included the Bland Board of Inquiry in Victoria, the Corbett Committee in South Australia, the Coombs Royal Commission at the Federal level and the Wilenski Review of Government Administration in New South Wales, which is still continuing. Caiden is disenchanted by the failure of so many inquiries to produce much real reform that will promote greater excellence in administration and more sensitivity to the needs of the citizen. Why should this be so?

> Much reform failure has been attributed to sheer bureaucratic inertia, political indecision and incompetence, and public indifference and apathy. But that has been said before; today there is a qualitative difference. Public decision processes are now so elaborate and complex that governments suffer severe constipation. They just cannot get out of the governmental system what needs to be gotten out. They are overcome by complexity and turbulence. Paperwork proliferates, resulting in a great deal of activity without results. To go from here to there in doing anything is a trial. By the time we know what information we need and that information is generated, it is too late to act. Consequently, movers of administrative systems who want to get things done are now inclined to by-pass the rational reform model altogether.[16]

I imagine that the issues raised in this critique are principally matters for senior Commonwealth administrators and administrators at a State level. In the festival of democracy which is celebrated in a general election, the concerns momentarily become public, in promises made by the competing political parties, for greater accountability and better government. The debate is, however, of legitimate concern also to municipal administration and indeed to administration in the private sector. If we are to reform and improve the basic system, we need attention to the laws. But attention to the laws alone will not be enough. There must also be attention to the basic needs for reform of our method of delivering the governmental product at all tiers of government and with close attention to efficiency and cost-effectiveness. Unless we can reform the system, in an institutional way, we will turn ourselves over to unsystematic improvisation of the 'do-it-yourself' school, the 'short-cutters', the pure 'opportunists', the 'pragmatic experimenters', where justice depends too much on the clerk you happen to draw in your dealings with administration — and too little on the systematic dedication of the bureaucracy to efficiency and justice as the norm:

> If we cannot abolish, reduce or limit government appreciably because of the demands we place on it, we can at least improve its performance. In this way no-one ought to be excluded and no idea ignored. Bureaucratic revitalisation by itself is insufficient; bureaucratic habits die hard. Simple remedies will not do. Contemporary administrative problems require new approaches, new organisational designs, new laws, new commitments, new relationships, new attitudes, new techniques, new innovations. We are in no position to discard so tried and tested a strategy as the reform model.[17]

As one committed daily to the reform model, and as a participant (in the Federal sphere) in the ongoing reform of administrative laws, I commend the reform ideal to your Institute. Attention to it will be needed as municipal administrators confront the inevitable the stereotypes I have mentioned and help their administrations adapt to the challenges of a time of rapid social and technological change. If Raymond West were with us today, I am sure he would applaud such an invocation as one worthy of this Institute.

FOOTNOTES

1. R.S. Parker, 'The Government of New South Wales', St. Lucia, University of Queensland Press, 1978, 410-11.

2. ibid, 376, 381-2.

3. R. Atkins, Albany to Zeehan : A New Look at Local Government, Sydney, The Law Book Company, 1979.

4. J.M. Power, 'The Discipline of Public Administration and the Study of Local Government' in (1980) 39 Aust.J.Pub.Admin. 352.

5. ibid, 353.

6. id, 356.

7. The terms of reference are set out in Victoria, Statute Law Revision Committee, Report on Pecuniary Interests of Municipal Councillors, 1981, 1.

8. Downward v. Babbington [1975] VR 872, 882.

9. Report on Appeals from Administrative Decisions and an Office of Ombudsman, D No. 6, 1941/68, Vic. Government Printer, Melbourne, 1968.

10. Law Reform Commission of Canada, 7th Annual Report, 1977-8, 14. See also the comments of Lord Chief Justice Lane, 'Change and Chance in England', (1981) 55 Australian Law Journal, 383, 384.

11. Lord Lane, n.10 above.

12. The expression was first used in Re Becker and Minister for Immigration and Ethnic Affairs (1977) 15 ALR 696, 699-700; 1 ALD 158, 161. In Drake v. Minister for Immigration and Ethnic Affairs (1979) 24 ALR 577, 2 ALD 60, 70, the Federal Court adapted the expression slightly to the 'correct or preferable' decision. See ibid, 589, 68.

13. New South Wales Law Reform Commission, Appeals in Administration, (NSWLRC 16), Sydney, 1973.

14. N. Wran QC, MP, Australian Labor Party Policy Speech, 1978.

15. G.E. Caiden, 'Administrative Reform', (1980) 39 Aust.J.Pub.Admin. 437, 442.

16. ibid, 452.

17. id, 453.