

Sell-out conference hears wide range of views on human rights

By Neda Monshat

A sell-out crowd of over 200 was on hand to hear Commonwealth Attorney-General, The Hon. Robert McClelland, open the 2009 Castan Centre Annual Conference. As the National Human Rights Consultation was still underway at the time, the Attorney-General shied away from discussing the need for a Human Rights Act, but that did not stop the audience from trying to glean hints from his speech, particularly when he discussed the lack of comprehensive human rights protection in the common law.



Attorney-General Robert McClelland speaks, with Dr Julie Debeljak at far left.

Where the Attorney-General tiptoed around the issue of a Human Rights Act, Dr Ben Saul, Director of the Sydney Centre for International Law at the University of Sydney, claimed that Australia needs something stronger than the “dialogue model” adopted in Victoria, the UK and elsewhere. Dr Saul criticised the Victorian Charter of Human Rights and Responsibilities (“Charter”) “under which there are no new causes of action, no remedial rights to compensation, and no power of judges to declare legislation inoperative where it is inconsistent with human rights”.

In the day’s second session, The Hon. Justice Chris Maxwell, President of the Victoria Court of Appeal, and barrister Alistair Pound gave an update on the Charter. Justice Maxwell weighed into the issue of judicial activism, stating that judges had been successfully interpreting legislation and precedent for centuries and were unlikely to suddenly discard judicial restraint because of statutory human rights protection. For this reason, according to Justice Maxwell, the Charter had not been the lawyers’ feast some had predicted.

Mr Pound, co-author of *An Annotated Guide to the Victorian Charter of Human Rights and Responsibilities*, gave four more reasons for the absence of the predicted “flood” of Charter-related litigation. First, the Charter has only been in force for 18 months. Second, in many cases where Charter issues would have arisen, disputes have been settled before the matter had a chance to get to trial. Third, the Charter does not in and of itself create new causes of action. Finally, unlike the UK, where lawyers had been exposed to the European Court of Human Rights for 30 years prior to the enactment of its

Human Rights Act, Victorian lawyers are generally unfamiliar with the scope and application of the Charter.

After lunch, the Hon. Robert Hill, former Australian Ambassador and Permanent Representative to the United Nations, and Professor Hilary Charlesworth, Director of the Centre for International Governance and Justice at the Australian National University, discussed the level of international engagement under the Howard and Rudd governments. Mr Hill stated that while Mr Rudd presents a public image as an ‘active participant in a multinational system’, in substance his approach to international human rights has been similar to Mr Howard’s. As evidence, Mr Hill discussed the recent Concluding Observations on Australia from the UN Human Rights Committee, which praised the Rudd government for its ‘constructive dialogue’, while stating that it ‘did not see a great deal of change in substance’. Professor Charlesworth often agreed with Mr Hill, and pointed out that while some of the Howard government’s interactions with the UN had bordered on the offensive, other interactions – such as its support for the International Criminal Court – were very positive.

The final session focussed on human rights from an international perspective. Professor Chris Sidoti, the former Australian Human Rights Commissioner, offered an interesting, though somewhat downbeat, analysis of the success of the UN Human Rights Council so far. Pointing to ‘the domination of the Council by headline states and their accomplices’, he lamented that the Council was at risk of becoming ‘as discredited as its predecessor’. He was, however, optimistic about the allowance for dissenting reports under the Universal Periodic Review, and the use of secret ballots. Castan Centre Director Professor Sarah Joseph, finished the conference by summarising three major recent cases on the human rights compatibility of measures taken to implement Security Council anti-terrorism resolutions, democratic rights in Fiji, and gay rights in India.

Throughout the day, the interaction between speakers and delegates, and the buzz in between sessions, were indicative of a stimulating, exciting day.

The Castan Centre Annual Conference will take place in July 2010.



Professor Hilary Charlesworth