



THE UNIVERSITY  
OF  
NEW SOUTH WALES



FACULTY OF LAW

**GILBERT + TOBIN CENTRE OF PUBLIC LAW**

**ANNUAL REPORT**

**FOR THE YEAR ENDED 31 DECEMBER 2002**

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## **1. DIRECTOR'S REPORT**

### **Relationship of the Centre to UNSW**

The Gilbert + Tobin of Public Law is based in the Law Faculty at UNSW.

### **Benefits to UNSW**

The Centre has provided a focal point for research and other activity in the field of public law at UNSW. Further details can be found in section 2 of this report and in the attached newsletters.

### **Financial position of the Centre**

As described in section 5 of this report, the Centre operated a surplus in 2002. The surplus will enable us to cover expected salary and other costs in 2003 and beyond.

### **Success or failure in meeting research objectives**

It was too early to determine the success or failure of the Centre in meeting its research objectives, as at 31 December 2002. At that point the Centre had only been in formal existence for a matter of a few months. It is fair to say, however, that a foundation had been laid in that time, and in the period before the Centre came into formal existence, that will enable it to meet or exceed its research objectives.

## **2. CHAIR OF MANAGEMENT COMMITTEE'S REPORT**

### **Summary of Centre's achievements**

As at 31 December 2002 neither the Advisory Committee nor the Management Committee had met. The fact that the Centre was only brought into formal existence in late 2002 prevented the initial meetings of these committees occurring until early 2003. The following information is provided by the Director of the Centre.

The Gilbert + Tobin Centre of Public Law has been in operation since May 2001. In the following 18 months we have:

- established the infrastructure of the Centre (including a database, website etc),
- identified and begun work on key project areas,
- established the national reputation and profile of the Centre,
- gained significant additional funding, and
- employed four full-time project directors.

### *Public Recognition and Profile*

The Centre has established a high media profile in playing a prominent, independent role in public debate on issues vital to Australia's future: including human rights, the reconciliation process, reform of the Australian Constitution and the question of an Australian republic. The Centre publishes a bi-annual newsletter. The newsletter is put up on our website and is posted to the 1,000 people on our database, which includes academics, lawyers, journalists, politicians and members of the general community.

### *Website*

The Centre website <[www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au)> has become a popular portal into public law issues and the work of the Centre. The website is innovative in including features such as a Constitutional Law Teacher's Clearing House. The Clearing House serves as a resource and reference point for teachers of constitutional law throughout Australia and the region. The website also contains resource pages on Bills of Rights and electoral law matters.

### *Projects*

The members of the Centre are now hard at work producing outcomes of importance nationally and at the community level in identified project areas. The key projects currently being undertaken by the Centre are:

- Bills of Rights
- Electoral Law
- High Court of Australia
- International Challenges to the Australian Legal System
- Public Law Litigation
- The Republic
- Reconciliation and a Treaty between Indigenous Australians and the Wider Community

The Centre has also attracted three PhD students who have begun projects in fields of law and public policy, such as a project on the legal system as it relates to issues of homelessness.

### *Events*

The Centre has held several very successful events. In fact, our two major conferences held so far in 2002 have both sold out (with 155 and 180 registrations respectively). Our events for the financial period to 31 December 2002 are:

#### *2002 Electoral Law Conference*

The Centre is holding a 'closed door' Conference on Electoral Law on 5 and 6 December 2002 at The Coojee Bay Hotel, Conference Centre, Sydney. The Conference is jointly organised with Griffith University and with the support of the Electoral Council of Australia.

### *Bill of Rights Conference on 21 June 2002*

Following its successful Forum on Bills of Rights held in November 2001 and its Bill of Rights Roundtable held in 2002, the Centre held a major conference on Bill of Rights issues on Friday 21 June at the New South Wales Parliament House Theatre at Macquarie Street, Sydney. The conference was jointly organised with the Australian Human Rights Centre at the Faculty of Law, University of New South Wales and was generously supported by the Human Rights and Equal Opportunity Commission and the Hon Peter Breen MLC.

### *Bill of Rights Roundtable on 1 March 2002*

On Friday 1 March 2002, the Centre held a Roundtable (supported by the Human Rights and Equal Opportunity Commission) on a Bill of Rights for Australia. The Roundtable consisted of two sessions. The first session looked at the current state of the law in the protection of human rights and determining whether there was a problem and if so, what was the nature and scope of the problem and why attempts to redress have failed. In the second session strategies, processes and options for reform were discussed as well as the need to build partnerships.

### *2002 Teachers Workshop and Constitutional Law Conference*

Two days of events were held over Thursday 14 and Friday 15 February 2002 in conjunction with the Australian Association of Constitutional Law. The Constitutional Law Teacher's Workshop on 14 February provided an opportunity for constitutional law teachers and postgraduate students to meet and discuss teaching and research matters. The workshop examined issues such as new research directions, publications, postgraduate research, course content and the use of comparative and contextual material in teaching.

The Conference on 15 February focused upon the major constitutional law developments of 2001 and the issues of 2002 and beyond. The Conference was followed by a dinner at the Botanic Gardens Restaurant to celebrate the release of the ground breaking *The Oxford Companion to the High Court of Australia*. The speaker at the dinner was followed by a High Court trivia quiz.

### **Contribution to UNSW**

The Centre has boosted the already strong national profile of public law at UNSW. It has provided a platform for academics at UNSW to engage in national debates through appearances in the media and also the organisation of national conferences. The Centre has also brought in a number of new post-graduate research students at the level of PhD. The Centre has also been helpful in drawing scholars across UNSW into discussions and dialogue on issues of public law, political science and the like.

### **3. CENTRE COMMITTEES**

An outstanding group of people have agreed to join the Centre's Advisory and Management Committees. The composition of those Committees is as follows:

## **Advisory Committee**

Sir Anthony Mason, Former Chief Justice of the High Court (Chair)  
Professor Larissa Behrendt, Jumbunna Indigenous House of Learning, University of Technology, Sydney  
Professor James Crawford, Cambridge University  
Ms Andrea Durbach, Director, Public Interest Advocacy Centre  
Mr Stephen Gageler SC, NSW Bar  
Mr Danny Gilbert, Managing Partner, Gilbert + Tobin  
Justice Ronald Sackville, Federal Court of Australia  
Mr Michael Sexton SC, Solicitor-General of NSW  
Professor Leon Trakman, Dean, Faculty of Law, UNSW  
Professor George Williams, Centre Director  
Professor George Winterton, Faculty of Law, UNSW

## **Management Committee**

Professor David Dixon, Associate Dean (Research), Faculty of Law, UNSW (Chair)  
Ms Carmel Harrington, Gilbert + Tobin  
Professor Peter Saunders, Social Policy Research Centre, UNSW  
Associate Professor Elaine Thompson, School of Politics & International Relations, UNSW  
Dr Derek Wilding, Director, Communications Law Centre, UNSW  
Professor George Williams, Centre Director

As both these Committees were formed in early 2003 no meetings were held during the financial year ended 31 December 2002.

## **4. OPERATIONAL SUMMARY**

### **Objectives of the Centre**

The Centre was established as a national focal point for research into and discussion of important questions of public law for the academic, professional and wider community. The Centre has strong support from the Faculty of Law, which provides office space, computer resources etc and a part time administrator. Many members of the Faculty are Associates of the Centre.

The Centre's activities involve not only administrative and constitutional law, but also related areas of intersection and structural legal reform, such as human rights, Indigenous legal issues, cyberlaw and electoral law. In these and other areas, the Centre is involved in research and contemporary public debates of political and legal significance. It acts as a change agent through the excellence of its research, the highly visible platform it provides for key participants and its constructive community leadership in debate and opinion formation.

## **Research**

The aim of the Centre is to establish itself as a leading research institution in the field of public law in Australia and in the region. In the longer term we are seeking to develop an international profile for our research work.

## **Funding**

Gilbert + Tobin funds the salary of its Director (this funding is provided direct to the Faculty of Law and not to the Centre). We have been successful in gaining significant additional funding that has enabled the Centre to expand beyond the Director and to now employ four other people full-time. We have attracted the following project based funding:

### *Treaty Between Indigenous and Non-Indigenous Australians*

The Australian Research Council has awarded the Centre and its partners the following research funding for this project:

2002:	\$70,000
2003:	\$100,000
2004:	\$134,083

The project is also supported by funding of \$90,000 from the Myer Foundation.

This funding has enabled the employment of Sean Brennan as a full-time Project Director.

### *Electoral Law*

The Australian Research Council has awarded the Centre and its partner the following research funding for this project:

2002:	\$77,506
2003:	\$32,561

The project is also supported by funding of \$60,000 from the Electoral Council of Australia.

This funding has enabled the employment of Bryan Mercurio as a full-time Project Director.

### *International Challenges to the Australian Legal System*

The Australian Research Council has awarded the Centre and its partner the following funding for this project:

2002:	\$57,000
2003:	\$107,000
2004:	\$136,520
2005:	\$72,000

This funding has enabled the employment of Devika Hovell as a full-time Project Director.

### *Bill of Rights*

This project is supported by ATSIC. They have provided us for one year with the full-time services on secondment of one of their most talented young Indigenous lawyers, Megan Davis. We are currently seeking additional funding for this project.

### **Future of the Centre**

The Centre is only in its very early stages. It now has a solid financial base, and we are looking forward to producing some exciting and important research outcomes.

## **5. STAFF**

### **Postgraduate Students**

The following postgraduate students are supported by the Centre:

Peter Gerangelos

Supervised by Professor George Winterton

Topic: The Separation of Powers and Legislative Interference with the Judicial Process.

Cassandra Goldie

Supervised by Professor George Williams

Topic: Human Rights and Homelessness in the Northern Territory and the Need for Legal and Constitutional Reform.

Katherine Lindsay

Supervised by Professor George Williams

Topic: Judicial Biography and the High Court of Australia

Andrew Lynch

Supervised by Professor George Williams

Topic: Dissent in the High Court of Australia in Constitutional Cases

Dan Meagher

Supervised by Professor George Williams

Topic: The Why and How of Race Hate Speech Regulation in Australia

Anne Twomey

Supervised by Professor George Winterton

Topic: The Powers of the New South Wales Parliament



## **Social Justice Internship**

The Centre takes part in the Social Justice Intern Program, an undergraduate elective. The subject is designed to give later year undergraduate students experience in various aspects of social justice advocacy. Over a semester, students work on a research project, public interest litigation and other social justice activities.

### **Centre Staff**

Staff as at 31 December 2002 consisted of the following:

Sean Brennan

Email: s.brennan@unsw.edu.au

Phone: (02) 9385 2334

*Interests:*

Public Law, Indigenous Legal Issues, Native Title.

Megan Davis (on secondment)

Email: megan.davis@unsw.edu.au

Phone: (02) 9385 2863

*Interests:*

Human Rights, Public Law, International Law.

Belinda McDonald (Administrator)

Email: gtcentre@unsw.edu.au

Phone: (02) 9385 2257

Bryan Mercurio

Email: b.mercurio@unsw.edu.au

Phone: (02) 385 3445

*Interests:*

Electoral Law, International Trade Law and Intellectual Property.

George Williams (Centre Director)

Email: 9385 2259

Phone: (02) 9385 2259

*Interests:*

Constitutional law, human rights and electoral law.

## **6. PUBLICATIONS**

Publications for the year ending 2002 by Centre Director, Professor George Williams were:

### **Books**

Australian Constitutional Law and Theory: Commentary and Materials, with Tony Blackshield (Federation Press, 3rd ed 2002), 1-1376.

## **Articles**

"Co-operative Federalism and the Revival of the Corporations Law: Wakim and Beyond" (2002) 20 Company & Securities Law Journal 160-171

## **Research Papers**

"Voters and the Franchise: the Federal Story" Research Paper 17 2001-02, (Parliamentary Research Service, Commonwealth Parliament, May 2002), 1-41 (with Jennifer Norberry).

## **Electronic**

"Australia's Legal Response to September 11: The Need to Safeguard Democracy while Fighting Terrorism" on Australian Policy Online at [www.apo.org.au/webboard/items/00078.shtml](http://www.apo.org.au/webboard/items/00078.shtml) (13 August 2002).

## **General Media**

Australia's Legal Response to September 11: New Terrorism Laws" Civil Liberty (Journal of the New South Wales Council for Civil Liberties, Issue 190, September 2002).

"Legislation May Undermine the Freedom it Seeks to Protect" Weekend Australian Financial Review (7-8 September 2002).

"Treaty, Yeah?" Uniken (September 2002).

"Over the Top with Bill" Newcastle Herald (29 August 2002).

"Why the ASIO Bill is Rotten to the Core" The Age (27 August 2002).

"ASIO Must Not Bypass Courts" Australian Financial Review (16 August 2002).

"Gaudron Replacement Must be a Woman" Canberra Times (1 July 2002).

"Voting YES - Can Australia Do it?" New South Wales Republic (NSW State Council Newsletter, Australian Republican Movement, June 2002), 9-10.

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

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

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

"Doorstop" Poetic Justice, No 2 2002, 28-29.

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

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

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

"Without Support, Court is Fragile" The Australian (20 March 2002)

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

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

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