

# LawAsia Down Under 2005

The 14<sup>th</sup> Biennial LawAsia conference took place on the Gold Coast from 20 to 24 March, in conjunction with the 34<sup>th</sup> Australian Legal Convention, the 44<sup>th</sup> Queensland Law Society Symposium and the 11<sup>th</sup> Conference of the Chief Justices of Asia Pacific. This “lawfest” attracted over 750 delegates to sunny southern Queensland.

Law Society NT Council members Merran Short, Allison Robertson, Jo Tomlinson and Lisa O’Donoghue, along with LSNT CEO Barbara Bradshaw, attended the conference and associated meetings of the Law Council of Australia.

The conference attracted a significant number of high-profile speakers from the judiciary and government, as well as from the legal professions of Australia and the Asia Pacific region.

The formal opening ceremony of the conference included the pipe band of the Queensland Police Service, who played the national anthem, and a traditional welcome of dance and fire-lighting from local Indigenous performers.

The highlight of the conference for me was probably the speech made by former Malaysian Deputy Prime Minister, Anwar Ibrahim, who was eloquently introduced by Justice Michael Kirby.

Anwar Ibrahim’s acknowledgement of the shortcomings of the political regime of which he had been a part was frank. His account of his experiences of the Malaysian justice system, where political motivation and interference in the workings of the

judiciary resulted in his lengthy imprisonment, was a reminder that many of the freedoms and advantages we have under the law in Australia simply do not exist in other parts of the world. Cornerstones of our legal system, such as an independent judiciary and the rule of law, are things we probably take for granted every day, but Anwar’s experience underlines the need to be vigilant about maintaining these fundamental pillars. The audience clearly found the speech and following open discussion session both moving and inspiring, affording Anwar Ibrahim a standing ovation.

Some of the other interesting sessions I attended during the conference included:-

- \* the opening plenary session with speakers Stephen Kenny<sup>1</sup>, former legal representative of David Hicks, and Sean Dorney, ABC Pacific correspondent discussing the role of a free press and the rule of law;
- \* a review of the role of expert witnesses by Justice Peter McClellan (NSW Land and Environment Court) and Dr David Morgan (orthopaedic surgeon)<sup>2</sup>,



*Anwar Ibrahim addressing the LawAsia Down Under 2005 conference.*

including discussion of the recently introduced “single court appointed expert” protocol in the NSW Land and Environment Court;

- \* the Wednesday plenary session with speakers Dennis Richardson, ASIO Director General and barrister Dr Angela Ward, discussing the raft of national security legislation, introduced by the Australian Government in the wake of the September 11 terrorist attacks, and concomitant considerations of human rights;
- \* a review of the current state and possible future developments in intellectual property law, with particular consideration of the impact of the internet and other advances in technology;
- \* a discussion of the outcome of changes to the law of tort undertaken in Australia over the last few years, with Queensland Chief Justice Paul de Jersey joining an increasing number of commentators suggesting that the changes were unnecessary and went too far<sup>3</sup>;
- \* an overview of Continuing Professional Development schemes in place (or about to be introduced) in Hong Kong, Victoria and Queensland, which was of particular interest in the context of the LSNT’s current planning for



*LSNT President Merran Short, LSNT Councillor Jo Tomlinson and LSNT Vice President Allison Robertson at the LawAsia Down Under 2005 conference.*

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the introduction of such a scheme in the NT.

Of course, no conference is complete without social events, plenty of food, and freebies from exhibitors.

The conference venue, the recently opened Gold Coast Convention and Exhibition Centre was certainly an excellent venue, and the conference organizers did a sterling job over the four days of the conference, keeping us all fed and watered regularly.

I managed to come away with some golf balls, a bottle of wine, several CD cases, assorted tins of lollies, sticky-notes and pens. The social events included an opening cocktail party and BBQ, a dinner with the

sharks and other aquatic life at Sea World, a golf tournament, a formal dinner (with a rather strange laser-light dance display) and closing lunch ceremony including Chinese dragons, heralding the next biennial conference in Hong Kong in September 2007.

LawAsia Downunder 2005 was certainly an unique legal gathering, and the LawAsia organization is an important one in our region. Membership of LawAsia is a modest \$110 per annum for Australian legal practitioners, and provides a range of benefits, including access to seminars and conferences, regular update newsletters and an annual journal. See the website, [www.lawasia.asn.au](http://www.lawasia.asn.au) for further

information.<sup>①</sup>

### Allison Robertson

Vice President of the Law Society Northern Territory

### Editor's notes:

<sup>1</sup> Excerpts from Stephen Kenny's address - "The role of the press in the maintenance of the rule of law" - have been published in this edition of *Balance*, pages 10-13.

<sup>2</sup> Dr David Morgan's presentation - "Expert witnesses - the more the merrier?"

<sup>3</sup> Excerpts from this speech will be included in the next edition of *Balance*.

## The role of the press in the maintenance of the rule of law cont...

evidence required by Military Commissions I must assume a true lack of evidence.

The other idea floated at that time was that the US intended to build detention centres for Guantanamo detainees in other countries such as Afghanistan, Saudi Arabia and Yemen. They would then allow those countries to operate the prisons, but the US State Department Official claimed that they would ask them to "abide by recognised human rights standards" and that the United States State Department would "monitor compliance".

### Conclusions

A free press is of course vitally important in maintaining the rule of law. Not only does the press need to be free, it needs to be independent and in my opinion not beholden to any advertiser or any political group.

In Australia, the ABC, like the BBC, has [a] tremendous reputation for truth and honest[y] but I do not believe that that is enough.

A free press alone is not capable of defending the rule of law.

To me, the most important element in maintain[ing] the rule of law is an

impartial and independent judiciary backed by an active and alert community of lawyers.

Reading reports in the press of US decisions in political matters, and certainly in matters relating to Guantanamo Bay, almost invariably include a reference to the particular President that had appointed the judges.

In the case of *Rasul v Bush*, a case in which David Hicks was an applicant, I was advised by the US lawyers that given that the majority of judges on the Supreme Court had been appointed by Republican Presidents, it was unlikely that they would find in our favour. The US Administration was apparently so surprised by the Supreme Court decision that Guantanamo Bay was within the jurisdiction of the US Courts, that they did not even prepare a press release to cover this eventuality.

Occasionally in Australia we may see what some classify as a political judicial appointment, a left-wing Labour supporter or a capital C Conservative, but by and large, I believe their independence on the bench renders pointless any

identification of their appointor.

I am also proud of the role Australian lawyers, and in particular the Law Council of Australia, have played in maintaining the rule of law. It is not just in the Hicks matter but also in the tremendous work many lawyers took on [on] behalf of refugees and in the thousands of hours of pro bono work that is done by lawyers all around Australia each week.

As for the media, there are times when they capture the essence of a matter such as the editorial in the Sydney Morning Herald on 13 January 2005.

In relation to Mr Hicks and Habib it stated:

"At almost every opportunity, the Howard Government has been the accommodating US ally, happy to sacrifice the rights of Mr Habib and Mr Hicks. The bitter irony is that Australia's obsequiousness has been in the name of a war against terrorism aimed at defending the very rights and freedoms which the Guantanamo Bay detention camp so aggressively and unapologetically seeks to compromise".