



Dear Friend

Welcome to the second newsletter of the Gilbert & Tobin Centre of Public Law at the Faculty of Law, University of New South Wales. The Centre has now operated for a little over a year and has been working on several public law projects.

The last six months have been important in consolidating the financial base of the Centre, and funding received from the Australian Research Council, the Myer Foundation (via Reconciliation Australia) and other sources has enabled us to undertake a series of successful conferences and to advertise three full-time positions.

Two of those positions have been filled by Sean Brennan, who is Director of the Centre's Treaty Project, and Bryan Mercurio, who is Director of the Electoral Law Project. They join Megan Davis who has been with the Centre for some months on secondment from ATSIK working as the Bill of Rights Project Director. They will soon be joined by Devika Hovell, who has been appointed to direct our project on International Law as it relates to domestic legal systems.

The Centre now also has three PhD students and is looking to expand involvement in postgraduate research.

Over the last six months we have run two conferences, both of which sold out, and have also been active in several national debates that involve issues of public law and in some cases human rights. We have focused upon the proposed legal response to September 11 and the work of the Centre has been significant in achieving changes to the federal anti-terrorism bills. Our work has been reflected in the reports of the Senate Legal and Constitutional Legislation Committee and the Parliamentary Joint Committee on ASIO, ASIS and DSD.

Professor George Williams  
Director

## FOR THE DIARY

### Constitutional Law Conference and Dinner Friday 21 February 2003

The 2003 Constitutional Law conference will be held on Friday 21 February 2003 at the NSW Parliament House Theatre.

The purpose of the Conference is to enable participants to be updated on recent important developments in constitutional law, and to gain an understanding of the issues that will emerge in 2003 and beyond. The conference will be followed by a dinner at NSW Parliament House.

We will send out brochures soon.

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## EVENTS

### 2002 Constitutional Law Teachers Workshop

On 14 and 15 February the Gilbert & Tobin Centre of Public Law hosted two major constitutional law events: a Teachers' Workshop and a Constitutional Law Conference.

The Constitutional Law Teacher's Workshop on Thursday 14 February provided an opportunity for constitutional law teachers and postgraduate students to discuss teaching and research matters. Sixty-two people from around Australia attended the event at the Scientia Building at UNSW, and the discussion covered such issues as research, publications, course content and the use of comparative and contextual material in teaching.

The Workshop was followed by a dinner at the Coogee Bay Hotel. The highlight of the evening was the inaugural Geoffrey Lindell address by Sir Anthony Mason, who spoke on 'The Academic Contribution to Constitutional Law'.

### 2002 Constitutional Law Conference

The Constitutional Law Conference was held at the State Library the following day. The 155 people who attended, both from Australia and overseas, were treated to a series of excellent papers on a range of constitutional topics.

The speakers, who included Sir Anthony Mason, Justice Catherine Branson, Professor George Winter-ton and Stephen Gageler SC, covered such areas as the High Court's 2001 term, the foundations and limitations of judicial review, and recent developments in State constitutional law. Many of the papers delivered at the Conference can now be found at the Centre's website: [www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au).

The Conference was followed by a dinner at the Botanic Gardens Restaurant.

### Launch of the Oxford Companion to the High Court of Australia, 15 February

The dinner marked the Sydney launch of *The Oxford Companion to the High Court of Australia*. After Justice McHugh's speech, the atmosphere soon changed to one of (mostly) healthy competition as the High Court Trivia Quiz got underway. There were three rounds of questions plus some table questions – all based on information contained in the *Companion* – with each table receiving a mark out of 100. Once the marks came in, quizmaster Michael Coper announced that all tables had passed, and awarded first place to a table that left no doubt about its High Court knowledge by achieving a perfect score.

### Sample Questions from the High Court quiz

Q. Who resigned from the Court after being bequeathed a large stable of valuable racehorses?

A. Adrian Knox

Q. Which States have never had an appointment of one of their own to the High Court?

A. South Australia and Tasmania

Q. Which High Court judge re-married at the age of 87?

A. George Rich

### Bill of Rights Roundtable Friday 1 March

On Friday 1 March 2002, the Centre held a Roundtable (supported by the Human Rights and Equal Opportunity Commission) on a Bill of Rights for Australia. The Centre invited community and legal representatives to discuss how to move forward in the debate about a Bill of Rights.

The timing of the event was significant given the upcoming ACT inquiry into a Bill of Rights, the recent Bill of Rights inquiry in New South Wales and continuing concern about the protection of basic freedoms in Australia.

The Roundtable consisted of two sessions. The first session looked at the current state of the law in the protection of human rights and determining whether there was a problem and if so, what was the nature and scope of the problem and why attempts to redress it have failed. In the second session strategies, processes and options for reform were discussed as well as the need to build partnerships. Notes from the discussion can be found at [www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au).

### Constitutional Law Teachers Clearing House

The Clearing House (linked to from the Centre website) provides a resource point for teaching relating information on constitutional law. It includes information on core courses (in constitutional law and introductory public law) as well as electives and postgraduate subjects. The webpage also serves as a reference point for students wishing to study in the area as well as for teachers thinking about new or revitalised courses and assessment.

If you have course outlines, exams or other teaching related material that could be hosted on the site, or linked to from it, please email [gtcentre@unsw.edu.au](mailto:gtcentre@unsw.edu.au).

## Bill of Rights Conference 2002

The Centre held a major conference on Bill of Rights issues on Friday 21 June at the NSW Parliament Theatre in Sydney. The conference was jointly organised with the Australian Centre for Human Rights at the Faculty of Law, University of New South Wales. The event was also generously supported by the Human Rights and Equal Opportunity Commission.

The keynote speaker was Sir Kenneth Keith of the New Zealand Court of Appeal. Other notable speakers included Professor Larissa Behrendt from the Jumbunna Indigenous House of Learning, University of Technology, Sydney and Dr Sev Ozdowski, Human Rights Commissioner, Human Rights and Equal Opportunity Commission who spoke about the content of an Australian Bill of Rights.

The Conference was also addressed by political leaders The Hon Daryl Williams AM QC MP, Attorney-General, Robert McClelland, MP, Shadow Attorney-General and Shadow Minister for Workplace Relations, and Senator Brian Greig, Democrats Spokesperson for Attorney-General and Justice. Elizabeth Evatt AC, former member, United Nations Human Rights Committee addressed the Conference during the session on comparative models of Bills of Rights.

Bret Walker SC, President of the NSW Bar Association and Professor Hilary Charlesworth the Director of the Centre for International and Public Law, Australian National University talked about the Way Forward for a Bill of Rights in Australia.

The conference was extremely successful attracting over 180 participants and was sold out. Some of the papers are now available on the Centre website: [www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au). Many of the papers will be published in the Australian Journal of Human Rights.

### Bill of Rights Website

The Centre now has its own Bill of Rights project web page. The page is designed to provide a comprehensive resource for research and writing on a Bill of Rights with easy access to comparative Bills of Rights, articles and speeches on the merits of a Bill of Rights for Australia. The web page can be found on the Centre website. The Centre will have Treaty and Electoral Law web pages available in the near future.



Julie Debeljak, Elizabeth Evatt, Andrea Durbach and Professor Leon Trakman



Dr Anne-Marie Devereux, Dr John Pace, Dr Sev Ozdowski and Professor Larissa Behrendt



Dr John Pace, The Hon Daryl Williams and Professor George Williams

## Centre welcomes new Indigenous Treaty Project Director

Sean Brennan recently joined the Gilbert & Tobin Centre of Public Law as Director of the Centre's project on a Treaty between Indigenous and other Australians. Sean has worked on native title, public law and indigenous legal issues for the last 8 years. He worked with Cape York Land Council (CYLC), Tharpuntoo Aboriginal Legal Service, the National Indigenous Working Group (NIWG), Queensland Indigenous Working Group (QIWG) and ATSIC between 1994 and 1998. At the Commonwealth Parliament's research service between 1999 and 2002 he specialised in Indigenous legal issues and public law, keeping him in touch with developments across State and Territory jurisdictions as well as in the national arena. While in Canberra Sean also completed a Masters in Law at the ANU, again specializing in indigenous legal issues (particularly native title) and public law.

The Treaty project will examine the proposal for a Treaty or framework agreement(s) from a public law perspective. It will generate a number of discussion papers during its 3 year life, and through public events, a website and other materials, assist the community in having an informed public debate about the merits of a Treaty process. The project will culminate with the publication of a major report in mid-2005.

The Centre's partners in this project are Professor Larissa Behrendt of the Jumbunna Indigenous House of Learning at UTS, Dr Lisa Strelein of the Australian Institute of Aboriginal and Torres Strait Islander Studies and Reconciliation Australia.



Bryan Mercurio, Sean Brennan and Megan Davis

## Centre welcomes Electoral Law Project Officer

In April, Bryan Mercurio joined UNSW as an Associate Lecturer and the Centre as the Director of the Electoral Law Project. Prior to joining the Centre Bryan worked as a foreign legal consultant at a Sydney-based law firm.

Bryan completed his Master of Laws, International Law at the University of New South Wales in 2001. Prior to coming to Australia, Bryan received his BA(Hons) in Politics and Government and pre-law at Ohio Wesleyan University and his juris doctorate (Hons) from Case Western Reserve University, School of Law, in Cleveland, United States, and worked in the Canadian Government, Public Affairs Department at the Embassy of Canada, Washington, DC.

The aim of the Electoral Law Project is to explore and critically analyse contemporary issues relevant to electoral law. Given Australia's standing as an advanced democracy, it is poorly served in the field of electoral law scholarship. This lack of scholarship creates an impediment to best electoral practice. The project will build a base of scholarship by systematically analysing electoral law as a field of inquiry for the practical benefit of those who work in implementing and developing electoral law.

The Centre's partners in this project are the Electoral Council of Australia and Graeme Orr of Griffith University.

## Centre Welcomes New PhD Students

The Centre welcomes its new PhD students. Cassandra Goldie's topic relates to Human rights and homelessness in the Northern Territory and the need for legal and constitutional reform. Katherine Lindsay is researching Judicial Biography and the High Court of Australia. They join PhD students Andrew Lynch, whose topic is Dissent in the High Court of Australia in Constitutional Cases, and Peter Gerangelos on the Separation of Powers and Legislative Interference with the Judicial Process.



Cassandra Goldie

### Visitor to the Centre

Professor Ted Morton from University of Calgary was a visitor to the Gilbert & Tobin Centre of Public Law on Friday 24 May. He is well known in Canada as one of the more provocative and interesting critics of the Canadian Charter of Rights and Freedoms. He is a political scientist with a well established background in commenting on the work of the Canadian Supreme Court. He held a seminar on 24 May on 'The Political Impact of the Canadian Charter of Rights and Freedoms, 1982-2002: A Twenty Year Assessment'.

### Centre joins Australian Policy Online

The Centre has joined Australian Policy Online (APO). APO has over fifty member centres and institutes and offers fast access to much of the best Australian social, economic, cultural and political research available online. APO is maintained by the Institute for Social Research Swinburne University of Technology and has sixteen subject areas, from health and education to cities & suburbs to the environment. The internet address for APO is: [www.apo.org.au](http://www.apo.org.au).

### Social Justice Interns

*Iain Gentle*

Iain Gentle was the Social Justice Intern for Semester One, 2002. He is in his third and final year of the Bachelor of Laws program at UNSW. This follows a Bachelor of Arts and Science he completed at the University of Washington in 1998. Iain played an important role in the Centre's work on the proposed federal anti-terrorism legislation.

*Vanessa Bosnjak*

The Social Justice Intern for Semester Two, 2002 is Vanessa Bosnjak, who is in her second year of the Bachelor of Laws Graduate program. She completed her first degree, Bachelor of Science (Hons), at the University of Sydney. Her research during the internship will contribute to the Centre's Bill of Rights project.

### Project Director attends UN Draft Declaration

In January, Megan Davis, the Centre Bill of Rights Director attended the United Nations Commission on Human Rights Working Group on the Draft Declaration of Indigenous peoples rights as legal advisor to ATSIC. Held in Geneva the purpose of the Working Group is to elaborate a Declaration of the rights of Indigenous peoples. This year was the seventh session. Megan attended the meeting assisting Dr Sarah Pritchard as legal advisor for the ATSIC delegation.



George Williams and Centre Administrator Belinda McDonald

## Centre Publications

*George Williams*

'Voters and the Franchise: the Federal Story' Research Paper 17 2001-02, (Parliamentary Research Service, Commonwealth Parliament, May 2002), (with Jennifer Norberry)

'Co-operative Federalism and the Revival of the Corporations Law: Wakim and Beyond' (2002) 20 *Company & Securities Law Journal* 160

*The Oxford Companion to the High Court of Australia* (Oxford University Press, 2001) (edited with Tony Blackshield and Michael Coper)

'The Australian Constitution' (2001) 64 *Australian Geographic* 88

*Megan Davis*

'Rights Reluctance: Utilitarianism and the Future of Human Rights in Australia' *The Drawing Board: An Australian Review of Public Affairs*

'New South Wales Bill of Rights Inquiry' (2002) 13 *Public Law Review* 11

'The United Nations Draft Declaration 2002' (2002) 5 (16) *Indigenous Law Bulletin* 6

### Presentations

*George Williams*

'Indicators for Human Rights: Domestic and International' delivered (with Professor Hilary Charlesworth) at *Democratic Audit of Australia: Indicators Workshop*, ANU, Canberra, 11 July 2002.

'Australia's Legal Response to September 11: New Terrorism Laws' delivered at NSW Council for Civil Liberties, President's Lunch, NSW Parliament House, 14 June 2002.

'Australia's Legal Response To September 11: Proposed Proscription Regime' delivered at ALP Government Services and Delivery Caucus Committee, Parliament House, Canberra, 16 May 2002.

'Australia's Legal Response to September 11: Proposed New Terrorism Laws' delivered at Gilbert & Tobin, Sydney, 1 May 2002.

'Human Rights and the Second Century of the Australian Constitution' delivered at Legal Studies Conference 2002, 21 March 2002.

*Megan Davis*

Keynote Speaker, International Women's Day ATSIIC breakfast, ATSIIC XI vs Prime Ministers XI Cricket Match, Manuka Oval, March 8 2002.

University of Sydney, Law school presentation "Why Australia Needs A Bill of Rights", May 13 2002.

'A Way Forward?', 2002 Bill of Rights Conference, 21 June 2002.

#### **General Articles**

*George Williams*

'Gaudron Replacement Must be a Woman' *Can-*

*berra Times* (1 July 2002).

'Voting YES - Can Australia Do it?' *New South Wales Republic* (NSW State Council Newsletter, Australian Republican Movement, June 2002), 9.

'Legal Overkill Puts Liberty at Risk' *The Australian* (17 June 2002).

'The Minister v the Judges' *The Age* (5 June 2002).

'Judges Fair Game for Fair Criticism' *Sydney Morning Herald* (5 June 2002).

'Doorstop' *Poetic Justice*, No 2 2002, 28.

'ASIO Bill Would be Effective - In Removing Rights' *Sydney Morning Herald* (3 May 2002).

'Rethink Referendums? Vote Yes' *Sydney Morning Herald* (24 April 2002).

'Hardline Laws Can Go Too Far' *The Australian* (8 April 2002).

'Without Support, Court is Fragile' *The Australian* (20 March 2002).

'Commission Not as Toothless as it May Seem' *Canberra Times* (25 February 2002).

'This Unseemly Row is Tainting an Important Office' *The Age* (22 February 2002).

'G-G's Terms of Work are Outdated' *The Australian* (20 February 2002).

'We've Left Basic Laws Untouched for Too Long' *The Australian* (31 December 2001).

## **Centre Personnel**

#### **Director**

George Williams, Anthony Mason Professor, BEc LLB Macq, LLM UNSW, PhD ANU

#### **Administrator**

Belinda McDonald

#### **Project Directors**

Sean Brennan, Lecturer, BA LLB LLM ANU, Treaty Project

Megan Davis, BA LLB UQ, Bills of Rights Project

Bryan Mercurio, Associate Lecturer, BA (Hons) Ohio, Wesleyan University, JD (Hons) Case Western Reserve University, LLM UNSW, Electoral Law Project

#### **Centre Associates**

Tony Blackshield, Adjunct Professor, LLM Syd

Adam Czarnota, Senior Lecturer, LLM PhD N. Copernicus

Julian Disney, Professor, AO LLB Adel, Hon LLD UNSW

Peter Gerangelos, Part-time Lecturer, UNSW, BA (Hons) LLB Syd, LLM UNSW

Arthur Glass, Associate Professor, BA LLB PhD Syd

Jill Hunter, Associate Professor, BA LLB UNSW, PhD Lond.

Martin Krygier, Professor, BA LLB Syd, PhD ANU

Naomi Sharp, Barrister and Part-time Lecturer, UNSW, BA (Hons) LLB UNSW, LLM McGill

Garth Nettheim, Emeritus Professor, LLB Syd, AM Tufts

Ronnitt Redman, Lecturer, BA LLB Syd LLM McGill

Robert Shelly, Lecturer, BA LLB Syd

Alex Steel, Lecturer, BA LLB Macq, MA (Media, Tech & Law) Macq

George Winterton, Professor, LLM WAust, JSD Columbia

#### **Social Justice Interns**

Iain Gentle (semester I 2002)

Vanessa Bosnjak (semester II, 2001)

#### **Research Assistants**

Pat Knowles

Paul Kildea