



### 2016 CONSTITUTIONAL LAW CONFERENCE AND DINNER

Our next Constitutional Law Conference and Dinner will be held on 12 February 2016 at the Art Gallery of New South Wales and NSW Parliament House

Dear Friend,

I am very pleased to bring you the latest news from the Gilbert + Tobin Centre of Public Law. Amongst other things, it has been a great six months for collaborative work. If you check the listings at the back of the newsletter you will see 5 co-authored books and edited collections, 9 joint submissions and 17 chapters and journal articles that involved multiple authors. Likewise the eight project reports show a lot of cross-over work by Centre members, individually and as part of collaborative teams.

Centre events are another way of bringing people together, to share experience, perspective and expertise. The inaugural Public Law in the Classroom teaching workshop in February was a great example, attracting over 70 people from 30 institutions to a day of presentations, poster displays and lively discussion. Inside you will also find reports on other events from the past six months, including four book launches, two invited workshops and of course our annual constitutional law conference and dinner.

We are very proud to have launched AUSEPUBBLAW - The Australian Public Law Blog on 9 June. Led by Blog Coordinator Gabrielle Appleby, it is another expression of the Centre's commitment to collaboration and providing a platform for engagement with the wider public law community and the general public. There is more inside on the first few weeks of the blog, with posts from authors at the Universities of Adelaide and Queensland, and the ANU as well as the Centre, across a broad range of topical public law issues.

The successful conclusion of a PhD project is a landmark in the career of the researcher who wrote it and a cause for celebration by family, supervisors and colleagues. Likewise the conferral of a PhD at a graduation ceremony. We have had both, this past six months. Sangeetha Pillai completed her PhD and has just taken another step in her academic career, commencing as a Lecturer at Monash University. We thank Sangeetha, most recently for her leadership of the Federalism Project and wish her well in her new position. This marks the last milestone for the ARC Laureate Project 'Anti-Terror Laws and the Democratic Challenge', and that is an opportunity to acknowledge George Williams and his leadership of the project. What a wonderful contribution to scholarship in this area and to the professional development of a group of outstanding early career researchers.

In the June graduation ceremonies, Keiran Hardy, Mitchell Landrigan and Kelvin Widdows received their doctorates - we have reports in this newsletter from all three about their projects. The Centre has also welcomed several new higher degree research students: Lynsey Blayden, Genna Churches, Jason Donnelly and Gemma McKinnon.

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Centre Director,  
Associate Professor Sean Brennan

Congratulations are also in order for some others amongst our current and recent PhD scholars. In March, three of the four PhD Excellence Awards announced by the Law Faculty went to Dr Rebecca Ananian-Welsh (now a Lecturer at University of Queensland), Dr Nicola McGarrity-White (presently on maternity leave from UNSW Law) and Dr Tamara Tulich (who joined the University of Western Australia as a Lecturer in 2014). Current PhD student, Rob Woods, received the prestigious Zines Prize for Excellence in Legal Research for the quality of scholarship in his article 'Rights Review in the High Court and the Cultural Limits of Judicial Power' published in the Federal Law Review. I also want to congratulate our colleague Dr Greg Weeks on his recent promotion to Senior Lecturer in the Faculty.

The Centre has some great events coming up in the months ahead. We are joining with UNSW Law and the Rule of Law Institute of Australia in staging the Sydney event of a lecture tour by Lord Igor Judge, the recently retired Lord Chief Justice of England and Wales. The title for Lord Judge's lecture on Thursday 1 October at 5.45pm for 6pm is 'Magna Carta: Destiny or Accident'. We thank the Hon Chief Justice Allsop of the Federal Court of Australia for permission to use the Ceremonial Court on Level 21 of the Law Courts Building and our partners in supporting Lord Judge's Australian visit, the Queensland Supreme Court Library and Melbourne Law School.

Rosalind Dixon has again organised an international line-up for this year's Final Courts Roundup, the Centre's annual contribution to the Australian Association of Constitutional Law seminar series in Sydney to be held on 10 December: Professor Jacob Gersen (Harvard University) on the USA and Associate Professor Mila Versteeg (University of Virginia) on the European Union, with the Centre's Dr Jason Varuhas double-teaming on the UK and New Zealand. And the second in our annual Public Law in the Classroom workshops will be held at UNSW on Thursday 11 February 2016, the day before the Constitutional Law Conference and Dinner.

I hope you enjoy the stories inside and that we see you at one of our Centre events very soon.

**Associate Professor Sean Brennan**  
**Centre Director**

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For details of Centre events, publications, submissions and so on please go to our website: [www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au)

The Centre's Twitter account keeps you up to date between newsletters and e-bulletins: @GTCentre

Or if you prefer Facebook: [www.facebook.com/pages/Gilbert-Tobin-Centre-of-Public-Law/138063326284705](https://www.facebook.com/pages/Gilbert-Tobin-Centre-of-Public-Law/138063326284705)

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Audience at the Public Law in the Classroom Workshop

## [CENTRE ACTIVITIES]

### 2015 PUBLIC LAW IN THE CLASSROOM WORKSHOP

On Thursday 12 February 2015, the Centre in partnership with the Public Law and Policy Research Unit, University of Adelaide, hosted the 'Public Law in the Classroom' workshop. This was the first in what will become an annual event on public law teaching research and practice. Seventy-five people attended the event from over thirty institutions. The event attracted participants from across Australia, as well as New Zealand, the UK, USA, India and Pakistan.

The workshop program was designed to maximise discussion between participants across three sessions. The day also included a poster session featuring thirteen posters on topics ranging from flipping classrooms to using role play, digital flashcards, student peer-review and feminist legal judgments in public law teaching.

We received very positive feedback on the event, and look forward to hosting the event in 2016, once again on the day prior to the Centre's annual constitutional law conference.

### 2015 CONSTITUTIONAL LAW CONFERENCE AND DINNER

On 13 February, the Centre, with the support of the Australian Association of Constitutional Law, held its annual flagship event on constitutional law. The fourteenth in the series, the conference and dinner attracted over 220 people. The guest speaker for the dinner at NSW Parliament House was the Hon Marilyn Warren AC, Chief Justice of Victoria, who spoke on executive accountability in the 21st Century. She highlighted the important role in achieving that accountability in Australia played by administrative law, judicial independence, the common law principle of legality and, potentially, human rights jurisprudence.

Earlier, at the conference, the keynote morning session featured the Centre's Rosalind Dixon providing a functionalist perspective on the High Court's 2014 term. Justice John Basten of the NSW Court of Appeal, and a member of the Centre's Advisory Committee, analysed the constitutional cases of the past year in the Federal and State intermediate courts. In doing so, he urged recognition of the principles of statutory interpretation as constitutional principles, since they govern the relationship between the courts and the legislature. The session also included George Williams presenting the statistical report prepared with Andrew Lynch on the High Court's 2014 term.

The next session featured Andrew, together with barrister and Centre Fellow, Dr Brendan Lim, and Kristen Walker QC of the Victorian Bar. They addressed three federal law cases: respectively *Williams No 2* (the second school chaplains case), *ACMA v Today FM* (concerning regulatory action based on commission of an offence, absent a criminal conviction) and *CPCF* (testing Commonwealth powers over a boat full of foreign nationals at sea).

Sydney barrister Naomi Sharp kicked off the afternoon session on constitutional cases from 2014 about State and Territory law, analysing the anti-consorting law challenge in *Tajjour*. She was followed by Andrew Buckland, a senior executive lawyer with the Australian Government Solicitor, speaking about *Emmerson*, the Northern Territory criminal forfeiture case and Dr Rebecca Ananian-Welsh, formerly at the Centre and now a Lecturer at University of Queensland, who discussed the unsuccessful challenge to that State's 'anti-bikie laws' in *Kuczborski*.



Panel 1 at 2015 Constitutional Law Conference: The Hon John Basten, Rosalind Dixon, George Williams and Sean Brennan



Centre staff and PhD students at the launch of *The High Court, the Constitution and Australian Politics*

The final session was a panel discussion on the idea of a federal ICAC or anti-corruption commission. The panel featured figures from the law, politics, media and academia: Ian Temby AO QC, who established both the NSW ICAC and the Commonwealth Office of the Director of Public Prosecutions; the Hon Melissa Parke MP, who has chaired the parliamentary committee with oversight of the existing federal commission for law enforcement integrity; Chris Merritt, the Legal Affairs Editor for *The Australian*; and Professor Nicholas Aroney who, with the Hon Ian Callinan AC QC, conducted a review of the Queensland legislation underpinning the Crime and Misconduct Commission. The panel discussion was moderated by the ABC's Damien Carrick and later broadcast on *The Law Report* on Radio National. A full video webcast of the conference is available on the Centre website along with papers received from some of the speakers.

### BOOK LAUNCH: THE HIGH COURT, THE CONSTITUTION AND AUSTRALIAN POLITICS

Directly following the 2015 Constitutional Law Conference on 13 February, the Hon Chief Justice Robert French AC launched *The High Court, the Constitution and Australian Politics* (Cambridge University Press, 2015) edited by Rosalind Dixon and George Williams.

The Chief Justice's thorough and highly entertaining speech took the audience through each of the 16 chapters in the book, most of which focus on a particular period in the Court's history by reference to the term of its Chief Justice. The book built on a successful Centre workshop with the authors of each chapter in November 2013.

### PANEL AND BOOK LAUNCH: INSIDE AUSTRALIA'S ANTI-TERRORISM LAWS AND TRIALS

On 31 March, Gleebooks hosted a discussion featuring the Centre's Andrew Lynch, Nicola McGarrity-White and George Williams, the three authors of *Inside Australia's Anti-Terrorism Law and Trials* (NewSouth Publishing, 2015). They discussed the themes of their book in conversation with Nicholas Cowdery AM QC, the former New South Wales Director of Public Prosecutions and a Visiting Professorial Fellow of the UNSW Law Faculty. The discussion included reflections on the need for Australian anti-terrorism laws, the political drivers for making them so abundant, the effectiveness of some and the inadequacy or poor justification for others, international comparisons and areas in which government might do more to respond to the national security challenge.

Over ten years after Australia's first national laws were enacted to combat the threat of terrorism, yet more anti-terrorism laws were passed in the Australian Parliament in late 2014. The first laws were often introduced in great haste and were, the authors say, stunning in scope and number. The latest laws are similarly extensive and controversial. Yet again, powers and sanctions once thought to lie outside the rules of a liberal democracy except during wartime have become part of Australian law.

Links to reviews of the book and multi-media coverage are available at the Centre website.



Gleebooks event panel: Andrew Lynch, Nicola McGarrity-White, Nicholas Cowdery and George Williams

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Melissa Crouch speaking at panel and book launch of *Law, Society and Transition in Myanmar*



Megan Davis and George Williams at the Gleebooks event about their new book: *Everything You Need to Know about the Referendum to Recognise Indigenous Australians*

[Photo: Courtesy James Smith]

## PANEL AND BOOK LAUNCH: LAW REFORM IN MYANMAR BEYOND 2015

On 31 March 2015 a panel on 'Law Reform in Myanmar Beyond 2015' was hosted by the Centre and the Australia-Myanmar Constitutional Democracy Project. It was organised by Dr Melissa Crouch who recently joined the Centre and UNSW Law.

Ahead of national elections to be held in Myanmar in late 2015, the panel discussion focused on what lies ahead for the law reform process in Myanmar.

The panel was chaired by Professor Tim Lindsey of University of Melbourne, and had over 80 people in attendance. The panel discussion included reflections on constitutional reform from Melissa. It also included contributions on economic reform by Associate Professor Sean Turnell (Macquarie), corporate law reform by Melinda Tun (Baker & McKenzie), and human rights reforms by Dr Catherine Renshaw (UWS).

Following the panel discussion Professor David Dixon, Dean of UNSW Law launched a new book 'Law, Society and Transition in Myanmar', which is co-edited by Melissa and Professor Lindsey and published by Hart. It includes chapters from Melissa, Tim, Sean, Melinda and Catherine and a number of other experts.

## BOOK EVENT: EVERYTHING YOU NEED TO KNOW ABOUT THE REFERENDUM TO RECOGNISE INDIGENOUS AUSTRALIANS

On 14 May, Gleebooks hosted Professor Megan Davis of the Indigenous Law Centre and George Williams in conversation with Aden Ridgeway about their new book *Everything You Need to Know about the Referendum to Recognise Indigenous Australians*, published by NewSouth Books.

With attention focused on a proposed referendum, the book provides a timely account of how Aboriginal peoples were excluded from the new political settlement when the Australian Constitution was drafted, what the 1967 referendum achieved and why discriminatory racial references remain. It also canvasses proposals for reform, why they are important and the path to achieving them.

## LAUNCH OF THE AUSPUBLAW BLOG

On 9 June the Centre launched an exciting new project, as part of its commitment to external engagement with leading figures and emerging talent in the field of Australian public law, wherever those people may be located.

AUSPUBLAW, the Australian Public Law Blog, is a collaborative blogging project bringing readers expert commentary and analysis on recent cases and legislative change as well as updates on the latest research and scholarship in Australian public law. AUSPUBLAW posts contributions from leading public law experts – including academics and practitioners – from across Australia. It seeks to promote greater engagement with public law issues and a national platform for informed debate about current issues in public law.

The Centre has been keen to establish this national online platform for some time. The efforts of Gabrielle Appleby, who joined the Centre and UNSW Law in February 2015, have been crucial to realising those ambitions. As Blog Co-ordinator, Gabrielle has taken the lead on commissioning and editing submissions, promoting the blog and



AUSPUBLAW – The Australian Public Law Blog launched on 9 June 2015



Great Australian Dissent Workshop

managing the site. Centre Director Sean Brennan has assisted the process, which has built on foundational work done earlier by Centre colleagues, in particular Andrew Lynch and Keiran Hardy.

In its first three weeks, AUSPUBLAW carried analysis of judicial diversity, Freedom of Information controversies in Australia and the UK, federalism reform, the latest native title case from the High Court and federal spending powers in the area of offshore immigration detention. It featured contributors from the University of Adelaide, the University of Queensland and the ANU as well as the Centre itself. Each month the blog will also feature a post with news of upcoming public law events.

Subscribing to the blog is easy. Just visit the website [www.auspublaw.org](http://www.auspublaw.org), provide your first name and email address and then click on Sign Up. That way you will receive an email automatically in your inbox when a new post goes up on the site. You can also follow the blog on Twitter: @auspublawblog. There are details on the website about making a submission to the blog. You can contact Gabrielle and Sean directly at [auspublaw@unsw.edu.au](mailto:auspublaw@unsw.edu.au), to discuss the blog and ideas for submissions, or to ask them to sign you up as a subscriber.

### GREAT AUSTRALIAN DISSENTS WORKSHOP

In early June, the Judiciary Project held a research workshop on the theme of 'Great Australian Dissents'. The goal of this event was to debate and celebrate notable dissenting opinions produced by the judges of Australian courts. In doing so, it aimed to move beyond the powerful mythology of a 'Great Dissenter' (a label that has been applied to figures as diverse as Sir Owen Dixon, Lionel Murphy, Michael Kirby and Dyson Heydon) and instead to identify and analyse the 'great' dissenting opinions in Australian law. Necessarily, that involved reflection on what it is that makes a dissent 'great' and the criteria that participants used to justify their selection of an opinion for inclusion in the pantheon. A number of factors were raised in this regard, sometimes in isolation but often in combination. They included the rhetorical and logical force of the dissent as a piece of legal reasoning; its subsequent judicial or legislative adoption; the lyricism or emotive power of the opinion; and the general importance of the issue at stake.

In all, sixteen dissents were nominated and vigorously debated at the workshop by participants, who were drawn from academia and the bar. The dissents were revealed in real time to followers of the Centre's Twitter account – through which we also invited nominations for others that people regarded as 'great' (some fascinating alternatives were thrown up!). The first dissent discussed at the workshop celebrates its 100 year anniversary this year – Justice Barton's opinion in the *Wheat Case* of 1915. The final entrant in the list was Justice Heydon's 2013 dissent in *Monis v Commonwealth*. In between was a great variety of opinions – with as many authored by the High Court's intellectual leaders as by its mavericks. The papers are now being readied for an edited volume to be published by Cambridge University Press next year.

The workshop was organised by Professor Andrew Lynch, Co-Director of the Centre's Judiciary Project and was made possible with support from the Faculty of Law's Research Workshop funding scheme.



Engaging Constitutional History Workshop

*"As Europe revisits its immigration policies, it should eschew the Abbott administration's hard line on people arriving by boat. And Canberra has an obligation to reverse course, beginning with the legislation currently before Parliament. Australia must start responding responsibly and with compassion to the challenges of protecting asylum-seekers, including those who come by sea."*

Gabrielle Appleby, 'Australia's Rigid Immigration Barrier', *The New York Times*, 7 May 2015

## ENGAGING CONSTITUTIONAL HISTORY

An invited workshop, *Engaging Constitutional History*, organised by Rosalind Dixon, was held on 25 June. It was designed to consider the similarities, as well as the differences, between engagement with constitutional history in Australia, and other jurisdictions, as well as between historical scholarship and comparative constitutional inquiry more generally.

The workshop included papers from Professors John Williams (Adelaide), Helen Irving (Sydney), Rosalind Dixon (UNSW) and Kim Rubenstein (ANU). There were a number of excellent commentators who responded to these papers: Lisa Ford (UNSW History), Ann Genovese (Melbourne), Nicholas Aroney (Queensland), Jeffrey Goldsworthy (Monash), Fiona Wheeler (ANU), Gabrielle Appleby (UNSW), Ruth Balint (UNSW History), Scott Stephenson (Melbourne) and Ben Golder (UNSW).

The workshop was also attended by a range of other interested observers and participants from UNSW and beyond.

## CENTRE SEMINARS

On 2 June the Centre held a seminar with guest speaker Assistant Professor Satya Prateek, Jindal Global Law School, India. The topic of the seminar was 'A Constitutionalism of Overriding Exceptions: Constitutional Change through Non Obstante Clauses and Some Puzzles for Constitutional Theory'. This talk, borrowing mainly from the Indian experience, sought to evaluate and question the practice of using constitutional amendments as overriding mechanisms, investigating both the causes and effects of the practice of overriding court judgments through constitutional amendments.

A week earlier, Assistant Professor Erin Delaney from Northwestern Law School provoked a very lively discussion with the presentation of her seminar paper 'From Waldron to *Windsor*'. In the paper she explored her reservations about the extension of Jeremy Waldron's skeptical view of judicial rights review to a federal rather than unitary state.



Centre Social Justice Intern, Pras Ramkumar

## [CENTRE PEOPLE]

### SOCIAL JUSTICE INTERN REPORT

Pras Ramkumar

As I sit here on the last day of my Social Justice Internship at the Gilbert + Tobin Centre of Public Law, I feel like this semester-long journey has given me some life-long skills and insights that I will carry with me wherever I go. The work has been engaging, challenging and fascinating, and the guidance that I received from the Director of the Centre, Sean Brennan and former Director Andrew Lynch has been invaluable and comprehensive. So what did I do for these 13 weeks?

The first task I undertook was a case brief on *CEPU v Queensland Rail* [2015] HCA 11 which invited the High Court to consider the meaning of a 'corporation' under s 50(xx) of the Constitution. It was the first time in law school I was exposed to a case in which the judgment had yet to be handed down and all I had was what the judges had – submissions from the various parties and the hearing materials. This was an ideal task for an intern because it was concrete, challenging and provided many insights into the way the High Court functions. I was intrigued, for example, with the way the Justices behaved and questioned the barristers and admired the way they handled the intense interrogation. It was also a satisfying exercise because I received plenty of feedback from Sean along the way who encouraged my intellectual curiosity but expertly and politely nudged me in the right direction when I needed it! I drafted another of these case briefs, for *McCloy v NSW*, which involves a constitutional challenge to political donations laws on the basis of the implied freedom of political communication. I was thrilled to have another try at a brief, and felt much more confident in preparing one that was sharper and more comprehensive than the first. Improvement!

I interspersed these more substantive tasks with some ad-hoc projects. For example, I helped update the links on the Centre Federalism website under the guidance of Andrew Lynch, and also conducted some research on the Victorian Premiers' recent announcement that they would adopt a quota of 50% women in judicial appointments. Finally, I conducted research on behalf of the Centre for a submission to the Tax White Paper process. Our submission, which discusses and recommends changes to alcohol taxes and particularly to the Wine Equalisation Tax, presented a unique opportunity to gain an understanding of how submission writing works in practice.

The official name of this internship is the Social Justice Internship. Initially, I struggled to fit the work at the Centre as social justice in its typical sense. However, as I leave here, I feel it serves a critical function. Social justice is just as much about education, discourse and debate as it is about campaigning and 'lawyering' for justice on behalf of those with no voice. We learnt in public law that accountability depends on the 'rigour and vigour' of public discourse and debate because it ensures an educated society that knows the issues that affect us all and is able to engage with them in a sophisticated manner. The definition of a corporation might involve an analysis of some nice arguments and precedents in Constitutional law, but it also affects the concrete entitlements of workers on the ground. A stronger approach to wine taxation may involve a legal research exercise, but it can reduce violence, save lives and rebuild communities.

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PhD Graduate Keiran Hardy

*"The Australian government should replace the Wine Equalisation Tax with an extension of the volumetric approach to alcohol, to strengthen the public health achievements of the indirect tax system."*

Sean Brennan, Prasanth Ramkumar and Megan Davis, Submission on Alcohol Taxation to Tax White Paper Taskforce (5 June 2015)

I learnt here at the Centre that the most intricate inflections of law can have massive social justice implications, and it inspires me to master the law so that I can engage, contribute and possibly empower social change. This is undoubtedly the most important insight I have gained here at the Gilbert + Tobin Centre of Public Law. My sincere thanks to Sean Brennan, Director for his expert and selfless guidance and the entire Centre staff for a wonderful semester of immersion in public law!

## PHD REPORTS

### Keiran Hardy

I first joined the G + T Centre as a Research Assistant in 2010, when I was in the final year of my undergraduate law degree at UNSW. After some initial work on referendums and federalism, I began working for George Williams on his ARC Laureate Fellowship 'Anti-Terror Laws and the Democratic Challenge'. The Laureate quickly grew into a large, collaborative and sociable team of researchers, and I joined that team as a PhD student in 2011. I submitted my PhD in July 2014, and I recently graduated in June this year.

In my PhD I examined the relationship between 'hard' and 'soft' approaches to combating terrorism. After 9/11, western governments responded to the threat of terrorism primarily through 'hard' approaches, including criminal laws, expanded police powers and overseas military operations. After the London bombings in 2005, 'soft' community-based approaches took on increasing importance as governments saw the need to address the causes of homegrown extremism. Soft approaches to counter-terrorism include a variety of social policy initiatives, including community education projects and intervention programs for individuals at risk of radicalisation.

Orthodox thinking suggests that governments can best combat terrorism by developing a strategy which 'balances' hard and soft approaches effectively. In my PhD I sought to challenge this idea by showing the more complex relationship between these two approaches. I argued that hard and soft approaches are not as distinct as they first seem, that soft approaches pose their own dangers and difficulties, and that the two approaches frequently work at cross-purposes. I reached these conclusions by examining hard and soft approaches not only in domestic counter-terrorism, but also by tracing the origins of strategies for 'winning hearts and minds' in counter-insurgency military operations.

I could not have asked for a better academic experience than to complete my PhD on the Laureate Project within the Gilbert + Tobin Centre of Public Law. The Laureate Project was an incredibly collaborative experience, with frequent meetings, rigorous work-in-progress seminars and social events. I was given repeated opportunities to visit the UK and present my work there, and because of this I have built important relationships with other researchers and centres which I can take into my academic career. The members of the Laureate are an incredible team of people, and I wonder whether we will ever be able to recreate the same experience again elsewhere.

The success of the Laureate was bolstered by its position within the Centre. The Centre is a special place for academic research: it is highly collaborative, highly productive, and its work is constantly relevant to public debate. As a PhD student in the Centre, you are trained in how to be an academic and inspired to be one – but you feel treated like a member of staff from the outset and your contributions to meetings, publications and parliamentary submissions are taken seriously.



PhD Graduate Mitchell Landrigan

*"The reasoning that has produced the Irish vote does not apply to Australia. Our Constitution does not set out the importance of the family, or the role of women in society. While it mentions 'marriage', it does so only by way of stating that the federal parliament can pass laws on the subject."*

George Williams, 'Referendum No Way to Resolve Same-Sex Marriage Impasse'  
*Sydney Morning Herald* (18 May 2015)

My most valuable experience in the Centre was to lecture in public law with a large team of experts, and as I move towards an academic career I know that I will draw on this experience wherever I work in the future. Above all, though, it is simply that you could not ask to work with a nicer group of people. I would recommend the Centre to anyone considering a doctorate in public law, as the variety of experience you gain and the people you work with will be exceedingly difficult to match elsewhere.

### Mitchell Landrigan

Completing a PhD part-time requires natural determination, a strong interest in the subject matter and – most importantly – an enthusiastic supervisor. Whatever I may have lacked in persistence and interest, George Williams as my (sole) PhD supervisor more than made up for it in his dedication to my thesis supervision.

My part-time research at UNSW Faculty of Law began in 2006 into what I considered an interesting question: in a secular democracy like Australia, where does the protective scope of the implied freedom of political discourse end and the constitutional protection for religious speech begin? Nearing the end of 2014 (after taking a year's leave from PhD research in 2010), I submitted a 100,000 word thesis for assessment with an actual title, several chapters (with real headings) and copious footnotes. The topic, honed over the best part of a decade, was, in its final form, narrowly focused on whether Australia's Constitution can protect speech about religion or by religious leaders.

Being part-time, the research involved evenings at my study desk, early morning revisions, and most weekends doing writing and/or research of some sort. I was fortunate to be able to take annual blocks of leave from my paid work (as a commercial lawyer at Telstra) to write substantive parts of the PhD chapters and slabs of writing and analysis.

Apart from the support from George and close family and friends, two factors helped me to complete the thesis. First, the prospect of critical feedback at annual panel reviews imposed a healthy discipline on writing and research during the earlier part of the year. Panel participants (such as Andrew Lynch) who read the material I submitted to the reviews and offered generous feedback on various draft chapters, made the research rewarding and progress towards completion irresistible. Importantly, it also meant that there was at least a small audience seemingly interested in the written output. Secondly, writing each day (even if it was only 20 words), and not losing the thread of insight from the day before, was critical to progress and to getting the thesis finished.

### Kelvin Widdows

My thesis, *Sir John Latham: Judicial Reasoning in Defence of the Commonwealth*, seeks to shed light on the extent to which Sir John Latham's personal or political convictions were a discernible influence on his judicial reasoning in cases on national security which came before him as Chief Justice of the High Court. Latham held the post from 1935 for seventeen years, a period which covered peace time, World War II and the 'Cold War'. While Latham is probably best known to Australian lawyers as Chief Justice, his career path to the Court was diverse and possibly unique in Australian judicial history. It included a period in intelligence followed by a role in international negotiations over Australia's post-World War I national security, and three parliamentary terms as Attorney-General in conservative governments, in which capacity he also oversaw the operations of the Commonwealth

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2015 Constitutional Law Conference panel on a federal ICAC: Damien Carrick (Moderator), Nicholas Aroney, the Hon Melissa Parke MP, Ian Temby AO QC and Chris Merritt

*"Carmody's plight is distinctive because it is his colleagues who want him gone. Yet they possess no constitutional power, let alone mechanism, to bring about that result. Nor, to be blunt, should they."*

Andrew Lynch 'Campbell Newman's Most Contentious Legacy' Inside Story (8 April 2015)

intelligence service. One of Latham's principal legacies as Attorney-General was legislation seeking to curb the activities of 'seditious' associations, aimed at the Communist Party and its affiliates.

Latham's activist conservative background, including as a member of Round Table, a 'think tank' largely devoted to British Empire security, led to speculation on his appointment to the Court, that despite his earlier public commitment to Rationalism, he would fail to act with impartiality as a judge in cases involving national security. Latham himself made frequent public claims that he would keep out of politics and apply only a complete legalism in judicial reasoning. Yet the question of Latham's independence as a judge was often aired, including when he insisted on accepting appointment as Australia's first envoy to Japan in 1940 without resigning from the judiciary.

The first part of the thesis contains an analysis of Latham's views on national security issues before his elevation to the Court, principally as revealed through a review of his private papers, bequeathed to the National Library. The second part takes the form of a doctrinal analysis of relevant judgments in the area of defence and security, designed to reach conclusions on the extent to which his judgments differed from those of his colleagues, earlier case law, or his own earlier views as a jurist, and the extent to which such differences might be seen to derive from Latham's personal or political convictions. The thesis thus combines elements of legal history with doctrinal law.

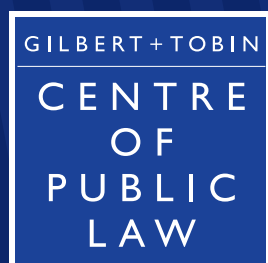
The thesis concludes that while Latham CJ was the judge least likely to invalidate Commonwealth power and least sympathetic to the protection of freedom of speech in national security cases, it was only in the Communist Party case that his reasoning was not in accordance with precedent, the judgments of his fellow judges and his own earlier views on the law. I owe a huge debt of gratitude to my supervisors, Professors Andrew Lynch and George Williams of the School of Law at UNSW for their willingness to share their wisdom and experience, as well as their empathy and keen interest in the life and law of Sir John Latham.



2015 Constitutional Law Conference Panel 3:  
Rebecca Ananian-Welsh, Andrew Buckland,  
Naomi Sharp and Grant Donaldson SC

*"A lack of enforceable rules and an absence of other accountability measures means that political parties are prone to develop into individual fiefdoms. Key figures have been able to distribute power through patronage networks in return for favours. Such systems are open to corruption, and not surprisingly the same patterns of conduct have arisen in the representatives of those parties in state Parliament."*

George Williams, 'Lack of Accountability Means Political Parties Remain Exposed to Potential Corruption' *Sydney Morning Herald* (9 March 2015)



## [PROJECT REPORTS]

### COMPARATIVE CONSTITUTIONAL LAW PROJECT

Project Director: Rosalind Dixon

The CCL Project has been delighted to welcome Dr Melissa Crouch to the Centre, and as a new Deputy Director of the Project. Melissa is an expert on constitutional and administrative law in South-East Asia, and was part of the conference on 'The Constitutional Court & Democracy in Indonesia: Judging the first decade' held on 10-11 December 2014 (see our last newsletter). She is also now co-editor, with Rosalind Dixon and Simon Butt (Sydney), of a special symposium edition of the *Australian Journal of Asian Law*, as a product of that conference. Melissa is also an expert on law and legal development in Myanmar, which brings great strength to the ongoing work of other members of the CCL project on constitutional design and democracy.

In March 2015, Rosalind Dixon and Melissa also both participated in a meeting with Mr Nay Chi Win, member of the National League for Democracy (Burma) as part of the Australia-Myanmar Constitutional Democracy Project, facilitated by the Department of Foreign Affairs and Trade. Rosalind Dixon also attended a conference in Chicago in April on *Assessing Constitutional Performance*, which brought together academics and policy-professionals from around the world working in the field of constitutional design, to debate the question of how best to assess or measure whether a constitution is achieving its goals, or other goals, such as democracy and political stability, or justice.

The Centre, and the CCL project, also hosted two visitors during semester 1 – Assistant Professor Erin Delaney (Northwestern Faculty of Law) and Assistant Professor Satya Prateek (Jindal Global Law School, India). There are reports earlier in this newsletter on both their seminars.

Finally, as reported elsewhere in the newsletter, on 25 June the CCL project hosted a one day workshop for constitutional scholars, historians, and scholars of comparative constitutional law on 'Engaging Constitutional History'. This brought together an impressive array of presenters, commentators and participants from the UNSW Arts and Social Sciences, UNSW Law, the Universities of Adelaide, Melbourne, Queensland and Sydney, Monash University, Macquarie University and the ANU.

### FEDERALISM PROJECT

Project Director: George Williams

Members of the Federalism Project continued to grapple with the impact of the High Court's decisions in the two *Williams* decisions on the scope of the Commonwealth's spending power and the constitutional validity of many of its ongoing spending programs. Andrew Lynch spoke on *Williams (No 2)* at the Centre's Constitutional Law conference in February and in March gave an invited address to the Family Relationships Services Australia Network on the implications of the case for the funding of activities under the Families and Communities Programme administered by the Commonwealth Department of Social Services. The ideas in both these speeches formed the basis of a comment piece by Andrew published in the June edition of the *Public Law Review*.

Coming at similar questions but in an entirely different policy setting, George Williams presented on 'The Constitution and its Effect on Environmental Policy' at a Strategic Policy Seminar held by the Commonwealth Department of the Environment in May. He and Sangeetha Pillai have also had a paper on the regulation of family

*"...how individual judges interact with colleagues in the determination of court orders, let alone the reasons that are given for those orders, will remain a matter as subject to variation as the membership of the bench itself. What is perhaps most intriguing about judicial attention to this dynamic, including the recent Australian examples, is the suggestion that it may ever be the subject of clear consensus."*

Andrew Lynch, 'Collective Decision-making – The Current Australian Debate' (2015) 21(1) *European Journal of Current Legal Issues* (available online at: <http://webjcli.org/article/view/407/518>)

law in the Australian Federation accepted by the *Australian Journal of Family Law*. Additionally, in the *Alternative Law Journal* George reflected on the capacity of the Australian states to regulate same-sex marriage after the High Court's decision in the ACT marriage case.

In May, Gabrielle Appleby spoke at the Attorney-General's Constitutional Law Symposium in the session on 'The Federal Balance and the White Papers on Reform of the Federation and Australia's Tax System'. Her paper looked at the impact of the *Williams* decisions on the division of spending responsibilities across the federation, and how this might inform the wider review of taxation and spending powers that is being undertaken in the federalism and taxation white papers. The development of both white papers remains ongoing and Andrew participated in the Sydney roundtable sessions convened by the Reform of the Federation White Paper Taskforce in late February.

The Federalism Project has been supported over the last six years by funding under the Australian Research Council's Discovery grant scheme. Over that time, two distinct phases of research work have been completed. The second block of funding from 2012-14 sustained work in three streams: the Commonwealth's executive spending power after the two chaplains cases; the contemporary practice of cooperative federalism in Australia – including on matters such as the now repealed federal mining tax, the potential for federal and state recognition of same-sex marriage and proposals for new national regulation of the Australian media; and a continued examination of Australia's intergovernmental institutional architecture. The Project Director over its second phase since 2012 was Shipra Chordia who did a masterful job of maintaining momentum in our research activity going across all three fronts. Shipra has now moved from that role and across to the Centre's cohort of postgraduate research students by enrolling in her PhD at UNSW. Her contribution to the Centre's activities in the federalism area was immense and we record our gratitude for her fine work here. We also express appreciation to Sangeetha Pillai who took on a short stint as Director of the Federalism Project following Shipra's departure. The Project will continue with a number of the Centre's academic staff continuing their research in the area and under the directorship of George Williams.

## INDIGENOUS LEGAL ISSUES PROJECT

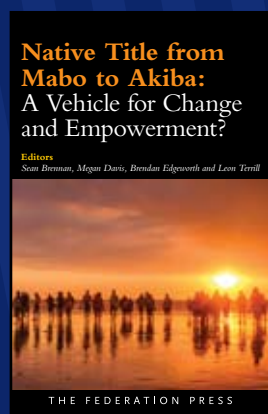
Project Director: Sean Brennan

With Indigenous community organisation leaders in Broome in late May for a roundtable on economic development and property rights, there is renewed national interest in what Aboriginal and Torres Strait Islander people have long regarded as important: the potential for economic empowerment from native title and statutory land rights. The publication of a new edited collection, *Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?* (Federation Press, 2015), is therefore very timely. It features contributions on the Noongar negotiations for a comprehensive settlement in southwest Western Australia, the innovative work of the Community Development Unit at Central Land Council, and chapters from leading practitioners Bret Walker SC, Andrew Chalk and Jonathon Hunyor, as well as the Hon Paul Finn, Professor Marcia Langton and other experts in native title. The collection is edited by Project Director Sean Brennan, together with UNSW colleagues Megan Davis, Brendan Edgeworth and Leon Terrill, and follows on from a workshop held at UNSW by the ILI Project together with the Indigenous Law Centre (ILC).

Sean has maintained his research focus on the development of native title extinguishment law, as the High Court handed down its fourth

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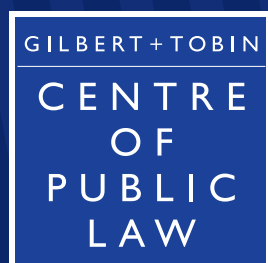
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Book Cover Native Title From Mabo to Akiba

*"The Court in Congoo appears divided between two views: either extinguishment is essentially a legal conclusion of last resort or native title is to be radically differentiated from other rights when it comes to extinguishment analysis."*

Sean Brennan and Lauren Butterly, 'High Court sharply divided in latest native title case' on AUSPUBLAW (18 June 2015)



decision in two years (*Queensland v Congoo*) in May. He co-authored, with ILC Associate and ANU Associate Lecturer Lauren Butterly, an analysis of the way in which native title prospects depend on judicial choices and mindset in this vital area of extinguishment law. Sean also contributed a paper on native title to the Great Australian Dissents workshop run by Judiciary Project Co-Director Andrew Lynch.

The ILI Project has made periodic contributions on the regulation of alcohol and other substances since 2007. Research into supply-side measures to combat alcohol-related harm, in conjunction with Dr Leon Terrill of the ILC, informed a submission in June to the Australian government's current Tax White Paper process. The submission, by Sean, Social Justice Intern Prasanth Ramkumar and the ILC, called for reform of the Wine Equalisation Tax and a volumetric approach to alcohol excise.

Finally there has been a great deal of activity involving Centre people in the area of constitutional change relating to Australia's First Peoples. You will find some of the work by Fergal Davis, Gabrielle Appleby and others detailed in the report of the Parliaments Project and contributions particularly from Paul Kildea and George Williams discussed in the Referendums Project report. Sean Brennan has also delivered a series of presentations in recent months, engaging with community organisations, government, the private sector, academia and the wider public about constitutional reform. In particular he has advocated the importance of ensuring the people who count most in the proposed referendum, the Aboriginal and Torres Strait Islander peoples to whom the proposal is directed, have a prominent role in determining the content of a referendum question. That includes support for the proposal to hold a series of regional conventions of Indigenous delegates prior to the formulation of a final proposal. This would allow people to debate vital questions of strategy and content, including the relative merits of a racial non-discrimination clause and a constitutionally recognised Indigenous body to advise parliament and the executive.

## JUDICIARY PROJECT

Project Co-Directors: Gabrielle Appleby and Andrew Lynch

The Judiciary Project is now co-directed by Gabrielle Appleby and Andrew Lynch, reflecting their complementary and sustained work on matters concerning the Australian judiciary as the third arm of government and the decision-making practices of courts. To mark this new phase of the project's life, we have substantially revised and updated the relevant Centre resources page. The page now contains links to primary materials and commentary on the topics of judicial appointment and removal across the Commonwealth, State and Territory jurisdictions. The page is accessible at <<http://www.gtcentre.unsw.edu.au/resources/judiciary>>.

The key event of the project for 2015 is the Great Australian Dissents workshop, which was held at UNSW on 9-10 June. This event and its outcomes are described under 'Centre Events' earlier in this edition of the newsletter. But the workshop aside, Gabrielle and Andrew have each been engaged with existing and developing research activities on different aspects of the vast topic that is the Australian judiciary.

Gabrielle has spent significant time this year working on *Law, Order and Federalism*, a research project funded through an ARC Discovery Grant that has been co-hosted within the Judiciary Project since 2015. Gabrielle is working as a Chief Investigator on this project with Associate Professor James Stellios (ANU) and Professor John Williams (University of Adelaide), with research assistance from Dr Anna Olijnyk and Nathan Deakes.



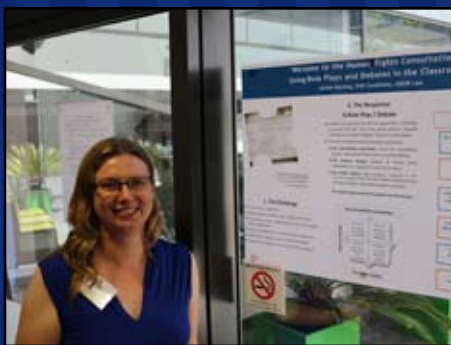
Centre Member and Judiciary Project  
Co-Director Gabrielle Appleby

The project is examining the effect of the High Court's Chapter III jurisprudence protecting judicial independence and integrity on the capacity of the States to respond to local concerns about law and order, and the effect, if any, on State diversification and experimentation. The project has three case studies: anti-organised crime measures, specialist courts that employ restorative justice principles, and the design of administrative tribunals. From this work, Gabrielle has had an article, 'The High Court and Kable - A Study in Federalism and Human Rights Protection', published in the *Monash University Law Review* and another in the *Public Law Review* with Anna Olijnyk entitled 'The Impact of Uncertain Constitutional Norms on Government Policy: Tribunal Design after Kirk'. She is currently supervising Anna, who is undertaking a series of interviews with State and Territory law- and policy-makers and advisors. Gabrielle will present some of the project's findings to date at the conference, *Judicial Independence in Australia: Contemporary Challenges, Future Directions*, held at the University of Queensland in July.

Gabrielle is also continuing her research interest in judicial regulation. Working in collaboration with Dr Suzanne Le Mire (University of Adelaide), Gabrielle has organised a panel for the 2016 *International Legal Ethics Conference* at the Stein Center for Law and Ethics at Fordham Law School (New York). The panel is entitled 'Integrity in Judicial Ethics and Regulation'. It brings together leading experts on judicial ethics to debate the conceptual bases for judicial regulation and explore contemporary issues and developments in a comparative perspective, with a focus on judicial appointment, education, support and discipline. Gabrielle and Suzanne will be joined on the panel by Andrew and leading American, Canadian and British researchers: Professor Richard Devlin (Dalhousie University), Professor Adam Dodek (University of Ottawa), Graham Gee (University of Birmingham), Associate Professor Sarah Cravens (University of Akron), and Professor Melissa Hart (University of Colorado).

Gabrielle has been researching the topic of recusal with Stephen McDonald (from the South Australian Bar) since 2013, when Justice Stephen Gageler recused himself from the case of *Unions New South Wales v New South Wales*. Their article on the circumstances in which a judicial officer should recuse himself or herself on the basis of a legal opinion provided prior to appointment to judicial office will be published in the *Federal Law Review*. They are continuing to explore the topic of recusal, and Gabrielle will present their next paper, 'Recusal Procedure: A Critique' at King's College London in September.

Judicial recusal has made headlines recently with the controversial decision of Queensland Chief Justice Tim Carmody to recuse himself from the appeal of convicted murderer, Brett Cowan. That episode will obviously feature in Gabrielle's recusal research, and the 'Carmody affair' more broadly has been a topic on which Andrew has now written two long-form articles for the online magazine *Inside Story*. In the second of those ('Campbell Newman's Most Contentious Legacy', *Inside Story* (8 April 2015)), he revisited the controversy in light of Justice Alan Wilson's no-holds barred criticisms of the Queensland Chief Justice upon the former's retirement from the Supreme Court. In that piece, Andrew emphasised that if any good is to come out of the whole saga it should be judicial appointments reform – and not just in Queensland. That topic is the subject of an article Andrew co-authored with Professor Elizabeth Handsley (Flinders University) and which was recently published in the *Sydney Law Review*. In it they review the reforms initiated by Attorney-General Robert McClelland to federal judicial



Jackie Hartley at Public Law in the Classroom Workshop Poster Session



Fergal Davis speaking at Cape York Indigenous Summit

appointments and which were abandoned by Attorney-General George Brandis QC upon the Coalition coming to power in 2013. Elizabeth and Andrew consider the rationale for the processes used by the Rudd-Gillard governments to select judges. They examine the model adopted, particularly in light of the purported goal of transparency and emphasis on improving judicial diversity. In doing so, they consider the vexed question of the utility of 'merit' in such processes.

A related topic and Andrew's other focus over recent months has been the way in which judges on multimember courts engage with each other in deciding cases. This is, of course, a driving concern in the annual reports he prepares with George Williams on decision-making patterns in the High Court. The latest paper in that series was presented at the Centre's fourteenth Constitutional Law Conference in February and is forthcoming in the University of New South Wales Law Journal. As they have noted, this is a topic on which a number of past and present High Court judges have spoken very directly over the last few years – but espousing markedly different approaches. In his contribution to a special issue of the European Journal of Current Legal Issues celebrating the work of Professor Alan Paterson (University of Strathclyde), Andrew reported on this 'Australian debate' over the subject of collective decision-making and judicial independence. This is a theme to which he returns in his paper for the University of Queensland conference in July, which is mentioned above.

## PARLIAMENTS PROJECT

Project Director: Fergal Davis

The Parliaments Project has built on the success of the June 2014 Workshop on Parliamentary Process and Party Discipline (see our mid-year newsletter from last year). Papers arising from that workshop were collected and Dr Jessie Blackburn and Dr Fergal Davis have been engaged in the process of editing them for publication in a Special Section of the journal *Parliamentary Affairs*. Dr Gabrielle Appleby presented her initial research on the constitutional requirements for parliamentary oversight of delegated rule-making at the workshop and is a contributor to the forthcoming Special Section. Her extended research in the area will also be published in a forthcoming issue of the *Oxford University Commonwealth Law Journal*.

Across 2014-2015 the Cape York Institute set out a proposal for the creation of a Representative Body for Indigenous Australians within the Constitution. The Parliaments Project recognised the proposal as being fundamentally concerned with the Project's themes: scrutiny of legislation and holding the executive to account. As a result, members of the Project have been analysing the merits of the Cape York Institute's proposal and have sought to engage with a variety of interested stakeholders.

To that end, Dr Davis was invited to speak about this innovative proposal at the Cape York Indigenous Summit in Cairns in May 2015. In addition, alongside Centre Director Sean Brennan, and Director of the Indigenous Law Centre at UNSW, Professor Megan Davis, Fergal spoke at the Gilbert + Tobin National Reconciliation Week event on Indigenous Recognition in the Constitution. Finally, Fergal and Gabrielle (along with George Williams and other UNSW colleagues) addressed a University of Sydney symposium on Indigenous Constitutional Recognition and the idea of an Indigenous Constitutional Body.

In addition to this work on a Representative Body, Fergal continued to pursue his interest in political rights review and national security. To that end he presented a paper at the last annual conference of the Australian Political Studies Association.

"Gleeson's domestic arrangements were surely very similar to those of other highly successful members of the legal profession... As a result, these parts of the book...illuminate a profession in which women, without the enormous benefit of such proficient domestic management or insulation from day-to-day family worries, have had to work very hard to succeed. Those pondering the difficulties which face female legal practitioners and the obstacles to ensuring more women are appointed to the bench, can draw telling inferences from *The Smiler*."

Andrew Lynch, 'Book Review: Murray Gleeson – *The Smiler* by Michael Pelly, The Federation Press, 2014.' (2014) 29(2) Australasian Parliamentary Review 188-91

Fergal was invited to speak on counter-terrorism issues at the annual Commonwealth Attorney General's Department Constitutional Law Symposium in May 2015 (an event at which Gabrielle and Sean also spoke on other topics).

Gabrielle has also recently been working with the Andrew and Renata Kaldor Centre for International Refugee Law on drawing parliamentary and public attention to the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015, which grants broad powers to officers working in privately-run immigration detention centres to use force against detainees. Gabrielle was involved in making a submission and giving evidence to the Senate Legal and Constitutional Affairs Committee on the Bill and wrote an op-ed for the *New York Times*, focusing on the lack of oversight of the exercise of powers to use force and the exclusion of key delegated instruments in that Bill from parliamentary oversight.

## PUBLIC LAW AND LEGAL THEORY PROJECT

Project Co-Directors: Ben Golder and Daniel McLoughlin

The biggest achievement for the Public Law and Legal Theory Project over the first half of 2015 is that one of the directors, Dr Daniel McLoughlin, completed work on an edited collection entitled *Agamben and Radical Politics*. The Italian philosopher Giorgio Agamben has been one of the most important thinkers in critical legal theory over the past decade and a half. This is in no small part due to his analysis of the relationship between sovereignty and states of emergency, work that was profoundly influential for critical theory as it grappled with issues of security and state violence in the wake of September 11 2001. The volume examines what Agamben's work has to say in the contemporary context, a global political situation marked by economic crises and political revolts. The essays in the volume provide new perspectives on the ideas that frame some of the most pressing problems of our time – those of economy and political action – by analysing Agamben's recent work on government and his relationship to the tradition of radical political thought and action. *Agamben and Radical Politics* will be available in the first half of 2016.

## REFERENDUMS PROJECT

Project Director: Paul Kildea

The constitutional recognition process remains in a holding pattern while we await an indication from the federal government about what the next steps will be, and whether it is any closer to settling on a model. In the mean time, debate continues about the form that recognition should take and the process for advancing it. As to the former, there has been increasing commentary on a proposal to amend the Constitution to create an Indigenous representative body. The purpose of this body would be to advise on proposed laws that affect Aboriginal and Torres Strait Islander peoples.

The Centre has continued to be active in this ongoing debate in many ways. Most notably, Professors George Williams and the Indigenous Law Centre's Director Megan Davis published a book earlier this year, *Everything You Need to Know about the Referendum to Recognise Indigenous Australians* (NewSouth Publishing, 2015). The book provides historical and political context to the current push for constitutional recognition and explains the main reform options, and is a major contribution to the debate.

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*"One conclusion which appears to be open is that the Australian judiciary is an exception to the rest of the common-law world only as a result of the particular political settlement in Australia which has given the judiciary a limited field of operation and little or no scope for substantive (as opposed to 'formalist') reasoning. Put another way, each democracy decides for itself what courts can do and what is reserved for the politically accountable arms of government."*

Matthew Groves and Greg Weeks, 'Substantive (Procedural) Review in Australia' in Hanna Wilberg and Mark Elliott (eds), *The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow* (Hart Publishing, Oxford, 2015), 133, 135

Paul Kildea made a submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, which is chaired by Liberal MP, Ken Wyatt. In his submission Paul presented the case for holding a 'people's convention' on constitutional recognition to promote popular engagement and to advance public deliberation about the various reform options. Paul also presented evidence before the Committee, and published an opinion piece in *The Conversation* on the topic. The Committee has published its final report as we go to press, with recommendations on reform options and process.

While Australians wait to see if they will vote in a referendum some time in the next few years, citizens in other countries have seen referendum developments occur far more rapidly. There is speculation that the newly elected Conservative government in the UK will hold a referendum on EU membership as early as 2016. Of more direct relevance to Australia was the Irish referendum in May, which saw a strong majority of voters endorse same-sex marriage. George Williams wrote about this referendum in the *Sydney Morning Herald*, arguing that a similar poll in Australia is not desirable given that the federal Parliament's power to legislate on the topic is well established.

## TERRORISM LAW REFORM PROJECT

Project Co-Directors: Keiran Hardy and Nicola McGarrity

The Terrorism Law Reform Project has continued to respond to new counter-terrorism laws introduced by the Abbott government, including disclosure offences and a new mandatory data retention regime. Keiran Hardy and George Williams made submissions to inquiries by the Independent National Security Legislation Monitor (INSLM) and the Australian Law Reform Commission, and gave evidence to the INSLM and the Parliamentary Joint Committee on Intelligence and Security.

George and Sangeetha Pillai made a submission to the Department of Immigration and Border Protection on proposals to revoke the citizenship of terror suspects, and Sangeetha wrote an article on the same topic for *The Conversation*. Gabrielle Appleby has also contributed to the project's work on these new laws, writing a comment on parliamentary scrutiny for the *Public Law Review* and an article on good government for *The Conversation*.

George Williams gave several presentations over this period, including the Sir Richard Blackburn Lecture for the ACT Law Society. Keiran and George both presented papers at a workshop on Regulating Preventive Justice, which was held at the University of Queensland and organised by former Centre colleagues Drs Tamara Tulich and Rebecca Ananian-Welsh. George also presented a paper in Washington on executive oversight of intelligence agencies. That paper, co-authored with Keiran, will appear as a chapter in a book edited by members of the New York University Center on Law and Security, to be published by Oxford University Press. Keiran also recently presented on 'soft' approaches to counter-terrorism at the Oxford Centre for Criminology, and on counter-terrorism laws and technology at the University of Edinburgh.

*Inside Australia's Anti-Terrorism Laws and Trials*, a new book co-authored by Andrew Lynch, Nicola McGarrity and George Williams, was published by NewSouth Books in early 2015. Andrew, Nicola and George launched the book with a panel discussion at Gleebooks in Sydney (covered elsewhere in this newsletter). The discussion reflected on the need for Australian anti-terror laws, the effectiveness of those laws, and comparisons with anti-terror laws in other countries.

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Panel 2 at 2015 Constitutional Law Conference: Andrew Lynch, Brendan Lim, the Hon Chief Justice Helen Murrell and Kristen Walker QC

## [PUBLICATIONS AND PRESENTATIONS]

### PUBLICATIONS

#### Joint Publications

Rebecca Ananian-Welsh and George Williams, 'Judges in Vice-Regal Roles' (2015) 43 *Federal Law Review* 119;

Rebecca Ananian-Welsh and George Williams, 'Judicial Independence from the Executive: A First-Principles Review of the Australian Cases' (2014) 40 *Monash University Law Review* 593;

Rebecca Ananian-Welsh and George Williams, 'The New Terrorists: The Normalisation and Spread of Anti-Terror Laws in Australia' (2014) 38 *Melbourne University Law Review* 362;

Alysia Blackham and George Williams, 'Courts and Social Media: Opportunities, Challenges and Impact' (2014) 17(9) *Internet Law Bulletin* 210;

Janina Boughey and Greg Weeks, 'Comment from Australia: Australian Government Scraps Peak Administrative Law Advisory Body' on UK Constitutional Law Association Blog (25th May 2015) <<http://ukconstitutionallaw.org/2015/05/20/janina-boughey-and-greg-weeks-comment-from-australia-australian-government-scraps-peak-administrative-law-advisory-body/>>;

Sean Brennan and Lauren Butterly, 'High Court sharply divided in latest native title case' on AUSPUBLAW (18 June 2015) <<http://auspublaw.org/2015/06/high-court-sharply-divided-in-latest-native-title-case/>>;

Sean Brennan, Megan Davis, Brendan Edgeworth and Leon Terrill (eds), *Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?* (Federation Press, 2015);

Sean Brennan, Megan Davis, Brendan Edgeworth and Leon Terrill, 'The Idea of Native Title as a Vehicle for Change and Indigenous Empowerment' in Brennan, Davis, Edgeworth and Terrill (eds) *Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?* (Federation Press, 2015) 2;

Peter Burdon, Gabrielle Appleby, Rebecca La Forgia, Joe McIntyre and Ngaire Naffine, 'Reflecting on Hannah Arendt and Eichmann in Jerusalem: A Report on the Banality of Evil' (2014) 35(2) *Adelaide Law Review* 427;

Lisa Burton and George Williams, 'Australia's Parliamentary Scrutiny Act: An Exclusive Parliamentary Model of Rights Protection' in Murray Hunt, Hayley Hooper and Paul Yowell (eds), *Parliaments and Human Rights: Redressing the Democratic Deficit* (Bloomsbury, 2015);

Andrew Chalk and Sean Brennan, 'The Relevance of Statutory Land Rights to Native Title and Empowerment' in Brennan, Davis, Edgeworth and Terrill (eds), *Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?* (Federation Press, 2015) 143;

Melissa Crouch and Tim Lindsey (eds), *Law, Society and Transition in Myanmar*, (Oxford Hart Publishing, 2014);

Megan Davis and George Williams, *Everything You Need to Know about the Referendum to Recognise Indigenous Australians* (New South Publishing, 2015);

Rosalind Dixon and George Williams (eds), *The High Court, The Constitution and Australian Politics* (Cambridge University Press, 2015);

"Given the exceptional nature of the ICAC's powers, their scope must only be as wide as is absolutely necessary. This ensures that the pursuit of corruption is appropriately balanced with respect for individual liberties."

Gabrielle Appleby, 'Give ICAC more, but focussed, power' *The Drum* 28 April 2015

Rosalind Dixon and Sean Lau, 'The Gleeson Court and the Howard era: a tale of two conservatives (and isms)' in Dixon and Williams (eds), *The High Court, The Constitution and Australian Politics* (Cambridge University Press, 2015);

Rosalind Dixon and George Williams, 'Introduction' in Dixon and Williams (eds), *The High Court, The Constitution and Australian Politics* (Cambridge University Press, 2015);

The Hon Justice Stephen Gageler and Brendan Lim, 'Collective Irrationality and the Doctrine of Precedent' (2014) 38 *Melbourne University Law Review* 525;

Matthew Groves and Greg Weeks, 'Substantive (Procedural) Review in Australia' in Hanna Wilberg and Mark Elliott (eds), *The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow* (Hart, 2015) 133;

Elizabeth Handsley and Andrew Lynch, 'Facing up to Diversity? Transparency and the Reform of Commonwealth Judicial Appointments 2008-13' (2015) 37 *Sydney Law Review* 187;

Keiran Hardy and George Williams, 'National Security Reforms Stage Three: Metadata', *Law Society of NSW Journal* (February 2015) 70;

Keiran Hardy and George Williams, 'National Security Reforms Stage Two: Foreign Fighters', *Law Society of NSW Journal* (December 2014) 68;

Paul Kildea and George Williams, 'The Mason Court' in Dixon and Williams (eds), *The High Court, The Constitution and Australian Politics* (Cambridge University Press, 2015);

Andrew Lynch, Nicola McGarrity and George Williams, *Inside Australia's Anti-Terrorism Laws and Trials* (NewSouth Publishing, 2015);

Svetlana Tyulkina and George Williams, 'Preventative Detention Orders in Australia' (2015) 38 *University of New South Wales Law Journal* 738.

#### Gabrielle Appleby

'The 2014 Counter-Terrorism Reforms in Review' (2015) 26 *Public Law Review* 4;

'The Gavan Duffy Court' in Rosalind Dixon and George Williams (eds), *The High Court, the Constitution and Australian Politics* (Cambridge University Press, 2015) 141;

'Protecting procedural fairness and criminal intelligence: is there a balance to be struck?' in Greg Martin, Rebecca Scott-Bray and Miiko Kumar (eds), *Secrecy, Law and Society* (Routledge Cavendish, 2015) 75;

'The High Court and Kable – A Study in Federalism and Human Rights Protection' (2014) 40(3) *Monash University Law Review* 673.

#### Sean Brennan

'The Significance of the *Akiba* Torres Strait Sea Claim' in Sean Brennan, Megan Davis, Brendan Edgeworth and Leon Terrill (eds), *Native Title from Mabo to Akiba: A Vehicle for Change and Empowerment?* (Federation Press, 2015) 29.

#### Melissa Crouch

'Myanmar elections lack legitimacy without constitutional change', *East Asia Forum*, 27 May 2015.

Keiran Hardy

'National Security Reforms and Freedom of the Press' (2015) 3(1) *Griffith Journal of Law and Human Dignity* 1;

'Resilience in UK Counter-Terrorism' (2015) 19(1) *Theoretical Criminology* 77.

Andrew Lynch

'Judicial gender diversity in Australia – can we talk about quotas' on AUSPUBLAW (9 June 2015) <<http://auspublaw.org/2015/06/judicial-gender-diversity-in-australia-can-we-talk-about-quotas/>>;

'Judicial Dissent and the Politics of the High Court' in Rosalind Dixon and George Williams (eds), *The High Court, the Constitution and Australian Politics* (Cambridge University Press, 2015) 58;

'Commonwealth Spending after *Williams (No 2)* – Has the New Dawn Risen?' (2015) 26 *Public Law Review* 83;

'Collective Decision-making – The Current Australian Debate' (2015) 21(1) *European Journal of Current Legal Issues* (available at: <http://webjcli.org/article/view/407/518>);

'Book Review: *Murray Gleeson – The Smiler* by Michael Pelly, The Federation Press, 2014' (2014) 29(2) *Australasian Parliamentary Review* 188.

Jason Varuhas

'Against Unification' in Hanna Wilberg and Mark Elliott (eds), *The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow* (Hart, 2015) 91;

'Judicial Review at the Crossroads' (2015) 74 *Cambridge Law Journal* 215.

Greg Weeks

'Comment on Australia: A history of judicial disrespect and the current "crisis" in the Queensland judiciary' on UK Constitutional Law Association Blog (9 April 2015) <<http://ukconstitutionallaw.org/2015/04/09/greg-weeks-comment-on-australia-a-history-of-judicial-disrespect-and-the-current-crisis-in-the-queensland-judiciary/>>;

'Book Review: *Statutory Interpretation in Australia (8th ed)* by DC Pearce and RS Geddes' (2015) 22 *Australian Journal of Administrative Law* 132;

'Book Review: *Justice in Tribunals (4th ed)* by JRS Forbes' (2015) 22 *Australian Journal of Administrative Law* 201.

George Williams

'Social Justice Through Constitutional Change: Mission Impossible?', *The Crimson Thread: Ideas for Australian Society* (Henry Parkes Foundation, ETT Imprint, 2015) 139;

'Why it's Time to Recognise Indigenous Peoples in the Constitution' (2015) 23 *Australasian Psychiatry* 214;

'Anti-Terrorism Laws and Human Rights' (2015) 19 *Review of Constitutional Studies* 127;

'Same-Sex Marriage and the Australian States' (2015) 40 *Alternative Law Journal* 4;

'Protecting Freedom of Speech in Australia' (2014) 39 *Alternative Law Journal* 217;

'Whitlam's Legacy of Law Reform' (2014) 88(12) *Law Institute Journal* 26;

'What are the Limits of Free Speech and How Should it be Protected?' *Free Speech 2014* (Symposium Papers, Australian Human Rights Commission, 2014) 40.

## PRESENTATIONS

### Joint Presentations

Gabrielle Appleby and Heather Roberts, 'He who would not be muzzled: Justice Heydon's last dissent', *Great Australian Dissents Workshop*, UNSW, Sydney, 10 June 2015;

Gabrielle Appleby, Sangeetha Pillai and George Williams, *Roundtable on Citizenship and the Constitution*, House of Representatives Social Policy and Legal Affairs Committee, 20 March 2015;

Simone Degeling and Greg Weeks, 'Justice Mason and the Essence of a Fiduciary Relationship: *Hospital Products Limited v United States Surgical Corporation* (1984)', *Great Australian Dissents Workshop*, UNSW, Sydney, 9 June 2015;

Ben Golder and Daniel Joyce, 'Teaching Human Rights Through Film', *Human Rights Tertiary Teachers' Network Workshop*, CIGJ/RegNet, Australian National University, Canberra, 18 February 2015;

David Hume and Bret Walker SC, 'Broadly-framed powers and the Constitution', Seminar, Public Law Section of the New South Wales Bar Association, Sydney, 31 March 2015.

### Gabrielle Appleby

Keynote address: 'Provision of Government Legal Services', *Australian Government Lawyers Network Annual Conference*, Canberra, 19 June 2015;

'Establishing an Indigenous Constitutional Body?', *Constitutional Law Symposium: Indigenous Constitutional Recognition and the Idea of an Indigenous Constitutional Body*, University of Sydney, 12 June 2015;

'Spending and Responsibility in the Modern Australian Federation', *Attorney-General's Department Constitutional Law Symposium*, 1 May 2015.

### Sean Brennan

'Certainty, Co-existence and the Legacy of *Mabo*: The Dissent of Federal Court Justice Anthony North in the *Miriwung Gajerrong Native Title Case*', *Great Australian Dissents Workshop*, UNSW, Sydney, 10 June 2015;

Panel on Indigenous Recognition in the Constitution, Gilbert + Tobin Lawyers, Sydney, 3 June 2015;

'Trust and Constitutional Change with respect to Aboriginal and Torres Strait Islander People', *Attorney-General's Department Constitutional Law Symposium*, Canberra, 1 May 2015;

'Constitutional Change & Aboriginal People', Central Land Council, Mutitjulu, Northern Territory, 28 April 2015;

'Constitutional Amendment and the Issue of Trust', *Indigenous Australians and the Constitution Symposium*, University of Southern Queensland School of Law and Justice, Toowoomba, 18 February 2015.

### Melissa Crouch

'Legislating Reform in Myanmar? Law as a Source of Conflict', *ANU Myanmar/Burma Update Conference*, Australian National University, Canberra, 5-6 June 2015;

'Law and Investment in Myanmar', Masters program, Law Faculty, University of Sydney, 9 May 2015;

'Localising Islam and the Burmese Muslim Identity', *International Conference on Muslim Minorities in East Asia*, School of Oriental and African Studies, London and Qatar University, Qatar, 11-13 April 2015;

'A Stocktake on Law Reform in Myanmar', Seminar, ANU College of Law, Canberra, 2 April 2015;

'Islam and the State in Myanmar: Understanding the Politics of Belonging', Seminar, Department of Political and Social Change, ANU, Canberra, 1 April 2015.

### Fergal Davis

'Indigenous democratic participation or judicial review: what is the best way to protect Indigenous rights?', *Constitutional Law Symposium: Indigenous Recognition and the Idea of an Indigenous Constitutional Body*, University of Sydney, 12 June 2015;

'A "long-term era of terror" - the Permanent State of Emergency: Lessons from Israel for Australian Counter-terrorism Policy', *Limmud Oz: Festival of Jewish Ideas*, Sydney, 8 June 2015;

Panel on Indigenous Recognition in the Constitution, Gilbert + Tobin Lawyers, Sydney, 3 June 2015;

'An Indigenous Representative Body in the Australian Constitution', *Cape York Indigenous Summit*, Cairns, 12 May 2015;

'Institutional Design and the Australian Constitution: Ensuring Effective Oversight of National Security', *Attorney General's Department Constitutional Law Symposium*, Canberra, 1 May 2015.

### Rosalind Dixon

'Constitutional Design by Judiciary? Constitutional Drafters as Judges', *Engaging Constitutional History Workshop*, UNSW, Sydney, 25 June 2015;

'Constitutional Change, Constitutional Success and the Democratic Minimum Core', *How Do Constitutions Succeed? Defining and Assessing Constitutional Performance*, University of Chicago, 24-25 April, 2015.

### Ben Golder

'Contemporary Legal Genealogies', *Institute for Global Law and Policy Conference*, Harvard Law School, Cambridge, MA, 1 June 2015;

'Contemporary Legal Genealogies', *Law's Promise and Law's Pathos in the Global North and the Global South*, Law and Society Association (US), Seattle, 30 May 2015;

Discussant, *Author-Meets-Reader Roundtable* on Irus Braverman, *Wild Life: The Invention of Nature* (Stanford: Stanford University Press, 2015), UNSW, Sydney, 8 May 2015;

Panellist, 'Legal and Biological Norms', *Society for the Study of Biopolitical Futures and Biopolitical Studies Research Network Workshop*, UNSW, Sydney, 20 February 2015.

### Keiran Hardy

'Counter-Terrorism, Technology and the Law', SCRIPT Centre, Faculty of Law, University of Edinburgh, 11 May 2015;

'Preventive Justice Principles for Soft Power Responses to Terrorism', Centre for Criminology, University of Oxford, 4 May 2015;

'Online Extremism and the Criminal Trial', *Criminal Justice Work-in-Progress Seminar*, UNSW, Sydney, 29 April 2015;

'Preventive Justice Principles for Soft Power Responses to Terrorism', *Regulating Preventive Justice Workshop*, University of Queensland, 24 April 2015.

### Brendan Lim

'The Rationales of the Principle of Legality', *The Principle of Legality in Australian and New Zealand Law Conference*, Deakin University, Melbourne, 20 February 2015;

'*Australian Communication and Media Authority v Today FM*', 2015 *Constitutional Law Conference*, Gilbert + Tobin Centre of Public Law, Sydney, 13 February 2015.

### Andrew Lynch

'Unrequited But Still Great - The Dissent of Justices Dixon and Evatt in *R v Federal Court of Bankruptcy; Ex parte Lowenstein* (1938)', *Great Australian Dissents Workshop*, UNSW, Sydney, 9 June 2015;

'The Constitution and Funding of Family and Relationship Services', *Annual Conference of Family & Relationship Services Australia*, Canberra, 25 March 2015;

'*Williams (No 2)*', 2015 *Constitutional Law Conference*, Gilbert + Tobin Centre of Public Law, Sydney, 13 February 2015.

### Daniel McLoughlin

'Agamben on Glory, Spectacle and Immaterial Labour', *Association for the Study of Law Culture and the Humanities Annual Conference*, Washington D.C., 7 March 2015;

'Agamben on Glory, Spectacle and Immaterial Labour', *New Encounters in French and Italian Thought*, Villanova University, Pennsylvania, 14 March 2015.

### Jason Varuhas

'Human Rights Damages and the Public Law-Private Law Divide', UNSW Law Staff Seminar Series, 12 May 2015;

'Against Unification', Joint Obligations Group – Centre for Comparative Constitutional Studies Seminar, University of Melbourne, 17 February 2015;

'The Evolution of the Baigent Remedy: From Torts to Administrative Law', *New Zealand Administrative Law Conference and Workshop*, University of Auckland, 30 January 2015.

### George Williams

'Anti-Terrorism Laws and Countering Violent Extremism in Australia', *Public Lecture*, School of Law and International Centre for Muslim and non-Muslim Understanding, University of South Australia, Adelaide, 23 June 2015;

‘Contemporary Constitutional Issues for Government Lawyers’, *Australian Government Lawyers Network Conference*, Canberra, 19 June 2015;

‘Justice and Freedom in Times of Terror’, *5<sup>th</sup> National Access to Justice and Pro Bono Conference*, Law Council of Australia, Sydney, 19 June 2015;

‘Anti-Discrimination Protection or an Indigenous Representative Body?’, *Constitutional Law Symposium: Indigenous Constitutional Recognition and the Idea of an Indigenous Constitutional Body*, University of Sydney, 12 June 2015;

‘Chief Justice Latham’s Dissent in the Communist Party Case’, *Great Australian Dissents Workshop*, UNSW, Sydney, 9 June 2015;

‘Australia’s Anti-Terrorism Laws’, *Liberty, Threats and Australia’s New Security Legislation*, University of Western Sydney Law School, Whitlam Institute, NSW Writers’ Centre, Parramatta, 4 June 2015;

‘Australia’s Anti-Terrorism Laws’, *The Secret State*, Sydney Writers’ Festival, 23 May 2015;

‘In Conversation about *Everything You Need to Know about the Referendum to Recognise Indigenous Australians*’, Gleebooks, Sydney, 14 May 2015;

‘The Legal Assault on Australian Democracy’, *Sir Richard Blackburn Lecture*, ACT Law Society, Canberra, 12 May 2015;

‘The Constitution and its Effect on Environmental Policy’, *Strategic Policy Seminar*, Department of the Environment, Canberra, 12 May 2015;

‘The Effectiveness of Anti-Terror PDOs’, *Regulating Preventative Justice Workshop*, University of Queensland School of Law, Brisbane, 24 April 2015;

‘In Conversation about *Inside Australia’s Anti-Terrorism Laws and Trials*’, Gleebooks, Sydney, 31 March 2015;

‘Executive Oversight of Intelligence Agencies’, *Comparative Intelligence Oversight Workshop*, Woodrow Wilson Center and NYU Center on Law and Security, Washington, United States, 24 March 2015;

‘Rights and Responsibilities of Citizenship under the Constitution’, *Constitutional Roundtable*, House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament House, Canberra, 20 March 2015;

‘Aboriginal Peoples and the Drafting of the Constitution’, *Recognise Campaign Partners Forum*, National Centre of Indigenous Excellence, Sydney, 13 March 2015;

‘Euthanasia and the Law’, *Voluntary Assisted Dying, Democracy and Politics: Keeping our Politicians Accountable Parliamentary Forum*, NSW Parliament House, 25 February 2015;

‘The Constitution and the *Racial Discrimination Act*’, *RDA@40 Conference*, Australian Human Rights Commission, Sydney, 19 February 2015;

‘The High Court on Constitutional Law: The 2014 Statistics’, *2015 Constitutional Law Conference*, Gilbert + Tobin Centre of Public Law, Sydney, 13 February 2014.

## MEDIA PUBLICATIONS

### Joint Media Publications

Gabrielle Appleby and Sangeetha Pillai, 'What does "being Australian" mean under the Constitution?', *The Conversation* (20 March 2015);

Megan Davis and George Williams, 'Unfinished Business', *Sydney Morning Herald* (11 April 2015);

Andrew Lynch, Nicola McGarrity and George Williams, 'Australia's response to 9/11 was more damaging than any other country's', *The Guardian* (19 February 2015).

### Gabrielle Appleby

'Australia's Rigid Immigration Barrier', *The New York Times* (7 May 2015);

'Give ICAC more, but focussed, power', *The Drum* (28 April 2015);

'High Court forces ICAC to drop Cunneen inquiry and review others', *The Conversation* (15 April 2015);

'ICAC asks High Court to decide extent of its investigatory powers', *The Conversation* (4 March 2015);

"Good government" gets lost in the pursuit of national security', *The Conversation* (19 February 2015).

### Fergal Davis

'Noel Pearson's proposal could deliver real authority for Indigenous Australia', *The Guardian* (14 April 2015);

'Human rights in Australia will become a political plaything without consensus', *The Guardian* (10 March 2015);

'Why national security should NOT be above politics', *The New Daily* (1 March, 2015);

'PM's terrorism talk all rhetoric, no new vision', *The Age* (24 February 2015);

'Why tougher terror laws won't stop "lone idiots"', *The New Daily* (12 February 2015).

### Paul Kildea

'Leadership is key to breaking the impasse on constitutional recognition', *The Conversation* (26 June 2015);

### Andrew Lynch

'Federalism at stake if \$4b is cut from schools and hospitals', *The Conversation* (23 April 2015);

'Campbell Newman's Most Contentious Legacy', *Inside Story* (8 April 2015).

### Sangeetha Pillai

'Proposals to strip citizenship take Australia a step further than most', *The Conversation* (29 May 2015);

'There's more to be lost than gained in stripping citizenship', *The Conversation* (24 February 2015).

### George Williams

'Deeply Flawed Citizenship Law to Throw a Wide Net', *The Age* (25 June 2015);

'Flawed Law to Throw a Wide Net', *Sydney Morning Herald* (25 June 2015);

'Proposal to Give Aboriginal Peoples a Bigger Say May be Misplaced', *Sydney Morning Herald* (15 June 2015);

'Lowering the Voting Age to 16 would be Good for Democracy', *Sydney Morning Herald* (1 June 2015);

'Referendum No Way to Resolve Same-Sex Marriage Impasse', *Sydney Morning Herald* (18 May 2015);

'Western Australia's Strident Secession Threats Just Empty Words', *Sydney Morning Herald* (4 May 2015);

'Laws Fail to Stop Australians Going Overseas to Fight', *Sydney Morning Herald* (20 April 2015);

'Nile Likely to Have Baird Over a Barrel – and Profit Thereby', *Sydney Morning Herald* (6 April 2015);

'Metadata Law Concessions Good News for Press but Problems Remain', *Sydney Morning Herald* (23 March 2015);

'Lack of Accountability Means Political Parties Remain Exposed to Potential Corruption', *Sydney Morning Herald* (9 March 2015);

'Changing Minds on the Right to Die', *The Drum* (25 February 2015);

'Lack of Help for Hicks Reflects Poorly on Us', *Sydney Morning Herald* (23 February 2015);

'Retirement Age Needs to Better Reflect Society', *The Age* (9 February 2015);

'Bench Retirement Age Needs to Better Reflect Society', *Sydney Morning Herald* (9 February 2015).

## SUBMISSIONS

### Joint Submissions

Gabrielle Appleby and Suzanne Le Mire, Submission to the South Australian Attorney-General's Department on the Judicial Conduct Commissioner Bill 2015 (26 February 2015);

Sean Brennan, Prasanth Ramkumar and Megan Davis, Submission on Alcohol Taxation to Tax White Paper Taskforce (5 June 2015);

Rosalind Dixon and George Williams, Submission on Review of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (20 May 2015);

Keiran Hardy and George Williams, Submission to Independent National Security Legislation Monitor Inquiry into section 35P of the ASIO Act (2 April 2015);

Keiran Hardy and George Williams, Submission to Parliamentary Joint Committee on Intelligence and Security Inquiry into Access to Journalists Telecommunications Data (17 March 2015);

Keiran Hardy and George Williams, Submission to Australian Law Reform Commission Review of Commonwealth Laws for Consistency with Traditional Rights, Freedoms and Privileges (25 February 2015);

Andrew Lynch and Jessie Blackbourn, Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Independent National Security Legislation Monitor (Improved Oversight and Resourcing) Bill 2014 (28 January 2015);

Jane McAdam, Gabrielle Appleby and Claire Higgins, Submission to the Senate Legal and Constitutional Affairs Committee on the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015 (1 April 2015);

Sangeetha Pillai and George Williams, Submission to Department of Immigration and Border Protection Discussion Paper on Citizenship Rights and Responsibilities (4 June 2015).

#### Fergal Davis

Submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Inquiry into Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (15 June 2015).

#### Paul Kildea

Submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Inquiry into Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (10 December 2014).

#### George Williams

Submission to Standing Committee on Community Development, Parliament of Tasmania, Inquiry into Constitutional Recognition of Aboriginal People as Tasmania's First People (16 June 2015);

Submission to Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, Inquiry into Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (12 June 2015).



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