Dear friends,

2020 has been a challenging year – and a year like no other in recent memory. No doubt you have experienced that in your own lives in myriad ways. And our experience at the Centre has been no different. We have all been forced to adapt to new ways of meeting and operating. However, as we look back on the year, there are also many new and positive initiatives to celebrate.

2020 marked the 20th anniversary of the Centre’s life, and we were delighted to develop and share a video commemorating many of the Centre’s achievements during that period. It was also an opportunity to acknowledge the enormous generosity of Gilbert + Tobin as a firm, and especially Danny Gilbert in his tireless support for our work over the last 20 years. If you have not already seen the video, we invite you to do so here: watch now. You will note that special thanks are due for the excellent work done on the production by Centre members Tom Chapman and Lynsey Blayden, and UNSW TV’s Michael Kosmider.

The Centre adapted to the challenges of travel restrictions and social distancing by hosting a number of highly successful online events. These included a series of webinars examining the various public law implications of the COVID-19 pandemic, from the shift to online courtrooms and tribunals, to the proportionality of human rights restrictions imposed in response. These events saw us deepen our links with our new overseas public law partners, the Centre for Comparative and Public Law at Hong Kong University and the Centre for Asian Legal Studies at the National University of Singapore, as well as public law scholars in Taiwan. It also involved working closely with colleagues in history and economics to gain inter-disciplinary insights on quarantine and the COVIDSafe app. These webinars complemented the special series of posts on COVID-19 and Public Law curated by the Centre and published on AUSPUBLAW.

The series was also a great success: we hosted more than 800 attendees over the course of the seven webinars, including senior members of the bar, judiciary and academy. We especially thank Justice Beech-Jones and Professor Natalie Klein from our advisory and steering committees for their support, and all our speakers and guests for contributing their time and expertise – including Centre alum, Australian Human Rights Commissioner Edward Santow.

Term 2 also saw the Centre host a very successful virtual conference on the public law implications of government automation, together with the Allens Hub for Technology, Law & Innovation at UNSW Law. The conference was hosted...
by the Centre’s Dr Janina Boughey and attended by practitioners, judges and scholars working at the intersection of law and technology. It forms another important part of the growing collaboration between members of the Centre and the Hub, who are working together on various projects relating to the automation of government services and decision-making. The Centre is also thrilled to announce that Janina has recently been awarded a Discovery Early Career Researcher Award from the Australian Research Council.

To mark the end of the year, we hosted another virtual conference – the annual roundtable of the Comparative Constitutional Law project from 8-11 December. On 7 December, the Centre also hosted a conference on democracy and electoral commissions in comparative perspective. The conference was hosted by the Comparative Constitutional Law project, and organised by Rosalind Dixon and Harvard Law Professor Emeritus Mark Tushnet. The lead paper on Australia, however, is co-authored by Professor Sarah Murray and Director of the Elections Project, Dr Paul Kildea.

More importantly, we hosted an outdoor, socially distanced picnic – to thank everyone for everything they have done for the Centre during a challenging period. This included thanking three members of our Steering committee who will be stepping down after this year, two of them because they are leaving UNSW – i.e. Professors Andrea Durbach and Julie Stubbs. We thank them, and Professor Claudia Tazreiter, for their guidance over the last few years and wish them well in this next phase of their professional life. We also look forward to working with their replacements, Scientia Professors Jane McAdam (the Kaldor Centre for International Refugee Law at UNSW Law) and Carla Treloar (Faculty of Arts, Architecture and Design).

The picnic also provided an opportunity to farewell a long-term Centre member and researcher, Dr Nicola McGarrity, who will be moving on to pursue her interest in primary/pre-school teaching! We thank Nicola for her enormous contribution to the Centre, especially in the context of our anti-terrorism work and work at the intersection of criminal justice and public law, and look forward to her continued role as a Centre fellow.

On a happier note, we have welcomed several new PhD students to our community this year, including most recently Joshua Aird, a former Herbert Smith Freehills lawyer and New Zealander working on comparative human rights, who is profiled later in the newsletter.

Other Centre members are still very much at UNSW – but increasingly occupied with the governance of the Faculty and University more broadly. Since our last newsletter, the Centre’s founding Director, Professor George Williams, was appointed as the new Deputy Vice-Chancellor for Planning and Assurance, and his successor, Professor Andrew Lynch, as our Acting Dean. Centre Affiliate Professor Theunis Roux has also been appointed as the Head of School of the new School of Global and Public Law within the Faculty of Law, a role he will take up in January 2021. It is wonderful to see this continued path from the Centre to broader leadership within the University, and we wish George, Andrew and Theunis our best as they continue in these demanding new roles. It is a challenging time for the university sector generally, and we are lucky to have such able leaders to help guide us through this.

Throughout 2021, we will be running a the Global Public Law Virtual Book Seminar Series. The aim of this series is to invite leading scholars in public law around the globe to share ideas from a recent book with an Australian audience. The Series will be hosted by the G+T Centre and feature Australian-based commentators from both within and outside the Centre to discuss the book with the authors. It will also involve a collaboration with AUSPUBLAW, to develop a special blog series featuring commentary on the book for an Australian audience.
The Centre will also be producing a podcast to celebrate Thomas Mayor’s book releases. Thomas is a Torres Strait Islander who has tirelessly advocated for the proposals in the Uluru Statement, and is the author of two best-selling books. The first book, ‘Finding the Heart of the Nation – the journey of the Uluru Statement towards Voice, Treaty and Truth’, tells his story, the story of the Uluru Statement and the remarkable people that he met on his campaigning journey. The children’s version of the book, ‘Finding our Heart’, was published in June 2020. The podcast will feature Thomas reading ‘Finding our Heart’.

Our final note for the year is that we warmly invite you to attend our two major conferences in February next year, Public Law in the Classroom and our Constitutional Law conference, on February 11 and 12 respectively. The line-up for both programs is very exciting.

The teaching conference features an in-depth exploration of the challenges and opportunities of teaching public law online, as well as the launch of a new Centre CovidCreative group novel, The Originalist. All proceeds from the sale of the book go to the UNSW student hardship fund.

Our Constitutional Law conference will be fully online for the first time. And while we will miss meeting in person at the Art Gallery of NSW, we have a stellar line up of topics and speakers. Registration is also discounted from 2020, and you are able to register for the whole day or single sessions. We thank our colleagues at UNSW Edge for their help in making this new virtual format possible and encourage you to join us for what will be a great discussion. Click here to register.

Sincerely
Rosalind Dixon + Lisa Burton Crawford

** SAVE THE DATE **
12 FEBRUARY 2021
CONSTITUTIONAL LAW CONFERENCE

For details of Centre events, publications, submissions and so on please go to our website: gtcentre.unsw.edu.au

CENTRE ACTIVITIES

AWARDS
We are delighted to announce that recent publications by two of our members were shortlisted for the inaugural Australian Legal Research Awards by the Council of Australian Law Deans. Melissa Crouch’s book The Constitution of Myanmar: A Contextual Analysis was shortlisted for the Book Award, and Lisa Burton Crawford’s article ‘The Rule of Law in the Age of Statutes’ was shortlisted for the Article/Chapter (ECR) award. Congratulations to Melissa and Lisa, and to all the award winners!

EVENTS
COVID-19 and the COVIDSafe App
12 June 2020
Click here to watch the recording.
This webinar examined the COVIDSafe App launched by the Australian government in response to the COVID-19 pandemic. It considered the design and function of the app and the legal restrictions on its use, as part of a broader discussion of its potential risks and benefits and public trust in government-operated technology.

**Speakers:**

- Professor Lyria Bennett Moses, Director of the Allens Hub on Law, Technology and Innovation at the University of New South Wales Faculty of Law
- Dr Caroline Compton, Research Associate at the University of New South Wales Faculty of Law
- Associate Professor Kate Galloway, Griffith University Law School
- Associate Professor David Byrnes, Faculty of Business and Economics at the University of Melbourne
- Associate Professor Joshua Miller, Faculty of Business and Economics at the University of Melbourne

**Chair:**

- Dr Lisa Burton Crawford

*This Webinar was a joint initiative of the Gilbert + Tobin Centre of Public Law, Allens Law + Technology Hub and New Economic Policy Initiative at the University of New South Wales.*

**COVID-19, Human Rights Restrictions and Proportionality**

26 June 2020

Click here to watch the recording.

This webinar focussed on restrictions to various human rights – such as freedom of movement and association, and the right to an adequate standard of living. It noted the various countervailing human rights arguments for imposing restrictions of this kind – including the right to the highest attainable level of health. Drawing on public health and economic experts, as well as experts on human rights and proportionality, it was debated how these different rights are best weighed or balanced – or how we achieve a truly proportionate set of restrictions on some rights in the name of protecting others.

**Speakers:**

- Professor Richard Holden, Director, New Economic Policy Initiative, University of New South Wales
- Professor Marylouise McLaws, School of Public Health and Community Medicine, University of New South Wales; Member, World Health Organization (WHO) Health Emergencies Program Experts Advisory Panel for Infection Prevention and Control Preparedness, Readiness and Response to COVID-19
- Mr Edward Santow, Human Rights Commissioner, Australian Human Rights Commission

**Chair:**

- Professor Rosalind Dixon

*This Webinar was a joint initiative of the Gilbert + Tobin Centre of Public Law and the New Economic Policy Initiative at the University of New South Wales.*

**Elections and COVID-19**

3 July 2020

Click here to watch the recording.
This webinar examined the challenges that the COVID-19 pandemic poses for the conduct of elections in Australia. It considered how the spread of the coronavirus has prompted questions about whether elections should go ahead and, where they do, how voting, campaigning and counting can be conducted in a safe manner. This webinar was particularly timely given the Eden-Monaro by-election that took place on 4 July.

Speakers:
- Michael Maley, Electoral Process Specialist, formerly Special Adviser, Australian Electoral Commission
- Wade Lewis, Assistant Electoral Commissioner, Electoral Commission Queensland
- Professor Graeme Orr, University of Queensland

Chair:
- Dr Paul Kildea

This webinar was a joint initiative of the Electoral Regulation Research Network (ERRN) and the Gilbert + Tobin Centre of Public Law at the University of New South Wales.

COVID-19 and Federalism: Seeding Chaos or a More Effective Response? 24 July 2020
Click here to watch the recording.
This webinar examined the relationship between Commonwealth and state government responses to the COVID-19 pandemic. States have responded differently to the pandemic, and we have seen Commonwealth-state co-operation through novel public law institutions such as the ‘National Cabinet’, as well as disagreement among Commonwealth and state governments in a range of key areas – especially in the context of education and the closure/opening of schools. Ultimately, speakers questioned whether federalism has made us safer, or simply more confused, as we confront the challenges raised by the pandemic.

Speakers:
- Professor Andrew Lynch, Acting Dean of the Faculty of Law, University of New South Wales
- Professor The Hon Adrian Piccoli, Director of the UNSW Gonski Institute for Education and Professor of Practice, School of Education, University of New South Wales
- Dr Tamara Tulich, Senior Lecturer, University of Western Australia
- Dr Shipra Chordia, NSW Bar.

Chair:
- Professor Rosalind Dixon

This Webinar was a joint initiative of the Gilbert + Tobin Centre of Public Law, Gonski Institute for Education and the New Economic Policy Initiative at the University of New South Wales.

Fairness in Virtual Courtrooms 14 August 2020
Click here to watch the recording.
This webinar examined the measures and changes to court and tribunal procedures put in place across Australia in response to the COVID-19 pandemic, including the move to online hearings and expansion of non-jury trials. It discussed the rationale and design of these measures, their compatibility with public law norms and values, and looked forward to lessons that may be learned about the broader digitisation of court process.
Elections under COVID-19 in Australia: an update on recent experiences and lessons for the future
26 November 2020
Click here to watch the recording.

This webinar was a joint initiative of the Australia and New Zealand Chapter of the International Society of Public Law (ICON-S AUS-NZ), the Gilbert + Tobin Centre of Public Law, the Australian Association of Comparative Law.

Speakers:
• Professor the Hon Kevin Bell AM QC, Director of the Castan Centre for Human Rights Law at Monash University
• Associate Professor Claire Charters, University of Auckland Faculty of Law
• Professor Megan Davis, Pro Vice-Chancellor Indigenous UNSW and Belnaves Chair in Constitutional Law, Indigenous Law Centre
• Associate Professor Dean Knight, Victoria University of Wellington Faculty of Law and Co-Chair of ICON-S AUS-NZ
• Professor Adrienne Stone, Director of the Centre for Comparative Constitutional Studies at Melbourne Law School

Rapporteur:
• Professor Janet McLean QC, University of Auckland Faculty of Law

Chair:
• Professor Sarah Murray, University of Western Australia Faculty of Law and Co-Chair of ICON-S AUS-NZ

This webinar was a joint initiative of the Australia and New Zealand Chapter of the International Society of Public Law (ICON-S AUS-NZ), the Gilbert + Tobin Centre of Public Law, the Australian Association of Comparative Law.

This webinar was a joint initiative of the Gilbert + Tobin Centre of Public Law and the Australian Institute of Administrative Law, and we thank Justice Rachel Pepper for her assistance in organising the event.

ICON-S AUS-NZ Launch Event: Trans-Tasman Reflections on COVID-19 and Public Law
28 August 2020
Click here to watch the recording.

This webinar marked the official launch of the Australia-NZ chapter of the International Society of Public Law (ICON-S), and was co-hosted by the Gilbert + Tobin Centre and AACL. It drew together experts from Australia and New Zealand to discuss how the governments in their jurisdictions have responded to the COVID-19 pandemic. Among other things, they considered what has determined the success of responses, what oversight challenges have arisen, and the public law significance (if any) of how the two countries have worked together to respond to the pandemic.

The introduction was given by Professor Rosalind Dixon, Director of the Gilbert + Tobin Centre for Public Law at UNSW Law, and Co-President of ICON-S.

Speakers:
• Professor the Hon Kevin Bell AM QC, Director of the Castan Centre for Human Rights Law at Monash University
• Associate Professor Claire Charters, University of Auckland Faculty of Law
• Professor Megan Davis, Pro Vice-Chancellor Indigenous UNSW and Belnaves Chair in Constitutional Law, Indigenous Law Centre
• Associate Professor Dean Knight, Victoria University of Wellington Faculty of Law and Co-Chair of ICON-S AUS-NZ
• Professor Adrienne Stone, Director of the Centre for Comparative Constitutional Studies at Melbourne Law School

Rapporteur:
• Professor Janet McLean QC, University of Auckland Faculty of Law

Chair:
• Professor Sarah Murray, University of Western Australia Faculty of Law and Co-Chair of ICON-S AUS-NZ
This webinar explored the responses to the COVID-19 challenge adopted at recent electoral processes in Australia, and seek to identify the longer term implications of work practices which Australian election administrators have been forced by the pandemic to adopt.

Speakers:
• Damian Cantwell AM, ACT Electoral Commissioner
• Warwick Gately, Electoral Commissioner for Victoria
• Iain Loganathan, NT Electoral Commissioner
• Tom Rogers, Australian Electoral Commissioner

Chair:
• Dr Dominique Dalla-Pozza, Senior Lecturer, ANU College of Law

This webinar was a joint initiative of the Electoral Regulation Research Network (ERRN), Melbourne School of Government and the Gilbert + Tobin Centre of Public Law at the University of New South Wales.

Electoral Commissions and Democracy Conference
7 December 2020
This one-day conference, organised by Professor Rosalind Dixon with Emeritus Professor Mark Tushnet from Harvard Law School and hosted by the Comparative Constitutional Law Project, brought together scholars and electoral experts from around the world to discuss both the theory and practice of electoral commissions in comparative context. See the Comparative Constitutional Law Project report for more information.

Comparative Constitutional Law Roundtable
8-11 December 2020
The Comparative Constitutional Law Project again hosted its annual Roundtable event – in 2020 for the first time via Zoom. The Roundtable brought together scholars from Australia and New Zealand, as well as the broader region and the world, to discuss a variety of papers on issues of comparative constitutional law. The Roundtable also featured a book manuscript workshop for Rosalind Dixon’s forthcoming book Responsive Judicial Review, and a book Launch for Professor Joel Colón-Ríos’ new book Constitutional Power and the Law (Joel is the Director of the New Zealand Centre for Public Law – one of the G+T Centre’s partner centres). See the Comparative Constitutional Law Project report for more information.

THE AUSPUBLAW BLOG
It has been a busy 2020 for the AUSPUBLAW blog editorial team. We have worked hard to respond to the public law implications of the COVID-19 pandemic while continuing to publish scholarly analysis of recent cases and other public law developments, as well as insights into the academic research being undertaken by Australia’s best public law scholars. The blog is currently edited by Zsofia Korosy and Elisabeth Perham, two HDR members of the Centre, and coordinated by Dr Lisa Burton Crawford.

Since the last Centre newsletter, the blog’s readership has continued to grow. We now have over 1300 email subscribers and over 2700 Twitter followers (an increase of over 200 subscribers and 200 followers respectively since the previous newsletter).

In late March, the blog began publishing a series of posts on COVID-19 and Public Law. This series includes a mix of commissioned and submitted posts from public law scholars and practitioners across Australia. So far, 18 posts have been published in that series. Since June, these have covered topics including Clive Palmer’s legal challenge to the closure of Western Australia’s border; the structure and operation of the National Cabinet; the respective relationships
between the pandemic and protests, police powers and public trust; and the democratic accountability dimensions of dealing with the pandemic in states such as Queensland and Tasmania. Posts published as part of this series have seeded wider academic debates, including in forums such as the *Alternative Law Journal*.

In addition to the new series, we are also pleased to have published 28 other posts. This takes our total for the year to November to 46 posts. By contrast, in the calendar year 2019 the blog published a total of 23 posts and two book forums. Topics covered since the previous newsletter include examination of the operation of Western Australia’s *Aboriginal Heritage Act*; the use of Indigenous languages in statutes and the possibility of broader Indigenous language recognition reform; judicial appointment and education procedures; and accountability and transparency in the use of delegated legislation. We have also published analyses on several topical High Court cases, including the Palace Letters case; WA’s *Palmer Act*; and *Smethurst v Commissioner of Police*.

We have also continued to provide a monthly roundup of public law events across the country, and have been pleased to share details of webinars and other online events that continue to be held even in the face of the disruption wrought by the pandemic.

In 2021, the blog will continue to commission and welcome analysis on the public law implications of the COVID-19 pandemic, as well as continuing to bring you posts analysing other public law developments and highlighting research on Australian public law. We also look forward to publishing new book forums focusing on the work of early career researchers. These forums were instituted in 2018 and provide an opportunity for scholars and practitioners to critically engage with new book-length scholarship focussed on Australian public law.

As always, we welcome contact from any friends of the Centre who are interested in writing for AUSPUBLAW. To subscribe to the blog, sign up at www.auspublaw.org or follow it on Twitter @auspublawblog. To submit a post for consideration by the blog editors, or to advise an upcoming public law event, contact the editors at auspublaw@unsw.edu.au.

Elisabeth Perham and Zsofia Korosy

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**PEOPLE**

**NEW CENTRE MEMBER**

**Dr Chantal Bostock**

Dr Chantal Bostock recently joined UNSW Law as a senior lecturer, where she teaches administrative law and Australian Immigration Law and Practice, with Joanne Kinslor. She has worked as a lawyer in private practice and at the AAT and in the UK at the Asylum and Immigration Tribunal and the Law Commission. She completed a five year term as a Member of the AAT in 2017 and currently works as a legal member of the NSW Medical Council. She completed her PhD on the AAT’s review of visa cancellation decisions at UNSW and has presented at conferences and published on various topics such as visa cancellation, Tribunal review and independence and administrative justice in national and international journals.

She is currently examining the impact of visa cancellation on victims of family violence (assisted by the exceptionally capable student, Kate Jackson!). The paper was accepted at the *Feminism, Law and Citizenship* Conference, Paris, which was to be held in June 2020 but as a result of the pandemic, has been re-scheduled to June 2021. She has also commenced a new project, which is intended to explore and understand students’ perceptions of administrative law, the findings of which will ultimately feed into the design of the administrative law course.
INTRODUCING OUR NEW PHD CANDIDATES

Joshua Aird
Joshua Aird was born in New Zealand and grew up in the idyllic Bay of Islands. He attended Te Herenga Waka - Victoria University of Wellington and graduated third in his class with a first-class honours degree in Law. Upon graduating, Joshua joined the law firm Russell McVeagh where his work focused on contentious litigation and tax matters. In 2018, Joshua moved to Sydney to join the disputes group of Herbert Smith Freehills where he worked on a number of high-profile disputes.

In 2020, Joshua commenced a PhD at UNSW under the supervision of Professor Rosalind Dixon and Dr Janina Boughey. His research focuses on the culture of justification in human rights law with particular regard to parliamentary rights protection mechanisms. Joshua has previously taught Public Law, and Legal Research, Writing and Mooting at Te Herenga Waka - Victoria University of Wellington, Public Law at the University of Auckland, and Contracts at the University of Sydney.

Martin Hill
Martin Roland Hill grew up in the Hunter region. After completing a Bachelor of Arts (Honours) (majoring in philosophy) at the University of Newcastle (during which he was awarded the Friends of Newcastle University Prize), Martin completed a graduate Bachelor of Laws (Honours) at the Sydney Law School, University of Sydney. While completing that degree, Martin was a student editor for the Australian International Law Journal.

Martin subsequently completed a Master of Laws (Research) at the Sydney Law School. His thesis examined how the rule of law regulates the New South Wales legislature’s power.

Martin commenced in the New South Wales Crown Solicitor’s Office in 2008. He has practiced in constitutional and administrative law, advising government clients on constitutional issues and acting in judicial review proceedings. Martin most recently acted as a principal solicitor in the Property and Native Title practice group, where his practice focused on government transactions involving real property.

Martin commenced his PhD in the UNSW Faculty of Law in June 2020. His research, which is supervised by Professor Prue Vines and Dr Lisa Burton Crawford, focuses on how the High Court approaches contextual materials when interpreting legislation.

PROJECT REPORTS

ADMINISTRATIVE LAW AND JUSTICE PROJECT

Project Director: Janina Boughey
The Administrative Law and Justice Project examines the accountability challenges presented by changes in the scope, nature and exercise of executive power across a range of areas of substantive law.

A major focus of the project during 2020 has been the use of executive power in response to the COVID-19 pandemic. Gabrielle Appleby, Janina Boughey, Sangeetha Pillai and George Williams made submissions and gave evidence to the Senate Committee on the Scrutiny of Delegated Legislation on the rise of non-disallowable instruments; which has been a particular concern during COVID. Gabrielle and Janina each contributed to a special issue of the Alternative Law Journal on government accountability during COVID, and members of the project wrote numerous blog posts and media articles on aspects of government accountability in times of emergency.
The Administrative Justice project was closely involved in two of the webinars hosted by the Centre as part of its series on the public law implications of COVID-19. The first was a webinar on the topic of *Fairness in Virtual Courtrooms*, which examined the measures and changes to court and tribunal procedures put in place across Australia in response to the COVID-19 pandemic, including the move to online hearings and expansion of non-jury trials.

The panellists discussed the rationale and design of the measures that had been put in place, their compatibility with public law norms and values, and looked forward to lessons that may be learned about the broader digitisation of court process. This webinar was co-hosted by the NSW Chapter of the Australian Institute of Administrative Law and Lisa thanks Justice Rachel Pepper and Janina Boughey for their assistance in organising the event.

Lisa also hosted a webinar on the topic of the COVIDSafe app, the new technology launched by the Australian government in an attempt to slow the spread of COVID-19. This webinar was a joint initiative of the Centre, the Allens Hub for Law, Technology and Innovation, and the New Economic Policy Initiative at the University of New South Wales. It provided a unique opportunity to consider a voluntary measure adopted by the government and drew together a range of interdisciplinary insights into the legal and behavioural factors which would inform its success (or otherwise), as well as the public law and human rights implications of the technology.

A second area of focus for the project during 2020 was our ongoing work on the public law implications of government automation. Janina, together with Katie Miller organised a workshop on this issue in June, which brought together judges, law academics, technology academics, government policy-makers and lawyers to discuss the challenges and opportunities that the automation of government functions presents for public law. The workshop was co-hosted by with the Allens Hub for Technology, Law and Innovation. The papers from the workshop are being prepared for publication in early 2021. Particular thanks to Shreeya Smith and Kate Jackson (our wonderful Centre Intern in Term 3) for their invaluable contributions throughout the project. Janina and Lisa also continued their ongoing research work with colleagues from the Allens Hub on a range of issues relating to the automation of government functions during 2020.

Additionally, Janina has continued her research on standards of review, writing for AUSPUBLAW and the Public Law Review on the novel approach to unreasonableness in *Brett Cattle Company Pty Ltd v Minister for Agriculture* [2020] FCA 732.

Lisa has continued her research into the constitutional dimensions of judicial review and the ways in which courts construe statutory conferrals of executive power. This includes recent commentary of the decision of the High Court in *ABT17 v Minister for Immigration and Border Protection* [2020] HCA 34 (‘How should a court respond to a material error of law?’ *AUSPUBLAW* (28 October 2020). This case demonstrated ongoing disagreement about the way in which the Court should respond to “immaterial” errors of law, citing Lisa’s recent work on the topic (Lisa Burton Crawford, ‘Jurisdictional Errors, Immaterial Errors and the Presumptive Limits of Executive Power’ (2019) 30 *Public Law Review* 281).

Lisa has also drawn upon her previous research into the purpose and scope of the constitutional guarantee of judicial review of executive action in her commentary on the recent and controversial decision of the High Court in *Smethurst v Commissioner of Police* [2020] HCA 14 (Lisa Burton Crawford and Michael Crawford, ‘Private Rights, Public Wrongs and the Limits of Property’, forthcoming in the *Law Quarterly Review*). She looks forward to examining this topic in her keynote address to the Gilbert + Tobin Centre Constitutional Law Conference in February.
Dr Chantal Bostock is currently examining the impact of visa cancellation on victims of family violence (assisted by the exceptionally capable student, Kate Jackson!). The paper was accepted at the Feminism, Law and Citizenship Conference, Paris, which was to be held in June 2020 but as a result of the pandemic, has been re-scheduled to June 2021. She has also commenced a new project, which is intended to explore and understand students’ perceptions of administrative law, the findings of which will ultimately feed into the design of the administrative law course.

COMPARATIVE CONSTITUTIONAL LAW PROJECT

Project Director: Rosalind Dixon

Project Deputy Director: Melissa Crouch

2020 saw the launch of a reading group on Constitutionalism from the Global South, facilitated by Project Deputy Director Melissa Crouch, and Project affiliate Theunis Roux. Several centre HDR members are part of the reading group. The Constitutionalism from the Global South Reading Group met on a monthly basis this year to discuss key works on comparative constitutional law of relevance to the global south. Starting initially on Zoom and then excitedly, amazingly, beginning to meet in person, they covered a range of key texts, from Gautam Bhatia’s monograph on transformative constitutionalism in India to Jothie Rajah’s study of authoritarian rule of law in Singapore. They hope to expand the Group’s focus in 2021 beyond constitutionalism to law and politics in the Global South more generally, forging links with scholars from the humanities and social sciences.

COVID-19 and the move to virtual conferencing has also allowed more engagement by Project members with a range of global initiatives. Rosalind Dixon has given talks on her new project on “responsive judicial review” to the Supreme Courts of Mexico and Brazil, and the Constitutional Court of Colombia. In November, she also gave the endowed Huneeus lecture in Chile on the theme of ‘Realistic Constitutional Transformation in Chile’. Dixon also joined the American Society of Comparative Law panel on a new book by Yvonne Tew, Constitutional Statecraft in Asian Cases, and a conference held at the University of Chicago on empirical studies in comparative constitutional law.

In December, the CCL Project again hosted its annual comparative constitutional roundtable featuring 10 papers by 11 authors from law schools across Australia and the region (including a paper by Elisabeth Perham), a book manuscript workshop for Rosalind Dixon’s forthcoming book Responsive Judicial Review, and a book Launch for Professor Joel Colón-Rios’ new book Constitutional Power and the Law (Joel is the Director of the New Zealand Centre for Public Law). This again cements our new partnerships with the Centre for Comparative and Public Law at Hong Kong University and the New Zealand Centre for Public Law at Te Herenga Waka – Victoria University of Wellington – multiple academics from both centres were involved as presenters and commentators across the four days of the roundtable.

The Project also hosted a conference on democracy and electoral commissions in comparative perspective, featuring papers on Australia, India, Indonesia, Malaysia, Myanmar, Kenya, Sri Lanka, as well as theoretical perspectives. The papers from this conference will be submitted to a special symposium of the Asian Journal of Comparative Law.

ELECTIONS AND REFERENDUMS PROJECT

Project Director: Paul Kildea

In recent months there has been extensive discussion about the impact of the COVID-19 pandemic on elections. The question of whether elections should go ahead, and what measures should be put in place to ensure the safety of voters and officials, has been debated around the globe. The Centre has contributed to the Australian discussion by co-hosting a series of webinars with the Electoral...
Regulation Research Network (ERRN). These have been diverse and wide-ranging: highlights have included electoral process specialist, Michael Maley, outlining the challenges that COVID poses for electoral administration; the Australian Electoral Commissioner, Tom Rogers, reflecting on the experience of running the Eden-Monaro by-election; and the NT Electoral Commissioner, Iain Loganathan, speaking about the challenges of reaching Aboriginal and Torres Strait Islander voters in remote communities during the pandemic.

INDIGENOUS LEGAL ISSUES PROJECT

Project Director: Sean Brennan

First, great news that Centre Fellow and Centre Alumni Lauren Butterly has had her PhD conferred, following excellent markers’ reports. Lauren’s thesis was entitled Reconciling Indigenous and Settler-State Assertions of Sovereignty Over Sea Country in Australia’s Northern Territory. Dr Butterly is now a Senior Solicitor with the Environmental Defenders Office in Perth.

To mark NAIDOC Week 2020, the Indigenous Law Centre (ILC) at UNSW held an online seminar series over three weeks in October and November devoted to the three reforms outlined in the Uluru Statement from the Heart: Voice Treaty and Truth. Centre member Gabrielle Appleby was a presenter in the seminar devoted to Truth Telling, along with historian Mark McKenna. Earlier, Centre member Sean Brennan was a panel member in the seminar focused on Treaty. Videos of all three seminars that feature Pat Anderson AO, Megan Davis, Noel Pearson, Dani Larkin, Geoffrey Winters and Jill Gallagher are available here. This continues the long-standing collaboration between the Gilbert + Tobin Centre of Public Law and the ILC, and maintains the Centre’s strong connection with the Uluru Dialogues and commitment to seeing the reforms set out in the Statement from the Heart implemented.

PUBLIC LAW AND PUBLIC HEALTH PROJECT

Project Co-Directors: Rosalind Dixon and Janina Boughey

Project Deputy Directors: Elisabeth Perham and Shreeya Smith

The Public Law and Public Health project examines the challenges to public law values and institutions posed by the outbreak of COVID-19 and government responses focused on containing its spread. One of the key aims of this project is to engage the legal sector, public officials and the broader community on these issues.

As set out in the June 2020 newsletter, the project has supported posts on the AUSPUBLAW blog dealing with public law and COVID-19. To date, 18 blog posts have been published, including four posts by Centre members and fellows.

Centre members Professors Rosalind Dixon and George Williams have also published opinion and discussion pieces in the media relating to the impact of COVID-19 on our personal liberties and representative government as well as the shape of economic responses to COVID-19 now and in the future.

The COVID-19 webinar series for 2020 is comprised of nine webinars dealing with matters such as human rights and proportionality in shaping COVID-19 responses, the regulatory challenge posed by the entry and exclusion of cruise ships from Australian ports, the role of government-operated technology (in the context of the deployment of the COVIDSafe app), the conduct of safe, fair and free elections in a COVID-safe manner, fairness in virtual courtrooms, and the role of federalism in responding to COVID-19 and if, and how, federalism has been affected by COVID-19. Panellists included experts in public health, human rights, economics, education, electoral law and practice, international law, constitutional law and practice, judicial scholars, as well as judicial officers and leading members of the profession. The webinars were well-attended, with 50–100 participants calling in to each via Zoom.
Since the last newsletter, six webinars have been held; two in June, two in July, one in August, and one in November. The first of the June webinars, held on 12 June 2020 considered the design and function of the COVIDSafe App and restrictions on its use. This discussion was grounded in the broader context of the benefits and risks of government operated technology, and the public trust in, or lack thereof, in such technology. Co-hosted with the Allens Law and Technology Hub and New Economy Policy Initiative, we were joined by Professors Lyria Bennett Moses, Dr Caroline Compton and Professor Kate Galloway to discuss the design of the app, the role of trust, and a comparison with international approaches. Professors David Byrnes and Joshua Miller—our colleagues from the Faculty of Business and Economics at the University of Melbourne—explored the economic effects of the app, as well as how to build the right incentive structure for its use. The discussion was facilitated by the Deputy Director of the Centre, Dr Lisa Burton Crawford.

The second June webinar, held on 26 June 2020 considered the question of what constitutes a proportionate response to COVID-19. Discussing the imposition and continuation of lockdowns, Human Rights Commissioner, Mr Ed Santow, gave the human rights perspective. Professor Marylouise McLaws shared her public health expertise, discussing what constitutes a proportionate response from a public health perspective. Professor Richard Holden, Director of the New Economic Policy Initiative, gave the economic perspective, responding to arguments from some quarters that a less severe lockdown was the proportionate economic response. The discussion was facilitated by Centre Director, Professor Rosalind Dixon.

The first of the July webinars, held on 3 July 2020, immediately before the by-election in Eden-Monaro, discussed the conduct of elections in a pandemic. Current and former electoral officials and electoral scholars on the panel discussed the strengths and vulnerabilities of the current regulatory framework for elections in the face of conducting an election during a pandemic, the practical experiences from by-elections in Queensland, as well as the effect of COVID-19 restrictions on the ritual and social aspects of elections. An enduring theme was the need to balance maintaining and bolstering trust in the electoral process with the need for flexibility to respond to uncertain, and fast moving, conditions for the running of elections during COVID-19. The session was chaired by Dr Paul Kildea, who facilitated a fascinating and broad ranging Q&A session.

The second of the July webinars, held on 29 July 2020, explored federalism and COVID-19. Professors Andrew Lynch and Ben Reilly discussed the impact of COVID-19 on federalism, including the replacement of the Council of Australian Governments with the National Cabinet and its implications. The Honorable Adrian Piccoli spoke to the opportunities and challenges posed by federalism through approaches to school closures during COVID-19. Dr Shipra Chordia discussed the constitutionality of interstate border closures, and alternative models such as regional closures. This session was chaired by Centre Director, Professor Rosalind Dixon.

The August seminar examined measures and changes to court procedures put in place in courts in response to COVID-19. The panel, composed of judicial officers, leading members of the legal profession and scholars of the judiciary, explored the rationale and design of measures such as the move to online hearings and expansion of non-jury trials and considered the compatibility with public law values and norms. This session was chaired by the Deputy Director of the Centre, Dr Lisa Burton Crawford.

The November seminar, co-hosted with the Electoral Regulation Research Network and the Melbourne School of Government, returned to the question of the conduct of elections during COVID-19. Panellists reflected on recent experiences with elections in Australia, and the longer term implications for
how elections are run. The panel was comprised of the Australian Electoral Commissioner and the Electoral Commissioners of the ACT, Victoria and the Northern Territory.

Recordings of these webinars as well as the two May webinars outlined in the June 2020 newsletter are available here.

**STATUTES PROJECT**

**Project Co-Directors: Lisa Burton Crawford and Janina Boughey**

The Statutes Project aims to examine contemporary developments in legislative practice and statutory interpretation, in comparative perspective. Straddling the divisions of constitutional law, administrative law and legal theory, it aims to shed new light on important public law debates by viewing them in light of the way in which statutes are used as a tool of governance in the modern administrative state.

Co-director Lisa Burton Crawford has continued her research into contemporary developments in statutory interpretation. Lisa’s research places particular emphasis on the constitutional dimensions and parameters of statutory interpretation. This focus was evident in her recent publication with Professor Dan Meagher of Deakin University, which examines how the doctrine of precedent applies to previous judicial interpretations of statute law, and which has already been cited by the New South Wales Court of Criminal Appeal (Lisa Burton Crawford and Dan Meagher, ‘Statutory Precedents Under the “Modern Approach” to Statutory Interpretation’ (2020) 42(2) Sydney Law Review 209). Earlier this year, Lisa published an extensive empirical and theoretical study of the volume and complexity of federal legislation and its implications for the rule of law (‘The Rule of Law in the Age of Statutes’ (2020) 48(2) Federal Law Review 159). This article was shortlisted for the inaugural Council of Australian Law Dean’s Legal Research Awards in the category of best Article or Chapter by an Early Career Researcher.

In collaboration with colleagues from the Allens Hub for Law, Technology and Innovation, Lisa and Janina are currently working on new research examining the potential benefits of, and challenges posed by, the idea of ‘rules as code’. This entails co-creating machine-readable versions of legislation at the same time as the natural language version of the law. While this technology has many important potential benefits, it raises significant questions about the authority and interpretation of statute law. Part of this research will soon be published in a collection edited by Janina, with further publications to follow in the new year.

In the teaching space, Lisa has enjoyed the opportunity to deliver a reinvigorated version of the Faculty’s Advanced Statutory Interpretation unit in Term 3. This unit allows students the opportunity to delve deeper into the challenges of statutory interpretation, from the fundamentals of identifying the ‘ordinary, natural meaning’ of statutory texts to the complexities of the ‘always speaking’ canon of construction. The course has been greatly enriched by guest lectures from Justice John Basten, Dr Janina Boughey, Dr Bruce Chen, Dr Lyria Bennett Moses, and last but not least Mr Martin Hill, who has recently joined the Centre as a PhD candidate. Martin’s thesis will examine the way in which considerations of context inform statutory interpretation, and is jointly supervised by Lisa and Professor Prue Vines. Lisa and Janina also continue to work on the substantially revised second edition of their teaching text, *Public Law and Statutory Interpretation: Principles and Practice*, which will be published by Federation Press early in the new year.
PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Joint Publications


Janina Boughey


Lisa Burton Crawford

‘How should a court respond to a material error of law?’, blog post published on AUSPUBLAW (28 October 2020).

Melissa Crouch


Paul Kildea

Andrew Lynch
‘Will the Heydon scandal finally produce judicial appointments reform?’, blog post published on AUSPUBLAW (26 June 2020)

Siddharth Narain

George Williams
Treaty (Federation Press, 2nd ed 2020), 1-364 (with Harry Hobbs).

PRESENTATIONS

Sean Brennan
Melissa Crouch

‘Lecturer for Yangon School of Political Science, Intensive Masters subject on Principles of Constitutionalism’, Yangon, Myanmar (May 2020).

‘COVID-19 and Rule of Law in Myanmar’ organised by RSF, a cooperation between Freie Universität Berlin and the German Foreign Office Germany (June 2020).

‘ASEAN Forum Webinar’ on the 45th anniversary of ASEAN and New Zealand relations, hosted in Wellington, New Zealand, (July 2020).

‘International Relations in Asia’ hosted by Department of International Relations, Nanyang Technological University, Singapore (July 2020).

‘Dominion Constitutionalism’, hosted by City University of Hong Kong Law School (July 2020).

‘Challenges to Constitutionalism in the Global South’, the Faculty of Law, University of Brawijaya, Malang, Indonesia (Aug 2020).

‘Democracy in the Digital Era: Law and Governance in Asia’, Department of International Affairs, Faculty of Law, Sultan Agung State Islamic University (Universitas Negeri Islam Sultan Agung, UNISSULA) Semarang, Indonesia (Sept 2020).

‘Constitutional Law Workshop for civil society groups in Myanmar’ (Nov 2020).

Paul Kildea


Siddharth Narrain

Presentation of a summary of a joint submission (with Lyria Bennett Moses & Monika Zalnieriute) to the Legal and Social Issues Committee of the Parliament of Victoria on Victoria’s Anti-Vilification Law, 28 May 2020.

Elisabeth Perham


George Williams


‘Micronations and Australian Exceptionalism’ Staff Seminar, UNSW Law, Sydney, 30 June 2020.


MEDIA PUBLICATIONS

Joint Publications

Rosalind Dixon ‘Premier, close the border with Victoria now’, The Sydney Morning Herald (1 July 2020) (with Richard Holden)

Melissa Crouch

‘Health of Democracy in Decline: Covid-19 and Southeast Asia’s illiberal turn’, The Interpreter (July 2020)

‘Why Myanmar’s Elections will be neither Free, Fair, nor Safe’, The Interpreter (13 Oct 2020)

‘Under the cover of covid-19, Indonesia’s most respected institution under attack’, The Sydney Morning Herald (14 September 2020)


‘Youth engagement, language skills key to deeper Australia-Indonesia engagement’, The Interpreter (15 December 2020)

Rosalind Dixon
‘Deeply troubling Dyson Heydon case a reminder low acts can occur in the highest places’, The Sydney Morning Herald (23 June 2020)

‘Premier has taken the correct decision to close the border’, The Sydney Morning Herald (6 July 2020)

George Williams
‘Isolation Fuels ‘Pandexit’ Calls’ The Australian (26 October 2020).
‘This Expensive Bill Will Undermine Our Universities’ Global Status’ The Australian (12 October 2020).
‘The President’s Call will Influence American Life for Decades to Come’ The Australian (28 September 2020).
‘Final Test for Closed Borders’ The Australian (7 September 2020).
‘PM Has the Upper Hand on Border Closures’ The Australian (31 August 2020).
‘Little lands Can be Quite Amusing’ The Australian (18 August 2020).
‘Why Does Australia go it Alone Without a Protective Bill of Rights?’ The Australian (4 August 2020).

Submissions

Jessie Blackburn, Andrew Lynch, Nicola McGarrity, Tamara Tulich and George Williams, Submission to Parliamentary Joint Committee on Intelligence and Security ‘Review of AFP Powers’ (19 September 2020).


George Williams, Submission (with Keiran Hardy) to Senate Finance and Public Administration Legislation Committee ‘Inquiry into Intelligence and Security Legislation Amendment (Implementing Independent Intelligence Review) Bill 2020’ (21 October 2020).

George Williams, Submission (with Ian Jacobs) to Foreign Affairs, Defence and Trade Committee on ‘Australia’s Foreign Relations (State and Territory Arrangements) Bill 2020’ 25 September 2020).

PODCASTS
Melissa Crouch
New Books Network about The Constitution of Myanmar (Oct 2020)
Talking ASEAN for UNSW ASEAN Society (Oct 2020)
Podcast with the International Association of Constitutional Law (IACL) on “Methodological questions in comparative constitutional law: Language as a barrier and an opportunity” (Dec 2020)

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