



#NTBA2016Dili

NORTHERN TERRITORY BAR ASSOCIATION 2016 CONFERENCE

***In association with the School of Law, Charles Darwin University
and proudly supported by the International Bar Association***

CONFERENCE PROGRAMME (version: 6 July 2016)

Timor Plaza, Dili, Timor Leste

Thursday 14 July 2016 to Saturday 16 July 2016

Registration – Wednesday 13 July 2016, 4pm-5pm, 5th Floor Timor Plaza

to be followed by...

Welcoming reception – Hosted by His Excellency Mr Peter Doyle, Australian Ambassador to Timor Leste

Day 1 - Thursday 14 July 2016

Main Programme (Suai Room: Level 4)	
9.00	Welcome: Ben O'Loughlin, President, NTBA and Jeswynn Yogaratnam, Lecturer, CDU.
9.15	Opening Address: His Excellency Minister Ivo Jorge Valente, Minister of Justice, Timor Leste (TBC)
9.30	Keynote Address: Hon Justice Stephen Gageler of the High Court of Australia <i>Arbitration, international commerce and regional legal convergence</i>
10.30	Morning Tea
11.00	<p>Session - Judicial Independence and Judicial Accountability (2 CPD points: Substantive law) <i>Paper: Judicial Independence and Judicial Accountability at the Coalface of the Australian Judiciary, Dr John Lowndes, Chief Judge, Local Court of the Northern Territory and President of the Commonwealth Magistrates' and Judges' Association.</i> The purpose of this paper is to examine the complementary nature of the relationship between judicial independence and judicial accountability in magistrates' courts, which deliver justice at the coalface of the Australian judiciary and which are the first and often only point of contact that the public has with the court system. The primary focus of the paper is on the extent to which the complementary nature of the two concepts is acknowledged, and given expression to, in the Latimer House Principles and Guidelines and the International Framework for Court Excellence. The paper concludes that these two international instruments together provide a framework for achieving a proper balance between judicial independence and judicial accountability in magistrates' courts.</p> <p><i>Presentation: Dr Joao Boavida, Executive Director, Centre of Studies for Peace and Development, Timor Leste</i> My purpose is to comment on "Judicial Independence v Judicial Accountability" from a peacebuilding perspective. The importance of the two concepts is well recognised as vitally important in the consolidation of democracy in every context. In Timor-Leste, discussing judicial independence and accountability in isolation, risks insulating the judges to the confines of having to protect themselves against structural interference beyond available resources and the wider society to the most complex undertaking of having to monitor judges' misconducts beyond existing capacities. One judiciary goal is to help establish a 'government of laws' so that not only everyone must be treated equally before the law, but the law itself must be equal for everyone. This peacebuilding approach to promoting judicial independence and accountability must come at the cost of judicial reform, accountability for past abuses and fighting corruption.</p> <p><i>Presentation: Mr Adérito de Jesus Soares, formerly Timor-Leste's Anti-Corruption Commissioner</i> <i>Challenges and Opportunities for Judicial Accountability and Independence in Post-Conflict Societies</i> <i>Commentary: His Excellency, Dr Antonino Gonçalves, Judge of the Dili District Court; President, Timor Leste's Judges Association</i> <i>Commentary: Dr Phillip Tahmindjis AM, Director, International Bar Association's Human Rights Institute</i></p>

12.45	Lunch
1.45	<p>Session: Timor Gap and other regional maritime issues (2 CPD points: Substantive law) <i>Paper: "Nosy Neighbours: Espionage in International Law", Professor Ben Saul, Challis Chair of International Law at the University of Sydney and the incoming Gough Whitlam and Malcolm Fraser Chair of Australian Studies at Harvard University</i> Is spying illegal under international law? There has been a long and unsettled debate about the legality of espionage under international law. This paper explores the legal issues in the different contexts in which espionage arises. It considers areas such as diplomatic status, non-intervention, sovereignty over airspace and maritime areas, electronic and cyber surveillance, the human right to privacy, national security and national criminal jurisdiction, industrial and commercial espionage, and spying in armed conflict.</p> <p><i>Presentation: "Two years down the road: an update on the Timor-Leste mineral resources sector". Ms Tereza Garcia André, Attorney, Miranda & Associates, Timor Leste office</i> This presentation will examine recent developments in the Timor Leste mineral resources the sector (including the transfer of the mining competences from the Ministry of Petroleum and Natural Resources to the Autoridade Nacional de Petróleo and award of two Production Sharing Contracts to TIMORGAP) and the main issues still pending (including taxation and maritime boundaries).</p>
3.00	Afternoon tea
3.30	<p>Session: Regional opportunities for commercial arbitration (1 CPD point: Substantive law) <i>Mr. Frederico Ferreira, senior associate, Cuatrecasas Gonçalves Pereira, Lisbon</i> <i>Ms Caroline Kirton QC, Barrister and Arbitrator, Owen Dixon Chambers, Melbourne</i> <i>Mr Mark Mangan, Partner, International Arbitration Group of Dechert LLP, Singapore</i> <i>Mr José Teixeira, Partner, Da Silva Teixeira, Dili, former Minister for Natural Resources, Minerals and Energy Policy, Timor Leste</i></p>
5.00	Close
7.00	Dinner at recommended local restaurants (own cost)

Day 2 - Friday 15 July 2016

Main Programme (Suai Room: Level 4)	
9.00	<p>Session: <i>Domestic and sexual violence against women</i> (2 CPD points: Substantive law) Convenor/Chair: The Hon. Justice Jenny Blokland, Supreme Court of the Northern Territory Contributors: Paper: Ms Meredith Day, <i>Deputy Chief Executive Officer Department of the Attorney-General and Justice Northern Territory Government</i> Australia has both an urgent need and, over the last several years, a clear policy commitment by governments to reduce domestic and family violence. The Northern Territory's Safety is Everyone's Right: 2014-2017 strategy aligns with the Second Action Plan under the National Plan to Reduce Violence against Women and their Children 2010-2022. The Northern Territory strategy is built upon previous work including the Alice Springs Integrated Response to Domestic and Family Violence project (the Alice Springs Integrated Response) which commenced in 2012. The Alice Springs Integrated Response is a 'placed based' project which seeks to integrate and focus the efforts of government and non-government agencies including victims' services, police and legal assistance providers and to engage the community in a concerted practical effort to reduce domestic and family violence. The project also established a men's behaviour change program which has been operating since late 2014. This paper describes the elements of the Alice Springs Integrated Response, considers its outcomes and contribution to the development of a wider Northern Territory strategy to reduce domestic and family violence, and looks to the next steps as work continues to develop the Third National Action Plan and a second NT wide strategy to commence in 2017.</p> <p>Paper: Mr Jeswynn Yogaratham, <i>Lecturer, Charles Darwin University</i> <i>NGOS: The 'Check And Balance' Of Laws Protecting Women</i> This paper looks into the role of non-government actors in Timor-Leste as the 'check and balance' in promoting women's rights through existing legal frameworks. Since the promulgation of the domestic violence law in Timor-Leste in 2010, one particular non-government organisation called the Judicial System Monitoring Programme (JSMP) has been actively involved in monitoring the implementation of the new law and more importantly monitoring the stakeholders involved, for instance, the judiciary, lawyers, police, government sector, health care professionals and the community leaders. This has led to increase reporting of violence against women and also progressive reviewing on the effectiveness of the new legislation which aims to prevent, protect and provide more option for shelter for women affected by domestic violence. This paper aims to unpack some aspects of the domestic violence law, the anomalies within the law and suggestions for reform as identified by JSMP and others. The actions and findings of JSMP will highlight their attempt to identify limits to the existing legal framework while recommending ways to restore the legal process so access to justice for women in domestic violence is more effectively achieved.</p> <p>Ms Xian Warner, <i>Asia Foundation, Timor Leste</i> – <i>"Baseline Study on Women's Experience of Violence and Men's Perpetration of Violence in Timor-Leste"</i>. Ms Anna Yang, <i>Asia Foundation, Timor Leste</i> – <i>"Legal framework on gender-based violence in Timor-Leste - areas for law reform"</i> Ms Ana Paula Marçal, <i>Head of Legal Research Unit, Judicial Systems Monitoring Programme, Timor Leste</i> Judge Anthony Young, <i>Federal Circuit Court, Darwin</i></p>

10.45	Morning Tea
11.15	Session: <i>Domestic and sexual violence against women (cont)</i>
12.00	<p>Paper: <i>Human rights, addiction and the most vulnerable people: The Territory Alcohol Mandatory Treatment reforms</i>; Sally Gearin, Deputy President, Alcohol Mandatory Treatment Tribunal (1 CPD point: Substantive law)</p> <p>The Alcohol Mandatory Treatment Tribunal is a world first as a pathway to assist chronic alcoholics. Much maligned by the chattering classes this, therapeutic Tribunal deserves some better understanding of its work and its powers. This paper attempts to do that. The people coming before the Tribunal are the most vulnerable in our community. Mostly aboriginal, chronic alcoholics, suffering severe, untreated medical conditions, often cognitive impairment, these are the people who we look away from as we step over them lying in the streets of the Northern Territory. Many are homeless women who bash themselves with rocks outside our hospitals so they can get a safe bed for the night. Moving between protective custody, prison and short term emergency ward treatment, they are unwelcome in our homeless shelters because of their disruptive behaviours. They are nobody's responsibility. The Tribunal provides a pathway for treatment, training, housing and jobs for these vulnerable people.</p> <p><i>Presentation: Update on the Montara oil spill class action</i>, Mr Greg Phelps and Ms Freya Mulvey, Ward Keller, Darwin, solicitors for the claimants in the class action (1 CPD point: Substantive law)</p>
12.45	Lunch
1.45	<p>Session: Youth Justice (1 CPD point: Substantive law)</p> <p>Ms Grace Agcaoili, <i>Regional Child Protection Specialist and technical expert on Child Rights and Justice for Children, UNICEF East Asia and the Pacific Regional Office</i></p> <p>Ms Colleen Gwynne, <i>Children's Commissioner for the Northern Territory</i></p> <p>Ms Sue Oliver, <i>Managing Judge, Northern Territory Youth Justice Court and member of the South Pacific Council of Youth and Children's Courts</i></p>
3.00	Afternoon Tea
3.30	<p>Session: Justice for Children (1 CPD point: Substantive law)</p> <p>Ms Gabby Brown, <i>Managing Lawyer, Child Protection & Community Services Team, Solicitor for the Northern Territory</i></p> <p>Ms Philippa Martin, <i>Managing Solicitor, Civil Section, North Australian Aboriginal Justice Agency</i></p> <p>Ms Gizela Moniz Da Silva, <i>Child Protection Section, UNICEF Timor Leste office</i></p>
4.30	<p>Presentation: Turning Good Policy into Good Law: Tips for a Smoother Drafting Project (1 CPD point: Substantive law)</p> <p>Ms Sandra Markman, <i>Northern Territory Parliamentary Counsel</i></p>
5.00	Close
7.00	Dinner at DiZa restaurant (own cost)

Day 3 - Saturday 16 July 2016

Programme (Suai Room: Level 4)	
9.00	<p>Session: The development of independent legal professions in South East Asia (1 CPD point: Substantive law)</p> <p>The purpose of this panel is to provide a local, grassroots perspective of legal and judicial reform initiatives undertaken in Southeast Asian countries at a stage of development similar to Timor Leste. The session aims to discuss, in a comparative manner, challenges to the development of an independent judiciary and an independent legal profession in those countries and identify some lessons learned or best practices in dealing with those challenges that may be of relevance to Timor Leste.</p> <p>Facilitator: The Hon. Justice Colin Forrest, Family Court of Australia</p> <p>Mr Long Panhavuth, senior lawyer, Cambodia</p> <p>Mr Khin Maung Win, IBA National Legal Consultant for Myanmar and Director of 'Justice for All' Law office</p> <p>Developing ILAM as A Step Towards Independent Legal Profession in the Democratic Transitional Period of Myanmar</p> <p>Legal profession has being existing in Myanmar since hundred years ago. However, Burma/Myanmar lacks independence of legal profession throughout its history although it can be said that there was a strong legal profession. Legal profession is too broad for me to cover it all in this event. So I would like to emphasize more on specific issue– the profession of the lawyers to be independent, i.e. the independence of legal profession of the lawyers in Myanmar. Generally, the legal profession of the lawyers came into legal existence in 1880s after enacting the two laws, the Legal Practitioners Act in 1880 and the Bar Council Act in 1929 by the colonial government. The laws created and shaped legal status of legal professionals and its professional association. However, there lacks the lawyers' professional independence, i.e., the lawyers could not independently practice their profession through the history of Myanmar. There are many reasons for that. Myanmar generally can be understood as pre-colonial, colonial and postcolonial period. During these periods, lawyers are being oppressed and suffered from unlawful interferences, intimidation, threat and penalty for their professional works. These are the challenges and threats that the Myanmar lawyers are facing, trying and struggling to deal with for their professional standards. Now they are mobilized and organized for betterment of their professional independence. As a result, the Independent Lawyer Association of Myanmar (ILAM) come into existence, which stands for their lawyers' rights to practice their legal profession independently, and their right to freedom of association to protect and promote their legal professional society in practice of their profession.</p> <p>Mr Paolo Remedios, President, Asosiasaun Advogadu Timor Lorosa'e (Timor Leste Bar Association)</p>

10.30	Morning Tea
11.00	<p>Session: Practical experiences with assistance to legal and judicial reforms in South East Asia (1 CPD point: Substantive law)</p> <p>This session presents and discusses some initiatives and different strategies deployed in support of legal and judicial reforms in Southeast Asia, with a specific emphasis on developing an independent judiciary and an independent legal profession. The session ends with a panel discussion with the audience, especially from Timor Leste, to identify some measures that might be useful for Timor Leste's ongoing reform process.</p> <p>Facilitator: Ms Lyma Nguyen, NT Bar Association</p> <p>Dr Phillip Tahmindjis AM, Director, International Bar Association's Human Rights Institute</p> <p>Mr Christoph Sperfeldt, Deputy Director of the Asian International Justice Initiative</p> <p>Panel Discussion: All speakers (including speakers from the first session) and Mr José Pedro Camoes, <i>Past President, Timor Leste Bar Association</i></p>
12.30	Lunch
2.00	Presentation: The work of the da Comissão para a Reforma Legislativa e do Sector da Justiça (Timor Leste Legislative and Justice Sector Reform Commission), Mr Jorge Graça, President
2.30	Discussion: what can overseas judges and lawyers do to support the development of the rule of law in Timor Leste?
3.30	Close
7.00	Conference Dinner: Sky Garden Terrace, Timor Plaza. Guest speaker: Her Excellency Dra Maria Natércia Gusmão Pereira, <i>Member, Court of Appeal of the Republic of Timor Leste</i>

NORTHERN TERRITORY PRACTITIONERS PROGRAM (afternoons, Thursday 14 July/Friday 15 July)



The Territory Practitioners Program is supported by the generous sponsorship of Maurice Blackburn. It will stream in conjunction with the main conference program. It will be conducted on the afternoons of Thursday and Friday, allowing about 3 hours of topics each day. Each topic will involve a presentation of about 25-35 minutes with 10 minutes for questions. This programme has been devised to ensure that Territory practitioners attending the conference will be able to earn **all 10 CPD points required to meet their 2015/2016 CPD requirements (as applied in the Territory)** including those required in each core competency (**Substantive law competency; Professional ethics and responsibility; Practice management and business skills and Professional skills in legal practice**).

Topic	Abstract	Presenter
Catastrophic Causation & Complex Superannuation Claim: Two Perspectives (1 CPD point: Substantive law)	<i>In complex claims, causation can often be a key element on which a case will turn, and can have knock-on effects to several elements of claim, including TPD benefits. This session will explore two perspectives on the complexities of claims involving Medical Negligence and Superannuation aspects, and draws on Maurice Blackburn’s wealth of resources as Australia’s leading plaintiff firm in these two practice areas.</i>	Phil Nolan and Matthew Littlejohn, Maurice Blackburn

<p>Accidental Contracting – is saying “subject to contract” enough to avoid a contract coming into existence? (1 CPD point: Substantive law)</p>	<p><i>An examination of recent authority including Stellard Pty Ltd & Anor v North Queensland Fuel Pty Ltd [2015] QSC 119 to show when specifying “subject to contract” is not enough to avoid a contract coming into existence</i></p>	<p>Tarryn Brown, Barrister, William Forster Chambers</p>
<p>Recent reforms of the Local Court (1 CPD point: Substantive law)</p>	<p><i>An overview of the recent reforms to civil and criminal justice effected in the Territory by the Local Court Act 2015 and related legislation</i></p>	<p>Dr John Lowndes, Chief Judge of the NT Local Court</p>
<p>The Future of the Bar (1 CPD point: Practice management and business skills or Professional skills in legal practice)</p>	<p><i>An examination of changes in the practice of law, emerging trends and the implications for barrister’s practices and viability of practice areas</i></p>	<p>Duncan McConnel, Barrister William Forster Chambers and guests</p>
<p>Legal Ethics and Social Media (1 CPD: Professional ethics and responsibility)</p>	<p><i>Social Media is commonly used in legal business marketing and social networking. Increasingly social media has also had implications for the conduct of modern litigation. This session will examine a range of ethical issues and challenges faced by lawyers with an increased use of social media, including the risk of mistakes and ethical transgressions against the backdrop of a lawyer’s ethical duties to the court, to their client and to the public.</i></p>	<p>Lyma Nguyen, Barrister, William Forster Chambers</p>

<p>Technology in practice (1 CPD point: Practice management and business skills)</p>	<p><i>How to develop a brief into a paperless trial.</i></p>	<p>Ben O'Loughlin, President NT Bar Association</p>
<p>A strategic approach to mediations and negotiations (1 CPD point: Professional skills in legal practice)</p>	<p><i>A scientific approach to the very human aspects of mediations and negotiations</i></p>	<p>I.H. Fraser, Advocacy Trainer and Mediator</p>