



## GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER DECEMBER 2024

### DIRECTOR AND DEPUTY DIRECTOR'S REPORT

Dear colleagues,

It has been an exciting few months for the Centre, with a range of events and new arrivals.

We are fortunate to have welcomed two new senior colleagues to the Centre: Associate Professors Harry Hobbs and Ellen Rock, experts in constitutional and administrative law respectively. We are also delighted that Ellen will be taking a leadership role in the Administrative Law and Justice Project, and Harry will be joining the Indigenous Legal Issues Project. You can read more about them in the People section of this newsletter.

We were also delighted to welcome back from sabbatical Professor Melissa Crouch, who has recently been awarded an ARC Future Fellowship to study the role of the military in constitutional government, and we wish her our warmest congratulations on this success. We also very recently learned that Melissa has been elected as a fellow of the Australian Academy of Humanities, and we are delighted to congratulate her on this amazing achievement as well!

The Centre has hosted many events since our last newsletter, including (as co-host with the University of Sydney Law School) the inaugural conference of the Australia-New Zealand chapter of the International Society of Public Law (ICON•S) at the end of August. This conference welcomed scholars from across Australia and New Zealand, and featured a range of parallel panels as well as plenary addresses on 'Comparison from the Antipodes' and 'Engaging with the Global South from Australia and New Zealand'. Published remarks from the latter panel can be found on AUSPUBLAW [here](#) and [here](#). The conference also concluded with an outstanding plenary conversation involving Justice Joe Williams of the Supreme Court of New Zealand and Justice Louise Taylor of the ACT Supreme Court on their experiences as Māori and First Nations judges, respectively, in settler-colonial legal systems.

Earlier in August the Centre also hosted, together with the UNSW Faculty of Law & Justice, the 2024 Mason Conversation, which saw the Hon Virginia Bell AC in conversation with Professor Rosalind Dixon about her life in the law. The Mason Conversation is a flagship event for the Centre and the Faculty. It is a biennial series named in honour of Sir Anthony Mason AC KBE GBM marking his outstanding generosity and contribution over decades to the University of New South Wales. We were grateful to Chief Justice Andrew Bell for the use of the Banco Court for this important event, and to the Chair of the Centre's Advisory Committee, the Hon John Basten, for his support of the event.



Rosalind Dixon  
Centre Director



Elisabeth Perham  
Centre Deputy Director



Also in August, the Centre co-hosted (with the University of Sydney Law School) a workshop on the principle of legality, and its theoretical and comparative dimensions, and an associated seminar with members of the Federal Court of Australia on these themes. August also saw the Centre host, together with the NSW Branch of the Australian Institute of Administrative Law, an important seminar on the role of royal commissions in ensuring public accountability, bringing together experts to discuss the impact and effectiveness of royal commissions. And finally, in early August, Centre members Associate Professor Sean Brennan and Dr Ashleigh Barnes travelled to Darwin to attend the hearing of the High Court of Australia in the case of *Commonwealth v Yunupingu*. The hearing was not livestreamed, and so on 14 August the Centre hosted a seminar where Sean and Ashleigh, alongside University of Melbourne colleague Associate Professor Lulu Weis, shared their observations of oral arguments in the case. Sean and Lulu's observations have since been published on AUSPUBLAW, and more information about the importance of the case can be found in the report for the Indigenous Legal Issues Project in this newsletter.

In September, the Centre hosted UC Berkeley Professor Amanda Tyler for the third time, to discuss recent decisions of the US Supreme Court and their relevance for the 2024 presidential election and beyond. The event was co-hosted by the United States Studies' Centre at the University of Sydney. The Centre also hosted Oxford Professor Nick Barber for a discussion about positive constitutionalism – with a focus on Australia. Professor Barber also kindly delivered a seminar on research methods to the HDR members of the Centre.

In addition, in August and September, the Centre hosted the fourth iteration of the NSW Pathways to Politics for Women program, a program run with the support of the Trawalla Foundation and other parts of the university – including the Division for Equity, Diversity and Inclusion, the Australian Graduate School of Management, the Social Policy Research Centre, and the Australian Human Rights Institute. The program this year involved 28 women from a range of political, professional, ethnic and geographic backgrounds, but all of whom aspire to run for public office at local, state or federal level. 21 alumnae of the program ran in the NSW local government elections this year, and of those 10 were successfully elected or re-elected.

The last six months has also seen the continuation of the Centre's global book series, in collaboration with the Greater Sydney Law Schools' Public Law Reading group. In November, the Centre hosted (online) Professor Cora Chan from Hong Kong University to discuss her new book, *Deference in Human Rights Adjudication* (OUP, 2024). Centre Director Professor Rosalind Dixon provided commentary and Associate Professor Harry Hobbs acted as chair.

Members of the Centre made submissions to, and appeared as witnesses before, the Joint Standing Committee on Electoral Matters, including making submissions on the importance of civics education to our democracy. Centre Director Rosalind Dixon and Project Officer Rose Vassel also specifically highlighted to the Committee the Centre's current pilot projects around primary and high school civics education, which were completed in the last six months. The primary school program involved a second in-person workshop at Woollahra Public School in August, for four local primary schools, led by Rosalind Dixon, joined by Member for Wentworth the Hon Allegra Spender MP. The high school pilot involved students at 17 schools across the state participating in an in-school exercise in #writingdemocracy, where they sent ideas for policy or practical improvement to the Department of Education or their local council, with finalists from each school selected to attend a day-long workshop hosted by the Centre, the Story Factory and NSW Parliament on 20 November. This work around civics education is part of the Centre's newly-formed Constitutional Democracy Project.

For details of Centre events, publications, submissions and so on please either go to our website:

[www.gtcentre.unsw.edu.au](http://www.gtcentre.unsw.edu.au)  
or join our [mailing list](#) here

Several of our colleagues are currently on well-earned sabbaticals and long-service leave – including Associate Professors Sean Brennan and Paul Kildea. We are looking forward to welcoming them back next year. We also look forward to welcoming back Professor Gabrielle Appleby from parental leave, though Gabrielle will be returning on a secondment to work with Pro-Vice Chancellor Scientia Professor Megan Davis in her office on initiatives relating to the post-Voice referendum agenda.

We have recently released the program and registration for our annual Constitutional Law conference – to be hosted in hybrid mode at the beautiful offices of Gilbert + Tobin in Barangaroo on Friday 7 February 2025. Please [register here](#) if you are able to join us for the day or part thereof. And teachers of public law are warmly invited to join us online or at UNSW for the annual Public Law in the Classroom workshop to be held the day before on 6 December: more information, including the link to register, [can be found here](#).

Finally, we wish you and your teams and loved ones a happy and peaceful festive season.

Ros and Lizzy

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## CENTRE ACTIVITIES

### EVENTS

#### **Sustainable Sovereignty for Small Island States** **19 June 2024**

Professor Alan Tidwell presented on the current challenges of sustainable sovereignty for small island states. Small island states face significant economic challenges that current development practices cannot easily overcome. Decades of loans and grants have not led to economic sustainability. Geographic, demographic, and historical factors make sustaining sovereignty nearly impossible. Geography limits economies of scale, making trade costly. Migration has eroded the local talent pool, and the legacy of colonialism and climate exploitation imposes unmanageable costs. Professor Tidwell proposed that establishing an international norm to support the sovereignty of small island nations is suggested as a solution. Alan Tidwell is Professor of the Practice and Director of the Center for Australian, New Zealand and Pacific Studies (CANZPS) at the Georgetown University Walsh School of Foreign Service.

#### **2024 Mason Conversation** **6 August 2024**

It was an honour to welcome the Honourable Virginia Bell AC as our distinguished guest at the Mason Conversation 2024. Virginia Bell's distinguished contributions include her appointment to the High Court of Australia from 2009 to 2021, as well as serving as a judge of the New South Wales Court of Appeal and Supreme Court of New South Wales. She served as counsel assisting the Royal Commission into the New South Wales Police Service and as President of the Australian Institute of Judicial Administration. Virginia was joined in conversation by Scientia Professor Rosalind Dixon to discuss her life in the law.

The Mason Conversation is a series named in honour of Sir Anthony Mason AC KBE GBM marking his outstanding generosity and contribution over decades to the University of New South Wales, as well as a distinguished career in the law.



## Native Title and the Constitution: Past and Future Prospects

14 August 2024

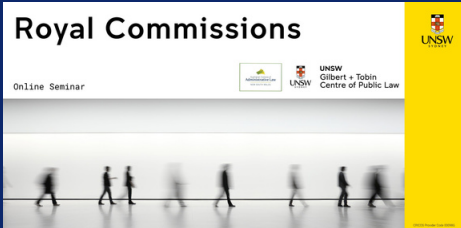
The High Court's impending decision in *Commonwealth v Yunupingu* promises to be one of the most significant constitutional decisions in decades: the case raises questions about the scope of the territories' power, the acquisition of property, and the status of native title in a post-colonial Australian constitutional settlement.

In this seminar, constitutional experts Associate Professor Sean Brennan (UNSW, Director of the Centre's Indigenous Legal Issues Project), Dr Ashleigh Barnes (UNSW), and Associate Professor Lael Weis (Melbourne) discussed their observations of oral argument in the case, and issues raised, including those surrounding the doctrine of precedent, and the potential ramifications of the case in terms of compensation and constitutional requirements of "just terms".

## Principle of Legality Workshop

16 August 2024

On 16 August, the Centre co-hosted (with the University of Sydney Law School) a workshop on the principle of legality. The workshop was held at the University of Sydney, but was preceded by a discussion held at the Federal Court of Australia between academics and Federal Court Judges on the 'Positive vs Normative Foundations of the Principle of Legality'. Across the day, academics from several universities across Australia, as well as practitioners, discussed the principle of legality from various perspectives.



## Royal Commissions

22 August 2024

Royal Commissions play an important, but often overlooked, role in Australia's accountability and public policy frameworks. They conduct independent, detailed inquiries into some of the most important and often controversial social issues facing society including, recently, Robodebt, the treatment of people with disability, aged care, and the banking sector. In this seminar, chaired by Associate Professor Janina Boughey (Director of the Centre's Administrative Law and Justice Project), three experts – the Honourable Ronald Sackville AO KC, Dominique Hogan-Doran SC and Dr Scott Prasser – discussed the impact and effectiveness of Royal Commissions, when they are an appropriate public policy tool, and governments' track records in implementing their recommendations.



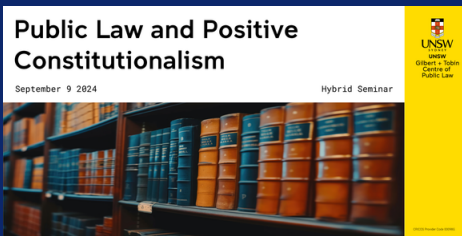
## ICON-S AUS-NZ Chapter Conference 2024

29-30 August 2024

Members of the Australian and New Zealand public law community were warmly invited to attend the inaugural ICON-S Australia-NZ in-person conference in Sydney, on 29-30 August 2024, at UNSW (day 1) and the University of Sydney (day 2). The conference featured a series of keynote panels, as well as parallel sessions in which participants were invited to present work-in progress on the themes of the conference, either in pre-organised panels or panels assembled by the organisers. Keynote speakers included Professors Adrienne Stone, Janet McLean, Theunis Roux and Ben Schonthal. The conference also concluded with a moderated discussion with the Hon Justice Joe Williams (Ngāti Pukenga, Waitaha and Tapuika), the first Māori Judge on the Te Kōti Mana Nui, Supreme Court of New Zealand, and Kamilaroi woman the Hon Justice Louise Taylor, the first female Indigenous Supreme Court Judge in Australia.



First Plenary Session at ICON-S ANZ Conference



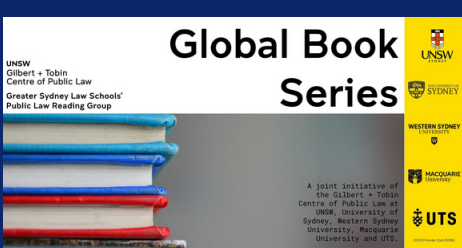
**Public Law and Positive Constitutionalism**  
**9 September 2024**

Constitutions and public law are often assumed to impose constraints on the scope for positive state action. Indeed, this is one reason constitutionalism has come under recent fire from critics such as Professor Martin Loughlin. This, however, need not be true. There is another more “positive” vision of the state and constitutionalism available. Nick Barber, Professor of Constitutional Law and Theory at the University of Oxford, is one of the primary advocates of this position in his book, *Principles of Constitutionalism* (Oxford University Press, 2018). In Australia, recent work by Dr Lynsey Blayden, Professor William Bateman, Professor Rosalind Dixon, Associate Professor William Partlett and Professor Adrienne Stone makes similar arguments, drawing on history, sociology and constitutional theory – including Barber’s own ideas. In this special seminar, Barber engaged in a dialogue with Bateman, Blayden, Partlett and Stone about these ideas of “positive constitutionalism” in Australia and more broadly. The seminar was hosted by Centre Director Scientia Professor Rosalind Dixon and was followed by drinks.



**The US Supreme Court and the 2023-24 Term**  
**16 September 2024**

The US Supreme Court has handed down a range of controversial decisions in recent months – including important decisions on presidential immunity and (non-deference) to administrative agencies. It has also narrowly avoided deciding questions about access to pharmaceutical abortions, and the regulation of social media. In this special seminar, the Centre hosted Professor Amanda L. Tyler (Shannon Cecil Turner Professor of Law at the University of California, Berkeley School of Law) in conversation with Professor Rosalind Dixon. They discussed this case and its significance for constitutional law in the United States and around the world. The event was co-hosted with the United States Studies Centre at the University of Sydney.



**GREATER SYDNEY LAW SCHOOLS’ PUBLIC LAW READING GROUP AND GLOBAL BOOK SERIES**

The Reading Group and Global Book Series brings together public law academics from across greater Sydney to discuss global books in the field of public law. In 2024, the series has returned in a hybrid format, allowing for a formal discussion of the book with international and remote guests followed by a more informal discussion by public law scholars attending in person.

**Deference in Human Rights Adjudication by Cora Chan**  
**8 November 2024**

Courts play a crucial role in upholding commitments to human rights in Australia and elsewhere. But there are also important limits to that role. The question this raises is how they should define and maintain those limits, or when and how they should defer to political actors in this process. In this special seminar Professor Cora Chan (HKU) explored these questions through the lens of her important new book, *Deference in Human Rights Adjudication* (OUP 2024), and in conversation with Professor Rosalind Dixon. The conversation was chaired by Associate Professor Harry Hobbs.

## UPCOMING EVENTS

### Public Law in the Classroom Workshop 2025

6 February 2025

The 11th annual Public Law in the Classroom workshop will be held at UNSW Sydney and online. The workshop is organised by the Gilbert + Tobin Centre of Public Law at UNSW, the Public Law and Policy Research Unit at the University of Adelaide, the Castan Centre for Human Rights Law at Monash University and the School of Law at Western Sydney University. The past 10 workshops have been a great success, each attracting public law teachers from across the country and internationally. The first panel session will focus on Building Micro-Skills, and will explore how teachers have helped their students to develop the 'micro-skills' needed to study law, such as how to take notes, how to read for class, how to understand an assessment task, etc. The second panel session will focus on Design and Visualisation to Increase Engagement and will explore how visualisation and the design of materials can bring public law to life, encourage pre-class preparation and help students in organising their knowledge. The third panel session will focus on Authentic Assessment and will explore both assessment design, as well as the provision of feedback – particularly in the context of authentic assessment.

An updated program with the exact timings and speakers will be updated on the event [page](#) on the UNSW Gilbert + Tobin website in mid-December.

We hope to see many of you in Sydney or online! Please register [here](#)

### Constitutional Law Conference 2025

7 February 2024

The 2025 Constitutional Law Conference will be held in a hybrid format on Friday 7 February 2025. It is organised by the Centre with the support of the Australian Association of Constitutional Law and Federation Press. The conference will feature discussions of important developments in the High Court, Federal Court and state courts and provide an overview of the key public law debates in 2024. The conference will include papers on the constitutional separation of powers, migration, native title, and the role of government lawyers in Australian public law, among other topics.

The conference will be held in hybrid format, with attendees able to register in person (100 pax capacity) or online via Zoom. The in-person element of the conference will be held at the offices of Gilbert + Tobin in Barangaroo, Sydney. There will be multiple opportunities for informal interaction throughout the day. A cocktail party will be hosted for those attending in person at Gilbert + Tobin. Zoom details will be forwarded to online attendees closer to the date.

Ticketing Information:

IN-PERSON - Full conference: \$275 (100 pax capacity; first come, first served)

ONLINE - Full conference: \$220 | Individual sessions: \$55 each | Organisation ticket: \$1100 (registration for attending remotely as a group in one location)

Academics and NGO lawyers will receive a 50% discount when using code ACADEMIC50 at checkout. If you are experiencing financial hardship and unable to purchase a ticket, please contact [gtcentre@unsw.edu.au](mailto:gtcentre@unsw.edu.au) and please register [here](#).

Public Law in  
the Classroom  
2025



Hosted by:



Constitutional  
Law Conference  
2025

Hosted by the Gilbert + Tobin Centre  
of Public Law, with the Australian  
Association of Constitutional Law  
(AACL) & Federation Press



## THE AUSPUBLAW BLOG

The second half of 2024 was busy and productive. In July, Rebecca Lucas joined the editorial team, and Laura Ismay stepped down. We are incredibly grateful to Laura for her enormous, highly skilled contribution to editing the blog for the past 2 years and her generosity in training the new editors.

Over the past six months, the blog has published three forums or blog series. In June, we published a book forum on Benjamin Saunders' book, *Responsible Government and the Australian Constitution* (Hart, 2023), with posts from James Stellios, Leslie Gonye and Ben Saunders. We also published series on two important developments: the US Supreme Court overturning *Chevron* deference (with posts by Lisa Burton Crawford and Harry Sanderson); and the High Court of Australia's hearing of *Commonwealth v Yunupingu* (with posts by Sean Brennan and Lael Weis).

Beyond our forums, we have continued to publish posts on a very wide range of topics relating to public law and governance. These have included government debt collection after Robodebt (Lucinda O'Brien and Vivien Chen), public interest disclosure laws (Riley O'Keeffe), costs in litigation (Michael Legg and Felicity Bell), the field and methods of comparative constitutional law (with separate posts by Theunis Roux and Ben Schonthal), the Commonwealth regime of post-sentence orders for terrorist offenders (Samuel Naylor), and South Australia's proposed ban on political donations (Sebastian Long).

We look forward to continuing our important work in 2025.

Rebecca Lucas, Sangeetha Pillai, Kelly Yoon and Janina Boughey

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## PEOPLE

### Harry Hobbs

Associate Professor Harry Hobbs is excited to return to the Gilbert + Tobin Centre, where he was a PhD student from 2016-2018. Harry holds a Discovery Early Career Research Award (DECRA) where he is investigating the public law questions surrounding modern treaty-making processes in Australia, drawing on comparative study of Canada and Aotearoa New Zealand. Harry has published widely in this area, with his most recent article 'Anticipating and Weathering Challenges to Modern Treaties in Australia' forthcoming in the *Public Law Review*. Alongside this work, Harry examines the rise of sovereign citizens and pseudolaw and its impact on the administration of justice and governance. He led an empirical project investigating this phenomenon in South Australian courts and has co-edited the edited volume *Pseudolaw and Sovereign Citizens* which will be released by Hart in February 2025.

### Ellen Rock

Associate Professor Ellen Rock researches government accountability and liability, investigating different legal and non-legal mechanisms used to control government power. Ellen's research centres on themes of government corruption and public trust. Ellen also has a strong interest in the relationship between principles of public law (eg, administrative law) and private law (eg, torts), and the use of private litigation as a tool of government accountability. Ellen's monograph *Measuring Accountability in Public Governance Regimes* was published by CUP in 2020, and explores the negative consequences of applying both 'not enough' and 'too much' accountability to government officials. Ellen's current research projects are focussed on understanding the most effective ways to enforce and enhance government accountability. Before her move to academia, Ellen worked as a practising litigator and she currently holds an appointment as independent legal adviser to the NSW Legislative Council Regulation Committee.





### **Rose Vassel**

Rose Vassel is a Project Officer and Research Associate at the UNSW Faculty of Law & Justice, working with Professor Rosalind Dixon on civics and democracy projects. She has experience handling international disputes, arbitration and specialist domestic litigation at one of Australia's top law firms, and was previously Associate to the Hon Chief Justice Kiefel AC in the High Court of Australia and the Hon Justice Markovic in the Federal Court of Australia.

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## **PROJECT REPORTS**

### **The Administrative Law and Justice Project**

#### ***Project Director: Janina Boughey***

The Administrative Law and Justice Project brings together UNSW Law & Justice scholars, and the wider government law community, concerned with ensuring those who exercise administrative powers act in accordance with public law principles and values. The Project is particularly interested in the accountability implications of changes in the nature, scope and exercise of government powers since Australia's administrative law 'system' was designed; such as the use of technology in administrative decision-making; mixed public-private administrative arrangements; and the modern use and interpretation of statutes which confer powers on the executive branch.

We are excited to announce that Associate Professor Ellen Rockwill now be co-directing the Administrative Law and Justice Project. Ellen's research on government accountability across public and private law fields will be an extremely valuable addition to the work of the project, the Centre and the Faculty.

In August, the Centre hosted an online panel discussion on the impact and effectiveness of Royal Commissions. The speakers, Dominique Hogan-Doran SC, Dr Scott Prasser and the Hon Ronald Sackville AO KC, shared insights from their different perspectives on when Royal Commissions are an appropriate form of inquiry and oversight, their powers and what makes Royal Commissions effective.

Janina Boughey has continued her DECRA project on government outsourcing, presenting her research at the Public Law Conference in Ottawa and arranging and speaking on a panel on government outsourcing at the annual Australian Institute of Administrative Law (AIAL) national conference, both in July. Janina is continuing her work on the implications of government automation, collaborating with Professor Lisa Burton Crawford (USyd) on a project on automated government information. Janina is also continuing her work on statutory interpretation, in collaboration with Associate Professor Oren Tamir (Arizona) and Professor Burton Crawford. Janina spoke in an online seminar hosted by the AIAL NSW Branch on the US Supreme Court's decision in *Loper Bright Enterprises v Raimondo*, overturning *Chevron* deference, along with Oren and Lisa. They hosted a workshop at UNSW on 9 and 10 December on comparative statutory interpretation, with leading scholars on statutory interpretation from across the common law world participating.

Chantal Bostock has continued her research (with Frances Simmons) on administrative review processes for vulnerable applicants. They published an article in the *UNSW Law Journal* on the Vulnerable Persons Guidelines and the Role of Legal Representatives and presented this research at the International Association of Refugee and Migration Judges Conference in Melbourne on 25 November.

Ellen Rock has continued her research into government accountability and liability. Ellen is currently working on two research projects, the first mapping out the connection between the unlawful exercise of statutory power and government liability in tort, and the second exploring the important role of administrative law in bolstering public trust. Ellen has recently completed a funded research project for the NSW Coalition of Aboriginal Peak Organisations (CAPO) investigating the effectiveness and impact of the powers held by different accountability and integrity bodies. This research has informed CAPO's report *NSW Independent, Aboriginal-led, Government Accountability Mechanism* presented to NSW Government in September 2024.

### **Comparative Constitutional Law Project**

**Project Director: Rosalind Dixon / Deputy Director: Elisabeth Perham**

The CCL project has had a busy six months. In late August, the project helped co-host the inaugural in-person meeting of the Australia-NZ chapter of the International Society of Public Law (ICON-S) – an event that brought together colleagues from across Australia and New Zealand to discuss topics in comparative public law. As part of that, Elisabeth Perham chaired the first plenary session on the topic of 'Comparison from the Antipodes', featuring remarks from Professor Adrienne Stone (Melbourne Law School) and Professor Claire Charters (Auckland Law School). The conference was very successful, attracting scholars from across Australia and New Zealand.

The project also hosted a special seminar with Oxford Professor Nick Barber on positive constitutionalism in comparative and theoretical perspective. The seminar focussed on a recent symposium on the topic in Australia, but drew on Barber's globally important work on the topic to provoke broad-ranging conversation about the scope and significance of these ideas in Australia and more generally. The panel featured presentations from Professor Adrienne Stone (Melbourne Law School), Associate Professor Will Partlett (Melbourne Law School), Professor Will Bateman (ANU College of Law) and Dr Lynsey Blayden (University of Sydney Law School), as well as Centre and Project Director Rosalind Dixon.

In addition, the project collaborated with the US Studies Centre at the University of Sydney to host Professor Amanda Tyler (UC Berkeley Law) to discuss recent and upcoming developments in US constitutional law. This was the third visit by Professor Tyler to the Centre, and the event was especially timely in light of the recent US presidential election, an election directly influenced by a number of important constitutional decisions of the US Supreme Court.

During June and July, Project and Centre Deputy Director Elisabeth Perham travelled to Europe to undertake a research visit in Dublin, and to attend conferences in Germany and Spain. Her research visit was hosted by Trinity College Dublin as part of the G+T Centre's relationship with the Trinity Centre for Constitutional Studies (TriCON), and provided the opportunity for numerous enriching conversations with TCD researchers on constitutional matters of mutual interest, as well as to deepen the already strong connection between the G+T Centre and TriCON. Elisabeth also, at the invitation of Professor Philipp Dann, presented research at the World Comparative Law Annual Conference at Humboldt University in Berlin (also attended by Centre HDR Members Douglas McDonald-Norman and Surbhi Karwa, who also presented work, and Daniel Bógea). Finally, she attended the ICON-S Global Conference in Madrid, presenting research and co-convening an ICON-S Interest Group on Constitution Making (and on Teaching, discussed in the Public Law Teaching Project Report). At the ICON-S Global Conference, Elisabeth also, on behalf of the Centre, offered remarks at the Emerging Scholars Reception, which was held to provide a supportive networking opportunity for early career academics at the conference.



Dr Elisabeth Perham with Professor David Kenny (Head of School, Law School, Trinity College Dublin) in July 2024



Professor Rosalind Dixon offers remarks the launch of William Partlett's new book *Why the Russian Constitution Matters*, chaired by Dr Svetlana Tyulkina and held on 5 December 2024 as part of the Comparative Constitutional Law Roundtable

The Project also enjoyed hosting its annual Comparative Constitutional Law roundtable in December, involving visits and presentations from a range of public law scholars from across Australia and the world.

### **Constitutional Democracy Project**

#### ***Project Director: Rosalind Dixon***

In August, the Project conducted the second Student Representative Council (SRC) Workshop with SRC representatives from three of the four participating public schools, giving students an opportunity to collaborate with peers from different schools and develop ideas and action plans for their term on the SRC. Schools are now conducting the final round of student surveys, which will complete the evaluation component of the trial and give us an insight into whether there has been a measurable increase in knowledge and understanding of democratic principles among students.

In September, over 500 students from 19 high schools across NSW participated in the #writingdemocracy Challenge – a letter-writing challenge designed to teach students about our democratic institutions and decision-makers and motivate them to press for positive social change for their schools and communities. On Wednesday 20 November, 70 of those students attended a final workshop at NSW Parliament House. There they worked with other students and the fantastic facilitators from the Story Factory to discuss their ideas and refine their letters, which were sent to the Secretary of the Department of Education or their local councillor.

### **Constitutionalism in the Global South Project**

#### ***Project Director: Melissa Crouch***

In her role as president of the Asian Studies Association of Australia, Melissa contributed to its biennial conference hosted by Curtin University, Perth, from 1-4 July 2024. Prior to the conference, a workshop was held for 80 HDR students and early career participants. The interdisciplinary conference included several hundred academics and students from around Australia and across Asia.

At UNSW, in July, Melissa hosted a HDR methods session on qualitative fieldwork with visiting Professor Ben Schonthal from Otago University. In October, Melissa hosted a visiting delegation from the Indonesian Judicial Commission (the peak national body with responsibility for oversight of the judiciary) including Commissioner Dr Binziad Kadafi. This term, our Indonesian PhD and LLM students at UNSW Law organised a reading group of focused on current decisions of the Indonesian Constitutional Court.

Continuing collaborations with law schools in Indonesia, Melissa gave online talks at conferences organised by the Faculty of Law Universitas Diponegoro (UNDIP), Semarang, and the Faculty of Law, Malikussaleh University, Aceh. In late November, a delegation from several Indonesian law schools visited UNSW Law & Justice, including leaders from the Al Azhar University Indonesia; North Sumatera University and the Universitas Dahlan Yogyakarta.

### **Free Speech, Social Media and Online Speech Project**

#### ***Project Director: Daniel Joyce***

This newly created project builds on the Centre's expertise in human rights and freedom of expression in order to contribute to current debates and regulatory developments regarding social media and online speech. Daniel was invited to present his developing research on 'Meta's Oversight Board: A Critique' at the Institute for International Law and the Humanities at Melbourne Law School on 17 July 2024. Daniel also chaired and helped to organise a Legal Hour event held by UNSW Law & Justice on 'Misinformation and the Media' on 10 October 2024 with panellists Scientia Professor Megan Davis, Associate Professor Alyce McGovern, Ben Doherty and Kevin Lynch.

## **Gender & Public Law Project**

### ***Project Co-Directors: Rosalind Dixon and Gabrielle Appleby***

The Gender & Public Law project continued its work supporting the NSW Pathways to Politics for Women program ('PTP'), including supporting the national roll-out of the program (2024 was the first year in which PTP ran in all states and territories) and its [knowledge hub](#).

In addition, August-September saw the fourth iteration of the program in NSW, via a mix of in-person and online programming, culminating in a speeches day held at the NSW Parliament. The 2024 NSW PTP program was co-directed by Centre Director Rosalind Dixon and Centre Deputy Director Elisabeth Perham, and supported by Marian Iskander as Assistant Director.

The program this year featured 29 women (cis and trans), including 5 women from the ALP, 2 Greens, 8 Liberal-National women, and another 14 participants identifying as independent or non-aligned. It also included 5 women identifying as LBTQIA+, 23 from a culturally diverse background, 9 from a disadvantaged socio-economic background, 8 with a disability or chronic medical condition, and 13 from a regional, rural or isolated background.

The September local government elections in NSW also saw 21 alumnae of the program running for office, with 10 women successfully winning a seat on their local councils – including in the Hills Shire, Wingecarribee, Kuringai, Ballina, Waverley, Orange, Bayside, and Glen Innes councils. 2023 alumna, Margot Davis, was also elected as Mayor of Glen Innes following her election to council – and some encouragement from the PTP team!

## **Indigenous Legal Issues Project**

### ***Project Director: Sean Brennan***

In August the Centre hosted a seminar entitled Native Title and the Constitution about test case litigation by the Yolngu people that is currently before the courts. The significance of the case and the public interest in it was reflected by strong attendance in person and online. The seminar featured as speakers Project Director Sean Brennan, new UNSW colleague and Centre member Ashleigh Barnes, and Lael Weis from Melbourne University, and it was moderated by Centre Director Rosalind Dixon. All three speakers had been able to travel to Darwin in early August to observe the three-day High Court hearing of a Commonwealth appeal from a 2023 decision by the Federal Court. The appeal concerned findings by a bench of three Federal Court judges on preliminary legal issues, in what has already become long-running, test case litigation about Commonwealth liability for native title extinguishment in the Northern Territory (NT).

In 2019, the now deceased leader, Yununpingu, launched a claim for compensation under the *Native Title Act 1993* (Cth), on behalf of the Gumatj, a clan of the Yolgnu. The claim relates to an area in North East Arnhem Land that has seen decades of mining and industrialisation associated with the extraction, processing and refinement of bauxite deposits on a massive scale. The parties agreed to separate off some questions of law for prior consideration, given their potential to influence the subsequent course of the compensation claim. The Federal Court found in favour of the Aboriginal parties on these question in 2023 and the Commonwealth opted to appeal on some of them.

One question before the High Court in August concerned extinguishment under the law of native title. Particular attention, however, has been trained on two other distinct grounds on which the Commonwealth relies to deny liability. Both of them concern the applicability of the guarantee in the Constitution that Commonwealth laws for the 'acquisition of property' should be accompanied by 'just terms' (s 51(xxxi)). The Yolngu say there was an absence of just terms when the Commonwealth legally asserted Crown ownership of minerals via an Ordinance made in 1939 and when it later granted special leases to mining companies over Yolngu country. Constitutionally, those were invalid acts and they achieved 'validation' only by way of provisions in the i which give the affected native title holders a right to recover compensation.

The Commonwealth disagrees, first by saying that when the Commonwealth legislated directly for the NT solely under its power in s 122 of the Constitution (the power to make laws for the government of a Territory), it was not bound by the just terms guarantee. It is a disjunctive view of the Territories power under the federal Constitution that has been losing ground in the High Court for decades. The Commonwealth displays a stubborn attachment to it, despite the view of many, including now the Federal Court, that it was rejected for the purposes of s 51(xxxi) in 2009.

Secondly, the federal government says that native title should be assigned to a category of interests that are treated as 'inherently defeasible' and thus do not attract just terms protection when acquired under Commonwealth law. The only rights the High Court has so far held to be inherently defeasible for the purposes of s 51(xxxi) are statutory rights self-evidently capable of being amended or abolished by later legislation. And even some statutory rights stand outside the exempt category. The Aboriginal parties say the category is inapplicable to a property interest (native title) which embodies a deep, inter-generational connection with country that pre-dates the assertion of Crown sovereignty.

The High Court's decision on these preliminary questions in the Yunupingu litigation will be very significant for the Yolngu and for many other native title groups across the territories, and it can be expected to have wider legal and political implications. To date, compensation for validation of extinguishing acts has been thought by many to apply only after October 1975, when the federal *Racial Discrimination Act* came into operation. By invoking the Constitution and its just terms property guarantee, the Yolngu seek to push back much further into the past the point at which governments become liable for past dispossession of First Nations peoples. It is a very consequential moment in Australian law.

Two blog posts based on presentations at the Centre seminar, from Sean and Lael, are available on AUSPUBLAW. Sean is grateful for the Faculty and Centre support that helped make his visit to Darwin in August possible. During the second half of 2024, Sean has been on study and long service leave, mainly working on a textbook about Indigenous legal issues and other writing about the Yunupingu litigation.

### **Judiciary Project**

#### ***Project Director: Gabrielle Appleby***

While Gabrielle has been on maternity leave for the year, there have been a number of exciting developments for the work of the Judiciary Project. In June this year, following Gabrielle's recent MacCormick Fellowship, she was invited by Professors Amalia Amaya Navarro and Claudio Michelon back to the University of Edinburgh for a conference entitled Public Exemplarity, Character, and Legal Culture, which explored the idea of public exemplars in the judicial and legal spheres. Gabrielle presented a paper that considered how judicial codes of conduct, and specifically the challenge of articulating standards of conduct with sufficient specificity, could be constructively informed by judicial exemplars, and how this might be sourced in critical judicial biography.

In July, Gabrielle co-hosted a workshop in Madrid with Professor Erin Delaney (UCL/NorthWestern) and Dr Elisenda Casanas Adam (Edinburgh) entitled 'Mapping Judicial Federalism'. The workshop extended Erin and Gabrielle's recent publication in the *Yale Law Journal*, 'Judicial Legitimacy and Federal Judicial Design: Managing Integrity and Autochthony', to commence a larger collaborative comparative study of the judicial architecture of federal systems. The purpose of the workshop was to collaboratively outline questions and consider what a cross-country template might look like for a large-scale comparative study of judicial architecture. It was the start of an ongoing conversation and network of judicial federalism scholars globally.

Since December 2023, Gabrielle has been involved in various ways with the response to the criminal allegations and now convictions against Tasmanian Supreme Court Justice Gregory Geason. This has included briefing the Tasmanian Legislative Council, a joint submission on the government's Judicial Commissions Bill, and a further briefing to the Legislative Council on this Bill. She has appeared on the 7:30 Report and the Law Report speaking on the issue, and has written two opinion pieces for The Mercury on the importance of longer-term reforms in light of the Geason case to ensure there is an independent and robust complaints system in place for the future.

In October 2024, the Council of Chief Justices appointed Gabrielle as advisor on the Committee to review the Guide to Judicial Conduct. The Committee is led by the Honourable Virginia Bell AC, and includes the Honourable Justice Murray Aldridge (President, Australasian Institute of Judicial Administration) and Professor Judith Cashmore AO (University of Sydney) (Advisors). This work will commence in December 2024.

### **Public Law Teaching Project**

#### ***Project Directors: Elisabeth Perham and Svetlana Tyulkina***

The Project Directors are looking forward to the 11th iteration of the Public Law in the Classroom Workshop, to be held on 6 February 2025 at UNSW and online. In 2025, the workshop will focus on assessment, student engagement, and micro-skills, and provides the opportunity for public law teachers from across Australia (and beyond) to continue conversations on the important activity of teaching core courses in public law, administrative law and constitutional law in our law schools.

The Project Directors, Elisabeth and Svetlana, also convened the inaugural meeting of a new ICON-S Interest Group on Public Law Teaching at the Annual Conference of ICON-S in Madrid in July 2024, and are now busy connecting with like-minded colleagues globally, working to develop a more global network for discussions of public law teaching.

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## **PUBLICATIONS AND PRESENTATIONS**

### **PUBLICATIONS**

#### **Ashleigh Barnes**

Ashleigh Barnes, 'Stare Decisis and Constitutional Guarantees: Commonwealth v Yunupingu' (2024) 46(3) *Sydney Law Review* (advance).

#### **Janina Boughey**

'Administrative Justice in the Modern Mixed Administrative State: Moving Beyond Taxonomies' (2024) 44(3) *Oxford Journal of Legal Studies* 591.

## **Melissa Crouch**

'The Military Turn in Comparative Constitutional Law: The Military and the Constitution in Authoritarian Regimes' (2024) *20 Annual Review of Law & Social Science* 53.

'What Counts as Constitutionalism in the Global South? An Anthropological Perspective' (2024) 3(1) *Comparative Constitutional Studies* 1.

'The Rise and Decline of Constitutionalism in the Global South: The Case of Indonesia's Constitutional Court' (2024) *57 VRÜ/World Comparative Law* 147. (As part of a symposium on the book: Melissa Crouch (ed), *Constitutional Democracy in Indonesia* (Oxford University Press, 2023)).

## **Rosalind Dixon**

'In this Issue; Guest Editorial: Unsexing Scholarship? Towards Better Citation and Citizenship Practices in Global Public Law' (2024) 22(2) *International Journal of Constitutional Law* 245 (with Mila Versteeg).

'Dynamic, Regressive, or Obstructionist Courts? What Kinds of Hopes for Judicial Review' (2024) *Law and Social Inquiry* (advance).

'A Global Constitutional Canon v Quasi-Canon? Towards a More Informed and Inclusive Comparative Constitutionalism' in Sujit Choudhry, Michaela Hailbronner and Mattias Kumm (eds), *Global Canons in an Age of Contestation: Debating Foundational Texts of Constitutional Democracy and Human Rights* (Oxford University Press, 2024) 29.

'Justification by Constitution and Tiered Constitutional Design' (2024) 50(7) *Philosophy and Social Criticism* 1051.

'Responsive Constitutionalism in Australia' (2024) 52(3) *Federal Law Review* 359.

## **Harry Hobbs**

'Towards A Legal Era of Islands: The International and Constitutional Legal Status of Island Territories' (2024) 73(3) *International and Comparative Law Quarterly* 609 (with Donald Rothwell).

'Taking Stock of Indigenous-State Treaty-Making in Australia: Opportunities and Challenges' (2024) 47(2) *UNSW Law Journal* 548.

'Treaties and Modern Agreements with Indigenous Peoples' in Mattias Åhrén et al (eds), *Oxford Handbook on Indigenous Peoples and International Law* (Oxford University Press, Advance Online).

## **Daniel Joyce**

'Furnishing Legal Lives' in Alex Burchmore (ed), *Material Selves: Object Biographies and Identities in Motion* (Bloomsbury, 2024) (with Jessie Hohmann).

'On international law and Gaza: critical reflections' (2024) 12(2) *London Review of International Law* 217 (with Tor Krever et al).

'Review of Carolyn N. Biloft. A Violent Peace: Media, Truth, and Power at the League of Nations' (2024) 35(2) *European Journal of International Law* 517.

## **Surbhi Karwa**

'Towards Grounding Differences: Review Essay on South Asian Comparative Constitutional Studies' *Comparative Constitutional Studies* (September 2024, advance online).

## **PRESENTATIONS**

### **Ashleigh Barnes**

'Constitutional Values and the Principle of Legality', Principle of Legality Workshop, Sydney, 16 August 2024,

'Dignity and *NZYQ*', Presentation at the ICON-S ANZ Conference, Sydney, 29-30 August 2024.

'Native Title and the Constitution: Past and Future Prospects', Gilbert + Tobin Centre of Public Law Hybrid Seminar, Sydney, 14 August 2024.

'Overruling Constitutional Precedent: A Comparative Perspective' Presentation at the ICON-S ANZ Conference, Sydney, 29-30 August 2024 (with Jemimah Roberts)

'The Future of Public Law in Australia: A Conversation', Gilbert + Tobin Centre of Public Law Discussion (as part of the UNSW Law & Justice '+Justice Festival'), Sydney, 27 June 2024.

### **Janina Boughey**

'Administrative Justice in Public and Private Prisons', Presentation at the Public Law Conference, Ottawa, 4 July 2024.

'Outsourcing administrative functions: an ongoing and evolving challenge for administrative law', Presentation at the AIAL Conference, Canberra, 19 July 2024.

'The implications of *Loper Bright* for deference in Australia', AIAL NSW Webinar, 8 August 2024.

### **Sean Brennan**

'A Constitutional Case Testing Australian Government Liability for Aboriginal Dispossession', Presentation at the ICON-S AUS-NZ Chapter Conference, Sydney, 30 August 2024.

Native Title and the Constitution: Past and Future Prospects, Gilbert + Tobin Centre of Public Law Hybrid Seminar, Sydney, 14 August 2024.

### **Rosalind Dixon**

'A Commonwealth Human Rights Act and *Momcilovic* Revisited', Presentation at Principle of Legality Workshop, Sydney, 16 August 2024 (with Lisa Burton Crawford and Bruce Chen).

'Freedom and Security: Maintaining the Balance in Challenging Times', Keynote address at NSW Council for Civil Liberties 2024 Annual Dinner, Sydney, 22 August 2024.

Panel Discussion at Women in the Alliance Dinner, United States Studies Centre, Sydney, 28 October 2024.

'Promoting the Political Participation of Young Women and Girls: Pathways to Politics', Address at 67th Commonwealth Parliamentary Association Conference, Sydney, 4 November 2024.

'Thematic Session 4: Strategies for Resistance and Resilience', Workshop Session at 'Designing Resistance to Democratic Backsliding in Asia', International IDEA, 13 November 2024 (via Zoom).

Theorising Constitutions – Comparatively: On Inductive, Illustrative and Reflexive Constitutional Comparison', Presentation at the ICON-S ANZ Conference, Sydney, 30 August 2024 (with Elisabeth Perham).

### **Harry Hobbs**

'The Rise of Sovereign Citizens: Why the Law Doesn't Apply to Me', Address to the Australian Judicial Officers Colloquium, Canberra, 13 October 2024.

'Sovereign Citizens and the Strawman Trap', Presentation to the South Australian Judicial Development Program, 1 November 2024.

'Treaty-making and Legal Pluralism', Presentation at the Pluralising Legalities Workshop, Otago, 8 August 2024.

DECRA Project Roundtable, Roundtable held at ICON-S ANZ Conference, Sydney, 29 August 2024.

### **Shakhawat Hossain**

'Impact of Over-Speaking by the Chief Justice on Public Confidence in the Judiciary of Bangladesh', Presentation at the at ICON-S ANZ Conference, Sydney, 30 August 2024.

### **Douglas McDonald-Norman**

'Rights of Refugees against Deportation to Danger' (with Sahana Basawapatna) Presentation at the Alternative Law Forum, Bangalore, 23 August 2024.

'The Canary: Administrative Tribunals and Democratic Decline in India', Presentation at ICON-S 2024 Global Annual Conference, IE Law School, Madrid, 8-10 July 2024.

'The Canary: Administrative Tribunals and Democratic Decline in India', Presentation at the World Comparative Law Annual Conference, Humboldt University of Berlin, 4-5 July 2024).

### **Elisabeth Perham**

'Emerging Scholars Reception', panel remarks at ICON-S 2024 Global Annual Conference, IE Law School, Madrid, 8 July 2024 (with Michaela Hailbronner and Antonios Kouroutakis).

'Modes of External Constitutional Advising', Presentation at the World Comparative Law Annual Conference, Humboldt University of Berlin, 4-5 July 2024.

'Theorising Constitutions – Comparatively: On Inductive, Illustrative and Reflexive Constitutional Comparison' Presentation at ICON-S 2024 Global Annual Conference, IE Law School, Madrid, 8 July 2024 (paper co-authored with Rosalind Dixon).

'Theorising Constitutions – Comparatively: On Inductive, Illustrative and Reflexive Constitutional Comparison', Presentation at the ICON-S ANZ Conference, Sydney, 30 August 2024 (with Rosalind Dixon).

### **Shohini Sengupta**

'The Enumerative Indian State and the Cyborg Monster', Presentation at the UNSW HDR Salon, Sydney, 22 October 2024.

'The Enumerative Indian State and the Cyborg Monster', Presentation at the AAS-in-Asia Conference in Yogyakarta, Indonesia, June 2024.

## **MEDIA PUBLICATIONS**

### **Sean Brennan**

'Commonwealth v Yunupingu: A Constitutional Case Testing Commonwealth Liability for Aboriginal Dispossession' on *AUSPUBLAW* (30 October 2024) <<https://www.auspublaw.org/blog/2024/10/commonwealth-v-yunupingu-a-constitutional-case-testing-commonwealth-liability-for-aboriginal-dispossession>>.

### **Rosalind Dixon**

'Why Abortion Did Not Stay on the Ballot', *Australian Financial Review* (online, 8 November 2024) <<https://www.afr.com/world/north-america/why-abortion-did-not-stay-on-the-ballot-20241105-p5ko23>>.

### **Douglas McDonald-Norman**

'LAOT Podcast #7: In Conversation with Douglas McDonald-Norman on Refugee Law and Intersection of Australian and Indian Scholarship' on *The Law and Other Things Podcast* (13 November 2024) <<https://open.spotify.com/episode/1qbHfew94HmQCT6PW5DkLx>>.

'Indefinite Tense: Detaining Non-Citizens in India and Australia' on *The NLS Blog* (16 October 2024) <<https://www.nls.ac.in/blog/indefinite-tense-detaining-non-citizens-in-india-and-australia>>.

'The lifeless clause: Refugees and Article 21 of the Indian Constitution' on *The Leaflet* (15 August 2024) <<https://theleaflet.in/the-lifeless-clause-refugees-and-article-21-of-the-indian-constitution>>

'Foreigners Tribunals and Burdens of Proof: The Supreme Court's Judgment in Md. Rahim Ali' on *Constitutional Law and Philosophy* (22 July 2024) <<https://indconlawphil.wordpress.com/2024/07/22/foreigners-tribunals-and-burdens-of-proof-the-supreme-courts-judgment-in-md-rahim-ali-guest-post>>.

## **Elisabeth Perham**

'Author Interview with William Partlett: Why the Russian Constitution Matters' on *IACL-AIDC Blog* (19 November 2024) <[blog-iacl-aidc.org/v-book-interv/2024/11/19/why-the-russian-constitution-matters-the-constitutional-dark-arts](https://blog-iacl-aidc.org/v-book-interv/2024/11/19/why-the-russian-constitution-matters-the-constitutional-dark-arts)>.

## **SUBMISSIONS**

### **Melissa Crouch**

Submission of the Asian Studies Association of Australia to the Australian Research Council consultation on Policy Reform (30 April 2024, authored by Melissa Crouch) <[asaa.asn.au/wp-content/uploads/2024/06/Submission-to-govt-ASAA-30042024.pdf](https://asaa.asn.au/wp-content/uploads/2024/06/Submission-to-govt-ASAA-30042024.pdf)>.

Submission of the Asian Studies Association of Australia to the New Colombo Plan External Advisory Group (26 October 2024, authored by Melissa Crouch) <[asaa.asn.au/wp-content/uploads/2024/10/2024-Submission-to-the-New-Colombo-Plan-External-Advisory-Group.pdf](https://asaa.asn.au/wp-content/uploads/2024/10/2024-Submission-to-the-New-Colombo-Plan-External-Advisory-Group.pdf)>.

### **Rosalind Dixon**

Rosalind Dixon, Evidence to Joint Standing Committee on Electoral Matters, Parliament of Australia, Sydney, 3 October 2024 (with Rose Vassel).

## **GRANTS**

### **Melissa Crouch**

In August 2024, Melissa was awarded an ARC Future Fellowship on 'Defending Constitutional Democracy: The Military and the Constitution in Asia'. There is currently an opportunity for applications for PhD scholarships as part of the project; applications close 13 January 2025. See the UNSW Law & Justice [website](#) for more details.

## **AWARDS**

### **Ashleigh Barnes**

Australian Academy of Law Annual Essay Prize 2024.

### **Melissa Crouch**

Honourable Mention, Postgraduate Supervisor of the Year Award 2024 (Law), UNSW Postgraduate Council and Graduate Research School.

### **Surbhi Karwa**

Awarded Letten Visiting Fellowship to undertake part of PhD research at LSE Law School between January and April 2025.

### **Shohini Sengupta**

Awarded the DFCRC Top-up Scholarship Award, September 2024 for \$15,000 per annum, renewable annually for up to three years (<https://dfcrc.com.au/top-up-scholarship/>)

# CENTRE PERSONNEL

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