

By Ben Zipser

The rule of law involves at least four core principles – that the polity must be governed by general rules laid down in advance; that these rules must be applied and enforced; that disputes about the rules must be resolved effectively and fairly; and that the government of the polity is bound by the same rules as its citizens.

The period of the Howard administration in Australia from 1996 to 2007 was marked by a number of issues that highlight the importance of the rule of law and the institutions and mechanisms supporting it. These issues included a call by the deputy prime minister in 1996 – dissatisfied at the time with a recent decision of the High Court – for retiring judges of the court to be replaced with ‘Capital-C Conservatives’; the incarceration of David Hicks at Guantanamo Bay without trial for over four years and his prosecution for retrospective criminal offences under rules of procedure and evidence considered unfair by lawyers and jurists in civilised countries; the introduction in Australia of national security legislation that significantly infringes the civil liberties of individuals and the ability of the press to report on matters invoking the legislation; and, more recently, the detention of Dr Mohamed Haneef and cancellation of his visa.

This edition of *Precedent* considers matters concerning the rule of law. The doctrine of the separation of powers

– fundamental to the rule of law – is the subject of an article by the federal attorney-general, Robert McClelland MP. Other institutions or mechanisms that support the rule of law include a bill of rights, the subject of an article by Dr Wendy Lacey at the University of South Australia; a free press, the subject of an article by Dr David Blackall at the University of Wollongong and Seth Tenkate; and judicial review of administrative action, the subject of an article by Matthew Smith, a magistrate of the Federal Magistrates Court. Anti-terrorism laws and the rule of law are reviewed by Nick Niarchos AM; the criminal justice system and the rule of law by Dr Donna Spears; recent developments concerning the death penalty in Indonesia by Julian McMahon; the rule of law and international human rights by Maarten Vlot; and the High Court’s recent decision in *Thomas v Mowbray* on the constitutional validity of part of the Howard administration’s anti-terror legislation by Amy Douglas-Baker. I thank each author for their contribution to what I believe is a very strong and timely edition of *Precedent*. ■

Ben Zipser is a barrister based at Selborne Chambers in Sydney and a member of the editorial committee of *Precedent*.

PHONE 02 9231 4560. EMAIL bzipser@selbornechambers.com.au

NATIONAL COUNCIL National President Ian Brown President-Elect Clara Davies
DIRECTORS ACT Mark Blumer NSW Anthony Scarcella NT Nicole Dunn QLD Laura Neil
 SA Anthony Kerin TAS Brian Hilliard VIC Geraldine Collins WA Tom Percy QC

BRANCH PRESIDENTS ACT Andrew Freer NSW Maurie Stack NT Robert Perry
 QLD Justin Harper SA Anthony Kerin TAS Sandra Taglieri VIC Tim Connor WA Raoul Cywicki

STAFF Chief Executive Officer Eva Scheerlinck eva@lawyersalliance.com.au

Finance Manager Maggie Galley maggie@lawyersalliance.com.au

Conference Manager Maja Maunic maja@lawyersalliance.com.au

Public Affairs Manager Seth Tenkate seth@lawyersalliance.com.au

Member Services Officer Nancy Hanna nancy@lawyersalliance.com.au

Publications Officer Renée Harris renee@lawyersalliance.com.au

Legal and Policy Officer Tilda Hum tilda@lawyersalliance.com.au

Sales and Marketing Co-ordinator Apeksha Srivastava apeksha@lawyersalliance.com.au

Conference Assistant Jessica Younan jessica@lawyersalliance.com.au

Admin Assistant Samantha Foster samantha@lawyersalliance.com.au

PA to CEO Vivien Conacher vivien@lawyersalliance.com.au

PRECEDENT Editorial Committee Bill Andrews, Phil Gleeson, Jnana Gumbert, Rob Guthrie, Michal Horvath, Leanne Larosa, Patrick Mugliston, Steven Penning, Amber Sprague, Maarten Vlot, Ben Zipser

Editor Renée Harris renee@lawyersalliance.com.au Phone: (02) 9258 7721

Editorial Assistant Jonathan Tyne jonathan@lawyersalliance.com.au **Design** Tianli Zu tian@artstudiozz.com.au

This issue of *Precedent* is cited as (2007) 84 PRECEDENT. ISSN 1449-7719 © 2008 Australian Lawyers Alliance, ABN 96 086 880 499
 Trading as the Australian Lawyers Alliance, GPO Box 7052, Sydney 2001, DX 10126, Sydney Stock Exchange Phone: (02) 9258 7700 Fax: (02) 9258 7777
 Email: enquiries@lawyersalliance.com.au Website: <http://www.lawyersalliance.com.au>

PRECEDENT is published bi-monthly by the Australian Lawyers Alliance Ltd. Contributors and advertisers should submit their copy and/or artwork in electronic form by the agreed deadline.
Disclaimer: Views expressed by the contributors are not necessarily endorsed by the Australian Lawyers Alliance Ltd. No responsibility is accepted by the company, the editor or the contributors for the accuracy of the information contained in the text and advertisements. The Alliance does not necessarily endorse any of the products or services advertised. Copyright in this material is retained by the publisher, the Australian Lawyers Alliance Ltd. No part of this material may be reproduced or transmitted in any form or by any means, electronic or mechanical, without permission in writing from the publisher, the Australian Lawyers Alliance Ltd. Enquiries should be directed to enquiries@lawyersalliance.com.au.

Precedent is now being produced in a more ecologically sustainable manner. For details, see <http://www.lawyersalliance.com.au/precedent.php>

Lawyers



for the People