



## Whale watching ace in Australia's anti-whaling sleeve

Posted Jun 21 2010, 09:53 PM by Lawyers Weekly

A leading barrister believes that the growing popularity of the Australian whale watching industry could be a key platform in Australia's argument to ban whaling in Antarctic waters.

Dr Chris Ward, a barrister and member of the Sydney Panel of Independent International Legal Experts addressing Japan's Special Permit Whaling, told a seminar in Sydney last night that Australia would look to highlight the importance of whale watching to its tourism sector in proceedings before the International Court of Justice.

"I don't want to be met with howls of derision from the floor, but I think there will be a substantial emphasis on whale watching as a special interest," Ward said. "I don't say that facetiously, it is picked up in the application [to initiate proceedings against Japan in the ICJ] which makes express reference, rather bizarrely and oddly to an aide memoire sent to Japan in 2007, and whale watching is singled out in that aide memoire, as an essential interest of Australia...it is a weak peg, but might be the peg we are putting a few things into," Ward said. "It would at least show some potential damage to an Australian industry which is said to be important, that would be the argument."

The seminar was organised by the Australian branch of the International Law Association and held at the Sydney offices of Marque Lawyers. In addition to Ward, Dr Tim Stephens, a Senior Lecturer at the Sydney Law School and Professor Gillian Triggs, the Dean of Sydney Law School, outlined additional arguments that Australia would mount before the ICJ.

"The very simply expressed application [before the ICJ] states that there is a moratorium on commercial whaling, and that is the legal position," Triggs said. "Australia is quite justified in arguing that the International Whaling Commission moratorium should stand, and this is backed by numerous resolutions urging Japan to abide by that moratorium."

"I think it would be a rather dangerous argument for Australia to engage in beyond what it has already said in its application, because Australia already has a very sound case on the technical point that there is a moratorium."

Associate Professor Natalie Klein from the Macquarie Law School played "devil's advocate", by putting forward the basis of Japan's legal argument before the ICJ. Klein, a member of the Sydney Panel of Independent International Legal Experts addressing Japan's Special Permit Whaling, has previously expressed her objections to whaling on the public record.

"Japan could well argue that Australia lacks the standing to bring this matter before the Court," she said. "There is the question of what damage Australia has really attained in this practice."

An in-depth discussion of the seminar, including the panel's thoughts on whether Japan is breaching its obligations under the Convention on Biological Diversity and the Convention on International Trade in Endangered Species will be discussed in the next edition of *Lawyers Weekly*.