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Welcome to this publication celebrating the 10th Anniversary of the Gilbert + Tobin Centre of Public Law at the School of Law, University of New South Wales.

The Centre is not marking this milestone simply for its own sake. Longevity, especially of a relatively modest kind, is not cause for celebration in itself. Rather it is that the conclusion of our first decade of operation clearly provides a signal moment in which to note the many achievements and contributions made by the Centre's staff and students to the field of public law and its role in both the open and effective governance of Australia and the protection and advancement of the freedoms of individuals.

Through its dedication to the production of scholarly research of the highest quality and its commitment to using this as a basis for engagement with government, the legal profession and the community at large, the Centre has had an enormous impact upon major debates in Australian society over its comparatively short life. This publication aims to capture the full extent and significance of that work (as well as, it must be said, the lighter side of Centre life) – before we turn to the fresh challenges and opportunities of our next 10 years.

Appropriately, this publication celebrates those who have ensured the great success enjoyed by the Centre to date. It is hard to imagine that an institution as highly effective as this could have been established without the clear-sighted vision and ongoing support of Mr Danny Gilbert and the energetic leadership of Foundation Director, Professor George Williams AO right from the start. Additionally, we check in with former academic colleagues and students who worked with the Centre over the last 10 years to see what they are up to now and hear their reflections on their time with the Centre.

I thank all past and present members of the Centre, its Advisory Committee and Management Board for their respective contributions over the Centre's life. The Centre's defining quality is perhaps its collegiality and emphasis on collaboration. Consequently, the achievements and impact recorded here are attributable to all who have played some part in its story to date.

Professor Andrew Lynch
Director
Gilbert + Tobin Centre of Public Law





2 ESTABLISHING THE GILBERT + TOBIN CENTRE OF PUBLIC LAW





Gilbert + Tobin and the Centre

A corporate law firm operating in accordance with the best traditions of the law has the opportunity each day to apply and support the rule of law. Opportunities to help refurbish and invigorate it are less obvious.

And so, when in March 2000 I was approached by Professor Paul Redmond the then Dean of the University of New South Wales Law School, asking if Gilbert + Tobin would fund the establishment of a centre of public law, my response was visceral and immediate. I knew that such a centre was important and that my partners would support it. To be able to fund an organisation devoted to informed public debate about laws vital to Australia's future as an open and democratic society is a great privilege.

The particular focus of the Gilbert + Tobin Centre of Public Law is on the constraint and regulation of power as exercised by government and the law itself. For example, Australia has yet to resolve how it should with fairness and decency recognise and meet the legitimate aspirations of our indigenous peoples and those of refugees and others seeking a permanent home in Australia. Similarly, in the

human rights arena, Australia is yet to decide how these rights should be articulated and settled. Then there are the many problematic questions which our Australian federal system seems ill equipped to answer. All of these issues and more, necessarily call for the intervention of the state in its various manifestations. Holding governments to account, limiting the consequences of overreach and ensuring fairness, equality, transparency and accountability are all critical to the rule of law and to the health of our democracy. None of these values should be taken for granted. The Gilbert + Tobin Centre of Public Law now plays an institutional role in ensuring that these values are not so taken and that departures from them are exposed to public debate and to healthy criticism.

I congratulate the Centre for its excellent work to date and I wish the Centre and everyone involved with it, continued recognition and success.

Danny Gilbert
Managing Partner
Gilbert + Tobin





The Gilbert + Tobin Centre and UNSW Law

In 2011, the Law School at the University of New South Wales celebrated its 40th anniversary and the Gilbert + Tobin Centre of Public Law marked its 10th. Thus, for a quarter of UNSW Law's life, the Centre has played a prominent part in its achievements and success.

The Centre strongly reflects a number of aspects which have been central to the ethos of Law at UNSW since our founding by Professor Hal Wootten AC. It is deeply committed to the dissemination of research beyond the academy – it reaches out to the legal profession, government, NGOs and the community generally to inform, stimulate and contribute to the national discourse on issues involving public law.

The reputation the Centre enjoys stems then, not simply from the quality of its research but what it does with that work beyond the traditional avenues of academic publishing. In this way, it mirrors the Law School's emphasis upon engagement more broadly.

The areas in which the Centre expends its energies are also ones that clearly connect with UNSW Law's traditional focus on social justice. Its work on the role that public law might play in improving the position of, amongst others, Indigenous peoples in contemporary Australia, the displaced who seek asylum here, and those communities which may be expected to bear the brunt of legal responses to the threat of terrorism, all accords with the importance that UNSW Law has always placed upon the interests and importance of those with whom the law can deal harshly.

The highly collegial, frequently collaborative, manner in which Centre staff and students conduct their research is also a part of the Law School's reputation more generally over its 40 years. As the part of this publication that revisits individuals who have worked and studied with the Centre so amply illustrates, the Centre has been most fortunate in the talent that has been attracted by its lively academic culture. At the same time, the very successful careers that those persons have gone on to pursue elsewhere are, as they attest, influenced by the very positive experiences of mentoring and collegiality they enjoyed at the Centre and the Law School. In its culture of intellectual generosity and collaborative strength, the Centre is a model of what can be achieved by a body of this kind in law, humanities and the social sciences.

Lastly, the Centre embodies a very strong relationship between the Law School and the law firm of Gilbert + Tobin. Danny Gilbert's vision and commitment was integral to the establishment of the Centre ten years ago and remains a key ingredient in its ongoing worth to Australian public life. The Centre and all that it has achieved is a clear demonstration of the value of partnerships between the profession and the university sector.

Professor David Dixon

Dean
UNSW Law





Getting Started – Recollections of the Foundation Director

When I arrived fresh from the Australian National University to take up the position of Director of the new Gilbert + Tobin Centre of Public Law at UNSW, I immediately discovered two things. First, the Centre did not actually exist, and second, apart from myself, it had no staff. In early 2001, the Centre was nothing more than a nameplate on a door.

It took some time to remedy both of these. Some months later in mid-2001 the University officially recognised the creation of the centre. The intervening time also led to the appointment of the first, and certainly one of the most important and enduring, appointments with administrator Belinda McDonald joining the Centre. Her work in building the Centre's online presence and taking the lead role in organising our annual and other conferences has been crucial to our collective success.

Further staff were soon to follow. I was fortunate in securing funding from the Australian Research Council for three major grants in the 2001 round. These enabled Centre projects to be established and people to be employed in the areas of electoral law (Bryan Mercurio), Indigenous legal issues (Sean Brennan) and the reception of international law into domestic legal systems (Devika Hovell). They joined Megan Davis, who had already arrived at the Centre on secondment to direct our new Charter of Rights project.

In establishing the Centre I sought to institute projects around questions of public law that were of significance to national and local debates about Australia's future. This involved as the first and most important step building a body of original research of international standard.

Once done, this enabled the Centre to play a leading role in policy debates through parliamentary and other inquiries, but also via contributions through the media. Our philosophy was based upon the idea that Australians deserve access to credible information about how their system of government works, and that universities have a responsibility not just to produce first-rate scholarship, but to communicate this to the broader community.

I also sought to locate the Centre as a meeting point for the wide range of people interested in public law, including those from government, the judiciary and profession. This objective was pursued through establishing an annual conference on constitutional law that, from its first outing in February 2002, attracted a large audience of just these people. It has since gone from strength to strength and for many people has become the must attend event of the year in the field.

Establishing the Centre took enormous effort by a range of people. If I was to point to my most significant achievement as Director, it lay in having the good fortune to attract a group of new scholars interested in public law and public policy who themselves were on the cusp of great things. Their efforts as part of our team built a body of exceptional research that was well communicated in academic and wider circles. They also created a vibrant and inclusive culture that over time has been built upon by further generations of scholars now under the directorship of Professor Andrew Lynch.

Professor George Williams AO
Foundation Director
Gilbert + Tobin Centre of Public Law





3 CENTRE PROJECTS



CHARTER OF RIGHTS PROJECT

(2001 – present)

PROJECT DIRECTORS:

Professor Megan Davis (2001–05);

Professor Ben Saul (2005–07);

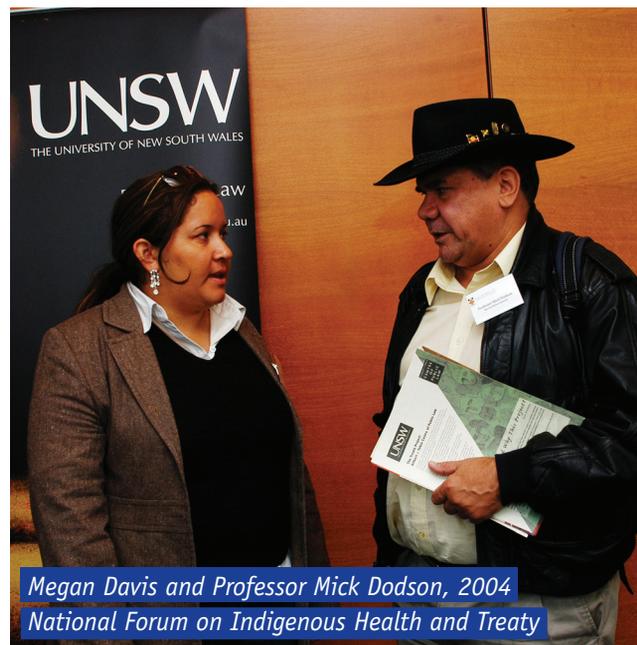
Edward Santow (2008–10);

Assistant Professor Rosalind Dixon (2011 – present)

The first decade of the Gilbert + Tobin Centre coincided with an historic period of law reform on the protection of human rights in Australia. At every stage, the Centre's Charter of Rights Project made major contributions to key developments through its research and public education functions.

Under the project's first Director, Professor Megan Davis, the Centre's very first specialist conference in 2002 was dedicated to Bills of Rights (reflecting the earlier favoured terminology!) and set the tone for much of what followed – the discussion was reform-focused, the speakers included important political actors from across the spectrum, and comparative international perspectives featured strongly. The timing of the event was propitious, for just months later the ACT Bill of Rights Consultative Committee made their recommendations, in a report that referred to the Centre submission, to the Chief Minister of the ACT. In 2004, the Territory legislated its *Human Rights Act* – the first general statutory protection of rights enacted by an Australian jurisdiction.

The second phase of the project was dominated by the consultation on, and subsequent enactment of, the Victorian *Charter of Rights and Responsibilities* (2006). The Foundation Director, Professor George Williams, had a lead role as the Chair of the four-person consultation committee, while colleagues in the Centre carried out their own research projects on the so-called 'Commonwealth model' being considered for adaptation to that state, including a close observation of experiences overseas, notably in the United Kingdom. In this respect, the interests of those in the Centre working in both human rights and terrorism studies tended to collide and it was opportune that the Charter project found a second director in Professor Ben Saul, who had returned from his DPhil studies at Oxford University to take up a position in the Law School at UNSW. Many of the debates about rights protection in Australia at this time were conducted in the context of the new anti-terrorism measures steadily



Megan Davis and Professor Mick Dodson, 2004
National Forum on Indigenous Health and Treaty

introduced by the Commonwealth government into Australian law. Members of the Centre were very active participants in the national conversation about these laws and what their enactment might be understood to say about the need for greater systemic rights protection in Australia.

The third phase of this project involved the National Human Rights Consultation under Father Frank Brennan AO. Edward Santow was the Project Director over this critical period and co-ordinated not just the Centre's various submissions to the Committee, which were extensively discussed in its final report, but also engagement with the Australian business sector and, through the formation of the Australian Human Rights Group, a large network of NGOs.

The Brennan Committee report recommended the enactment of a federal Human Rights Act. However, the Rudd government decided not to implement this finding. Instead, the report provided the impetus for better parliamentary checks on laws that affect liberty. At the very end of the Centre's 10th year, the Commonwealth Parliament passed legislation that requires a ministerial statement of the compatibility of each new bill with international human rights instruments. That legislation also creates a dedicated parliamentary committee on human rights matters.

Clearly, the topic of rights protection remains as vibrant now as it has been across the life of the Centre. Through the ongoing work of this project, the Centre will continue to engage and research in the field of public law and human rights as new developments unfold.



INDIGENOUS LEGAL ISSUES / TREATY PROJECT

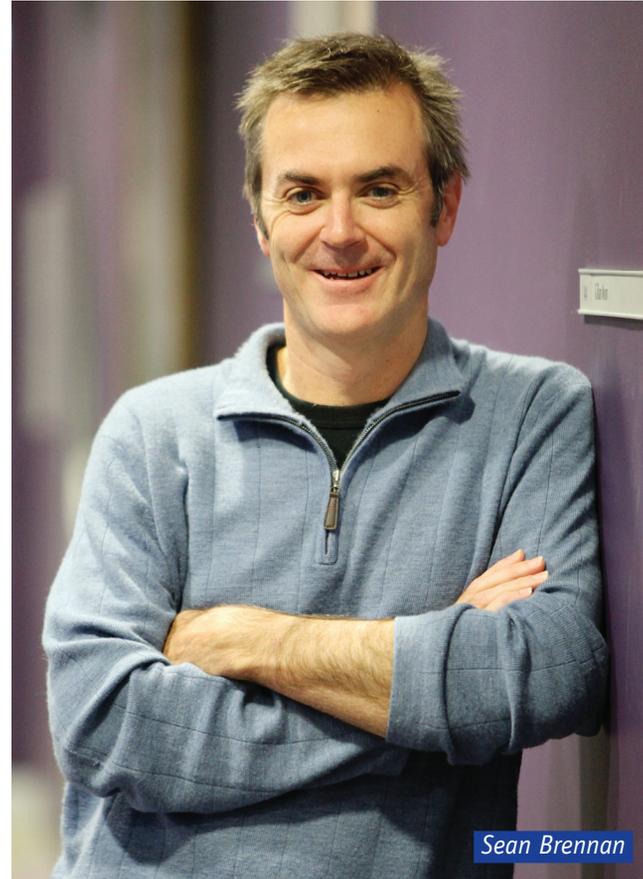
(2002 – present)

PROJECT DIRECTOR: Sean Brennan

Indigenous issues have been a central concern for the Centre since its inception. Events across the decade have shown that public law issues constantly intersect with the concerns of Aboriginal and Torres Strait Islander people – from the treaty debate in the aftermath of the reconciliation decade of the 1990s, through major developments in land rights and native title law, to the issue of Aboriginal trust funds and stolen wages, the Northern Territory Intervention, the regulation of petrol and other abusable substances, the possible introduction of a national human rights charter and most recently the idea of positive constitutional change at a referendum in 2013. On each of those issues the Centre has sought to make a well-reasoned contribution to legal reform and public debate.

With its Treaty Project (2002-2005) the Centre distributed to schools, local governments and community organisations thousands of copies of four Issues Papers. The National Forum on Indigenous Health and the Treaty Debate: Rights, Governance and Responsibility, held in 2004 with a program of national and international speakers, attracted more than 200 people (more than half of them Indigenous). It focused on the question whether, apart from its symbolic significance, a treaty could make a practical difference in the everyday lives of Indigenous people. At the conclusion of the project Sean Brennan and George Williams co-authored the book *Treaty* (Federation Press, 2005) with project partners Larissa Behrendt (UTS) and Lisa Strelein (AIATSIS). The book was well reviewed in the *Age* and elsewhere, and called ‘unquestionably the best work on the subject in Australia’ (AJP, Vol 11(1)).

The Project Director has provided media commentary on land rights and native title, constitutional change, voting rights, treaty, income management and reconciliation,



as well as presenting at national and international conferences, community events and in the professional development context.

The Centre’s website includes two resource pages, one relating to the treaty project and the other canvassing a broad range of Indigenous legal issues – organising useful and diverse material into a readily accessible form for the interested reader.

At the end of a decade the Centre is busier than ever in this area, with several staff (including Sean Brennan, Paul Kildea, Andrew Lynch and George Williams) actively contributing to workshops and public forums about constitutional change, and working with a range of leading first peoples organisations in the run-up to a proposed referendum in 2013.

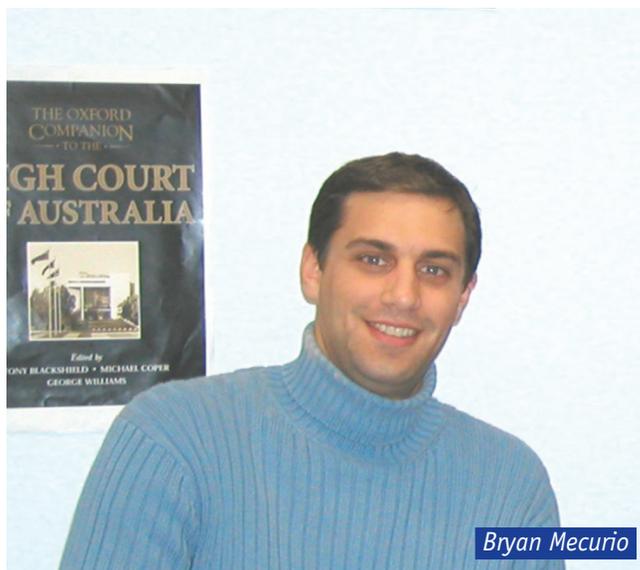




ELECTORAL LAW PROJECT

(2002 - 04)

PROJECT DIRECTOR: Professor Bryan Mercurio



Bryan Mercurio

An effective system of electoral law and regulation is vital to the integrity of any democratic system. However, in 2002, electoral law was a neglected discipline in Australia. This impeded best practice in electoral administration and the orderly development and modernisation of electoral law norms and rules, which is vital to the integrity of any democratic system. The aim of the Electoral Law Project was to identify and examine key issues of concern to contemporary electoral law in Australia, and to produce leading scholarship to assist the development of appropriate electoral regulation for Australia in the 21st century. The Centre was partnered in this project by the Electoral Council of Australia and Graeme Orr (Griffith University), and was funded in large part by the Australian Research Council.

In its first year, the project convened a major event – the Electoral Law Conference – bringing together electoral administrators, academics and practitioners to discuss electoral issues and build networks of researchers. Two other workshops were held in 2004. The first was a workshop on political finance law involving key academics, electoral officials and party representatives, and the second was a ‘virtual’ Electoral Law Symposium which was then featured in a special thematic edition of the *Federal Law Review*. Possibly the most important contribution of the Electoral Law Project was the publication of the first book dedicated to Australian electoral law: *Realising Democracy: Electoral Law in Australia* (co-edited by Graeme

Orr, Bryan Mercurio and George Williams, 2003, Federation Press). The project also produced three book chapters, seven refereed journal articles, one non-refereed journal article, one major review, 21 conference presentations, and five other academic outputs.

The Electoral Law Project played a key role in informing the public about electoral law. It created and maintained an online Electoral Law Resource Page. Members of the Centre were also frequently invited to speak at public events and to the media on a wide range of issues including campaign finance, the Pauline Hanson case and internet voting. The project was tremendously successful in meeting its objectives of raising awareness of the importance of electoral law as part of the broader sphere of public law.

JUDICIARY PROJECT

(2002 - present)

PROJECT DIRECTOR:
Professor George Williams (2002-05);
Professor Andrew Lynch (2005 - present)

This project was formerly known as the High Court Project and was renamed in 2008 to reflect a broader focus on research concerning the Australian judiciary. That said, the most visible output of this project remains the annual production of statistics on the judgment delivery patterns of the High Court over the preceding year, with an emphasis upon constitutional matters. The studies are presented to delegates at the Centre’s Constitutional Law Conference in February and regularly receive a great deal of media interest.

The project also contributes to contemporary discussion and analysis of high-profile decisions of the High Court through the social science and humanities research portal, Australian Policy Online via the regular ‘High Court Watch’ column. The authors of these pieces have been emerging young researchers, including Fiona Chong, David Hume and Tessa Meyrick.

More recently, research has been undertaken which considers proposals and arguments for reform of the High Court and the Australian judicial system more generally. Two particular areas of attention have been the development of an appointments process designed to produce a more diverse Australian judiciary and also the issues surrounding judicial complaints handling and removal procedures.





HOMELESSNESS LEGAL RIGHTS PROJECT

(2003 - 08)

PROJECT DIRECTOR: Dr Cassandra Goldie

Homelessness is a major human rights issue for Australia, with an estimated 100,000 people experiencing homelessness on any given night. This project, initiated by Cassandra Goldie, then a postgraduate student in the Centre and these days is the CEO of the Australian Council of Social Service (ACOSS), had the aim of disseminating information about the legal and human rights of people facing homelessness and how people might use the law as a tool for change. Funding assistance was given to the Centre by the Law and Justice Foundation of New South Wales, and the project was conducted in partnership with the Public Interest Law Clearing House (PILCH) and the Homeless Persons' Legal Clinic in Melbourne.

The first phase of the project was undertaken in 2003 and 2004, and consisted of:

- the development of a web-based repository of materials relating to homelessness in the fields of law, human rights and social policy;
- creation and administration of a national email list, and publication of a monthly Resource Bulletin; and
- support for public policy and law reform initiatives promoting the human rights of people who experience homelessness, such as the Legal Needs of Homeless People Research Project of the Law and Justice Foundation of New South Wales.

Phase two of the project, which commenced in 2005, involved the continuation and expansion of these activities. Additionally, it saw the establishment of an Advisory Group to assist the project with resource development and help build networks amongst people committed to building the legal and human rights of people experiencing homelessness.



Cassandra Goldie

In addition to these general activities, the Project Director was involved in a large number of international and grass-roots events associated with promoting economic, social and cultural rights, including the right to housing and security of tenure, and published extensively on the legal rights of homeless persons.





INTERNATIONAL LAW PROJECT

(2003 - 06)

PROJECT DIRECTOR: Devika Hovell

The three year International Law Project was run in conjunction with Professor Hilary Charlesworth and Madeleine Chiam at the Centre for International and Public Law (CIPL), Australian National University. It was funded by the Australian Research Council. The project aimed to explore and investigate the interaction between international law and the Australian domestic legal system, both at a general theoretical level as well as through four case studies (United States-Australia Free Trade Agreement, Rome Statute to the International Criminal Court, Framework Convention on Tobacco Control, and Optional Protocol to the International Covenant on Civil and Political Rights). The project also aimed to systematically document and analyse how Australian institutions across the three arms of government have dealt with the phenomenon of the internationalisation of Australian law, and to propose ways in which they might more appropriately engage with international law.

The project held an Expert Workshop on International Challenges to the Australian Legal System in August 2004. This resulted in the publication in 2005 of the book, *The Fluid State: International Law and National Legal Systems* (co-edited by Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams). This book looked at issues including the role of parliaments in treaty-making, the judiciary as gatekeeper to international legal norms, and approaches to international law in national politics. A second book, *No Country is an Island: Australia and International Law* (co-edited by Hilary Charlesworth, Madelaine Chiam, Devika Hovell and George Williams), was published in 2006. This book was written for the engaged general public, and provides a detailed and contemporary analysis of Australia's relationship with the international legal order. It drew extensively upon interviews conducted by members of the project team with key political figures and other domestic actors about issues such as Australia's involvement in the Iraq war, the case of David Hicks, and the United States – Australia Free Trade Agreement.



George Williams and Devika Hovell





INTERNATIONAL TRADE AND DEVELOPMENT PROJECT

(2004 - 07)

PROJECT DIRECTOR: Professor Bryan Mercurio

The International Trade and Development Project was established to contribute to a better understanding of public international trade law, defined broadly to include almost any subject involving law as it relates to cross-border economic activity. The aim of the project was to examine some of the more significant issues facing Australia and the World Trade Organisation, such as: the review of the WTO Dispute Settlement Understanding; Australia's role in shaping international trade policy; the explosion of bilateral trade agreements and their effect on the multilateral system; policy issues betwixt international trade law and human rights; the challenge posed to developing countries in gaining and enforcing their benefits and rights; and the relationship between trade and environment. The International Trade and Development Project was funded by University of New South Wales Faculty Research Grants and a University Goldstar Award.

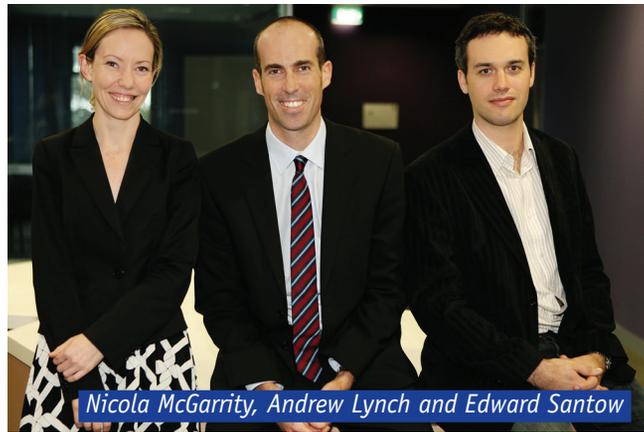
In addition to writing academic articles, book chapters and opinion pieces for the Australian hard-copy media, the project produced two books: *WTO Dispute Settlement Understanding: A Detailed Interpretation* (2005; co-authored by Guohua Yang, Bryan Mercurio and Yongjie Li) and *World Trade Law: Text, Materials and Commentary* (2008 co-authored by Simon Lester and Bryan Mercurio, with Arwel Davis and Kara Leitner). The Project Director also commenced work with Simon Lester on extensive research into free trade agreements. This resulted in the later publication of a further two edited books by Professor Mercurio since taking up his present appointment at City University Hong Kong.

In June 2006, the project held a high-level, invitation only 'Symposium on WTO Issues and Law' at UNSW. This event brought 15 scholars and researchers from Australia and New Zealand together to present and discuss contemporary issues of international trade law. The project also delivered a two-day training course on the WTO Dispute Settlement Understanding (DSU): Policy and Procedures to a group of senior legal practitioners visiting from China.

TERRORISM AND LAW PROJECT / AUSTRALIAN RESEARCH COUNCIL LAUREATE FELLOWSHIP

(2005 - present)

PROJECT DIRECTORS:
Professor Andrew Lynch (2005–08);
Nicola McGarrity (2008–10);
Edward Santow (2010);
Professor George Williams (2009 – present)



Nicola McGarrity, Andrew Lynch and Edward Santow

The Terrorism and Law Project commenced in 2005 when the Centre was awarded an Australian Research Council grant to conduct a five-year project into Australia's anti-terrorism laws. The aim of the project was to contribute to the safeguarding of Australia by improving knowledge on law's role in efforts to combat terrorism, while simultaneously respecting the core features of a liberal democratic society. In its early years, the project performed an important role in providing a critique of, and suggesting improvements to, the vast number of anti-terrorism laws that were being enacted with steady frequency by the Commonwealth Parliament. It did this by making written and oral submissions to parliamentary and independent review bodies, and commenting in the media and at public forums on the worrying aspects of these laws. In the later years of the project, after the legislative frenzy had died down, the focus shifted to producing research looking in greater depth at specific counter-terrorism measures both in Australia and overseas and their overall impact on fundamental human rights.

In July 2009, Professor George Williams was awarded an Australian Research Council Laureate Fellowship for a new project in this area titled 'Anti-Terror Laws and the Democratic Challenge'. The membership of this project consists of Professor Williams, two full-time academics,





INTERNATIONAL REFUGEE AND MIGRATION PROJECT

(2007 - present)

PROJECT DIRECTOR: Professor Jane McAdam

Refugee and asylum issues have been a central part of the Australian political landscape for a number of years, and their profile has only seemed to increase – sadly often without a corresponding rise in the quality of public debate. Partly to address this deficiency, the International Refugee and Immigration Law Project was created in 2007. The project deals with a wide range of topics across the areas of international refugee law and Australian asylum policy, including complementary protection, detention, refugee law and human rights, statelessness, and climate change-related displacement.

The project aims to provide considered, scholarly, yet accessible input into law and policy development in these areas, both in Australia and internationally. The Director, Jane McAdam, has published extensively in this field. Her books include *The Refugee in International Law* (2007; with GS Goodwin-Gill); *Complementary Protection in International Refugee Law* (2007); *Forced Migration, Human Rights and Security* (2008; edited), *Climate Change and Displacement: Multidisciplinary Perspectives* (2010), *Climate Change, Forced Migration, and International Law* (2012); and *Climate Change and Australia: Warming to the Global Challenge* (2012; with B Saul, S Sherwood, T Stephens and J Slezak).

The Project Director is an advisor to the UN High Commissioner for Refugees, and is frequently invited to speak at international conferences, provide advice and training to governments and NGOs, and provide media commentary on asylum issues. She has also made numerous submissions to parliamentary inquiries on behalf of the project and was instrumental in the introduction and passage of the *Migration Amendment (Complementary Protection) Act* 2011.

The project website includes a resource page on complementary protection for Australian decision-makers and researchers, and podcasts of a multidisciplinary conference on climate change and migration in the Asia-Pacific held in 2011.

two post-doctoral fellows, four PhD students, and three researchers. The Laureate project represents the next phase in public law research on the post 9/11 anti-terrorism laws. Anti-terrorism laws can no longer be cast as a transient, exceptional legal response to the events of 11 September 2001 and later attacks in, for example, Bali, London and Madrid. Whether or not the laws are justified as a matter of legal policy – a subject of great contention – they are, in one form or another, clearly here to stay. Therefore, the overarching aim of the Centre's current research is to answer the question of how democratic nations (especially Australia, Canada, India, New Zealand, the United Kingdom and the United States) can best reconcile traditional democratic processes, institutions, principles and individual freedoms with the likelihood that anti-terror laws granting war-time powers will remain in place for the foreseeable future. The democratic challenge posed by anti-terror legislation is being addressed through two complementary research objectives. First, the project is providing detailed, comparative legal analysis of the scope and operation of these laws in the aforementioned nations. Second, it is answering specific questions of public law theory and institutional design central to the challenge posed by those laws to democratic systems.

The outputs of both the original Terrorism and Law Project and the Laureate Project have been considerable. A full-day public forum on *The War on Terrorism and the Rule of Law* was held by the Centre in November 2003. Conferences and research roundtables bringing together international experts in counter-terrorism and human rights were held in the United Kingdom in September 2005, and Sydney in July 2007, July 2009 and August 2010. The latter three events each resulted in the publication of an edited book of papers. A further conference, in conjunction with the International Association of Constitutional Law, will be held in Sydney in December 2012. In total, one authored book, three co-edited books and many book chapters and academic articles, as well as conference papers and opinion pieces, have been produced by members of the Centre on terrorism-related issues.



FEDERALISM PROJECT

(2008- present)

PROJECT DIRECTOR:

Professor Andrew Lynch (2008-09);
Dr Paul Kildea (2009 – present)

The Centre's Federalism Project was created in 2008. From the start, the objective was to undertake public law research that would shed light on the day-to-day functioning of Australia's federal system, rather than to add another voice to those advocating a fundamental redesign of the federation. As it turned out, 2008 was an auspicious time to begin research of this kind as it coincided with Prime Minister Kevin Rudd's restructuring of federal financial relations and the expansion of the role of the Council of Australian Governments (COAG). It was also a time when the federal dimensions of some of the nation's most pressing policy problems, including water management and health care, began to be felt in profound ways.

The Federalism Project has thrived in this lively political context. Paul Kildea, Andrew Lynch and George Williams have led a busy research program that has addressed a wide range of issues, including: the constitutional status of COAG and the challenges of providing for parliamentary accountability in intergovernmental relations; the operation of the references power in s 51 of the Constitution and its limitations as a tool of Federal-State cooperation; the extent of federal power over water management and its implications for the development of the Murray-Darling Basin Plan; the capacity of the federal government to strengthen regulation of print and online news media; and the legal issues that arise from proposals to give constitutional recognition to local government. The project's research on these topics has been published in quality journals and presented at high profile conferences in Australia and overseas. It has also been highly influential in the policy context, informing the recommendations of numerous parliamentary inquiries into federalism issues and featuring prominently in media commentary and public debate.

Outside of its own research program, the project has been hugely successful in bringing together experts from across



Paul Kildea

a range of disciplines and sectors and showcasing their research. It has done this primarily through the hosting of major research roundtables in 2008 and 2011. These forums proved highly successful in enabling a sharing of perspectives on federal challenges across the disciplines of law, political science and economics, as well as between academics and senior government officials. Both events made significant contributions to federalism scholarship, resulting in the publication of a special thematic issue of the *UNSW Law Journal* (vol 31(2), 2008) and the book *Tomorrow's Federation: Reforming Australian Government* (Federation Press, 2012), edited by Paul Kildea, Andrew Lynch and George Williams.

In late 2011 the project secured another three years of funding from the Australian Research Council, ensuring that its unique contribution to scholarly and public debate on federalism is set to continue into the future.

REFERENDUMS PROJECT

(2009 – present)

PROJECT DIRECTORS:

Dr Paul Kildea and Professor George Williams



NTCHRE with George Williams

This Project was created in 2009 to contribute to public law scholarship on the substance and process of formal constitutional reform in Australia. The Project has been highly active in the context of the proposed referendums on the constitutional recognition of both Aboriginal and Torres Strait Islander peoples and local government.

The project's first major achievement was the publication of the book *People Power: The History and Future of the Referendum in Australia* (2010). Co-authored by George Williams and David Hume, it examines Australia's referendum record and analyses the factors that contribute to the success or failure of referendum campaigns. Since then the project has produced research on a range of issues including the shortcomings of Australia's referendum machinery legislation, citizen engagement in referendum processes, and the legal issues that arise from various proposals to recognise Aboriginal and Torres Strait Islander peoples in the Constitution.

The Centre has been active in filtering this research into public debate through numerous conference papers, submissions, speeches, workshops and media contributions. A particular highlight was the delivery of an education workshop on constitutional recognition at the inaugural meeting of the National Congress of Australia's First Peoples. Working in collaboration with the Indigenous Law Centre, this workshop saw several Centre staff lend their expertise to engaging Congress delegates on the many legal and procedural issues around constitutional reform. Sean Brennan, Paul Kildea and George Williams have since been actively involved in engaging many other organisations on these issues and look forward to a busy period as Australians are again asked to consider making changes to our foundational legal document.

PUBLIC LAW AND THEORY PROJECT

(2010 – present)

PROJECT DIRECTOR: Dr Ben Golder

The Public Law and Theory Project is one of the most recent projects established by the Centre. This project aims to use the conceptual resources of contemporary political theory, legal philosophy and critical legal theory to examine some of the foundations of the Centre's work in public law – for example, sovereignty, democracy, human rights, counter-terrorism, and the liberty/security balance. The intention is to link together with, and to contribute to, existing Centre projects by exploring their implicit concerns through theoretical reflection and inter-disciplinary dialogue. Since 2010, the project has conducted a seminar series featuring a mix of national and international speakers addressing a range of familiar topics from different philosophical, historical and sociological perspectives. There are also two ongoing research projects that have been supported by the project. The first of these is a special forthcoming issue of the *Leiden Journal of International Law* on 'Foucault and International Law' edited by the Project Director. The second is an edited collection, due to be published by Routledge in late 2012, titled *Michel Foucault: Law, Government, Rights*. This collection is co-edited by the Project Director. The project is also, in collaboration with colleagues in the philosophy departments at Sydney University and the University of New South Wales, planning a workshop on 'Critical and Historical Approaches to Rights' to be held in 2012.



Ben Golder



4 CENTRE ACTIVITIES



EVENTS

The Gilbert + Tobin Centre of Public Law hosts a range of different events to promote research and debate about public law issues in the Australian community. The Centre views events such as conferences, roundtables and seminars as a means of both generating and disseminating research in the field. In designing programs, the Centre has consistently emphasised: the inclusion of emerging, as well as established, researchers; the importance of drawing on perspectives from academia, government, and the private bar; and the value of interdisciplinary voices, be they from political science, economics or criminology.



The Annual Constitutional Law Conference

Without doubt, the signature event of the Centre is its annual Constitutional Law Conference, now entering its second decade as a fixture on the public lawyer's calendar. The first conference was held on 15 February 2002 in the Dixon Room in the State Library of New South Wales. Those who were there doubtless recall that occasion, not only because it set the high standard for which the event has aimed ever since – but also due to the oppressively tropical conditions that ensued when the air conditioning failed! Growing demand saw the conference venue move to the New South Wales Parliament the following year, and then the Art Gallery of New South Wales the year after that – where the conference has been held ever since, barring a relocation in 2009 to the Australian National Maritime Museum during renovations at the Gallery.

Another immutable feature of the conference has become the provision of a statistical snapshot of the decision-making in the High Court over the preceding year. Having its origins in a one-off paper presented by the current Centre Director at the 2003 conference, 'the Stats' became an annual feature of the Conference thereafter. Much bolder claims are occasionally made by others about these modest empirical reports than has ever been asserted by their authors – and there is no doubt that sometimes the public commentary can accentuate the results to a degree that borders on the dramatic. But as Justice Kirby assured us one year after we noted the unfairness of some of the remarks about his contribution to the Court's decisions, 'I certainly know all about media spin'.

The Constitutional Law Conference has featured far too many brilliant expositions of recent cases and intractable constitutional problems to mention here. Doubtless, regular attendees have their own memories of papers that fired their imagination or crystallised their understanding of an issue. Some sessions spring very readily to mind due to the pitch or tone of the presenters or the exchange of views between them. For example, the Fairfax journalist David Marr, did not mince words in 2003 when he declared that the High Court was 'a Court born to disappoint'. Yet despite that assessment, on two occasions, the conference has featured memorable discussions on judicial activism – in 2004, when Sir Harry Gibbs, Tony Blackshield and Katharine Gelber tackled the topic, and again in 2008, when US political scientist Jason Pierce shared the stage with Janet Albrechtsen and (then) Justice French, the latter vanquishing judicial activists as 'mythical monsters'. In 2010, the Conference for the first time invited a self-represented litigant to speak – as a panellist in an entire session devoted to his eponymous case, *Pape v Commissioner of Taxation*. Lastly, 2009 saw a novel twist on the final session format, with the host of *The Law Report*, Damien Carrick, moderating a Q&A on 'Australian Constitutional Futures' that was subsequently broadcast on ABC Radio National.



The formal dinner that follows the conference has also enjoyed an impressive roll call of guest speakers, including four former and serving Chief Justices, Justices of the High Court of Australia and the Commonwealth Attorney-General. For many years, the conference dinner featured a High Court Trivia Competition – memorably inaugurated by Professor Michael Coper as Trivia Master in 2002 with a massive 50 questions. In later years, the Centre's Foundation Director, Professor George Williams took on this role until, having reached the limits of trivial facts about the High Court – or at least those which any reasonably informed observer could have any hope of knowing, the competition was retired in 2009. This is perhaps the most controversial action ever taken by the Centre and while some regular attendees have expressed relief that the conference dinner is now more accommodating of freewheeling conversation, many others still regret the competition's absence and hope that it may be resurrected once the current High Court has done its bit by adding to the trivial history of the institution.

Other Major Conferences

The Centre's first decade has been punctuated by a number of other conferences based around particular project areas. In 2002-04 a series of single day National Forums were held on the topics of Bills of Rights, the War on Terror and Indigenous Health and the Treaty Debate. The programs of all three featured a range of perspectives from government, opposition political parties, the legal profession and NGOs.

As the Bill of Rights field changed with the introduction of first the *Human Rights Act 2004* (ACT) and then the *Charter of Rights and Responsibilities 2006* (Vic), the Centre partnered with colleagues at the Australian National University, joined from 2007 by those at the University of Melbourne, to present an annual series called the 'Protecting Human Rights' conferences. In 2009 the Centre, through the work of Charter of Rights Project Director Edward Santow, played host for this roving event, which was held just days before the Brennan Committee delivered to the Commonwealth government its final report on the National Human Rights Consultation. Both Father Frank Brennan AO and Mary Kostakidis, members of the four person committee, addressed delegates, along with papers from leading experts considering developments at the State level and future challenges.



In 2007 the Centre held perhaps its most ambitious conference titled 'Law and Liberty in the War on Terror' which ran over three days on 4-6 July. Opened with an address by the Commonwealth Attorney-General Philip Ruddock, the event brought together a formidable program of major international and national experts and stakeholders in the anti-terrorism field. The former included Professors David Dyzenhaus (Toronto), Chris Kutz (Berkeley), Kent Roach (Toronto), Clive Walker (Leeds) and Brian Z Tamanaha (St John's University, New York). Domestic speakers from the fields of law and political science included Professors Katharine Gelber, Andrew Goldsmith, Sarah Joseph and Adrienne Stone. The government sector was represented by Robert Cornall AO, Carmen Lawrence, Geoff McDonald and Senator Marise Payne, while perspectives from the courtroom were offered by Philip Boulten SC, Dr Stephen Donoghue, Dr James Renwick SC, and Justice Margaret White. Community and media views were also captured through contributions

from Waleed Aly and Leigh Sales. The event was swiftly followed by a volume of the papers published by The Federation Press.

The most recent of the Centre's thematic conferences was the two day 'Climate Change and Migration in the Asia-Pacific: Legal and Policy Responses' event held at NSW Parliament House on 10-11 November 2011 and organised by Professor Jane McAdam. The conference wove together a fascinating array of multi-disciplinary analyses of the phenomenon of climate-related movement in the Asia-Pacific region – 20 papers in all. Specialists in their respective fields (including law, geography, psychology, and international relations) travelled from all around the world to take part. Speakers included academics, government officials from affected countries including Tuvalu, Kiribati, Papua New Guinea, the Maldives, and Bangladesh, and representatives of international organisations. The Conference was in many ways a companion event to Jane's edited book published by Oxford University Press in 2010, *Climate Change and Displacement: Multidisciplinary Perspectives*.

Research Roundtables

In addition to events aimed at attracting an audience of academics, the profession and community representatives, in recent years the Centre has convened specialist research roundtables geared towards lengthy discussion of participants' written work circulated in advance of the event. In 2008 and 2011 the focus was federalism and



Indigenous Constitutional Reform Workshop





mechanisms of reform, while in both 2009 and 2010 the impact of anti-terrorism law was the basis of discussions. The two more recent roundtables each spanned two days – requiring quite a commitment of time and energy from the participants but on both occasions the high quality of the contributions has ensured that the gatherings have concluded with as much crackling intellectual exchange as they commenced.

All four of these roundtables have led to major published works: a special thematic issue on ‘Australian Federalism’ of the 2008 *University of New South Wales Law Journal*; *Counter-Terrorism and Beyond – The Culture of Law and Justice after 9/11* (Routledge, 2010); *Global Anti-Terrorism Law and Policy* (2nd edition, Cambridge University Press, forthcoming) and *Tomorrow’s Federation: Reforming Australian Government* (Federation Press, 2012).



In July 2011, the Centre also co-hosted a roundtable event with the Indigenous Law Centre at UNSW on the topic of Constitutional Reform and Indigenous People. Designed to give concentrated attention to the issues at play in the current proposal to hold a referendum in this area before or at the 2013 federal election, the roundtable brought together a mix of constitutional, human rights and indigenous academics. Professors Megan Davis and Marcia Langton, both members of the government’s Expert Panel on Constitutional Recognition of Indigenous Australians were present to hear and discuss options for reform. The papers from this event are in the process of being edited for publication in a forthcoming special issue of the *Australian Indigenous Law Review*.

Great Legal Debates

Prior to the last three federal elections, the Centre has co-hosted with the *Australian Financial Review* a Great Legal Debate between the serving Attorney-General and his Shadow counterpart. Similar to the slightly more mainstream Leader’s Debates, the Great Legal Debate is strictly moderated and the politicians are asked a series of questions from a small but diverse panel of interlocutors. The questions are designed to give the debaters an opportunity to outline their objectives in the portfolio for the term of government after the election.

In the inaugural debate in 2004, then Shadow Attorney-General Nicola Roxon was pitted against the incumbent Philip Ruddock. Mr Ruddock was back in 2007 to wrestle with Senator Joe Ludwig, then in the Shadow portfolio. Upon Labor winning office in that election, the job of Attorney-General was given to Mr Robert McClelland, who debated the Coalition’s Senator George Brandis SC at the 2010 Great Legal Debate. Due to the Cabinet reshuffle at the end of 2011, the next Great Legal Debate promises a face-off between two individuals who both have prior experience of participating from the Shadow position – the current Attorney-General Nicola Roxon and Senator Brandis.



ENGAGEMENT



The Gilbert + Tobin Centre is strongly committed to the idea that academics should contribute to public and political debates about legal affairs. As Edward Santow, former Charter of Rights Project Director and now CEO of the Public Interest Advocacy Centre, has commented:

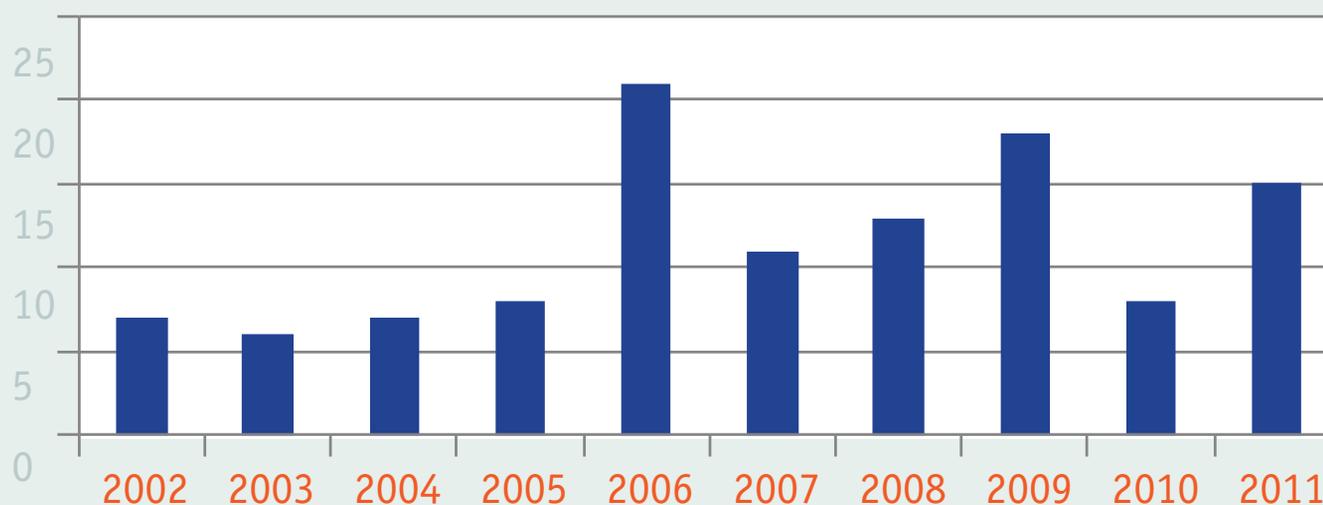
Not so long ago, there was a pervasive view in legal academia that there is something not-quite-right – even unseemly – about academics involving themselves in public and political debate. ... The Gilbert + Tobin Centre has led a new response to this old dilemma. The approach has been to speak publicly, with confidence but also a sensitive understanding of the boundaries that should remain untraversed.

The Centre has a strong research ethic, and the number and quality of academic publications produced by members of the Centre speak to this. However, we have not been content to build relationships solely with other academics. Instead, the Centre has sought to disseminate its members’ research to a much wider audience. It has engaged with the political process by making formal written submissions and giving oral evidence to parliamentary and other commissions of inquiry. The following graph shows the large number of formal written submissions that the Centre has made in each year since its establishment.

While this demonstrates an ongoing commitment to contribute to law-making and review processes, the graph cannot hope to reveal the impact of those submissions. Given the multiple factors influencing the creation of legislation, it is, of course, very difficult to draw bright lines between submissions that the Centre, along with



Centre submissions per year – 2001-11



other actors, has made and the content of statute books. One example perhaps has been the establishment of the office of the Independent National Security Legislation Monitor – which the Centre urged over the course of several reviews of the new anti-terrorism laws. We were far from alone in doing so, but our contribution was notably consistent – informed as it was by our published research on the equivalent office in the United Kingdom and stretching from a general recommendation in major inquiries from 2006 to focussed submissions on the two distinct bills introduced to this end over 2008-09.

But more commonly submissions address fairly specific aspects of bills or existing legislation that make impact rather more difficult to discern. Even when the recommendations of a parliamentary committee do appear to draw on the views expressed in written submissions and oral evidence to the committee, these may not be heeded by the government of the day which will secure enactment without amendment in accordance with the Committee's views. Still, through its ongoing work on public submissions, the Centre aims to be a constructive and respected contributor to the law-making process. The frequency with which Centre members are requested to appear before committees to expand upon our written submissions and the extent to which our work is cited and discussed in their final reports are all solid indicators that we are succeeding in this goal.

Additionally, Centre members have played an important role in grassroots debate about public law issues through working with community organisations and being willing

to contribute and speak to media. In many of the project areas in which the Centre has built its research reputation, including human rights protection, indigenous issues, terrorism law and immigration, Centre members are sought by civil society for speaking engagements. In some cases, we have taken a lead role in facilitating relationships across the community sector where a major public law issue was a shared concern, as for example, with the formation of the Australian Human Rights Group with over 40 NGOs during the 2009 National Human Rights Consultation process. In others, the Centre's expertise has been directly recruited to provide information and assist with an organisation's discussion of issues affecting them – such as our work in 2011 for the National Congress of Australia's First Peoples on the proposal for constitutional recognition of Indigenous Australians.

The Centre's commitment to communicating research on public law issues to the broader community beyond academia and, more widely, the profession, necessarily requires it to engage with media outlets. This involves both the composition of opinion editorials for the print and electronic media and also being available to provide comment to reporters working for press, television and radio. The Centre's Foundation Director, George Williams, enjoys the distinction of having had a regular column in both *The Australian* and the *Sydney Morning Herald* and his experience has been instrumental in others acquiring media skills upon joining the Centre. Consequently, many members regularly write for and speak with media outlets about their project research and public law issues as they arise from time to time.



5 CENTRE STUDENTS





A significant source of the vitality of the Gilbert + Tobin Centre of Public Law comes from the postgraduate and undergraduate students who work with its academic staff members. Across its first decade the Centre has had students of both levels attached to it. The number of postgraduate students has risen in tandem with the growth in number of academic members. Many exceptional undergraduates have worked with the Centre as interns through UNSW Law's Social Justice Internship program.

POSTGRADUATE STUDY

Postgraduate Students

The Centre provides an ideal base for postgraduate study in the field of public law leading to the award of a Masters of Law (LLM), Doctor of Juridical Science (SJD) or Doctor of Philosophy (PhD). Since 2001, there have been 24 Centre postgraduate students (13 of whom are currently studying at the Centre). The research projects of these students, like those of the academic members of the Centre, cover a broad range of topics. Just as an example, the projects of three current students are: 'Free, Prior and Informed Consent and the Rights of Indigenous Peoples to Lands, Territories and Resources' (Jackie Hartley), 'Developing a Counter-Insurgency Model of Anti-Terrorism Law' (Keiran Hardy), and 'Sir John Latham: Judicial Reasoning in Defence of the Commonwealth' (Kelvin Widdows).

Postgraduate students typically form their connection to the Centre through the fact of their supervisors being amongst its academic members, but some are enrolled after having successfully applied for advertised scholarships funded through external grants to the Centre.

All the postgraduate students are regarded as full members of the Centre. They are invited to participate in Centre meetings, conferences, and social functions. The Centre provides students with opportunities to present their research and practice their oral presentation skills at work-in-progress seminars. It has also provided students with financial assistance to attend and present at interstate and overseas conferences, and to conduct fieldwork.

The support that the Centre provides to postgraduate students researching in the field of public law is not limited to those studying with the Centre. In 2010, the Centre held the inaugural Postgraduate Conference in Public Law. This conference enabled students across Australia to present their work, learn about different research methodologies appropriate to this area, and network with other students.





Dr Dan Meagher
Graduated PhD 2007



Dan Meagher

In 2003, I became a postgraduate research student at the Gilbert + Tobin Centre of Public Law. I signed on to write a doctoral thesis on the constitutional and legal frameworks for the regulation of racial vilification in Australia, with the Centre's Foundation Director, Professor George Williams, as my supervisor. My reasons for doing so were twofold. First, in shopping-around (as it were) for a thesis topic and (just as importantly) a good person to supervise it, George's name kept cropping up from a variety of very reliable sources: good guy, incredibly supportive and knows his stuff. Second, I like travelling. The idea of packing up the white Camry station wagon every January with wife, child and surfboard (not necessarily in that order) and hitting the deadly Hume was most appealing. A six week working holiday in Sydney seemed a good way of dealing with the long haul of writing my thesis.

And so it proved to be. For four years each January and February, the Gilbert + Tobin Centre of Public Law was my (and my family's) second home: a great bunch of people – George, Andrew Lynch, Bryan Mercurio, Sean Brennan, Devika Hovell, Tom Poole – and a terrific place to study. I can honestly say that my thesis ended up becoming a mostly enjoyable part of my life, especially the time I spent in Sydney every summer.

It strikes me that what made, and indeed still makes, the Centre such a terrific place is that its members manage to strike the right balance between doing quality work and having some fun. They take public law seriously but not themselves. Indeed, my thesis experience and still close contact with many in the Centre has sorely tested my life-long commitment to the Groucho Marx theory of never wanting to be a member of a club (or Centre) that would have me as a member.

Katie Nesbitt
Graduated LLM 2007



Katie Nesbitt

As a postgraduate student from the United States, the Gilbert + Tobin Centre of Public Law was the ideal place for me to conduct my research and studies. In 2005, I was granted a Fulbright Scholarship by the United States Department of State to study the constitutional constraints on the recently enacted counterterrorism policies in Australia and the United States.

During my year and a half at the Centre, I had the opportunity to study under leading experts in Australian constitutional and public law. The significance of the Centre's work was immediately apparent. Indeed, just weeks after I arrived, the Centre made a submission addressing constitutional issues related to the major suite of counterterrorism legislation proposed by the Commonwealth in 2005. It was subsequently invited by the Senate Committee inquiry examining the government's bill to appear before it to give oral evidence.

My studies, however, went beyond the confines of the library and periodic meetings with my supervisors. Regular Centre meetings provided a forum for the discussion and exchange of ideas with Project Directors, associates and postgraduate students pursuing research in other areas of public and constitutional law, and gave me a greater perspective on issues of Australian law. In addition, I attended conferences and seminars sponsored by the Centre where I met and exchanged ideas with other Australian legal scholars and practitioners. Also during my stay, the Centre hosted several pre-eminent human rights scholars from universities around the world with whom I was able to connect. Finally, Centre faculty and students definitely knew how to have fun – lunches, lawn bowling, and beach picnics were not uncommon items on the Centre agenda.

I am thankful to the faculty and students at the Centre for providing me with one of the most rewarding experiences of my legal career. The friendships I made will last a lifetime and I look forward to my next visit. Happy 10th Anniversary Gilbert + Tobin Centre!



SOCIAL JUSTICE INTERNS

Social Justice Interns

Since its inception, the Centre has participated in UNSW Law's Social Justice Internship Program which is offered as a course for academic credit to undergraduate students. The course enables later year undergraduates to spend one day a week with one of the Centres based at the Law School. Enrolment is by application only and generally only one position is available per semester. Over a semester, efforts are made to involve the Social Justice intern in as many Centre projects as possible. She or he will assist staff with submissions to public inquiries, updating and improvement of web-based project resource pages, and will develop skills in writing about contemporary legal developments for media. The exciting thing about the internships is that neither the student nor anyone at the Centre can really predict the work they will have an opportunity to perform – it depends a lot on what happens in government and is decided by the courts.

By way of some examples, in 2008 Jonathan Dillon not only assisted on the Centre submission to the Senate

inquiry into Petrol Sniffing and Substance Abuse in Central Australia, he was also able to accompany Sean Brennan, Director of the Indigenous Legal Issues Project, to Alice Springs for the Committee's hearing and to meet with local community organisations working on the issue; in 2005, Frances Foster-Thorpe worked with local government exploring the role that Bills of Rights might play in making a difference to the lives of their most marginalised constituents; and in 2011, Fiona Chong wrote for online media about both the *M70* and *Momcilovic* decisions in the High Court as well as working on a major parliamentary submission with Jane McAdam and Greg Weeks concerning Australia's mandatory detention system for asylum-seekers.

The Centre is always grateful for the enthusiasm and dedication of each semester's intern and we look forward to providing a valuable experience to UNSW undergraduates (and now also Juris Doctor students) in future years.



Social Justice Interns, Lara Kostakidis-Lianos (2004) and Francis Foster-Thorpe (2005) with George Williams



David Hume
Semester I, 2006

I would describe my time as an intern at the Gilbert + Tobin Centre in 2006 as a defining experience in my education and career. While at the Centre, I worked on a range of legal issues (including domestic anti-terrorism policies and same-sex marriage) in a range of contexts (parliamentary committees, print media, radio and journal articles).

What struck me was the value that legal academics can bring if they focus on public communication and proactive contributions to policy processes. It is very easy to say that law is difficult and complex and that to attempt to communicate with the non-legally trained public necessarily results in simplification and inaccuracy. I think that the Centre does two things very well. One is that the Centre combines community accessibility with technical excellence, turning public law issues into issues with which the public can engage. The other is that it does a very good job of ensuring that practitioners are forever reminded that legal practice cannot be an echo chamber, that law is a normative tool which exists to achieve community outcomes and that legal practice without an awareness of this is incomplete.

Since finishing at the Centre and my university studies, my career has spanned several forms of legal practice. I have worked for Chief Justice Murray Gleeson, lectured at Melbourne University, studied at Harvard and practiced at Freehills, before I took up my present position in the Constitutional Litigation Unit at the Australian Government Solicitor. I have also sought to maintain close links with the Centre, researching and co-authoring media and journal articles. In 2010, I co-authored with George Williams the book, *People Power* (Federation Press), on the history and future of the referendum in Australia. Aside from developing my deep interest in public law, I'd like to think that my time at the Centre has allowed me to display in my career some of the qualities at which the Centre excels.



David Hume

Talia Epstein
Semester II, 2007



Talia Epstein

I interned at the Gilbert + Tobin Centre of Public Law during the last semester of my law degree in 2007. It was a very interesting time to be researching and commenting on public law issues in Australia; the Northern Territory Intervention, a federal election, talk of federal government takeover of state responsibilities and discussion of a human rights charter were all issues in the spotlight.

The day before I started my internship, the government announced the Northern Territory intervention and, true to form, the Centre geared up for action. With a very tight timeframe allowed for submissions to a Senate inquiry examining the proposed new laws, I assisted Sean Brennan and Edwina MacDonald to write submissions on what we thought would be an area of the laws possibly overlooked by other commentators. And from there, my internship took off – opinion pieces on federalism, watching a debate between the current and shadow Attorneys-General, and making a presentation about a Charter of Rights for New South Wales were highlights.

I have maintained a strong interest in public law and law reform projects since my internship, which I have put into good use in my present role as a solicitor at Legal Aid. The social justice issues that are at the heart of the Centre's work are very much a part of the ethos of Legal Aid and I have drawn on my experiences from the Centre in my current role. I continue to watch with interest the work of the Centre and enjoy reading the publications of the Centre staff. Congratulations to the Centre on a fantastic ten years.





6 PROJECT DIRECTORS – WHERE ARE THEY NOW?





The Centre is able to accomplish as much as it does through the industry and goodwill of its academic staff members.

Staff are either drawn from the Law School or recruited directly by the Centre to work on externally-funded research projects.

The Centre currently has 13 academic members – a far cry from the early years when it could hold its meetings around a small table in the Centre Director's office. These days the Faculty Boardroom is used, but the easy informality and good humour of the early years has not been lost in the transition.

In marking the Centre's 10th anniversary it is only appropriate that due acknowledgment is given to the hard work of those key colleagues who were here across the last decade but have since moved on. Longtime readers of the Centre's newsletters will be only too familiar with the names and achievements of these individuals. The anniversary offers an opportunity to learn what these talented researchers have done since their time with the Centre and how their experiences here have influenced them professionally. It is a testament to how fortunate the Centre has been in the quality of people who have contributed to its accomplishments over the years that all those profiled in this section have had such varied and successful careers after leaving the Centre.





Megan Davis

Professor of Law and Director of the Indigenous Law Centre, UNSW

(Director, Charter of Rights Project, 2002-05)

I was the first researcher to join George Williams at the Gilbert + Tobin Centre of Public Law in 2002, followed shortly by Bryan Mercurio and Sean Brennan. I was seconded to UNSW to work with George from the Aboriginal and Torres Strait Islander Commissioner Legal Branch in Canberra. There, I was a Legal Counsel but was more interested in law reform than drafting legislation. My passion for Public Law and civics education was cemented at the Centre.

I started as the Director of the Bill of Rights Project (George said I could not leave until Australia got a Bill of Rights – which it did in 2004 with the enactment of the *Human Rights Act 2004* in the ACT!). This was my first academic position and I learnt important skills in my time at the Centre. George taught me the importance of publishing, accepting occasional rejection letters with grace, as well as how to teach. The most valuable lesson George taught me was to eliminate the polemic from my writing (something many young Indigenous scholars struggle with).

The most enduring memory I have of my time at the Centre was discovering how happy workplaces can be! I have made lifelong friends through the Centre. When I returned to UNSW a few years ago as Director of the Indigenous

Law Centre, it was important to me that we nurtured a supportive, friendly and social centre like I remembered from the Gilbert + Tobin Centre of Public Law. I remember fondly the days of stuffing newsletters into envelopes, organising the very first constitutional law conference and dinner, and Bryan Mercurio betting me to mention Ronaldo in my speech at the Bill of Rights conference in 2002 (held during the soccer world cup).

Working in the Centre has helped shape my career to date. When I was accepted into the Department of Foreign Affairs and Trade Graduate program, George encouraged me to stay in academia, to get a PhD and keep up my work at the United Nations. Today, I am Director of the Indigenous Law Centre and a Professor of Law at the University of New South Wales. In 2010, I was elected by the UN Economic and Social Council to the UN Permanent Forum on Indigenous Issues, completed my PhD at ANU and was appointed to the Expert Panel on the Recognition of Aboriginal and Torres Strait Islander peoples in the Commonwealth Constitution.

Being involved in the Expert Panel has been one of the greatest experiences of my academic life. I have been so privileged to have had conversations about the Commonwealth Constitution with Aboriginal and Torres Strait Islander communities in Weipa, Hope Vale, Palm Island, Thursday Island, Cherbourg, to name a few. It is apparent in most of these communities that the Commonwealth bureaucracy is the biggest obstacle to the independence, freedom and economic development of Aboriginal communities.





Devika Hovell

Lecturer, University of Birmingham
DPhil Candidate, University of Oxford
(Director, International Law Project, 2003-06)



For me, life after the Gilbert + Tobin Centre has been one of doctoral and domestic bliss. Anyone acquainted with either doctorates or children will understand that I employ the word 'bliss' somewhat haphazardly. But it's certainly been an adventure.

My doctorate examines models for the application of procedural fairness to Security Council decision-making on UN sanctions. Though based at Oxford University, I spent a year of my doctorate at New York University, and was also fortunate to spend a summer as a visiting fellow at the European University Institute in Florence. Though my time in New York in particular was helpful in extending my practical understanding of the operation of the UN Security Council through interviews with those involved in the application of the UN sanctions regime, my doctorate has been concerned predominantly with problems of methodology. My topic is positioned at the interface between public law and public international law and emphasizes the importance of understanding the underlying theoretical foundations of procedural fairness before seeking to transplant these to an international legal setting.

I have learned much during this time, but have missed the practical engagement with current events that is the cornerstone of academic life at the Centre. As the Centre was taking shape in the early years, I like to think that it was not merely our fashion choices that led some observers to dub its members as 'the Scooby gang'. Rather, that it had something to do with the fact that, in its own small way, the Centre was gaining a reputation for addressing the ghosts and fighting injustices in Australia's legal and political system (although it may also have had to do with the fact we sometimes went bowling together).

Certainly, as the Centre has developed under the leadership of George Williams and now Andrew Lynch, it has carved an innovative role within academia of providing accessible legal analysis and commentary about issues affecting Australian society. In doing so, it has extended the value and dynamism of academic research beyond university gates and portals to the broader population, and hopefully enriched the quality of social debate in doing so. I have recently started as a Lecturer at the University of Birmingham and, in doing so, I hope to accomplish the balance between legal analysis, contribution to community debate and ten-pin bowling that the Centre and its current members so brilliantly achieve.





Edwina MacDonald

Law Reform and Policy Coordinator, Women's Legal Services New South Wales

(Terrorism and Law Project, 2006-07)

I arrived at the Gilbert + Tobin Centre in 2006 after several years working in legal policy at the federal Attorney-General's Department, and being at the Centre was a move towards influencing and engaging in law reform from the outside. The most important aspect of this was striving to develop high quality research that could inform policy debates. Often working closely with other Centre members, I published numerous articles (for example, on the experience of Indigenous regional governance in the Torres Strait), co-edited a book on terrorism law, and contributed to the organisation of a major international conference on terrorism, law and human rights. This general area of law was hugely topical, and I was encouraged to use my research to engage in ongoing (and hotly-contested) policy debates. With gentle prodding from George Williams and Andrew Lynch, I soon found myself appearing before parliamentary inquiries, writing newspaper opinion pieces and giving radio interviews. It was a steep learning curve but it was all part of being a recipient of the Centre's outstanding mentoring of early career academics.

Towards the end of 2007, I moved from the Centre to my current position as Law Reform and Policy Coordinator at Women's Legal Services NSW (WLS). Since then, I have found myself doing things as diverse as running a campaign on family law reform, convening the national women's legal services network and conducting women's rights workshops in Vietnam. One of the highlights of my time at WLS has been coordinating the non-government contribution to Australia's recent review under the Convention on the Elimination of All Forms of Discrimination Against Women. This was a two-year project that included delivering capacity building and consultative workshops across Australia, producing an NGO report endorsed by over 100 organisations, presenting the NGO perspective to the CEDAW Committee in New York, and developing a CEDAW Action Plan setting out the steps needed to implement the Committee's recommendations on Australia. Closer to home, another highlight has



Edwina MacDonald, Winner 2009 Woman Lawyer in a Community Organisation

been advocating for, and achieving, stronger protections for sexual assault victims in the criminal trial process in NSW. As a direct result of work that we and others did, the NSW Government strengthened the laws that protect the confidentiality of sexual assault victims' counselling records and also committed \$4.4 million for an independent service to assist victims in protecting the confidentiality of their records.

Working towards these achievements involved generating a strong evidence-base, engaging with ministerial and parliamentary processes and developing strategic partnerships across sectors. My capacity and confidence to do these things is due in no small part to my time at the Centre. And it seems fitting that, after four years away, I will be returning to UNSW over summer and in 2012 to teach in the Public Interest Internship Program. I will be certain to make time to catch up with old Centre colleagues and to reconnect with this vibrant and supportive community that continues to make a real impact on public law and governance in Australia.





Bryan Mercurio

Professor of Law and Associate Dean (Research),
Chinese University of Hong Kong

*(Director, Electoral Law Project, 2002-04;
Director, International Trade and Development
Project, 2004-07)*

Time does indeed go very quickly. I have trouble believing that the Centre is now ten years old. At the same time, when I reflect upon its accomplishments, research outputs and influence on the law and public policy of Australia, it is hard to believe that the Centre is *only* ten years old.

I will forever be grateful to Professor George Williams for providing me with the opportunity to begin my career in academia at the Centre and for his support, encouragement and mentorship during those first few years and beyond. I am also thankful that my entrée into academia and life in the Centre coincided with that of Sean Brennan, Megan Davis and Devika Hovell – all truly kind individuals, thoughtful scholars and a lot of fun! I recall fondly several Centre outings, from Centre-related parties to ten-pin bowling in Randwick to lawn bowling in Coogee. I also greatly appreciated and admired the way in which the numerous Centre-visitors were welcomed into the group dynamic and participated in all of our (sometimes very silly) events. It is this collaborative spirit that really sets the Centre apart from other centres and institutes.

The collaborative spirit of the Centre also came through in the academic work of its staff. Everyone was genuinely interested in the research being conducted by others and happy to read, comment or edit draft work, or simply to take the time to discuss and debate issues. As I have come to learn, this experience is not common elsewhere and even less so when most participants are on contract and concurrently competing for the same full-time position! I learned a great deal from this collegiality, not only about how a Centre should function but also as a budding academic. The process of watching and participating in this scholarly cycle time and time again greatly assisted my development.

In large part, I owe my position in academia today to my years at the Centre. The Centre and its staff provided me with the time and resources to focus on a research agenda, greatly assisted in honing my academic writing and taught me how an efficient and meaningful academic unit should function. At the same time, the Centre was a lot of fun to be part of and hid the often solitary life of an academic. In conclusion, I sum up my time at the Centre by simply saying thank you, thank you, thank you to all those involved in its development and continued success.



Bryan Mercurio





Edward Santow

CEO, Public Interest Advocacy Centre
Senior Visiting Fellow, UNSW Law School
(Director, Charter of Rights Project, 2008-10)

Not so long ago, there was a pervasive view in legal academia that there is something not quite right – even unseemly – about academics involving themselves in public and political debate. This aversion was partly based on a fear that such public engagement would require the academic to reframe their research for a general audience, a process that would inevitably produce a simplistic or facile imitation of the original research on which the comments were based. Another fear was that the academic, once out of the monastic ivory tower, would be corrupted by the public attention they receive. They might be tempted to become a ‘comment for hire’.

These dangers are real. But the obvious response – to retreat back to the tower – carries its own risks. It can cause academic discourse to become hermetically sealed within a closed network of universities. Cut off from the legal, social and other problems that academic research purports to address, it is reasonable to ask: What is the point? Why invest countless hours of patient research, thinking, debate, writing and, of course, the significant amount of public funding?

The Gilbert + Tobin Centre of Public Law has led a new response to this old dilemma. The approach has been to speak publicly, with confidence but also a sensitive understanding of the boundaries that should remain untraversed. The Centre has charted a course between the two extremes; between total engagement in public debate and withdrawing entirely.

As its Foundation Director, George Williams adopted an approach that has since been followed both within the Centre and at other similar academic centres. That is, he would first carry out the intellectual hard work, building a solid basis in academic research on particular areas of public interest, such as the push for an Australian republic, the protection of human rights and legal responses to the threat of terrorism. He would then draw out the central,



animating ideas from this research, presenting them to a much wider (that is to say, non-academic) audience. This was achieved by participating in public forums, writing op-ed pieces in the metropolitan newspapers and being available for comment in news reportage.

The Centre’s current Director, Andrew Lynch, further developed this approach. One measure has been to publish work that creates a new genre in between the brief journalistic treatment of a subject and the often voluminous material generated in conventional academic research. For example, the short book that he and George wrote on Australia’s anti-terrorism laws has been an invaluable tool for parliamentarians and others with an interest in the area to equip themselves to contribute to this debate.

When academics write about the famed collegiality of tertiary institutions, they customarily engage in the sort of purple prose that, if found in a student essay, would merit a squiggly red line and a tart comment (“could we be a little more nuanced?”). From my position as a former Centre member, I risk also adopting a wistful tone.

It suffices to say that I was struck by the generosity of all of my Centre colleagues, to meet and discuss each other’s work in a way that was warm and constructive. Critique was robust, but friendly and offered with the shared understanding of the value of dialectic to refine one’s thinking. I am very proud of my association with the Centre and I congratulate Andrew and George in particular on a successful first decade.





Ben Saul

Professor of International Law, University of Sydney

(Director, Charter of Rights Project, 2005-07)

When I started my first full-time academic job at UNSW, focusing on terrorism and bills of rights, the Gilbert + Tobin Centre immediately welcomed me. The approach by George Williams was typical of my experience at the Centre over two years: open, enthusiastic, inquisitive, and supportive. Coming from Oxford, where academics routinely fly solo, the change of scene was refreshing.

What impressed me about the Centre, among other things, was its hyperactivity. It shone in all the usual areas of academic achievement: prolifically publishing quality scholarship; earning a record number of competitive research grants; hosting high-level conferences and workshops; and nurturing research students and younger academics. But it also set the benchmark for less common forms of academic engagement, including frequent submissions to law reform and parliamentary inquiries; providing informed, expert opinion in the media; working with government; and writing legal advices on current controversies. The credibility of the Centre's reputation meant that serious attention was paid to its interventions. When I moved to the University of Sydney and ran a centre there, the Gilbert + Tobin Centre was an inspired model for how to create a vibrant, inclusive and effective research unit.

A particular strength was the Centre's collegiality and lack of hierarchy. Like many, I am indebted to George Williams for being a generous mentor and setting the standard for a cracking work rate. It may sound like an oxymoron, but the Centre also made academia seem fun. Which other academic centre holds its retreat at a yacht club? Or hosts its annual conference at an art gallery?

Engaged, policy-oriented scholarship of the type undertaken at the Centre is important. The public policy sphere is time-poor, crowded with cashed-up special interests buying policy leverage, and dominated by media outlets which too often struggle to perform their accountability function. In that difficult space, the Centre has injected independent, accessible, respected analysis and constructive law reform proposals. In doing so, it walks a fine line between the pragmatic concerns of practice and the aspirations of theory and principle, traversing the spectrum in between and making hard choices along the way.

The Centre does an outstanding job, always providing sophisticated reasons for its views and taking into account competing viewpoints. The Centre has played a significant role in generating a culture of ideas and legality in Australia. The peril of engagement is the flak it can attract, from political heat to abusive letters from fellow citizens, all of whom are vital interrogators for a Centre performing in the public sphere with public money. To its great credit, Australia is a better place because of it.



*The Hon Duncan Kerr SC and Ben Saul,
2006 Constitutional Law Conference*





7 PEOPLE





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Professor Andrew Lynch
February 2008 – present
Professor George Williams AO
January 2001 – February 2008

Centre Administrator

Belinda McDonald

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