



South Pacific
LAWYERS ASSOCIATION

newSPLAsh

Issue 13, Dec 2016

Sharing Knowledge

FEATURE ARTICLE
**Skills Development
in Timor-Leste**

A word from the Chair of SPLA

I am honoured to provide this foreword for the December issue of newSPLAsh, in my capacity as the new Chair of the South Pacific Lawyers Association (SPLA).

First and foremost, I wish to acknowledge and pay tribute to the very first Chair of the SPLA – the late, Ross Ray QC. As the inaugural chair, Ross was seen by many of us as a father figure, a wise adviser, an open minded leader, and a guiding mentor for the newly set up SPLA. His untimely departure in May this year left a void that cannot be filled. However, Ross left behind a legacy of cooperation and support for the betterment of the Law Societies of the Pacific so we are able to uphold the rule of law in our respective countries. As the new Chair, I undertake to continue that legacy. Rest in peace, Ross.

Secondly, I wish to encourage all SPLA members to re-ignite our passion for the law and our efforts in developing the Law Societies of the Pacific. I am aware that this year has not gone as planned as we continue to face many challenges: securing funding for our conference; trying to hold regular meetings remotely in spite of distance; time differences and technological difficulties; and explaining the relevance and benefits of SPLA to our own respective societies. These, and many other, challenges will continue to pose hurdles. However, I believe we can overcome those challenges together if we put more effort into contributing to the discussions that will shape our work agenda, and if we set our work program with a purpose so that SPLA becomes the Voice of the Pacific Law Societies in the region and on the international stage. Individually our voices might be drowned out, but together as SPLA, we will be heard.

Thirdly, I invite you all to join me in taking a more proactive and positive approach in 2017 as we look to host our third biennial SPLA Conference in Samoa later in the year.

Last, but not least, I wish to express our appreciation to the ongoing administration work and support provided by the Secretariat and Administrator, Peter Thomson, and his team in Canberra. Our gratitude also goes to the Law Council of Australia for its continuous support in financial and resource assistance to the SPLA Secretariat. Without this support, SPLA would simply not be able to function. I also wish to thank each and every member of the SPLA Council who have made time to contribute to the work of SPLA in 2016.

Here's wishing each and every one of you a very Merry Christmas. I look forward to a rejuvenated, revitalized and ready to work SPLA Council, in 2017.

Best wishes,

Savalenoa Mareva Betham-Annandale

(President, Samoa Law Society - 2016)

CHAIR OF THE SOUTH PACIFIC LAWYERS ASSOCIATION



Ross and I at the Samoa Law Society Continuing Legal Education Conference in Apia, Samoa, 5th December 2015

Features

- ◐ In brief
- ◐ In depth
 - Business & Human Rights
 - Vale Ross Ray QC
 - Judges training Judges, Prosecutors training Prosecutors, in Timor-Leste
 - Continuing Professional Development in Papua New Guinea
 - IPBA Annual Meeting & Conference 2017

A word from the SPLA SECRETARIAT

It's hard to underestimate the challenge of building the institutional framework to support the rule of law in a newly independent country. That's why it is so important for regional bodies like SPLA to facilitate the process of knowledge sharing, and to help countries like Timor-Leste build capacity within their judicial systems. This edition of the SPLA newsletters features an update on a training program in Timor-Leste, which is allowing Judges and Prosecutors to develop their knowledge and skills by working with experts from the region.

In brief ...

Northern Territory Bar Association Dili Conference 2016

The second biennial Northern Territory Bar Association Conference was held in Dili from 14 to 16 July 2016.

The keynote speaker at the conference was Justice Stephen Gageler of the High Court of Australia.

The program covered a wide range of topics of relevance to Northern Territory and Timorese lawyers – including judicial independence and accountability, the Timor Gap dispute and other regional maritime issues, violence against women, youth justice, and the development of independent legal professions in South East Asia.

The conference was supported by the Charles Darwin University School of Law, the International Bar Association and the Law Council of Australia.

Fiji Law Society Annual Conference

The Fiji Law Society successfully held its Annual Convention at the Fiji Pearl Resort on 9 - 10 September 2016 on the theme "Good to Great – pursuing Excellence in Legal Practice". The Chief Justice Mr Anthony Gates was chief guest and highlighted the increase use and reliance on technology in the Courts and the necessary safeguards.

With a range of topics from "Ethics in the legal profession: walking the fine line", "Rule



Left to Right, Mr Anurag Bana from IBA, Mr Justice Anthony Gates, Chief Justice of Fiji and Ms Laurel Vaurasi, President of the Fiji Law Society.



Fiji Law Society Annual Conference goes enjoy a break

of Law" to "Work-Life Balance" from International speakers and prominent Fiji speakers, the 200 attendees were challenged to raise the bar to new standards. The Fiji Law Society gave credit to its partnership with SPLA and IBA in making their convention a huge success.

The Convention was attended by legal practitioners whose years of practice ranged from over 25 years to young lawyers just a few months into practice.

In depth ...

Business and Human Rights

Business and human rights is a legal issue gaining international momentum. While governments have the primary duty to *protect and promote* human rights, businesses have a distinct responsibility to *respect* human rights.

In June 2011, the United Nations Human Rights Council unanimously endorsed the United Nations Guiding Principles on Business and Human Rights (the Guiding Principles) to provide a global standard for preventing and addressing the risk of adverse human impacts linked to business activity. It provides an authoritative statement on the relationship between business and human rights, recognising the importance of access to effective judicial and non-judicial remedies.

The Guiding Principles comprise three pillars:

- **Pillar 1** - the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
- **Pillar 2** - the corporate responsibility to respect human rights, which means to avoid infringing on the human rights of others and addressing adverse human rights impacts with which they are involved; and
- **Pillar 3** - the need for greater access by victims to effective remedy, judicial and non-judicial.

The Guiding Principles make it clear that they should not be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.

The South Pacific Lawyers' Association recognises the critical need for the legal profession to respect human rights through its own activities and interactions with others, including clients. The Guiding Principles and

the topic of business and human rights more generally are increasingly reflected in public policy, law and regulation, in commercial agreements, in international standards that influence business behaviour, in the advocacy of civil society organisations, and in the policies and processes of companies worldwide. Lawyers need to understand how human rights are relevant to their work and how to use the Guiding Principles to shape their response. Additionally, as businesses themselves, law firms also have a responsibility to respect human rights in all their dealings, including in the contracts they enter into for the supply of goods and services.

From a Pacific perspective, business and human rights are increasingly playing a role from an environmental and climate change perspective. As companies assess their corporate responsibility to respect human rights, they need to look at how they contribute to adverse human rights impacts through their own activities, consistent with Guiding Principle 13. One such example in the Pacific context is fishing. Coastal fishing is of fundamental importance in the Pacific Islands. Much of the region's nutrition, welfare, culture, employment, and recreation are based on the living resources in the zone between the shoreline and the outer reefs. Business practices that deplete fish stocks to unsustainable levels can have a negative impact upon the rights of people living nearby, particularly from an economic perspective.

Consistent with Guiding Principle 17, businesses should carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. In the context of coastal fishing in the Pacific, this could include broader enterprise risk management systems highlighting the risks to rights-holders in and around fishing zones.

Vale Ross Ray QC

The SPLA was saddened by the sudden and tragic death of the organisation's inaugural Chair, Ross Ray QC.

Ross was a tremendous advocate for the rule of law across the Asia Pacific, and played a critical role in the establishment of the SPLA. He was also a leading national practitioner in the field of work, health and safety, and practised in common and criminal law, appearing in many significant criminal trials.

President of the Law Council of Australia, Stuart Clark AM, said Ross wasn't just a brilliant legal mind, he was also close friend and confidante of many in the legal community across the Asia Pacific.

"His sharp wit, coupled with a down-to-earth character and great sense of humour, was cherished by all who met him," Stuart said.

"To say that Ross will be missed by those who knew him is an understatement. He was a truly extraordinary individual who will leave a hole not easily filled in our profession."

In depth ...

Judges training Judges, Prosecutors training Prosecutors, in Timor-Leste.

The task of building a legal system in a newly independent developing country cannot be understated. Timor-Leste is learning from best practice in judicial processes from other countries, and applying those lessons to its own evolving legal system.

In August 2016, the Law Council of Australia joined with The Asia Foundation and the National Judicial College of Australia (NJCA) to deliver a professional training program for judges and prosecutors in Dili, Timor-Leste. The cornerstone of the program was that the training would be delivered by experts with professional experience in judging and prosecuting – that is, judges training judges, and prosecutors training prosecutors.

The funding for the program was provided by The Asia Foundation as part of its implementation of the Ending Violence Against Women (EVAW) Program in Timor-Leste, under a Grant Agreement with the Australian Department of Foreign Affairs and Trade (DFAT). The goal of the EVAW Program is to reduce the proportion of women who experience violence, and



Judge Maria Natércia Gusmão Pereira from the Timor-Leste Court of Appeal at the official opening.

to better meet the needs of women and children affected by violence. The training program therefore had a strong focus on family and domestic violence, and the management and handling of such cases by judges and prosecutors.

The regional experts all volunteered their time to prepare and deliver the program based on the Learning Needs Analysis



Conference speakers at the Konferensia Judisiál Timor-Leste, August 2016

conducted by the Honourable Alan Wilson QC, formerly from the Supreme Court of Queensland, and Peter Thomson from the Law Council of Australia's International Division.

The judicial training sessions were delivered by NJCA representatives including, Judge Fleur Kingham from the District Court of Queensland (now President of the Land Court of Queensland), The Honourable Trevor Riley QC, former Chief Justice of the Supreme Court of the Northern Territory, and Mr Alan Wilson QC. Judge Phillip Rapoza, a retired President of the Court of Appeals in Massachusetts, who has strong ties to Timor-Leste, joined the judges in the training program.

The prosecutor training sessions were delivered by senior prosecutor, Ms Margaret Jones, the Deputy Director of the Office of the ACT Director of Public Prosecutions, and Ms Rebecca Griffiths, a policy lawyer with the Law Council of Australia, and former prosecutor.

The Program was held over five days and was divided into two segments.

Segment One involved sessions for Timorese Judges presented predominantly by Australian Judges. Interactive workshops were held to advance legal skills in the areas of judgment writing and judicial independence, along with sessions on health and wellbeing.



Timor-Leste prosecutors Dr Rogerio Viegas Vicente and Dr Ricard Leite Godinho during the training.

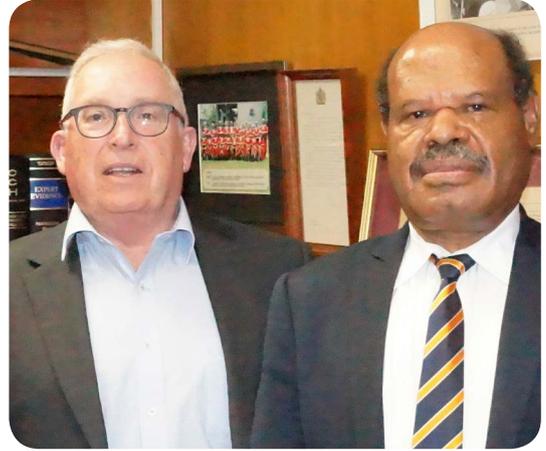
Segment Two involved sessions for Timorese prosecutors presented predominantly by Australian prosecutors. The interactive workshops examined key issues such as prosecuting domestic violence and sexual offences and duties of prosecutors.

Overall, the conference was a resounding success. It enabled participants to share their experiences with Australian colleagues, as well as each other, and engage in discussion of the shared legal challenges faced by Timor-Leste judges and prosecutors. Feedback from participants was overwhelmingly positive.

In depth ...

Continuing Professional Development in Papua New Guinea

From 17 to 21 October 2016, Mr Larry King, former CEO of the ACT Law Society, Mr Peter Thomson, Law Council of Australia, and Mr Peter Tritt, the College of Law, visited Port Moresby as part of a Centre for Asia-Pacific Pro Bono (CAPPB) project. The project involves assisting the Papua New Guinea Law Society by examining how it can better provide continuing professional development to its lawyers. The delegation met with a number of key stakeholders in PNG, including the PNG Law Society and Sir Salamo Injia, Chief Justice of the Supreme Court of Papua New Guinea. The CAPPB is a joint program of the Law Council and Commonwealth Attorney-General's Department.



Mr Larry King, former CEO of the ACT Law Society and the Chief Justice of the Supreme Court of Papua New Guinea, Sir Salamo Injia

Inter Pacific Bar Association Annual Meeting and Conference 2017

The Inter Pacific Bar Association (IPBA) Annual Meeting and Conference will be held from the 6 to 9 of April 2017 in Auckland.

The program for this year's conference will be based around the theme of "Connectivity and Convergence". The world of legal activity is becoming ever more connected as a result of the internet, modern forms of transport, and by virtue of numerous free trade deals, economic partnerships, and similar arrangements. As a consequence there is a great need for "convergence" and harmonisation of laws and procedures across borders. So it is vital that lawyers in the Asia Pacific understand how these forces will affect them.

IPBA 2017 will also be an invaluable opportunity for business and commercial lawyers to build relationships with colleagues from across the Asia Pacific, and to sharpen their knowledge on important issues. There's a busy schedule of social events outside the formal proceedings, including a Women Business Lawyers' Reception and the annual

Gala Dinner. You don't even need to be a member of the IPBA to attend.

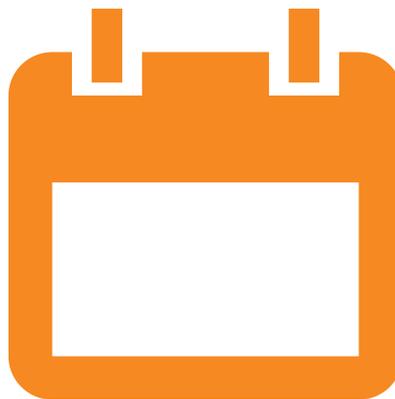
The jam-packed schedule includes a wide range of high-quality paper and presentations on issues including:

- International Trade
- Air and Space Law
- Taxation
- Dispute Resolution and Arbitration
- Cross-Border Investment
- Intellectual Property
- Technology, Media and Telecommunications
- Environmental Law
- International Construction Projects
- Employment & Immigration Law
- Banking, Finance and Securities
- Energy & Natural Resources

April is also a wonderful time to visit New Zealand, so make it a trip and enjoy some of the great destinations in and around Auckland.

For more information go the Conference website, www.ipba2017.com

Coming up...



Joint Australian National University and National Judicial College of Australia Conference

4 to 5 March 2017
Canberra, Australia

The theme of the conference is 'Brave New Worlds: Challenges for Evidence in the 21st Century' and will be held from 4 to 5 March 2017 in Canberra. The conference will focus on emerging technologies and the issues arising from their application in the modern legal and judicial context, particularly in the areas of evidence law, cybercrime and decision-making.

law.anu.edu.au/event/conference/brave-new-worlds-challenges-evidence-21st-century

20th Commonwealth Lawyers' Conference,

20 to 24 March 2017
Melbourne, Australia

The 20th Commonwealth Law Conference, themed 'Thriving in a global world: building on the rule of law', will be held in Melbourne from 20 to 24 March 2017.

commonwealthlawconference.org

30th LAWASIA Conference

18 to 21 September 2017
Tokyo, Japan

LAWASIA is an international organisation of lawyers' associations, individual lawyers, judges, legal academics, and others who focus on the interests and concerns of the legal profession in the Asia Pacific region. LAWASIA facilitates its members' participation in the most dynamic economic region in the world.

lawasia.asn.au/toyko_2016_event.html

IBA Annual Conference

8 to 13 October 2017
Sydney, Australia

The IBA Annual Conference is to be held in Sydney, Australia from 8 to 13 October 2017. This is a major international Conference.

ibanet.org/Conferences/Sydney2017.aspx



Law Council
OF AUSTRALIA



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

The South Pacific Lawyers' Association was established in 2007 by the Law Council of Australia in partnership with the New Zealand Law Society with seed funding from the International Bar Association. The South Pacific Lawyers' Association exists to assist developing law societies and bar associations in the South Pacific and to promote the interests of the legal profession in the South Pacific. Please visit www.southpacificlawyers.org for more information. *newSPLash* is produced on behalf of the South Pacific Lawyers' Association by the Law Council of Australia. For all enquiries, or to submit articles to *newSPLash*, please contact Peter Thomson, phone +61 6246 3752 or email info@southpacificlawyers.org.