THE EXECUTIVE PARDON OF BARAK SOPE: THE STRUGGLE FOR CONSTITUTIONAL STANDARDS IN THE REPUBLIC OF VANUATU

Patrick Keyzer*

Before his recent appointment to the position of Foreign Minister of the Republic of Vanuatu, Barak Sope was convicted for forgery and received an executive pardon (he was later re-elected). The Vanuatu Court of Appeal held that the pardon only had prospective effect, and so he was not entitled to resume his seat in the Parliament. Further consideration of the Barak Sope case provides an opportunity to reflect on the principles and techniques of statutory and constitutional construction applied in Vanuatu. The author concludes that consistent standards relating to questions of construction in this context are difficult to locate and steps may need to be taken to advance research and scholarship to harmonize the common law applied in the courts with local customs and traditions.

1 INTRODUCTION

The purpose of this article is to describe and analyse the decision of the Vanuatu Court of Appeal regarding the legal effect of a presidential pardon given to Mr Barak Mauutamate Sope, currently the Foreign Minister, but formerly the Prime Minister of the Republic of Vanuatu.1 Last year the Vanuatu Court of Appeal held that even though Mr Sope received a full presidential pardon, this did not restore Mr Sope to his full civil rights.2 I argue that this result is somewhat surprising in light of the support for Mr Sope’s position in the United States jurisprudence of executive pardons. But much more importantly, the alternative conclusion that the executive pardon ought to have operated from the moment of conviction, rather than simply prospectively from the date of grant, is strongly reinforced when the language of the pardon that was granted and the language of the Vanuatu Constitution describing the executive power to pardon, is taken into account. The language of both documents should have tipped the scales in Mr Sope’s favour.

Some further consideration of Sope Mauutamate v Speaker of Parliament3 (‘Barak Sope’) provides an opportunity to reflect on the principles and techniques of statutory and constitutional construction applied in Vanuatu. In Attorney-General v The President of Vanuatu,4 Sir Harry Gibbs5 held that the

---

* Associate Professor of Law, University of Technology, Sydney and sometime Barrister of the Supreme Court of the Republic of Vanuatu. The author was junior counsel for Mr Sope in the Court of Appeal of Vanuatu in the case which is the subject of this article.
1 Sope Mauutamate v Speaker of Parliament (Unreported, Court of Appeal of Vanuatu, Robertson, Von Doussa, Fatiaki, and Saksak JJ, 9 May 2003).
2 Ibid.
3 Ibid.
4 (Unreported, Supreme Court of Vanuatu, Gibbs J, 1 January 1994).
5 Formerly Chief Justice of Australia.
Vanuatu Constitution was sui generis: the product of the work of a local Constitutional Committee and should be construed in accordance with its terms. To what extent was that principle honoured in this case? Is it possible to locate consistent guidance on questions of constitutional construction in Vanuatu that might make adherence to this principle possible? This article seeks to answer those questions.

2 BACKGROUND

In July 2002 Mr Sope was charged and convicted of two counts of forgery relating to documents providing government guarantees of $5M and $18M US payable to a Vanuatu Investment Corporation Limited. The Supreme Court found that the documents had fictitious identifying numbers and that Mr Sope had produced the documents with dishonest intent, reflected in a failure to comply with proper procedures mandated by public finance legislation. Justice Coventry of the Supreme Court sentenced Mr Sope to three years on each count; sentences to be served concurrently. In sentencing, His Lordship noted the presence of the Vanuatu Members of Parliament (Vacation of Seats) Act, which, it was suggested, would disqualify him from continuing to sit in Parliament if he were convicted. Section 3(1) of the Members of Parliament (Vacation of Seats) Act provides:

If a member of Parliament is convicted of an offence and is sentenced by a court to imprisonment for a term of not less than two (2) years, he shall forthwith cease to perform his functions as a member of Parliament and his seat shall become vacant at the expiration of thirty days thereafter.

Mr Sope fell ill while he was in prison and he sought a presidential pardon. After ceremonies consistent with indigenous traditions, the President, Father John Bennett Bani, gave Mr Sope a presidential pardon on 13 November 2002, expressed in the following terms:

PARDON

WHEREAS Article 38 of the Constitution provides inter alia, for the President of the Republic of Vanuatu to Pardon a person convicted of an offence; AND WHEREAS BARAK TAME SOPE was convicted and found guilty of certain offences by the Supreme Court of the Republic of Vanuatu on 19 July, 2002 and sentenced to three years imprisonment.

---

7 Public Prosecutor v Sope Mauutamate (Unreported, Supreme Court of Vanuatu, Coventry J, 19 July 2002).
8 Cap 174.
9 See Kathleen Dean Moore, Pardons: Justice, Mercy and the Public Interest (1989) 5, for the various justifications for granting an executive pardon, including illness.
The Struggle for Constitutional Standards in the Republic of Vanuatu

AND WHEREAS I am of the opinion that the continued imprisonment of BARAK TAME SOPE may be injurious to his health;

In the exercise of the power conferred on me by Article 38 of the Constitution, FATHER JOHN BENNETT BANI, President of the Republic of Vanuatu, HEREBY PARDON BARAK TAME SOPE of the offences for which he was convicted in the Supreme on 19 July 2002.

MADE at the State Office this 13th day of November, 2002

FATHER JOHN BENNETT BANI
President of the Republic of Vanuatu

Following his pardon, Mr Sope sought to be reinstated to his parliamentary seat on the footing that he had been exonerated. However the Speaker of the Parliament of Vanuatu refused to recognize that Mr Sope had been exonerated by his pardon and steps were taken toward the holding of a by-election for Mr Sope’s seat in Parliament. As a result, Mr Sope commenced proceedings in the Supreme Court of Vanuatu seeking declarations and other orders in relation to his entitlement to continue to sit in Parliament.

At first instance, Chief Justice Vincent Lunabek rejected Mr Sope’s claims, holding that Article 38 of the Constitution of Vanuatu had a limited meaning: while it might exonerate Mr Sope for the conviction, it did not relieve him of the consequences of the conviction, and the operation of the Members of Parliament (Vacation of Seats) Act. In particular, Lunabek CJ relied on English authority to the effect that a pardon could not quash a conviction. His Honour in effect reasoned that as ‘only the Courts on an appellate level can quash a conviction’, a pardon did not eliminate the effect of the Members of Parliament (Vacation of Seats) Act which provided that a Member of Parliament’s seat should be vacated on a Member being convicted of a crime and sentenced to a specified term of imprisonment.

3 THE ARGUMENTS ON APPEAL

On appeal to the Vanuatu Court of Appeal, Senior Counsel for Mr Sope developed four interrelated arguments. First, Sope argued that Lunabek CJ had conflated treatment of the judicial power to quash convictions with the executive power to pardon convictions. It was conceded that the executive government could not quash a conviction; that this was a power that can only be properly exercised by an appeal court. The power to ‘quash’ is judicial in nature. However it was argued that a full pardon can remove the effect of a conviction. It does this, not by quashing the conviction, but by restoring the

10 Cap 174.
12 Stephen Southwood QC.
person who is the subject of the pardon to the position they would have been in if the conviction had not taken place.

Secondly it was argued that the Chief Justice had erred in concluding that the presidential pardon could only have prospective effect. The scope and effect of a pardon falls to be determined by the intention of the grantor when he or she exercises this power. The operative part of the pardon referred to 19 July 2002, the date of the appellant's conviction and sentence, unambiguously indicating that the pardon was effective from that date. It was contended that the terms of the presidential pardon in this case were wide enough to conclude that Mr Sope had received an absolute and unconditional pardon, and the reference to the date of the conviction made it clear that the pardon was intended to operate from and including that date. As to the intentions of the President in granting the pardon, it was contended that the Chief Justice ought to have had regard to the fact that the pardon was granted by the President after he received representations from the Chiefs and Elders of Vanuatu at ceremonies held in accordance with Vanuatu customs and traditions (I return to consider the significance of local traditions to constitutional construction in the conclusion).

The third argument was based on the structure of the Vanuatu Constitution and the text of Article 38. It was argued that a proper approach to the construction of the presidential power of pardon required the Court of Appeal to have regard to the separation of powers ordained by the Vanuatu Constitution: due respect ought be accorded by the judiciary to the exercise of executive powers, along similar lines to the approach taken in the United States.

The text of Article 38 of the Constitution of the Republic of Vanuatu provides as follows:

---

14 This argument was specifically rejected by the Court of Appeal for reasons discussed below.
15 '[A]lthough the power of the President of Vanuatu to grant a pardon is entirely derived from the constitution, the power is one that corresponds to the power of the English Crown, so that English decisions may be assistance': Attorney-General v The President of Vanuatu (Unreported, Supreme Court of Vanuatu, Gibbs J, 19 July 2002). Counsel for Mr Sope argued that the words 'corresponds to' in this quotation ought be read as 'analogous to' though not necessarily 'in conformity with'.
16 Previous authority confirmed that the nature of the powers and position of the President of Vanuatu can be determined only 'by a consideration of the Constitution itself': Attorney-General v The President of Vanuatu (Unreported, Supreme Court of Vanuatu, Gibbs J, 1 January 1994).
PRESIDENTIAL POWERS OF PARDON, COMMUTATION AND
REDUCTION OF SENTENCES

The President of the Republic may pardon, commute or reduce a sentence imposed on a person convicted of an offence. Parliament may provide for a committee to advise the President in the exercise of this function.

This provision yielded the same result whether a literal approach or a purposive approach was taken. The ordinary grammatical meaning of the provision is that the President has the power to: pardon a person convicted of an offence; commute a sentence imposed on a person convicted of an offence; or reduce a sentence imposed on a person convicted of an offence. The power is perfectly general, and apt to enable the President to order a full pardon or a conditional pardon at any point in time. Furthermore, the President’s power of pardon is not confined to the pardoning of ‘a sentence imposed on a person’. Such a construction would give the word ‘pardon’ no work to do. It would effectively mean that the President merely had the power to commute or reduce a sentence. The heading indicates that the Article itself is intended to deal with the topic of three discrete presidential powers: pardon, commutation and reduction of sentences. Emphasis should also be given to the grammar and punctuation of the Article in context. The natural and ordinary meaning of the sentence is that the President has the power to pardon (pause), the power to commute and (or) reduce a sentence. To the extent that there is any ambiguity, the heading to Article 38 ought to be used to determine the scope of the Article and to resolve ambiguity.

The purpose of Article 38, set out in the heading, was to grant the President in full the prerogative of mercy. At common law a pardon could be free or conditional. In R v Milnes and Green, Cox J said:

A pardon ... at common law is the solemn act by which the Sovereign, either absolutely or conditionally, forgives or remits for the benefit of the person to whom it is granted the legal consequences of a crime he has committed.

The breadth of the prerogative power was noted in Re Royal Prerogative of Mercy Upon Deportation Proceedings when the Supreme Court of Canada
cited Dicey’s description of the prerogative as being ‘both historically and as a matter of actual fact nothing else than the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown’. Australian authority also accords with this perspective on the prerogative.21 The ‘legal consequences of a crime’ include arrest, charge, trial, conviction and punishment. Traditionally, the power to pardon could be granted either before or after attainder or conviction.22 Given the wide variety of reasons for which a pardon can be granted, this is not surprising. A pardon could leave a judgment formally unreversed and, presumably, it may formally reverse the judgment.23 In Cuddington v Wilkes,24 the Kings Bench said that the ‘King’s pardon doth not only clear the offence itself, but all the dependencies, penalties, and disabilities incident unto it’. To like effect, the American cases emphasised that when a pardon is full it ‘blots out of existence the guilt’ and restores the former convict ‘to all his civil rights, it makes him, as it were, a new man, and gives him a new credit and capacity’.25 As Professor Williston remarked:

if the mere conviction involves certain disqualifications which would not follow from the mere commission of the crime without conviction, the pardon removes such disqualifications.26

Counsel for Mr Sope relied on Cuddington v Wilkes and the US authorities to argue that the presidential pardon granted by Father Bani in accordance with local traditions had blotted out Mr Sope’s guilt, and accordingly, he was entitled to resume his seat in Parliament. A by-election had not been held and Mr Sope had always contended that he had not forfeited his seat.

The final argument was that to the extent that the Members of Parliament (Vacation of Seats) Act27 was relied on to remove Mr Sope from his seat, it was repugnant to the Vanuatu Constitution. Article 38 of the Constitution is not in
terms expressed to be subject to the other provisions of the Constitution. Unlike other constitutions such as the Australian Constitution, the Constitution of the Republic of Vanuatu does not provide for the vacation of a member's seat in Parliament when a Member of Parliament is convicted of a serious criminal offence. Therefore, subject to what is stated below, once elected to Parliament Mr Sope had a right to remain a Member until the expiration of the Parliamentary term. Rather than provide expressly for the vacation of a Member of Parliament's seat when a Member has been convicted of a serious criminal offence, Chapter 10 of the Constitution establishes a Leadership Code for the conduct of leaders including a Member of Parliament and Article 68 states: 'Parliament shall by law give effect to the principles of this Chapter'. It was therefore arguable that Article 68 enables the Parliament to legislate for the disqualification of members of Parliament if they breach of the Code of Conduct and to stipulate what amounts to a breach of the Code of Conduct. However, the power granted to Parliament pursuant to either Article 68 or Article 16 was not such as to enable Parliament to override the other provisions of the Constitution. In the circumstances, the failure of Parliament to provide in the Members of Parliament (Vacation of Seats) Act for a Member of Parliament to receive the benefit of a pardon was therefore inconsistent with Article 38 of the Constitution.

4 THE JUDGMENT OF THE COURT OF APPEAL

All the arguments set out above were rejected by the Court of Appeal. The final argument was rejected on jurisdictional grounds that are not presently relevant. As to the arguments relating to the effect of the pardon, the Court held that the effect of Mr Sope's conviction was to trigger the operation of the Members of Parliament (Vacation of Seats) Act, and that he was disentitled to resume that seat. The Court characterized Mr Sope's argument as one that was based on the proposition that the executive pardon was argued to operate retrospectively. That is, the Court did not give emphasis to the plain language of the pardon, which was expressed to operate from the date of conviction, or to the relevant article of the Constitution, which clearly authorizes unconditional pardons. Rather, the Court emphasized dicta in the US cases to the effect that a person who had forfeited their rights and entitlements consequent upon a conviction could not automatically resume those entitlements upon receipt of a pardon. This exception to the general rule that a pardon restores a person to their full civil rights is justified in circumstances where a third party has, through no fault of their own, assumed a right or entitlement that was formerly enjoyed by the (former) convict. The exception operates to protect a person in the equivalent position to a person who has acquired property on a bona fide basis for value

---

28 Cap 174.
without notice. The Court of Appeal quoted the following passage, placing the emphasis on the italicized words:\textsuperscript{29}

A pardon is an act of grace by which an offender is released from the consequences of his offense, so far as such release is practicable and within control of the pardoning power, or of officers under its direction. It releases the offender from all disabilities imposed by the offense, and restores him to his full civil rights.

While the Court of Appeal emphasized the italicized words, the applicant drew attention to the entire passage of the judgment of the US Supreme Court.

While the exception referred to above may have a perfectly sensible policy rationale, it is certainly arguable that it should not have been applied to Mr Sope. The policy rationale for the exception to the rule was inapplicable in Mr Sope's case because there had been no by-election for Mr Sope's seat at the time he made his application to the Court to be reinstated. Nor had there been a by-election by the time the appeal was argued in the Court of Appeal. Since no one else could claim to hold Mr Sope's seat in Parliament (indeed for part of the period of his incarceration he was being paid), and he had consistently maintained his right to that seat, the restoration of his civil rights was, indeed, practicable.

Once Mr Sope was absolutely pardoned, in terms that were expressed to operate from the date of conviction, the text of Article 38 should have been given its full effect and the dicta in the United States cases had to be approached with due circumspection. Whatever the consequences of the decision in practical terms, due weight needed to be given to the intentions clearly expressed in the pardon by the executive government of Vanuatu.

5 FURTHER ANALYSIS AND CONCLUSIONS

The legal questions in this case were difficult and important, and as noted above\textsuperscript{30} there is room for differences of opinion and differences of emphasis in the analysis of the jurisprudence of executive pardons. Nevertheless the development of a consistent constitutional jurisprudence in Vanuatu and adherence to the Chief Justice Gibbs' principle noted at the outset of this paper

\textsuperscript{29} See Knote v United States 95 US l49, 154 (1877). The Court of Appeal quoted this passage, placing the emphasis on the italicized words: 'A pardon is an act of grace by which an offender is released from the consequences of his offense, so far as such release is practicable and within control of the pardoning power, or of officers under its direction. It releases the offender from all disabilities imposed by the offense, and restores him to his full civil rights'. While the Court of Appeal emphasized the italicized words, the applicant drew attention to the entire passage of the judgment of the US Supreme Court.

\textsuperscript{30} Williston, above n 26; Buchanan, above n 30.
The Struggle for Constitutional Standards in the Republic of Vanuatu

presents significant challenges to courts and to counsel representing clients in constitutional cases.

First, reference to diverse sources of law create additional complicating factors in circumstances where a local provision relating to an executive power is under consideration, viz, should the UK or the US cases on executive pardons have been applied? Was the emphasis on a particular aspect of the US decisions warranted in a context where the language of the Vanuatu Constitution pointed in another direction?

Secondly, Barak Sope involved the exercise of the executive power of presidential pardon. That power confers one of the widest possible discretions. It is a power that is characterized by its exercise for reasons that are often controversial (even in the United States), but always local. In this case, Mr Sope was pardoned for ill health after ceremonies involving representations by the Council of Chiefs.

For these reasons, when the Court of Appeal declined to give effect to this pardon it took a very significant step. Did the Court show the proper degree of deference to the executive branch, ie., not just the proper measure of respect for the separate power exercised by the executive branch of government, but also the proper measure of respect for local traditions? As noted at the beginning of this paper, in Attorney-General v The President of Vanuatu, Sir Harry Gibbs, a former Chief Justice of Australia, held that the Vanuatu Constitution was sui generis: the product of the work of a local Constitutional Committee and should be construed in accordance with its terms.31 This principle does not appear to have been applied in this case.

In conclusion, the Gibbs' principle pays the proper degree of deference to local customs and traditions. Having said that, the courts and the counsel who work in them cannot take steps to ensure that local customs and traditions are given due weight unless information relating to these traditions is made available. To that end, there is a strong case for further research to be conducted to determine the extent to which local circumstances may be used to inform questions of constitutional construction in the future. Scholarship that attempts to harmonize and synthesize Vanuatu customs and traditions with the common law applied in courts is necessary. Such efforts are quite likely to improve cross-cultural legal and constitutional understandings in the longer term.

Specialise in a key area of law.

When you study law at The University of Queensland, you have access to the highest standard of teaching and resources available.

Our quality postgraduate programs give you the opportunity to specialise in key areas of law including:
- Corporate/Commercial Law
- Intellectual Property Law
- Public, International and Comparative Law
- Litigation and Dispute Resolution

Flexible study options
We appreciate your busy lifestyle and offer intensive and online delivery for many courses.

Online courses for 2005 include:
- Comparative Indigenous Law
- East Asian Legal Systems
- Electronic Commerce Law
- International Air Law
- Securities Industry Law
- South Pacific Comparative Law

Find out more
For further details of our postgraduate programs for law and non-law graduates contact the TC Beirne School of Law
ph: +61 7 3365 2206
email: tcblaw@law.uq.edu.au
or visit www.law.uq.edu.au

www.law.uq.edu.au
EDITORIAL BOARD

Dr Ann Black
Fellow of the Centre for Public, International & Comparative Law; Lecturer, TC Beirne School of Law, The University of Queensland

Dr Jennifer Corrin Care
Executive Director – Comparative Law, Centre for Public, International & Comparative Law; Senior Lecturer, TC Beirne School of Law, The University of Queensland

Justice Mark Fernando
Former Justice of Supreme Court of Sri Lanka

Associate Professor Tan Cheng Han SC
Dean & Head, Faculty of Law, National University of Singapore

The Honourable Justice Michael Kirby AC, CMG
High Court of Australia

The Honourable Justice B H McPherson CBE
Court of Appeal, Brisbane

Ms Janet Neville
Secretary-General, LAWASIA

Chief Justice Arthur Ngirakhsong
Supreme Court of Palau

Justice M N Venkatachaliah
Former Chief Justice of India

Professor Zhenmin Wang
Vice-Dean, Tsinghua University School of Law, People's Republic of China

Chief Justice Gordon Ward
President, Court of Appeal, Fiji Islands

Project Officer

Ms Amanda Sever
LAWASIA Secretariat

Front cover:
Federal Court of Malaysia, Kuala Lumpur
Kuala Lumpur was host city to the 6th LAWASIA Business Law Conference, held in October 2004.
FOREWORD FROM THE PRESIDENT, LAWASIA

Dear Friends,

LAWASIA Journal 2003/2004 is the result of hard and intensive work by its editorial board under the able guidance of Dr Jennifer Corrin Care of The University of Queensland's TC Beirne School of Law. Extensive legal literature contained in this journal will, I am sure, serve as a useful legal tool and will be a source of required information and enlightenment.

LAWASIA was established in Canberra, Australia in 1966. Originally, it was composed of representatives from Bar Associations of only 18 countries but has by now acquired much larger numbers of Bar Associations, Law Societies and individual lawyers from the entire Asia-Pacific region. Its activities substantially contribute in the development of diverse branches of law including business law, energy law, arbitration law etc. However, what is most important is that LAWASIA concentrates on the rule of law and human rights.

The objectives of LAWASIA are reproduced in this journal and include:

- The desire to advance the standard of legal education
- To further the diffusion of knowledge of the law
- To promote the development of law
- To advance the science of jurisprudence

The inclusion of Section Reports and Country Notes will assist members of the legal profession, the judiciary, legal academics, administrators, and students to stay informed of current and relevant matters of interest throughout this rapidly changing region.

In closing, readers are reminded that each edition of the LAWASIA Journal is enhanced by the desire of its contributors to share knowledge and research in a truly egalitarian manner. LAWASIA members are encouraged to consider contributing to future editions.

Mr. G.L. SANGHI
President
November 2004
ABOUT LAWASIA

Who we are

LAWASIA is an international organisation of lawyers which focuses on the interests and concerns of the legal profession and their clients in the Asia Pacific region. The LAWASIA Council is comprised of representatives of the peak legal bodies in 24 countries. As such, its policies and agenda directly address the issues confronting the legal profession throughout the region. LAWASIA also has over 1,000 individual members, from over 70 countries, who have the opportunity to directly contribute to the activities of ad hoc council committees and a vibrant section structure.

Our History

LAWASIA was formed on 10 August 1966 when its inaugural conference in Canberra adopted a constitution drafted by the Law Council of Australia. The founding president was John Kerr QC (later Chief Justice of the Supreme Court of New South Wales). Since that time, LAWASIA has had presidents from Indonesia, Japan, South Korea, Sri Lanka, Thailand, Philippines, India, Malaysia, Hong Kong and Australia.

Our Objectives

LAWASIA's objectives, as set out in Article II of its constitution include the following:

(a) To promote the administration of justice, the protection of human rights and the maintenance of the rule of law within the region;
(b) To advance the standard of legal education within the region of advanced studies;
(c) To further the diffusion of knowledge of the laws of the various countries within the region;
(d) To promote development of the law in the region;
(e) To advance the science of jurisprudence in all its phases and to promote the study and development of international law and of comparative law;
(f) To promote uniformity within the region in appropriate fields of law;
(g) To further international understanding and good will;
(h) To foster relations and intercourse between lawyers and associations and organisations of lawyers within the region; and
(i) To uphold and advance the status of the legal profession within the region.

Sections & Committees

LAWASIA has the following Sections:
- General Practice
- Energy
- Judicial
- Family Law & Family Rights
- Business Law
- Young Lawyers

LAWASIA has the following Standing Committees:

General Practice Section
- Comparative Constitutional Law
- Legal Education
- Human Rights

Business Law Section
- Banking & Finance
- Communication & Technology
- Corporate Securities & Investment
- Environmental Law
- Franchising
- Infrastructure & Privatisation
- Insurance
- International Trade & Arbitration
- Taxation

Human Rights Activity

Of the standing committees, one of the most significant is the Human Rights Committee. LAWASIA has been active in the area of human rights, principally as a reflection of the human rights issues in the region which have confronted its member organisations. The role of the human rights committee is to engage in special projects and to monitor human rights issues which are then referred to Council for deliberation.

In recent years, the Council has passed resolutions on the following:

- The independence of the judiciary;
- The rights of counsel appearing in court;
- Terrorism - appropriate and inappropriate responses on terrorism;
- The plight of East Timor;
- The oppression of lawyers outside the region (eg Zimbabwe);
- Threats to the rule of law within the region (eg Nepal);
- Child prostitution in Cambodia and elsewhere;
- The protection of refugees; and
- Child kidnapping and forced labour.
As an ongoing project, LAWASIA is promoting the adoption of a Pacific Charter on Human Rights.

Our Conferences
LAWASIA conferences take many forms. The flagship event has traditionally been its biennial conference. The Business Law section holds a major business law conference on the alternate year to the biennial. In addition to these regular events, conferences and seminars are held on a range of specialist and general topics, according to needs which are either identified by the LAWASIA Executive or which are specifically requested by a member organisation.

Our Secretariat
Over the years, the Secretariat has been located in various parts of Australia - Sydney, Perth, Darwin, and now Brisbane.

Why join LAWASIA?
By joining LAWASIA, an individual has the opportunity to participate in Section and Committee activities. This in turn provides the individual with an opportunity to interact with lawyers from other countries in the region, to exchange information, to expand their network of contacts and to participate actively in conference and seminar activities. Member organisations have an opportunity to advance their interests and exert their influence throughout the Asia Pacific region. All members receive the regular LAWASIA publications: Update, the annual LAWASIA Journal and other ad hoc communications and information.

More important than any tangible benefits, however, membership fees ensure the ongoing viability of LAWASIA and contribute to its ability to pursue its objectives and advance the interests of lawyers and their clients throughout the Asia Pacific region. LAWASIA plays a critical role in advocating issues relevant to the rule of law. By becoming a member, an individual can endorse those objectives and ensure LAWASIA has the resources to pursue them.

Our Membership Fees
LAWASIA recognises that the differing economic conditions in the countries of our region require consideration when setting membership fees. In order to ensure that its membership is fully representative of the region, LAWASIA offers three categories of membership fees that have been set according to a member's country of residence and are outlined below:

<table>
<thead>
<tr>
<th>Category A</th>
<th>Category B</th>
<th>Category C</th>
</tr>
</thead>
<tbody>
<tr>
<td>(US$10)</td>
<td>(US$50)</td>
<td>(US$110)</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>Cook Islands</td>
<td>Brunei Darussalam</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>Fiji</td>
<td>Guan</td>
</tr>
<tr>
<td>Bhutan</td>
<td>Iran</td>
<td>Hong Kong SAR</td>
</tr>
<tr>
<td>Burma/Myanmar</td>
<td>Kazakhstan</td>
<td>Japan</td>
</tr>
<tr>
<td>Cambodia</td>
<td>Kiribati</td>
<td>Korea</td>
</tr>
<tr>
<td>East Timor</td>
<td>Marshall Islands</td>
<td>Macau SAR</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Maldives</td>
<td>Malaysia</td>
</tr>
<tr>
<td>Laos</td>
<td>PNG</td>
<td>New Zealand</td>
</tr>
<tr>
<td>Mongolia</td>
<td>Russia</td>
<td>N Mariana Islands</td>
</tr>
<tr>
<td>Nepal</td>
<td>Samoa</td>
<td>Singapore</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Sri Lanka</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Solomon Islands</td>
<td>Thailand</td>
<td>USA</td>
</tr>
<tr>
<td>Vietnam</td>
<td>Tonga</td>
<td></td>
</tr>
</tbody>
</table>

Why join LAWASIA? (Continued)
By joining LAWASIA, an individual has the opportunity to participate in Section and Committee activities. This in turn provides the individual with an opportunity to interact with lawyers from other countries in the region, to exchange information, to expand their network of contacts and to participate actively in conference and seminar activities. Member organisations have an opportunity to advance their interests and exert their influence throughout the Asia Pacific region. All members receive the regular LAWASIA publications: Update, the annual LAWASIA Journal and other ad hoc communications and information.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. About LAWASIA</td>
<td>iv</td>
</tr>
<tr>
<td>2. Foreward from President, LAWASIA</td>
<td>vi</td>
</tr>
<tr>
<td>3. Articles</td>
<td></td>
</tr>
<tr>
<td>Aged Capacity and Substitute Decision-Making in Australia and Japan Terry Carney</td>
<td>1</td>
</tr>
<tr>
<td>The Executive Pardon of Barak Sope: The Struggle for Constitutional Standards in the Republic of Vanuatu Patrick Keyzer</td>
<td>23</td>
</tr>
<tr>
<td>Franchise Sector Regulation: The Australian Experience Andrew Terry</td>
<td>57</td>
</tr>
<tr>
<td>WTO-Oriented Telecommunications Reform in the Socialist Republic of Vietnam Lisa C. Toohey</td>
<td>79</td>
</tr>
<tr>
<td>Situating Automatism in the Penal Codes of Malaysia and Singapore Stanley Yeo</td>
<td>103</td>
</tr>
<tr>
<td>4. Book Reviews</td>
<td></td>
</tr>
<tr>
<td>Asia-Pacific Constitutional Systems reviewed by Dr Jennifer Corrin Care</td>
<td>129</td>
</tr>
<tr>
<td>The Eye of the Cyclone reviewed by Professor Anthony Angelo</td>
<td>137</td>
</tr>
<tr>
<td>Making Australian Foreign Policy reviewed by Mark Otter</td>
<td>141</td>
</tr>
<tr>
<td>5. LAWASIA Section Reports</td>
<td></td>
</tr>
<tr>
<td>Energy Law</td>
<td>147</td>
</tr>
<tr>
<td>Family Law and Family Rights</td>
<td>149</td>
</tr>
<tr>
<td>Malaysia's Family Law: Custody and Religion</td>
<td>151</td>
</tr>
<tr>
<td>Judicial</td>
<td>157</td>
</tr>
<tr>
<td>6. Country Notes</td>
<td></td>
</tr>
<tr>
<td>China</td>
<td>165</td>
</tr>
<tr>
<td>Hong Kong Special Administrative Region (Bar Association)</td>
<td>169</td>
</tr>
<tr>
<td>Hong Kong Special Administrative Region (Law Society)</td>
<td>175</td>
</tr>
<tr>
<td>India</td>
<td>179</td>
</tr>
<tr>
<td>Indonesia</td>
<td>187</td>
</tr>
<tr>
<td>Japan</td>
<td>191</td>
</tr>
<tr>
<td>New Zealand</td>
<td>199</td>
</tr>
<tr>
<td>Singapore</td>
<td>209</td>
</tr>
<tr>
<td>7. Notes for Contributors</td>
<td></td>
</tr>
<tr>
<td>8. Joining LAWASIA</td>
<td></td>
</tr>
<tr>
<td>9. Subscribing to LAWASIA Journal</td>
<td></td>
</tr>
</tbody>
</table>