



THE UNIVERSITY  
OF  
NEW SOUTH  
WALES



FACULTY OF LAW

**GILBERT + TOBIN CENTRE OF PUBLIC LAW**

**ANNUAL REPORT**

**FOR THE YEAR ENDED 31 DECEMBER 2010**

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## **1. THE CENTRE**

The Gilbert + Tobin Centre of Public Law in the Faculty of Law was established in 2001 with the aim of providing a focus within UNSW for research and education (including teaching, research supervision, professional education and public conferences) on issues of law and policy concerning the sphere of Public Law.

The Centre is a focal point for research and discussion of these and other questions of public law for the academic, professional and wider community. The Centre's Members, Postgraduate Students and Visitors seek to actively engage with government, the legal profession and broader community through research, teaching, media and consultancy work and events including conferences and seminars.

The Centre's operations may be generally equated with those expected of individual researchers in an academic faculty but enhanced through the possibilities of institutional collaboration and profile which are afforded by the Centre, as well as the administrative support which its staff receives. So, in addition to the publication of traditional legal research in the areas with which the Centre is concerned, the Centre focuses strongly on the application and dissemination of its research efforts.

## **2. DIRECTOR'S REPORT**

Since its inception, the Centre has been highly successful in meeting its goals. It has established itself as an independent and credible contributor to public debates through written submissions to public inquiries, while also making many contributions via media and community fora on issues vital to Australia's future including Charters of Rights, federal reform, reconciliation and native title, refugees and migration law and the challenges of responding to terrorism.

Centre staff have adopted a practice of disseminating their academic research not just in books and peer-reviewed journals but also through other means, enabling the work to be more readily accessed by potential users. In addition, the Centre's website has become a popular portal into public law issues and the work of the Centre through detailed and regularly updated Project Resource pages.

The Centre, throughout 2010, continued to enjoy a high media profile playing a prominent, independent role in public debate on important public law issues including Federalism, Indigenous legal affairs, anti-terrorism laws, developments in the High Court and reform of the Australian Constitution. The Centre's initial ARC-funded terrorism project reached its conclusion in 2010 and since its establishment in 2005 it has supported the production of four authored or edited books, seven book chapters, 26 refereed articles and over 90 conference and seminar papers, 87 opinion pieces and countless other contributions to public debate through media interviews and citations. Twenty-five submissions and various oral evidence were made to independent and parliamentary inquiries examining Australia's anti-terrorism laws and how best to protect the nation from acts of terrorism over this period. The project supported completion of research theses by a PhD student and LLM Fullbright candidate. This area of research is now continuing through the new major Laureate Fellowship on "Anti-Terror Laws and the

Democratic Challenge” obtained by Professor George Williams in 2009. While the original Terrorism and Law project concluded in 2010 another project, Public Law and Legal Theory began. This project examines many of the foundational concerns of the Centre (public law, sovereignty, democracy, human rights and counter-terrorism) through the lens of contemporary political theory, legal philosophy and critical legal theory.

The Centre’s annual Constitutional Law Conference which receives on average 225 registrations from scholars and practitioners working in public law throughout Australia and overseas continues to be a popular event highlighting important developments in the High Court, Federal Court and State Courts. It routinely attracts judges, leading members of the private bar, government lawyers, academics and political figures. In addition, the Centre holds numerous other events such as seminars and workshops in specific areas such as Terrorism.

The Centre’s bi-annual newsletter is put up on the website and is posted to the 1,650 people on the database, which includes academics, lawyers, journalists, politicians and members of the general community. Additionally, in 2010, the brief bi-annual e-bulletin trialed in September 2009 was continued – being distributed in March and September so as to advise people of activities and upcoming events.

Particular highlights of 2010 include the publication of four books by Centre staff and the holding of the first public law postgraduate research conference, the Global Anti-Terrorism Law & Policy Forum, and the Great Election Legal Debate 2010 between Commonwealth Attorney-General Robert McClelland and Senator George Brandis SC which was held at the offices of Gilbert + Tobin on 13 August.

In second semester, the Centre Director took study leave from the University and the Acting Director was Professor Theunis Roux.

### **3. CENTRE COMMITTEES**

#### **3.1 Advisory Committee**

The composition of the Advisory Committee in 2010 was as follows:

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  
Professor Rosalind Croucher, President, Australian Law Reform Commission  
Professor David Dixon, Dean, Faculty of Law, UNSW  
Mr Stephen Gageler SC, NSW Bar  
Mr Danny Gilbert, Managing Partner, Gilbert + Tobin  
Associate Professor Arthur Glass, Faculty of Law, UNSW  
Dr Andrew Lynch, Centre Director  
Mr Michael Sexton SC, Solicitor-General of NSW

The Advisory Committee held its annual meeting on 3 May 2010. The Committee was pleased to add Professor Croucher to its membership in this year.

### **3.2 Management Board**

Professor David Dixon, Dean, Faculty of Law, UNSW (Chair)  
Associate Professor Andrea Durbach, Faculty of Law, UNSW  
Dr Andrew Lynch, Deputy Centre Director  
Richard Pascoe, Gilbert + Tobin  
Dr Helen Pringle, School of Politics & International Relations, UNSW  
Professor Peter Saunders, Social Policy Research Centre, UNSW

The Management Board held meetings on 16 June and 20 October 2010.

## **4. STAFF**

### **4.1 Centre Staff**

Centre Staff as at 31 December 2010 consisted of the following:

Sean Brennan (Director, Indigenous Legal Issues Project)  
Email: s.brennan@unsw.edu.au  
Phone: (02) 9385 2334  
Interests:  
Public Law, Indigenous Legal Issues, Native Title.

Ben Golder (Director, Public Law and Legal Theory Project)  
Email: b.golder@unsw.edu.au  
Phone: (02) 9385 1843  
*Interests:*  
Legal and social theory (particularly critical, feminist and post-structuralist approaches to law), legal philosophy, criminal law and public law (particularly critical approaches to counter-terrorist law and capital punishment).

Paul Kildea (Director, Federalism Project)  
Email: p.kildea@unsw.edu.au  
Phone: 902) 9385 9655  
Interests:  
Public law, the process of constitutional reform, political participation, deliberative democracy.

Andrew Lynch (Centre Director)  
Email: a.lynch@unsw.edu.au  
Phone: (02) 93859654  
Interests:  
Constitutional Law, Federalism, Terrorism Law, Judicial Dissent, Judicial Appointment

Jane McAdam (Director, International Refugee and Migration Law Project)

Email: [j.mcadam@unsw.edu.au](mailto:j.mcadam@unsw.edu.au)

Phone: (02) 9385 2210

Interests:

International Refugee Law, International Human Rights Law, Public International Law, Forced Migration, Climate-Induced Displacement, Statelessness, EU Law relating to Asylum and Human Rights.

Belinda McDonald (Administrator)

Email: [gtcentre@unsw.edu.au](mailto:gtcentre@unsw.edu.au)

Phone: (02) 9385 2257

Nicola McGarrity (Director, Terrorism Project)

Email: [n.mcgarrity@unsw.edu.au](mailto:n.mcgarrity@unsw.edu.au)

Phone: (02) 9385 3445

Interests:

Constitutional law, Legal responses to terrorism, Human rights, Constitutional reform.

Christopher Michaelsen

Email: [c.michaelsen@unsw.edu.au](mailto:c.michaelsen@unsw.edu.au)

Phone: (02) 9385 3721

Interests:

Human Rights, Public International Law, German and Comparative Constitutional Law, Criminal Justice, Terrorism/Counter-Terrorism

Theunis Roux

Email: [t.roux@unsw.edu.au](mailto:t.roux@unsw.edu.au)

Phone: (02) 9385 3418

Interests:

Australian federal constitutional law; South African constitutional (property) law; comparative constitutional (property) law; interdisciplinary research in law and politics; legal theory; property rights restitution and land reform

George Williams (Foundation Director and Director, Anti-Terror Laws and the Democratic Challenge)

Email: [george.williams@unsw.edu.au](mailto:george.williams@unsw.edu.au)

Interests:

Constitutional Law, Human Rights and Electoral Law.

## **4.2 Centre Associates**

Tony Blackshield, *Adjunct Professor*, LL.M. Syd

Megan Davis, *Senior Lecturer*, BA LLB UQ, LL.M. ANU

Arthur Glass, *Associate Professor*, BA LLB PhD Syd

Cassandra Goldie, B Juris LLB (Hons) UWA LL.M. Dist UCL, PhD UNSW

Janice Gray, *Lecturer*, BA LLB Dip Ed MA UNSW

Devika Hovell, PhD Program, Balliol College, University of Oxford, BA LLB (Hons)

UWA, LLM NYU

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

Garth Nettheim, *Emeritus Professor*, LLB Syd, AM Tufts

Richard Potok, *Visiting Fellow*, BComm LLB NSW, BCL Oxon

Rosemary Rayfuse, *Associate Professor*, LLB Queens, LLM Cantab, PhD Utrecht

Ben Saul, *Senior Lecturer*, University of Sydney, BA (Hons) LLB (Hons) Syd, DPhil Oxon

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

Jeremy Webber, *Visiting Professor*, BA (British Columbia), LLB (McGill), LLM (Osgoode) 1988

#### **4.3 Social Justice Intern Program**

The Centre continues to take part in the Social Justice Intern Program, an undergraduate elective designed to give later year undergraduate students experience in various aspects of social justice advocacy. The students working with the Centre during 2010 were Emily Collett (Semester I, 2010) and Melissa Chin (Semester II, 2010).

#### **4.4 Postgraduate Research Students**

The following postgraduate students were supported by the Centre during 2010:

Justin Carter

Supervised by Edward Santow

Topic: The Law of Contempt at the Dawn of the Human Rights Era

[Andrew Dahdal](#)

[Supervised by](#) Theunis Roux

[Topic: Section 51\(xiii\) - The Commonwealth Banking Power](#)

[Dominique Dalla-Pozza](#)

[Supervised by](#) Andrew Lynch and [George Williams](#)

[Topic: Australian Approach to Enacting Counter-Terrorism Laws](#)

Jacqueline James

Supervised by Andrew Lynch and Sean Brennan

Topic: Contemporary Australian Anti-Terror Laws: Do They Disproportionately Restrict Freedom of the Press?

[Mitchell Landrigan](#)

[Supervised by](#) George Williams

[Topic: The Interface of Political and Religious Discourse Under the Commonwealth Constitution](#)

Katherine Lindsay

Supervised by George Williams

Topic: Judicial Biography and the High Court of Australia

Wenwen Lu

Supervised by Andrew Lynch and Andrew Byrnes

Topic: Terrorism and National Security in Australia: International Human Rights Perspectives and Comparative Study with Other Asian Countries

Jennifer Norberry

Supervised by Andrew Lynch and George Williams

Topic: Law and National Security Crises - Contemporary Australian Experience

Soula Papadopoulos

Supervised by Andrew Lynch and George Williams

Topic: Co-operative Federalism is not a constitutional term

Leon Terrill

Supervised by Sean Brennan and Megan Davis

Topic: Aboriginal Land Tenure Reform in the Northern Territory

Tamara Tulich

Supervised by George Williams

Topic: The Judiciary as a Check on Anti-Terror Laws

Dominique Dalla-Pozza was awarded her PhD during the latter part of 2010

## **5. KEY CENTRE ACTIVITIES**

### **5.1 Research Funding**

The Centre currently has the following external research grants supporting its research activities:

- 2009-11 ARC Discovery grant for \$270,000 to fund research into ‘Federalism for the 21st Century – A Framework for Achieving Reform and Change’ (Lynch, Williams, Warren & Craven)
- 2009-11 ARC Discovery grant for \$159,000 to fund research into ‘Weathering Uncertainty: Climate Change ‘Refugees’ and International Law’ (McAdam)
- 2009-12 ARC Discovery grant for \$343,000 to fund research into ‘Immigration Restriction and the Racial State, c. 1880 to the present’.(Bashford, Amrith & McAdam)
- 2009-14 ARC Laureate Fellowship grant for \$2,211,430 to fund research into ‘Anti-Terror Laws and the Democratic Challenge’ (Williams)



## 5.2 Research Projects

The **Charter of Human Rights Project** (Project Director: Edward Santow) aims to contribute to the debate about a national Charter of Human Rights and maintain its watching brief on human rights issues in Australia, including through making submissions, presentations and engaging in public debate on legal issues particularly those involving refugees, freedom of expression and freedom of religion. The project has concentrated on the arguments for and against having a Charter and provides an overview of the movements for a Charter of Human Rights in Australia, the viewpoints of Australian political parties and key public figures about a Charter, and information about how the Victorian, ACT and other Charters around the world that have been enacted have fared.

The Centre was active in public debate, following release of the Brennan Committee report in late 2009, with Centre members contributing to numerous academic articles, speaking at conferences and public forums, and providing media commentary. In June 2010, the Centre co-hosted its fourth Human Rights Act Roundtable with the Australian Human Rights Commission. The roundtable brought together a large number of human rights experts to debate the new Human Rights Framework with representatives of the Attorney-General's Department, and to consider how those supporting enhanced legislative protection of human rights should respond to the Government's announced position regarding a Human Rights Act.

The **Federalism Project** (Project Director: Paul Kildea) is funded by an ARC Discovery grant of \$270,000. Its aim is to contribute the necessary legal scholarship crucial for a modern debate about improving Australia's constitutional division of power. The Project is underpinned by a commitment to federalist theory and so views the dismantling of Australia's federal system by abolition of the States as neither realistic nor desirable. Instead, the project is focused on reform of the existing federal relationship so as to capitalise upon its strengths and to better meet the challenges facing 21st century Australia. It approaches the topic through an examination of both constitutional and intergovernmental reform mechanisms.

During 2010, the project continued to make contributions to debate about federal reform generally, but also the most pressing public policy debates in the federation – the state of the Murray-Darling Basin. On the latter, evidence was given before the Senate Standing Committee on Environment, Communication and the Arts inquiry into the *Water (Crisis Powers and Floodwater Diversion) Bill 2010*. This contribution focused on doubts surrounding the constitutional validity of the bill, which sought to invest the Murray-Darling Basin Authority with enhanced powers during times of crisis.

The project has also been conducting research into the Council of Australian Governments (COAG), in particular looking at whether or not COAG should be given a firmer legal foundation, either in the Constitution or in ordinary legislation. A submission was made to an inquiry by the Senate Select Committee on the Reform of the Australian Federation arguing for clarification regarding the operation of the referrals power and for the establishment of a Constitutional Convention to discuss broader reforms to the federal system.

The **Indigenous Legal Issues Project** (Project Director: Sean Brennan) is committed to continuing its work on the intersection between constitutional law and indigenous property rights. The project is an obvious point of Centre collaboration with the Faculty's Indigenous Law Centre.

In early 2010 the project director presented a major paper to the Australian Association of Constitutional Law seminar series in Sydney, in a session chaired by former Chief Justice Murray Gleeson, with commentary from Justices John Basten and Jayne Jagot of the NSW Supreme Court and Federal Court respectively. The paper commenced with a review of four native title and land rights decisions from the High Court delivered in 2008-2009. It then expanded to a longer-range review of judicial decision-making in these two distinct but comparable bodies of law, distilling views that have developed over several years of research and teaching in these areas. It has since appeared in a leading journal in the field, the *Public Law Review*.

Several journal publications have appeared in Australia and overseas reflecting the work done on judicial interpretation of Indigenous property rights in Australia. In particular, this focused on the degree to which Australian courts have applied the protections available for property rights, under the Constitution and the traditional canons of statutory interpretation. The project director has also continued postgraduate research student supervision in these areas, with doctoral candidates working on tenure and housing reform in the Northern Territory, tax treatment of Indigenous land-related organisations and the recognition of customary property rights in Malaysia.

The **International Refugee and Migration Law Project** (Project Director: Jane McAdam) consists of three key research areas: Weathering Uncertainty: Climate Change "Refugees" and International Law; Complementary Protection and War Crimes; and Refugee Status: The Application and Interpretation of International Humanitarian and International Criminal Law to the Adjudication of Refugee Status in Canada, the United States, the United Kingdom, Australia and New Zealand.

The first book from the Australian Research Council grant 'Weathering Uncertainty: Climate Change "Refugees" and International Law' (Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing)), was published in late 2010. This is the first multidisciplinary book to consider the impacts of climate change on human movement and the challenges they present to law and policy. It brings together the work of researchers from a variety of disciplines – geography (political, economic and human), sociology, law, political economy, moral philosophy, public health, medical anthropology, epidemiology, psychiatric epidemiology, international relations and psychology – to identify the key issues that need to be considered in shaping domestic, regional and international responses.

During 2010, the project has continued to focus on two main areas: climate change and human movement, and refugee law. In June, the Project Director travelled to Bangladesh and India to undertake field research on the legal and policy responses to climate change and its migration and security challenges in the South Asian region. This research trip tested conventional assumptions about the patterns of displacement and the attendant

security risks predicted to flow from climate change impacts, as well as examining the legal and policy responses proposed to deal with them.

In September the project held The Asylum Debate, in which leading international refugee law experts discussed some of the most pressing issues relating to refugees and asylum seekers in Australia and internationally. A new Refugee Law and Policy Group was created to showcase the various researchers within and linked to the Law Faculty who are working on asylum issues. This provides a web portal into the diverse research and clinical work in the Faculty relating to refugee and migration law.

The **Public Law and Legal Theory Project** (Project Director: Ben Golder) examines many of the foundational concerns of the Centre (public law, sovereignty, democracy, human rights and counter-terrorism) through the lens of contemporary political theory, legal philosophy and critical legal theory. The research generated by the project will deepen the Centre's work in terms of disciplinary approaches, with these new perspectives furthering our understanding of some of the key concepts in public law debates. In this way Public Law and Legal Theory is intended to link together and contribute to some of the existing Centre projects (such as, for example, the new Laureate Fellowship on Anti-Terror Laws and the Democratic Challenge, Terrorism and Law, Charter of Human Rights) by exploring their implicit concerns through theoretical reflection and inter-disciplinary dialogue.

This project has had a successful year. In the second semester of 2010 it hosted a seminar series at the Law School which brought together Australian and international experts in the field to discuss a range of familiar topics (sovereignty, colonialism, rights, and democracy) from a range of different philosophical, historical and sociological perspectives.

The **Referendums Project** (Project Directors: Paul Kildea and George Williams) is a new project created to explore the holding referendums in Australia. Referendums have long been important to the work of the Centre in areas like federalism and Indigenous legal issues, but have not themselves been the subject of sustained attention. The project will examine how Australia has held referendums in the past, whether at the federal, state, territory or local level, and whether those processes can be improved in the future. Australia's referendum legislation has remained mostly unchanged since 1912, with things like the Yes and No case booklets now overdue for revision. Underlying the project is the notion that Australia's referendum machinery must be in good working order if important changes to the Constitution are to succeed in the future. The project will take no view on what changes to the Constitution might be required, only that the Australian people must be given the chance to vote on such proposals as part of an effective referendum process.

An important event during 2010 was the launch in September of the book *People Power: The History and Future of the Referendum in Australia*, co-authored by George Williams and David Hume. It is the first book to be dedicated to the subject in Australia, and analyses the law, history and politics of referendums. In the final chapter, the authors argue that if future referendums are to be successful, governments will need to do a better job of engaging people in the process of constitutional reform.

The Gillard government announced the creation of an expert panel to advise the government on options for constitutional recognition of Aborigines and Torres Strait Islanders. The following day, the government confirmed its commitment to holding a referendum at the same time on recognition of local government. Following these announcements, Project Co-Director, Paul Kildea, wrote in the *Australian Financial Review* on the importance of engaging the public early in the process, and giving them opportunities to contribute to ongoing debates in meaningful ways. The government's commitment to put two referendum questions before the next federal election likely foreshadows a busy time for the Project during 2011.

The **Terrorism and Law Project** (Project Director: Nicola McGarrity) continued to actively engage in domestic and international scholarly and policy debates around how best to protect the community from terrorism while maintaining important democratic and other values. During 2010, the project tackled a range of research in the field, including a further look at attempts to define terrorism in domestic law, the receipt of evidence in terror cases and the classification of terrorist related material.

The highlight of the year for this project was the release in late May of an edited book titled *Counter-Terrorism and Beyond: The Culture of Law and Justice After 9/11* (Routledge, Oxford, 2010). This book was edited by Nicola McGarrity, Associate Professor Andrew Lynch and Professor George Williams and grew out of a research roundtable event held by the Centre in 2009 with domestic and international experts.

This project has now concluded, however research into the area is continuing through the Anti-Terror Laws and the Democratic Challenge Project.

In June 2009, Professor George Williams (Anthony Mason Professor of Law and Foundation Director, Gilbert + Tobin Centre of Law) was awarded an Australian Research Council (ARC) Laureate Fellowship to fund an **Anti-Terror Laws and the Democratic Challenge Project**. The project which is also part of the Terrorism and Law Project, represents the next phase in public law research on the anti-terror laws enacted after 11 September 2001. The overarching aim of this project is to answer the question of how democratic nations 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 will be addressed through two complementary research objectives.

First, the project will provide detailed, comparative legal analysis of the scope and operation of the anti-terrorism laws. This is a vital aspect of the project because, despite the volume of literature, much about the laws in nations such as Australia and India, and especially the comparisons between them, remains to be examined and understood. This research is also necessary because the anti-terror laws are far from static. It is the comparative focus of this project that distinguishes it from the 2005-2009 project entitled 'Terrorism and Public Law after September 11'.

Second, the project will answer specific questions of public law theory and institutional design central to the democratic challenge posed by anti-terror laws.

### 5.3 Events

The Centre held several successful events during 2010:

- 2010 Constitutional Law Conference and Dinner

On 19 February 2010, the Centre again hosted its annual constitutional law conference at the Art Gallery of New South Wales. The conference, the ninth in this series, gathered together practitioners, judges, scholars and members of the general public to discuss recent events and future trends in Australian constitutional law. The event attracted over 200 people and participants at the conference also enjoyed the dinner that night at New South Wales Parliament House. The dinner speaker was the Hon Chief Justice Robert French of the High Court of Australia.

- Postgraduate Conference in Public Law

In July, the Centre hosted a two-day conference for postgraduate research students working in the broad field of public law. The aim was to provide a forum in which emerging scholars in this area could present aspects of their research and discuss methodological and other challenges with their peers. The Centre's own postgraduate students all took part and were joined by research students from other institutions in Sydney, New South Wales and from interstate. Abstracts had earlier been invited from the Australian postgraduate community and the final program showcased new research under a range of themes, including: public law and private bodies; judicial biography; customary law and Indigenous studies; preventative detention and the State; public/international law and identity; and freedom of speech.

- 2010 Global Anti-Terrorism Law and Policy Forum

In August the Laureate Project and Centre hosted a forum on global responses to terrorism. The forum attracted the largest number of international visitors yet to attend any Centre event and the visitors included leading international figures in anti-terror law.

The aim of the event was to present and discuss draft chapters for the second edition of *Global Anti-Terrorism Law and Policy*. The first edition of the book (published by Cambridge University Press in 2005) has established itself as the leading work on international and comparative responses to terrorism. The second edition, to be published in 2011, will take account of the many developments over recent years and provide an important international snapshot of the area for the 10th anniversary of September 11. The symposium was very successful in helping authors to further develop their ideas and analyses. A particular success was that the forum attracted leading Australian researchers to contribute to the discussion and to critique the work of the international participants.

- Great Legal Debate

On 13 August, just prior to the 2010 Federal Election, *The Australian Financial Review* and the Centre organised a ‘Great Legal Debate’ between the Attorney-General, the Hon. Robert McClelland MP, and the Shadow Attorney-General, Senator the Hon. George Brandis SC. The debate, held in the offices of Gilbert + Tobin in Sydney’s CBD, attracted over 100 people and was chaired by James Eyers of The AFR. The three-member panel was made up of Alex Ward, President Elect of the Law Council of Australia; Robert Milliner, chair of the Large Law Firm Group and chief executive partner of Mallesons Stephen Jaques; and Associate Professor Jane McAdam of the University of New South Wales. Discussion centred around the policies of the major parties and their effect on the Australian legal system and profession. A webcast of the event was made available soon afterward, during the campaign.

- Public Law and Legal Theory Seminar Series

During 2010, the project held a series of seminars at the Law Faculty which brought together Australian and international experts in the field to discuss a range of familiar topics (sovereignty, colonialism, rights, and democracy) from a range of different philosophical, historical and sociological perspectives. This seminar series proved very popular and attracted staff and students from across UNSW and the broader academic community of Sydney. It will continue in 2011.

## 6. PUBLICATIONS

Publications for the year ending 2010 are set out below.

### Joint Publications

Tony Blackshield, Roger Douglas and George Williams, *Public Law in Australia: Commentary and Materials* (Federation Press, 2010);

Tony Blackshield and George Williams, *Australian Constitutional Law and Theory: Commentary and Materials* (Federation Press, Annandale, 5th ed 2010);

Peter Fitzpatrick and Ben Golder (eds) *Foucault and Law* (Aldershot: Ashgate, 2010);

Peter Fitzpatrick and Ben Golder, ‘The Laws of Michel Foucault’, in B Golder and P Fitzpatrick (eds) *Foucault and Law* (Aldershot: Ashgate, 2010), xi-xxvi;

David Hume and George Williams, *People Power: The History and Future of the Referendum in Australia* (University of New South Wales Press, 2010);

Francine Johnson and Edward Santow, ‘How would an Australian Human Rights Act impact business?’ (2010) 38(1) *Australian Business Law Review* 7;

Paul Kildea and George Williams, 'Reworking Australia's Referendum Machinery' (2010) 35 *Alternative Law Journal* 22-26;

Jonathan Klaaren and Theunis Roux, 'The Nicholson Judgment: An Exercise in Law and Politics' (2010) 54 *Journal of African Law* 143;

Andrew Lynch, Nicola McGarrity & George Williams 'The Emergence of a 'Culture of Control'' in N McGarrity, A Lynch & G Williams (eds), *Counter-Terrorism and Beyond: The Culture of Law and Justice After 9/11* (Routledge, Oxford, 2010);

Andrew Lynch and Nicola McGarrity, 'A 'Watch Dog' of Australia's Counter-Terrorism Laws – The Coming of the National Security Legislation Monitor' (2010) 12 *Flinders Journal of Law Reform* 83;

Andrew Lynch and George Williams, 'The High Court on Constitutional Law: The 2009 Statistics' (2010) 33 *University of New South Wales Law Journal* 267;

Jane McAdam and Ben Saul, 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law' in A Edwards and C Ferstman (eds), *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press, Cambridge, 2010) 357-403;

Nicola McGarrity, Andrew Lynch & George Williams (eds), *Counter-Terrorism and Beyond: The Culture of Law and Justice After 9/11* (Routledge, Oxford, 2010);

Nicola McGarrity and George Williams, 'When Extraordinary Measures Become Normal: Pre-Emption in Counter-Terrorism and Other Laws' in N McGarrity, A Lynch and G Williams, *Counter-Terrorism and Beyond: The Culture of Law and Justice After 9/11* (Routledge, Oxford, 2010);

Nicola McGarrity and George Williams, 'Recognition of Local Government in the Commonwealth Constitution' (2010) 21 *Public Law Review* 164;

Nicola McGarrity and George Williams, 'Counter-Terrorism Laws in a Nation without a Bill of Rights: The Australian Experience' (2010) 2 *City University of Hong Kong Law Review* 45;

Susan Priest and George Williams, 'Women and Public Law' in Eastal, P (ed), *Women and the Law in Australia* (LexisNexis Butterworths, 2010), 407-423.

#### *Joint Media*

'David Hume and George Williams, Convincing a Nation of Naysayers' *Sydney Morning Herald* (11 September 2010);

Paul Kildea and Andrew Lynch 'Healthy cooperation', *The Drum – Unleashed*, ABC Online (14 April 2010).

## **Sean Brennan**

‘Statutory Interpretation and Indigenous Property Rights’ (2010) 21 *Public Law Review* 239;

‘Territory Exceptionalism and Indigenous Property Holders: Federalism, Rights Protection and the Australian Constitution’ (2010) 2 *City University of Hong Kong Law Review* 117;

‘The Northern Territory Intervention and Just Terms for the Acquisition of Property’ (2009) 33 *Melbourne University Law Review* 957.

## **Ben Golder**

‘Liberal Law’s Fear of “Culture”’ (2010) 35(4) *Alternative Law Journal* 194;

‘What is an Anti-Humanist Human Right?’ (2010) 16(5) *Social Identities* 651;

‘Foucault and the Unfinished Human of Rights’ (2010) 6(3) *Law, Culture and the Humanities* 354.

## **Paul Kildea**

### *Media*

‘Referendum education must start without delay’, *Australian Financial Review* (12 November 2010).

## **Andrew Lynch**

‘After A Referral: The Amendment and Termination of Commonwealth Laws Relying on s 51(xxxvii)’ (2010) 32 *Sydney Law Review* 363;

‘State Referrals and Terrorism Law Reform Paralysis: Cause and Effect?’ (2010) 21 *Public Law Review* 155;

Review ‘*Emergencies and the Limits of Legality* edited by Victor V Ramraj (Cambridge University Press, 2008)’. Reviewed in [2010] *Public Law* 831;

‘Terrorists and Bikies: The Constitutional Licence for Laws of Control’ (2009) 34 *Alternative Law Journal* 237.

### *Media*

‘Bikies face bumpy ride despite ruling’ *The Australian* (19 November 2010);

‘Electing judges would totally undermine our legal system’ *The Punch* (12 November 2010);



Curious case of the white paper', *The Drum – Unleashed*, ABC Online (24 February 2010);

'Why does court speak as one voice?', *The Australian*, (19 February 2010).

### **Jane McAdam**

*Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing, Oxford, 2010)(editor);

“Disappearing States”, Statelessness and the Boundaries of International Law’, in J McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing, Oxford, 2010);

'Introduction', in J McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing, Oxford, 2010);

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### **Nicola McGarrity**

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## **Christopher Michaelson**

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## **Theunis Roux**

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## **Edward Santow**

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## **George Williams**

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‘States could Legalise Same-Sex Marriage’ *Sydney Morning Herald* (28 September 2010);

‘Old-Style Racism Still in Constitution’ *Sydney Morning Herald* (14 September 2010);

‘Everything you Probably Wanted to Know about Forming Government’ *Sydney Morning Herald* (8 September 2010);

‘Too Much Stability can be a Problem’ *Sydney Morning Herald* (31 August 2010);

‘Guide to a Hung Parliament: How a Government is Formed’ *Sydney Morning Herald* (25 August 2010);

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‘Top Judicial Posts Merit Scrutiny’ *Sydney Morning Herald* (22 June 2010);

‘Standards Start to Slip Without the Rule of Law’ *Sydney Morning Herald* (9 June 2010);

‘Filtering by Computer Fails on Judgment’ *Sydney Morning Herald* (25 May 2010);

‘Too Rich, Too Weak to Succeed Seceding’ *Sydney Morning Herald* (11 May 2010);

‘People with Power Don’t Want to Give it up’ *Sydney Morning Herald* (27 April 2010);

‘NZ-Oz Nation: Impossible Dream, or Natural Union?’ *The Dominion Post* (New Zealand) (31 March 2010);

‘A Nation Girt by Sea – and Divided by it’ *Sydney Morning Herald* (30 March 2010);

‘The Moral Quandary of Sterilising A Child’ *Sydney Morning Herald* (16 March 2010);

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‘Stuck in an Unfair Federal System’ *Sydney Morning Herald* (16 February 2010);

‘Change will Only Come if Leaders can Agree’ *Sydney Morning Herald* (2 February 2010);

‘The Price of Free Thinking’ *ScienceHub Australia* (29 January 2010);

‘Past Time to Cut Ties with the Monarchy’ *Sydney Morning Herald* (20 January 2010).

## **7. PRESENTATIONS**

### **Joint Presentations**

Ben Golder and Christopher Michaelsen, ‘Men from the Forest: Political Criminals, Terrorists and Extra-Criminal Regimes of Punishment’, paper presented to the *Centre for International and Public Law (ANU) Workshop, Connecting International Law with Public Law - Allegiance and Identity in a Globalised World*, 19-21 July, 2010;

Paul Kildea and Andrew Lynch, ‘Federalism at the Sub-constitutional Level: The Case of the Council of Australian Governments’, *VIIIth World Congress of the International Association of Constitutional Law*, Mexico City, 6-10 December 2010;

Paul Kildea and Andrew Lynch, 'Entrenching 'Cooperative Federalism': Is It Time To Formalise COAG's Place In The Australian Federation?', *Conference of the Australian Political Studies Association*, University of Melbourne, 27-29 September 2010;

Nicola McGarrity and Edward Santow, 'Anti-terrorism laws: Balancing national security and a fair hearing in civil proceedings', *International Anti-Terrorism Symposium*, Gilbert + Tobin Centre of Public Law, 6 August 2010;

Edward Santow and George Williams, 'Terrorism Threat Assessments: A Gap in the Rule of Law?' *VIIIth World Congress of the International Association of Constitutional Law* Mexico City, 6-10 December 2010.

### **Sean Brennan**

'Indigenous Property Rights, the Judiciary and the Australian Constitution', *VIIIth World Congress of the International Association of Constitutional Law*, Mexico City, 6-10 December 2010;

'Reconciliation: Reflections on the Past Decade', *National Indigenous Policy and Dialogue Conference*, Sydney, 19 November 2010;

'What Happened to Native Title After 1992?', *Australian Mensa Conference*, Sydney, 16 October 2010;

'The High Court and Aboriginal Land 2008/09 – Constitutional Issues and the Strength of Aboriginal Property Rights', *Australian Association of Constitutional Law Seminar Series*, Federal Court, Sydney, 9 March 2010.

### **Ben Golder**

'On the Use and Disadvantage of (Foucault for) a Critique of Human Rights', paper presented to *Critic and Conscience?*, *27th Annual Conference of the Law and Society Association of Australia and New Zealand*, Victoria University of Wellington, 8-10 December, 2010;

'Foucault's Critical Affirmation of Human Rights', paper presented to *Affect*, *Australasian Society for Continental Philosophy Annual Conference*, University of Queensland, 3-5 December 2010;

'Foucault's Critical (Yet Ambivalent) Affirmation: Three Figures of Rights', seminar paper presented to the Law Research Seminar Series, University of Technology Sydney (27 October, 2010); the Institute for International Law and the Humanities, University of Melbourne (26 October, 2010); and the Law School Seminar Series, University of New South Wales (12 October, 2010);

Commentary on Harry Roque, 'The Philippines Human Security Act: A Critical Analysis', paper presented to the *Anti-Terrorism Symposium*, Gilbert + Tobin Centre of Public Law, Faculty of Law, University of New South Wales, 5-6 August, 2010;

‘The Differential Distribution of Death: Criminal Law as Biopolitics’, paper presented to the *Australian and New Zealand Critical Criminology Conference*, Sydney Institute of Criminology (University of Sydney) and the School of Social Sciences (University of Western Sydney), 1-2 July 2010;

‘On Foucault and Human Rights’, Socio-Legal Research Centre, Griffith University, 19 May 2010.

### **Paul Kildea**

‘The Future of the Council of Australian Governments’, Annual Conference of the Institute of Public Administration Australia (NSW), Sydney Convention Centre, Sydney, 22 July 2010.

### **Andrew Lynch**

‘The Tenacity of Bad Law – Why Anti-Terrorism Laws Proliferate and Persist’, *VIIIth World Congress of the International Association of Constitutional Law* Mexico City, 6-10 December 2010;

‘Legislating Anti-terrorism: Observations on Form and Process’, *International Anti-Terrorism Symposium*, Gilbert + Tobin Centre of Public Law, 5 August 2010;

‘The Fair Work Act – The Referrals Power Comes to the Rescue Once More’, ANU College of Law, Australian Labour Law Associations and Industrial Relations Society of the ACT, Australian National University, Canberra, 24 March 2010.

### **Jane McAdam**

‘Climate Change and Human Rights: Whose Rights, What Protection?’, *Castan Centre for Human Rights Law Annual Conference*, Melbourne, 16 July 2010;

‘Citizenship in a Globalised World: Perspectives from the Immigrant Democracies’ *UNSW–Harvard Collaboration*, 14–15 July 2010;

‘Climate Change, Displacement and International Law’, BRAC University, Dhaka, Bangladesh, 16 June 2010.

### **Nicola McGarrity**

‘Constitutional Recognition of Local Government’, Meeting of Local Government Managers Australia, Five Dock, 17 June 2010;

‘Constitutional Recognition of Local Government’, Local Government Association Education and Training Service Governance Seminar, Adelaide, 28 May 2010;

‘Australia’s Terrorism Trials’, UNSW Staff Seminar Series, Sydney, 25 May 2010;

‘The Role of the Media in the Counter-Terrorism Context’, *Media and Security Culture Symposium*, Melbourne, 26 March 2010;

‘What is Terrorism?’, Marrickville Peace Group Public Forum, Marrickville, 25 March 2010;

‘Intelligence services and law enforcement powers in Australia’, IACL Workshop on principles and best practices on the legal and institutional frameworks for intelligence and intelligence oversight in counter-terrorism, Switzerland, 2 March 2010.

### **Christopher Michaelsen**

‘Interception and International Law’, *Amnesty International Overboard Seminar* Sydney, 9 September 2010;

‘The Security Council’s Authority under the UN Charter to Adopt Sanctions Targeting ‘Independent’ Individuals’’, *Third Four Societies Conference (ANZSIL, ASIL, CCIL, JSIL), International Law in the New Era of Globalisation*, Japan, 27-28 August 2010;

‘Banning the Burqa? A Human Rights Perspective’, *46th Annual Congress of the Australian Federation of Islamic Councils*, Sydney, 16 May 2010;

‘Human Rights and Counter-Terrorism in Theory and Practice’, *51st Annual Convention, International Studies Association*, New Orleans, USA, 19 February 2010;

‘The Authority of the Security Council to Sanction Individuals’, *51st Annual Convention, International Studies Association*, New Orleans, USA, 18 February 2010.

### **Edward Santow**

‘Public Interest Litigation’ *NSW Young Lawyers Conference*, Sydney, 13 November 2010;

‘Enhanced scrutiny of human rights: Of parliament, pigs and lipstick’ *Australian Institute of Administrative Law National Forum*, Sydney, 23 July 2010;

‘Law reform and clinical legal education’ *Iran-US-Australia Human Rights Advocates Course*, Sydney, 23 July 2010;

‘Who’s afraid of unelected judges? A positive case for increasing the judicial role in human rights protection’, NSW Bar Association, *Constituting Law: Law’s Dependence on Social Values*, Sydney, 1 June 2010;

‘Human rights law in Australia’, Public Interest Advocacy Centre seminar *Law for Non-Lawyers*, Sydney, 1 June 2010;

‘Striking a balance between anti-terrorism laws and civil liberties’, Future Summit 2010, Melbourne, 24 May 2010;

‘Administrative decision making and the human rights lens’, Excellence in Government Decision-making Course, University of Sydney, 22 March 2010;

‘A Human Rights Act for Australia: religion and ethics’, Sydney Atheists Group Forum, Sydney, 14 February 2010.

### **George Williams**

‘Where to Now for the Australian Bill of Rights Debate?’ *UniSA Law School Evening Research Seminar*, Adelaide, 2 December 2010;

‘In Conversation about *People Power*’ Gleebooks, Sydney, 18 November 2010;

‘The ABCC and the Rule of Law’ *2010 Rule of Law Conference*, NSW Bar Association, Sydney, 6 November 2010;

‘The Laureate Research Project’ *Town and Gown Dinner*, UNSW, 26 October 2010;

‘The Constitution and Property Rights’ *NSW Department of Environment, Climate Change and Water Seminar*, Sydney, 8 October 2010;

‘The Charter of Rights Debate’ *UNYA National Youth Summit*, Sydney, 1 October 2010;

‘Academic Research Forum: Engaging with the Media’ UNSW Law School, 1 October 2010;

‘The Future of the Australian Bill of Rights Debate’ *Alice Tay Lecture on Law and Human Rights*, Freilich Foundation, ANU, 16 September 2010;

‘Land and Water Rights and the Law’ *National Farmers’ Federation 2010 National Congress*, Melbourne, 7 September 2010;

‘Anti-Terror Legislation in Australia and New Zealand’ *2010 Global Anti-Terrorism Law and Policy Forum*, UNSW, 6 August 2010;

‘Opening Address: Property Rights and Just Terms Compensation’ *NSW Farmers Association Annual Conference*, Sydney Olympic Park, 20 July 2010;

‘Australia’s Human Rights Debate’ *Commonwealth Womens Parliamentarians Conference*, NSW Parliament House, 2 July 2010;

‘Speech to Award Winners’ *Think Rights Awards Presentation*, Burwood Council, 29 June 2010’;

‘The Constitutional Recognition of Local Government’, *2010 National General Assembly of Local Government*, National Convention Centre, Canberra, 16 June 2010;



‘The Role of Legislative Support in Anti-Terrorist Policing’ Law Week Breakfast, Sydney, 17 May 2010;

‘The Communist Party Dissolution Bill and its Aftermath’ *Symposium: The Communist Party Dissolution Bill – 60 Years On*, Australian Society for the Study of Labour History, Canberra, 8 May 2010;

‘Do We Need a Bill of Rights?’ Burton & Garran Hall Academic Speaker Series, Canberra, 30 March 2010;

‘Would a Bill of Rights Change your Life?’ Politics in the Pub, Canberra, 9 March 2009;

‘Why do Rights Matter?’ *Think Rights Launch/Workshop*, Burwood Council, 2 March 2010;

‘The Constitution and the Management of Water in Australia’s Rivers’ *Supreme and Federal Courts Judges’ Conference*, Canberra, 25 January 2010.

## **8. SUBMISSIONS TO INQUIRIES**

### **Joint submissions**

Paul Kildea, Andrew Lynch and George Williams, Submission to the UK House of Lords Select Committee on the Constitution Inquiry into Fixed-term Parliaments, 20 September 2010;

Paul Kildea, Andrew Lynch and George Williams, Submission to the Senate Select Committee on the Reform of the Australian Federation, 20 August 2010;

Edward Santow and George Williams, Submission to the Standing Committee on Legal and Constitutional Affairs, ‘Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010’ 8 July 2010;

Paul Kildea, Andrew Lynch and George Williams, Submission to the Senate Environment, Communications and the Arts Legislation Committee ‘Inquiry into Water (Crisis Powers and Floodwater Diversion) Bill’, 9 June 2010;

Emily Collett, Andrew Lynch, Nicola McGarrity, Christopher Michaelsen, Edward Santow and George Williams, Submission to the Senate Legal and Constitutional Affairs Committee ‘Inquiry into the National Security Legislation Amendment Bill’, 30 April 2010;

Emily Collett and George Williams, Submission to Senate Legal and Constitutional Committee ‘Inquiry into Wild Rivers (Environmental Management) Bill 2010 [No 2]’, 17 March 2010.

## **Andrew Lynch**

Supplementary submission to the Senate Legal and Constitutional Affairs Committee 'Inquiry into the National Security Legislation Amendment Bill', 3 May 2010.

## **Jane McAdam**

Briefing Note for Parliamentarians: Migration Amendment (Complementary Protection) Bill 2009, sent on behalf of academics and NGOs to Federal MPs (5 November 2010);

Submission No 23 to Senate Standing Committee on Legal and Constitutional Affairs, 'Inquiry into the Anti-People Smuggling and Other Measures Bill 2010' (with Bassina Farbenblum), 16 April 2010.

## **Edward Santow**

Submission to the Senate Standing Committee for the Scrutiny of Bills, 'Inquiry into the future direction and role of the Scrutiny of Bills Committee', 5 March 2010.

## **George Williams**

Submission to Senate Legal and Constitutional Committee 'Inquiry into the Australian Film and Literature Classification Scheme' (24 November 2010);

Submission to Tasmanian Department of Justice 'Consultation on A Charter of Human Rights and Responsibilities for Tasmania' (17 November 2010);

Submission to House Standing Committee on Economics 'Inquiry into Issues Affecting Indigenous Economic Development in Queensland' (9 November 2010);

Submission to Aboriginal Affairs NSW 'Inquiry into Constitutional Recognition of Aboriginal People' (20 July 2010).

Submission to Senate Standing Committee for the Scrutiny of Bills 'Inquiry into the Future Direction and Role of the Scrutiny of Bills Committee', 5 March 2010.