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GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER DECEMBER 2022

DIRECTOR AND DEPUTY DIRECTOR'S REPORT

Dear Centre supporters and friends,

It has been a busy few months, with a welcome return to more hybrid and face-to-face events and teaching at UNSW, and the opportunity to reconnect with many of you in person. We are also pleased to announce that we have decided to offer our February conference in hybrid mode, with up to 100 in-person registrations available on a first-come, first-served basis. Following the success of recent events in this format, the conference will be held at Gilbert + Tobin in Barangaroo and followed by drinks in Sydney as well as satellite drinks in every capital city where there is interest. Details of the conference and how to register can be found [here](#).

A major focus for many public lawyers in recent months has been supporting the campaign for a referendum to entrench a First Nations Voice to Parliament, and our colleagues Professor Gabrielle Appleby and A/Professor Sean Brennan have been at the forefront of this work along with Professor Megan Davis and colleagues at the Indigenous Law Centre. Dr Paul Kildea and Scientia Professor and Deputy Vice-Chancellor George Williams have also contributed to debates about reform of the referendum machinery legislation aimed at improving the referendum process, and several Centre colleagues were fortunate to attend the recent Blackshield lecture on the topic by Gilbert + Tobin chair and advisory committee member, Danny Gilbert.

Another key focus of reform has been the rules governing the impartiality of and appointment of the judiciary. The Judiciary Project, led by Professor Appleby and UNSW Law Dean Andrew Lynch, hosted a high-level judicial-scholarly roundtable on the topic in November, and continue to contribute to public debate on reform in this area. In September, Professor Rosalind Dixon also gave a talk to the Australian Academy of Law on the topic.

In October, we were fortunate to be able to step back and reflect on some successful reform efforts – in the context of the Collaery Case and commitments to open justice. As you will no doubt be aware, Mr Collaery was charged with espionage offences relating to his public interest disclosures in relation to Australia's dealing with East Timor, and was subject to criminal prosecution without access to much of the material on which the prosecution was based. The case was defended pro bono by Gilbert + Tobin and a long list of leading Australian counsel, and Attorney-General Mark Dreyfus KC ultimately dropped all charges in the matter. The event co-hosted by the firm and Centre in October reflected on this remarkable process, and the gains as well as threats to the rule of law in this context. The recording of the event can be found [here](#).

Around the same time, the Centre also marked the culmination of the second Pathways to Politics Program for Women, and saw over 20 graduates from a wide range of parties and backgrounds – including three First Nations women, and many others from CALD backgrounds, as well as several UNSW and Gilbert + Tobin alumnae! We were fortunate to have the chance to celebrate the culmination of the program on September 23 in the NSW Parliament along with many friends and supporters, and to hear 'maiden speeches' from participants setting out their vision for a better and more inclusive form of Australian politics. As our report later in the newsletter notes, I have also continued to work with Centre colleagues and graduates on promoting related structural reforms to Commonwealth and state parliaments to make them more inclusive.



Rosalind Dixon
Centre Director



Lisa Burton Crawford
Centre Deputy Director



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10 FEBRUARY 2023

Constitutional Law Conference – Hybrid (in-person at the Gilbert + Tobin office in Barangaroo, Sydney and online via Zoom), with satellite cocktail parties in major Australian cities (TBC).

For details of Centre events, publications, submissions and so on please either go to our website: gtcentre.unsw.edu.au, or join our mailing list by [clicking here](#).

The Centre has been fortunate to host a rich and varied set of discussions with authors from around the world as part of our ongoing Global Public Law Virtual Book Seminar series, on Mark Tushnet's *The New Fourth Branch*, Mark D Walter's *AV Dicey and the Common Law Constitutional Tradition*, Christopher Bickerton and Carlo Invernizzi Accetti's *Techno-Populism*, and Berihun Gebiye's *A Theory of African Constitutionalism*. Further details of these events can be found in this newsletter. We are looking forward to continuing this very successful seminar series next year.

We have also been fortunate to welcome several visitors post the re-opening of international travel to Australia. Julius Yam from Hong Kong University and Dr Dian Shah from the National University of Singapore visited in September and November respectively, pursuant to our Centre-Centre exchange arrangements with KHU's Centre for Public and Comparative Law and NUS's Centre for Asian Legal Studies. We have also been fortunate to welcome Professor Malcolm Langford, Professor at Oslo, as a visiting professor and fellow at the Centre for the year. Malcolm has already participated in a range of Centre events, including a methodological session for HDR students in November.

The Centre has likewise continued to expand its international partnerships, recently signing a formal memorandum of understanding with Trinity College Dublin and its Centre for Constitutional Law and Governance (TriCon). To mark the beginning of this partnership, several Centre members also spent time at TriCon in July this year, as part of attending the Cambridge Public Law Conference in Dublin.

The Comparative Constitutional Law project continued to deepen ties with global public law scholars, including via a new online Global Junior Scholars forum and Global Book development program. This program saw 16 scholars from around the world work with me over 12 weeks to explore common methodological challenges and build scholarly community and connections, and was well received by all – including several Centre early career researchers who joined as fellows.

In addition, the project hosted its annual work in progress roundtable in late November, and welcomed scholars from Ireland, Germany, Taiwan, the US and around Australia in this context.

November also saw the release of a report by former Justice Virginia Bell on Prime Minister Scott Morrison's overlapping ministerial commissions. The report included a number of reform recommendations consistent with recommendations made by Professors George Williams, Rosalind Dixon and Anne Twomey in a panel discussion on the issue in August. The panel was convened at short notice and immediately followed a press conference by Morrison on the issue, and was the Centre at its best – working closely with colleagues in UNSW's Department of External Relations. For those interested, the panel recording is available on the [Centre website](#).

In less happy news for the Centre, in December we are farewelling our Deputy Director A/ Professor Lisa Burton Crawford, who has been an integral part of the Centre for the last few years – as Deputy Director, but also Director of the Centre's Statutes project, and key contributor along with A/Professor Janina Boughey to the administrative justice project and the Centre's public law and technology collaboration with the Allens Hub for Law, Technology and Innovation. Lisa, however, has been appointed as a Professor at the University of Sydney – a wonderful acknowledgment of her many research and teaching achievements, and we look forward to continuing to work with her in a range of contexts, including in a new inter-university network on Constitutional Resilience.

December also marks the departure of Centre post-doctoral fellow Dr Lynsey Blayden who is leaving to take up a position as a lecturer at the University of Sydney. Lynsey has had a long and valued association with the Centre, including as a teaching fellow and HDR student, and most recently served as the co-director of the Pathways to Politics Program for women. She again will be greatly missed, but will continue to remain involved in Centre events as an alumna.

Lisa and Lynsey have all at various points played crucial roles in editing the Auspublawblog, which is now edited by a team consisting of Professor Gabrielle Appleby, Douglas McDonald-Norman and Laura Ismay. The blog continues to go from strength to strength under their leadership, and we are extremely grateful to them all for their work in this context – especially Gabrielle for returning to the blog, after a period away from editing. The blog was initially the brainchild of Gabrielle and former Director Sean Brennan and we are sure you will agree greatly enhances all of our understanding of and engagement with Australian public law developments.

Sincerely,

Rosalind Dixon and Lisa Burton Crawford

2022 Mason Conversation

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CENTRE ACTIVITIES

EVENTS

Mason Conversation 3 August 2022

The 2022 Mason Conversation featured the Honourable Murray Gleeson AC in conversation with Professor Rosalind Dixon. The conversation was wide-ranging, and covered Gleeson's early career and education, his role as Chief Justice of New South Wales and time as Chief Justice of Australia. It also involved reflections on his role on the HK Court of Final Appeal, issues of diversity and representation in the legal profession and Gleeson's role in relation to proposals for a First Nations Voice.

The event was held online via Zoom with nearly 700 registrations, a great success for the Centre and the UNSW Law & Justice Faculty more widely. As always, the event also celebrated the career of Sir Anthony Mason, the Chief Justice of the High Court from 1987 to 95, and the idea inspired by Sir Anthony's example of a "life lived well in the law". You can view a recording of the 2022 Mason Conversation [here](#).

The US Supreme Court in Crisis? 8 August 2022

In August, the Centre hosted US constitutional law scholar, Professor Amanda Tyler, Shannon C. Turner Professor of Law at Berkeley Law and former clerk to Justice Ruth Bader Ginsburg in a discussion with Centre Director Rosalind Dixon and UOW Associate Professor Markus Wagner for a wide-ranging discussion about the US Supreme Court and its recent constitutional jurisprudence. It canvassed many topics, including gun control, school prayer, the administrative state, and most notably constitutional rights of access to abortion. You can watch a recording of the event [here](#).

US Democracy and Elections 24 August 2022

Later the same month, the Centre also hosted a discussion with Harvard Professor Nicholas Stephanopolous and Associate Professor on recent political and electoral developments and their relevant for US and comparative constitutional law. The event was co-hosted by the Gilbert + Tobin Centre of Public Law, United States Studies Centre at the University of Sydney, and Electoral Regulation Research Network (ERRN), and featured discussion with University of Sydney's US Studies Centre's David Smith who joined Professor Rosalind Dixon.

Lessons from the Collaery Case 6 October 2022

In July this year, Attorney-General Mark Dreyfus exercised his power to discontinue the Commonwealth prosecution of Bernard Collaery, bringing an end to a complex, four-year legal dispute. Collaery was charged in 2018 with conspiring with 'Witness K' to communicate information or matter to the Government of Timor-Leste that was prepared by or on behalf of ASIS in connection with its functions or related to its performance of its functions, contrary to the Criminal Code (Cth) and the Intelligence Services Act 2001 (Cth). Collaery was also charged with communicating such information to ABC journalists in 2013. This prosecution has cast a critical light on Australia's secrecy laws and principles of open justice. This event, held in-person at Gilbert + Tobin and online via Zoom, brought together a panel of those directly involved in the case, including Bernard Collaery, and the legal team of barristers and Gilbert + Tobin who defended Collaery (Kate Harrison and Chris Flynn), to discuss the case and its important implications for our legal system. Other speakers included Phillip Boulten SC, Dr Chris Ward SC, The Honourable Gareth Evans AC and Kieran Pender. The event was opened by Professor Rosalind Dixon. You can watch a recording of the event [here](#).

Responsive Judicial Review? A Global Judicial Dialogue 12 December 2022

To conclude the year, the Centre hosted a global virtual judicial dialogue featuring Centre Director Rosalind Dixon in conversation with Justice Stephen Gageler (High Court of Australia), Justice Dhananjaya Y Chandrachud (Chief Justice of India), Justice Luís Roberto Barroso (Supreme Court of Brazil) and former Justice Manuel Cepeda (Constitutional Court of Colombia), and focused on Dixon's forthcoming book [Responsive Judicial Review: Democracy and Dysfunction in the Modern Age](#). The seminar was co-hosted by ICON-S Australia-New Zealand, and chaired by Professor Lisa Burton Crawford.



Global Public Law Virtual Book Seminar Series

Following the success of the 2021 Global Book series initiated during lockdown, 2022 saw the continuation of the series in virtual mode so as to reach as many Centre colleagues and supporters as possible. Once again, the series was extremely well attended and featured dialogue between Centre members and leading global scholars.

The New Fourth Branch by Mark Tushnet 12 August 2022

In August, the Centre hosted Harvard Law School Professor Mark Tushnet, author of [The New Fourth Branch](#), in conversation with Professor Gabrielle Appleby. The event focused on the implications of Professor Tushnet's work for debates in Australia surrounding the design of integrity and other fourth branch institutions in Australia, as well as for global debates on constitutionalism and constitutional design. The session was chaired by Rosalind Dixon. You can watch a recording of the event here. (NOTE: LINK TO COME)

A V Dicey and the Common Law Constitutional Tradition: A Legal Turn of Mind by Mark Walters 2 September 2022

In September, the Centre hosted Professor Mark Walters to discuss his new book on A V Dicey, one of the most influential figures in the common law world. The webinar featured

Professor Walters in conversation with Associate Professor Janina Boughey (UNSW) and Dr Lynsey Blayden (Melbourne Law School/UNSW). This event was chaired by Professor Rosalind Dixon. You can watch a recording of the event [here](#).

Technopopulism: The New Logic of Democratic Politics by Christopher Bickerton and Carlo Invernizzi Accetti 20 October 2022

In October, the Centre hosted Professor Christopher Bickerton (University of Cambridge) and Associate Professor Will Partlett (University of Melbourne) for a discussion of Bickerton's new book, with co-author Carlo Invernizzi Accetti (CUNY), on a phenomenon they label 'technopopulism', in which appeals to technocratic expertise as well as populist invocations of 'the people' represent a new political logic that is being superimposed on the traditional struggle between left and right. The webinar canvassed the relevance of this dynamic in Australian constitutional law and politics, as well as recent global constitutional developments. This event was chaired by Professor Rosalind Dixon. You can watch a recording of the event [here](#).

A Theory of African Constitutionalism by Berihun Gebeye 16 November 2022

Finally, in November the Centre hosted Dr Berihun Gebeye to discuss his important book on [A Theory of African Constitutionalism](#). To discuss the book, Berihun Gebeye was joined in conversation by Professor James Fowkes (Westfälische Wilhelms-Universität, Münster) and Associate Professor Murray Wesson (University of Western Australia). This event was chaired by Professor Rosalind Dixon. You can watch a recording of the event here. (NOTE: LINK TO COME)

UPCOMING EVENTS

2023 Constitutional Law Conference 10 Feb 2023

We invite you to register for a major conference on constitutional law to be held in a hybrid format on Friday 10th February 2023, organised by the Gilbert + Tobin Centre of Public Law at the Faculty of Law and Justice, UNSW, with the support of the Australian Association of Constitutional Law and Federation Press.

The hybrid 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 2022. The conference will include papers on the separation of powers, the implied freedom of political communication, privacy, protective detention, discrimination law, inconsistency between state and federal legislation, and government powers with respect to citizenship, alienage and deportation. The event will be addressed and attended by leading judges, academics, barristers and government lawyers.

The conference will be held in hybrid format, with attendees able to attend in person (100pax capacity; first-come, first-served) 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, both in person and online. A cocktail party will be



hosted at Gilbert + Tobin in Sydney, and smaller cocktail events in most other major cities for those attending remotely. Details will be forward to online attendees closer to the date.

Ticketing Information

- IN-PERSON - Full conference: \$275 (100pax 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

Find out more and register for the 2023 Constitutional Law Conference [here](#).

THE AUSPUBLAW BLOG

Since our last update in the July 2022 newsletter, the AUSPUBLAW blog has experienced change and growth. We now have over 3800 followers on Twitter and nearly 500 followers on LinkedIn. We are delighted to welcome Douglas McDonald-Norman, barrister and incoming PhD student with the Gilbert + Tobin Centre of Public Law, to the team as Joint Editor, and Laura Ismay from the NSW Parliament as Associate Editor.

Even as our editorial team has changed, our goals remain consistent: to publish scholarly analysis of recent cases and public law developments, and to publicise and promote academic research by Australian public law scholars.

In August, the blog hosted a forum on the Australian Law Reform Commission's report and recommendations on judicial impartiality, featuring contributions from Andrew Lynch and Gabrielle Appleby (UNSW); William Isdale and Sarah Fulton (ALRC); Joe McIntyre (University of South Australia); Jessica Kerr (University of Western Australia); and Daniel Ghezlbash (UNSW), Keyvan Dorostkar (Macquarie), Saul Wodak (Behavioural Insights Team) and Robert Ross (Macquarie). This forum addressed the report and its recommendations from a range of legal and interdisciplinary perspectives, promoting public awareness of the ALRC's work and examining the path forward.

Our blog plays an important role in promoting contemporary public law scholarship. In October, we hosted a book forum on Alysia Blackham's *Reforming Age Discrimination Law*, featuring contributions from Emeritus Professor Rosalind Croucher AM (Australian Human Rights Commission), Emeritus Professor Andrew Byrnes (UNSW), Oanh Tran (Young Workers Centre) and Anthony North KC (Victorian Law Reform Commission), plus a response from Alysia (Melbourne). Further book forums will take place before the end of this year.

The blog has remained a home for critical analysis of important developments in Australian and comparative constitutional law. In the aftermath of the United States Supreme Court's judgment in *Dobbs v Jackson Women's Health Organisation*, Theunis Roux (UNSW) discussed the judgment and its implications for Australia's approach to protecting constitutional rights. We have addressed important developments on High Court public law proceedings in *Sharma* (Zoe Bush (EDO)), *Alexander* (Helen Irving (University of Sydney) and *Sangeetha Pillai* (UNSW)), *Montgomery* (Julian R Murphy (University of Melbourne) and *Shireen Morris* (Macquarie)), *Farm Transparency* (Anthony Gray (USQ)), *Nathanson* (Brandon Smith (Allens)), *SDCV* (David Hume (Sydney Bar)) and *Garlett* (Tamara Tulich and Sarah Murray (UWA)).

AUSPUBLAW also continues to publish its monthly roundups of public law events across Australia. We remain very grateful to Kelly Yoon for her invaluable assistance in preparing those roundups.

The blog looks forward to continuing to publish analysis on public law developments and contemporary public law research in Australia. As ever, we welcome contact from any friends of the Centre who would be interested in writing for AUSPUBLAW. To subscribe to the blog, please subscribe at www.auspublaw.org, or follow us on Twitter at @auspublawblog or on LinkedIn. To submit a post to our editors, to propose an idea for a post, or to let us know about an upcoming event, please contact us at auspublaw@unsw.edu.au.

Gabrielle Appleby, Douglas McDonald-Norman and Laura Ismay

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Laura Ismay



Douglas McDonald-Norman



Malcolm Langford

PEOPLE

Malcolm Langford

[Malcolm Langford](#) is a Professor of Public Law, University of Oslo and Director of the [Centre on Experiential Legal Learning \(CELL\)](#), a Centre for Excellence in Education (SFU). An UNSW alumni, his interdisciplinary and multimethod work spans comparative constitutionalism, international law, human rights, technology and the law, and legal education. He is the Co-Editor of the Cambridge University Book Series on [Globalization and Human Rights](#), Co-Editor of the Oxford Handbook on Economic and Social Rights, and was previously the Chairperson of the [Academic Forum for Investor-State Dispute Settlement \(ISDS\)](#) (2019-2021), which assists the UNCITRAL investment arbitration reform process. He is also an Adjunct Professor of Law, University of Bergen and was previously Co-Director of their [Centre on Law and Social Transformation](#) (2014-2021). He is currently working on a book on responsive courts and complex cases, amongst other projects.

PROJECT REPORTS

Administrative Law and Justice Project

Project Director: Janina Boughey

The Administrative Law and Justice Project brings together UNSW Law 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 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.

Two of the Centre's Global Book Series events were on books relating to administrative law. In August, the Gilbert + Tobin Centre's UNSW Global Book Series hosted a seminar on Professor Mark Tushnet's [The New Fourth Branch](#) (CUP 2021), and Professors Gabrielle Appleby and Rosalind Dixon providing commentary on Professor Tushnet's important reflection on the growth of fourth branch integrity institutions. Centre PhD candidate, Sarah Wyatt also has a review of Tushnet's book in the most recent issue of the *Australian Journal of Administrative Law*. In September, Lynsey Blayden and Janina Boughey commented on Mark Walters', [A. V. Dicey and the Common Law Constitutional Tradition](#), in which Walters examines the limitations in Dicey's work and thinking on administrative law (along with other aspects of Dicey's work).

Gabrielle Appleby's work with the NSW Legislative Council's Regulation Committee on their thematic inquiry looking at the reform of management of delegated legislation in the State has now been recognised in the Committee's final [report](#). That report adopted many of Gabrielle's recommendations in the Discussion Paper she prepared for the inquiry, including the consolidation of legislation that provides for the management of delegated legislation in the State, the application of that legislation to all instruments of a legislative character with limited exemptions, greater transparency around the publication of legislative instruments, the expansion of the Regulation Committee's role to scrutiny of instruments of a legislative character that are subject to disallowance, and the issue of greater guidance by the parliament to the government in the making of delegated legislation. Gabrielle has also been involved in the work of the [Centre for Public Integrity](#) and the [Grattan Institute](#), calling for a new process for the transparent appointment of statutory officeholders focussed on quality and diversity. Chantal Bostock has continued her research on migration decision-making, presenting a paper on the impact of criminal deportation on victims of family violence at the International Congress on Feminism, Law and Citizenship in July 2022.

Project members have continued their collaboration with the Allens Hub for Technology, Law and Innovation, on the automation of government processes and digitisation of legislation. Lisa Burton Crawford organised a Rules as Code workshop, where participants discussed a range of public law issues arising from governments' rules as code projects, including the implications for administrative law. Janina Boughey spoke at a range of forums on the opportunities and challenges of governments' use of technology in administrative decision-making, including the NSW Legal Aid conference, and to the NSW Young Lawyers. Janina's other work over the last six months has included: her ongoing project on government outsourcing, on which she presented at the *Public Law Conference* in Ireland in July; and publication in the [Melbourne University Law Review](#) with Anne Carter (Deakin) critically analysing the High Court's approach to constitutional freedoms and statutory executive powers.

Comparative Constitutional Law Project

Project Director: Rosalind Dixon

The Comparative Constitutional Law Project has had a busy six months. In July-September, the Project ran a global Virtual Junior Scholars and Book development program featuring methodological training and substantive feedback on works in progress by junior scholars from around the world, including scholars trained in or working on constitutionalism in Cameroon, South Sudan, Brazil, Colombia, Mexico, India, Sri Lanka, Italy, Germany and Portugal.

In August, the Project hosted several seminars focused on the US Constitution in comparative perspective.

In November, the Project hosted the 10th iteration of the Centre's annual Comparative Constitutional Law roundtable. This event has become a feature on the Australian public law calendar, and was organised over two days this year in hybrid mode, in May and November. In November, papers presented at the workshop included papers on environmental constitutionalism, authoritarian constitutionalism, Asian constitutionalism, constitutional amendment and judicial review, and presenters included Professor James Fowkes (Munster), A/Professor Will Partlett (Melbourne), Dr Brian Tiojanco (Tokyo), A/Professor Chien-Chih Lin (Sinica Taiwan), Dr Dian Shah (NUS), Professor Oran Doyle (Trinity) and Professor Matthew Qvortup (Coventry).

The workshop involved a special panel discussion, co-hosted by UNSW's Institute for Global Development, on *Culturally-Rooted Constitutionalism*. The panel featured a moderated discussion with experts from International IDEA, the IGD and scholars from Sri Lanka and South Sudan, namely: Drs Joseph Geng Akech, Dinesha Samararatne, Kimana Zulueta-Fülscher and Iain Payne.

The workshop also culminated in a book launch by Centre visitor, Professor Malcom Langford of the new book by Harry Hobbs and our own DVC and Scientia Professor George Williams on *Micronations and the Search for Sovereignty* (CUP 2022).

Immediately after the workshop, the Project also hosted a one-day workshop on *Democratic Equality, Representation & Responsiveness in Australia: A Comparative Constitutional Perspective*. This workshop featured papers from Laureate Professor Adrienne Stone (Melbourne), A/Professor Will Partlett (Melbourne), A/Professor Will Bateman (ANU), Professor Rosalind Dixon (UNSW), Dr Lynsey Blayden (UNSW), Centre visitor Professor Malcolm Langford (Oslo) and A/Professor Patrick Emerton (Deakin).

Gender and Public Law Project

Project Co-Directors: Gabrielle Appleby and Rosalind Dixon

The Public Law and Gender Project continued to support the delivery of the Pathways to Politics Program NSW. The Pathways to Politics Program is a national, non-partisan initiative that aims to equip women and those who are female identifying with the skills and networks they need to run for elected office. The Program is supported by the Trawalla Foundation, and by UNSW in NSW. Centre Director Professor Rosalind Dixon is the Program Director, and in 2022 Dr Lynsey Blayden worked with Professor Dixon as the Program's Co-Director.

The 2022 Program commenced with an in-person welcome day on campus at UNSW on 22 July, with panels featuring women politicians from across the political spectrum and from federal state and local government speaking on topics such as how to know when the time is right to run for politics. The Program featured weekly online sessions each Thursday evening between 28 July and 15 September. The online sessions covered a range of topics such as traditional and social media training, effective campaigning, leadership and political change, with the Uluru Statement as a case study and integrity in government. Several Centre members generously contributed to the delivery of these sessions, including Professor Gabrielle Appleby, Associate Professor Janina Boughey and Elisabeth Perham. The Program concluded with a highly successful speeches afternoon on 23 September in the Legislative Assembly Chamber of the New South Wales Parliament.

As part of the PTP program, Centre members also engaged formally and informally with members of the NSW Parliament around issues of structural reform to promote a more inclusive parliament. This included discussions around making Parliament more care-friendly, and advocacy for changes based on Rosalind Dixon's previous report, with former Centre interns, Kate Jackson and Matt McLeod, *Representing Care*. It also involved a concerted media engagement strategy on this issue, and testimony by Dixon and PTP co-Director Lynsey Blayden at the Commonwealth Joint Select Committee on Parliamentary Standards. It also extended to discussions around reforms of the complaints handling process.

In November, the Project also published a new report on complaints handling, co-authored

by Gabrielle Appleby, Rosalind Dixon and gender policy expert Prabha Nandagopal, entitled “*Managing Misconduct: A Principled Response to Behavioural Misconduct in Constitutionally Significant Workplaces*”. Research assistance was provided by former Centre intern and alumna Kate Jackson. Engagement and advocacy around this work remains ongoing.

The Indigenous Legal Issues Project

Project Co-Directors: Sean Brennan and Gabrielle Appleby

In May this year, on the fifth anniversary of the Uluru Statement from the Heart, UNSW Law & Justice celebrated the work of the legal team that had supported the Regional Dialogues and First Nations Constitutional Convention that delivered the Statement. This team included Gilbert + Tobin Centre members Associate Professor Sean Brennan and Professor Gabrielle Appleby, working with colleagues from the Indigenous Law Centre. An event was held at Nura Gili to learn about the work of the team, and an exhibition that spotlights the work of this legal team opened in the Law Library in July for NAIDOC week. On the anniversary of the Uluru Statement, Gabrielle, Sean and Professor Megan Davis wrote for the [IndigConLaw Blog](#) on the significance of the commitment by the incoming Labor Government to implementing the Uluru Statement from the Heart, and outlined the legal work that had been undertaken to prepare the country for a referendum to constitutionally enshrine a First Nations Voice.

In June 2022, following the release by the Prime Minister of a draft of the constitutional amendment and question, Gabrielle, Sean and Megan released three [Issues Papers](#) through the Indigenous Law Centre, intended to provide further information in relation to critical matters that must be decided in the lead up to the referendum to constitutionally enshrine a First Nations Voice:

1. [Issues Paper 1 – The Constitutional Amendment](#)
2. [Issues Paper 2 – The Referendum Question](#)
3. [Issues Paper 3 – Finalisation of the Voice Design](#)

Since then, Professor Gabrielle Appleby has been working with Professor Megan Davis, Director of the Indigenous Law Centre, in collaboration with the Law Council of Australia and the Australian Association of Constitutional Law, to conduct a series of national workshops with the legal profession to consider the draft constitutional amendment that was released by the Prime Minister in June 2022. Those workshops were the subject of a Law Report [episode](#). Those workshops will conclude by the end of the year, with a report provided to the government’s Referendum Working Group.

The Gilbert + Tobin Centre of Public Law was delighted to partner with the Indigenous Law Centre and the Australian Human Rights Institute to host four social justice interns, doing foundational work for the educational campaign that will need to precede the upcoming referendum on the First Nations Voice. You can read about the work of the Social Justice Interns, and their projects, above.

In September, Gabrielle Appleby collaborated with political scientist Professor Lisa Hill to write a piece for [The Guardian](#) on the dangers of misinformation in the upcoming referendum campaign, and the potential for reforms to truth in political advertising laws, reforming the government Yes/No pamphlet, and the use of citizens assemblies to help sift through the material available to voters.

The project also continues a focus on the history and trajectory of Indigenous land issues in Australia. Mid-year, a chapter on ‘Land Justice’ dealing with statutory land native title and native title that Sean Brennan co-authored with Chalk & Behrendt Managing Director and UNSW alumni Jason Behrendt was published in *The Cambridge Legal History of Australia*, a major new legal history volume edited by UNSW’s Lisa Ford, together with Peter Cane and Mark McMillan.

The Judiciary Project

Project Director: Gabrielle Appleby

It’s been a busy time at The Judiciary Project. The Project welcomed the delivery of the Australian Law Reform Commission’s final report into judicial impartiality, [Without Fear of Favour: Judicial Impartiality and the Law on Bias \(ALRC Report 138\)](#), which included recommendations on the structural and institutional reforms needed to support judicial impartiality in Australia. Professor Gabrielle Appleby, who had served on the advisory committee for the inquiry, wrote on the implications of the inquiry in [The Conversation](#), and convened a special series on [Judicial Impartiality](#) on the AUSPUBLAW blog. Gabrielle also presented at the ALRC’s panel [webinar](#) that launched the report particularly in relation to the recommendation to establish a federal judicial commission, and Andrew spoke to the [Law Report](#) about judicial appointments reform. In October, The Judiciary Project organised a small workshop, bringing together academics and members of the judiciary, to discuss the recommendations, with a particular focus on those recommendations relating to appointment,

diversity, data, education and a judicial commission. Coming out of that workshop, Gabrielle has been invited to edit the 2023 special issue of the *Australian Law Journal* on the judiciary.

Gabrielle is also very pleased to complete the first part of a larger collaborative project with Professor Erin Delaney (Northwestern University) that presents a comparatively informed theory of judicial legitimacy in federal systems, identifying two core values at stake: judicial integrity and judicial autochthony. Their article, *Judicial Legitimacy and Federal Judicial Design: Managing Integrity and Autochthony*, has been accepted into the *Yale Law Journal*, and in October, they attended a symposium with the student editors in October, and it will be published next year.

The Hon Chris Maxwell AC joined us in September as a Visiting Judicial Fellow to the Gilbert + Tobin Centre, and we were delighted he was able to attend the Project's workshop on judicial reform and participated in a panel discussion on 'Judging by numbers: Court statistics and their implications', responding to the issues raised by the publication by Ghezelbash et al, 'A Data Driven Approach to Evaluating and Improving Judicial Decision-Making: Statistical Analysis of the Judicial Review of Refugee Cases in Australia' in the *UNSW Law Journal*. Chris joined Associate Professor Daniel Ghezelbash, Professor Rosalind Dixon, and Professor Gary Edmond.

Statutes Project

Project Director: Lisa Burton Crawford

This will be the last report for the Statutes Project, as I will soon be departing UNSW to take up a new position at the University of Sydney.

The Statutes Project aimed to cast new and better light on the form and function of statutes in contemporary legal systems, particularly Australia. While the tide is certainly turning, this has tended to be a neglected topic in public law scholarship which has long focused on the way that judges decide cases. But we now live in an 'age of statutes', in which few areas of public or private life are left untouched by legislation enacted by Parliament. In a legal system such as this, it is imperative to understand how statutes are interpreted, and to think about the form that 'good' legislation should take, as well as what makes for good legislative practice.

While this is still much to be done in this space, the Statutes Project has produced a significant body of research, including:

- in-depth analyses of the way that courts construe statutes that confer executive power - including the highly regarded collection *Interpreting Executive Power* (Federation Press, 2020), which was co-edited by Janina Boughey and I, and launched by Justice James Edelman at the Centre's 2020 conference;
- path-breaking analyses of the complexity of Australian legislation, and its implications for public law norms, institutions, and values like the rule of law - including in recent months, my collaboration with the UNSW Data Science Hub which aimed to measure certain indicia of legislative complexity at scale using automated scripts and statistical tools;
- new research on the normative justification for and practical operation of core canons of construction, like the principle of legality; and
- innovative analyses of new developments like 'rules as code' and 'digital ready legislation', which aim to design legislation in a form that can be read and potentially implemented by machine.

As this suggests, the work of the Statutes Project has complemented that of the Administrative Justice project, and the public law and technology research collaboration between the Centre and the Allens Hub for Law, Technology and Innovation. The Statutes Project has hosted many events, including workshops with leading scholars from around Australia, and built strong connections with legislative drafters, rules as code experts, judges and public servants. This has ensured that the research we produced aligned with the professional experience of those working "at the coal face" to draft, interpret and apply legislation.

I'd like to thank Ros Dixon for her generous support of the project, and the previous Centre director Sean Brennan who so enthusiastically endorsed its creation, as well as Janina Boughey who co-directed the Project with me in its early years. I am also grateful to Lyria Bennett Moses and the Allens Hub for their financial support of the technology related aspects of the Project's work.

Social Justice Interns – Uluru Community Education Project

Professor Gabrielle Appleby and Dr Dani Larkin

In T3 2022 (September through to October), four social justice interns joined the Uluru community education project, hosted at the [Indigenous Law Centre](#), the [Gilbert + Tobin Centre of Public Law](#) and the [Australian Human Rights Institute](#). Supervised by Dr Dani Larkin and Professor Gabrielle Appleby, over the course of five weeks, they sifted through publicly available information on the Uluru Statement and the proposal for a First Nations Voice. This work will inform further community education work as we look towards a referendum,



Greta Parker & Claudia Saywell

including through the clinical community education program offered at the Kingsford Legal Centre at UNSW. We've asked each of the interns to reflect on their time with us. If you want to read more about their projects, there is a special IndigConLaw Blog series (www.indigconlaw.org). In that series, [Greta Parker](#) and [Claudia Saywell](#) provide a critical review of the public information and debate on the Voice. [Daen Phillips](#) looks at the orientation of the Voice to practical outcomes through a number of contemporary examples. [Isabel Cruz Aroca](#) argues that a citizens' initiative review would provide a democratic process for Australian voters to speak to Australian voters about the issue in a fair and informed way.

Claudia Saywell

I am a Commerce/Law student in my fourth year at UNSW. The internship provided me with the invaluable experience of applying my legal training to assist in the Referendum on the Aboriginal and Torres Strait Islander Voice to Parliament. The Voice referendum is a historic opportunity to create meaningful, practical change for First Nations people, and I am passionate about sharing my optimism for the Voice to educate Australians and give the referendum a fair chance at success. The internship has been an incredibly educational experience, with my supervisors Dani Larkin and Gabrielle Appleby kindly sharing their wealth of knowledge to assist me in improving my research skills and to critically analyse themes and arguments prevalent in the Voice campaign. I worked closely with another intern, Greta Parker, to produce a database which chronologically and thematically structures news articles and other information publicly disseminated about the Voice since the making of the Uluru Statement from the Heart. We have also written a blog post which analyses the database from the perspective of misinformation in the campaign. I am proud that the work produced during the internship will form the basis of materials that help law schools around the country to teach communities about the upcoming referendum. My goal coming into the internship was to educate myself about the Uluru Statement and the referendum, and to make a meaningful impact in the journey to ground-breaking constitutional reform. With the knowledge that our work will be picked up by the Kingsford Legal Centre and other organisations around the country, and my continued dedication to the campaign, I am confident that this goal has been achieved.

Greta Parker

I am a final year Science/Law student studying at the University of New South Wales. I signed up to partake in the Uluru Statement Community Education Internship as I am extremely passionate about making a wider change and play a part of a law reform. It has been an absolute privilege to be involved. I also was hoping to refine my legal research skills and further develop my ability to communicate complex ideas into an accessible manner. Through creating a large 50-page online database of information, refining this into a critical analysis memorandum and further into a blog post, I feel I have been able to achieve both of my aims. It has been so amazing to share this work and garner feedback from many esteemed academics and scholars, but I am particularly grateful for Dani and Gabrielle in leading us through this program. It has been really special to work closely with such intelligent and enthusiastic supervisors.

Daen Phillips

I am a proud Gamilaroi and Yorta Yorta man. I am a penultimate Bachelor of Commerce (Information Systems) and Bachelor of Law student at the University of New South Wales. I chose to pursue the Uluru Statement from the Heart Community Education internship for two reasons. First, to educate myself of the Uluru statement and utilise and develop my skills in research and communication to assist the public in understanding the sequence of Voice, Treaty and truth, and not be a bystander in the process of change. Second, to gain experience which will further build relevant attributes and transferable skills needed to become a well-rounded, experienced legal professional. This includes the ability to convey complexities in the law and explain the effects to those who may not have a grounded understanding. The last 5 weeks have been especially rewarding, as these two goals were accomplished.

Isabel Cruz Aroca

My participation in the Uluru Statement Community Internship has been an incredibly rewarding experience. My motivation to participate in this internship lied in the fact that I was eager to find a space where I could combine my commitment to social justice and my interest in constitutional law. Working with knowledgeable and approachable educators has been fantastic. Gabrielle and Dani have been there for us throughout the whole time. They have provided us with feedback and support to help us improve our knowledge of the law and our research and writing skills. I have felt intellectually stimulated and challenged throughout the whole internship. My goals focused on improving my understanding of constitutional and political procedures in the Australian context and improving my writing and oral skills in public law. I think I have achieved those objectives to a great extent by carrying out research on citizens' initiative reviews and writing a memorandum and blog post based on that research.



Daen Phillips



Isabel Cruz Aroca

The development of a database around frequently asked questions about the Uluru Statement also helped with these goals. Learning from peers was another of my goals. Working with three bright and generous law students has helped me achieve that objective. This internship experience has enhanced my confidence as a law student and has given me a greater understanding and appreciation of the Uluru Statement from the Heart.

PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Co-authored Publications

Gabrielle Appleby, Sean Brennan and Megan Davis, *The Constitutional Amendment Issues Paper No 1, Constitutional Enshrinement of a First Nations Voice*, Indigenous Law Centre, September 2022.

Gabrielle Appleby, Sean Brennan and Megan Davis, *The Referendum Question Issues Paper No 2, Constitutional Enshrinement of a First Nations Voice*, Indigenous Law Centre, September 2022.

Gabrielle Appleby, Sean Brennan and Megan Davis, *Finalisation of the Voice Design Issues Paper No 3, Constitutional Enshrinement of a First Nations Voice*, Indigenous Law Centre, September 2022.

Gabrielle Appleby

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Janina Boughey

Janina Boughey and Anne Carter, 'Constitutional Freedoms and Statutory Executive Powers' (2022) 45(3) *Melbourne University Law Review* 903.

Sean Brennan

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Rosalind Dixon

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Rosalind Dixon, *Abusive Internationalism? On Democracies and International Law* (book review), 116 *American Journal of International Law* 889 (2022) (with David Landau)

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Andrew Lynch

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Siddharth Narrain

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Elisabeth Perham

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“Book Review: Legal Systems of the Pacific: Introducing Sixteen Gems” (2022) 27 *Comparative Law Journal of the Pacific* 227

Ayesha Wijayalath

‘Sri Lanka in a Constituent Moment’ (IACL-AIDC Blog, 26 July 2022) <https://blog-iacl-aidc.org/new-blog-3/2022/7/7/sri-lanka-in-a-constituent-moment>

Book Review: Rehan Abeyratne and Ngoc Son Bui (eds), *The Law and Politics of Unconstitutional Constitutional Amendments in Asia* (Routledge 2022) in the *Asian Journal of Comparative Law* (2022) 1-3. DOI: <https://doi.org/10.1017/asjcl.2022.16>

George Williams

How to Rule your Own Country: The Weird and Wonderful World of Micronations (UNSW Press, 2022), 1- 308 (with Harry Hobbs).

PRESENTATIONS

Gabrielle Appleby

Gabrielle Appleby, Panellist at launch of the Australian Law Report Commission report on Judicial Impartiality, (Federal Court of Australia, 29 September 2022)

Gabrielle Appleby and Megan Davis, ‘First Nations Constitutional Recognition in Australia: Addressing foundational failures of rule of law’, (paper presented at the Public Law Conference, University College Dublin, 6-8 July 2022)

Gabrielle Appleby and Megan Davis, ‘First Nations Constitutional Recognition in Australia: Addressing foundational failures of rule of law’, (paper presented at the British Legal History Conference, Queen’s University Belfast, 6-9 July 2022)

Gabrielle Appleby and Heather Roberts, ‘The study of judges: the role of the Chief Justice, and other institutional actors’ (paper presented at Workshop on Empirical research with judicial professionals and courts: Methods and practices, Oñati International Institute for the Sociology of Law, 23-24 June 2022)

Janina Boughey

Janina Boughey, ‘Administrative Justice in the Modern Mixed Administrative State: Moving Beyond Taxonomies’, *Public Law Conference*, 8 July 2022, Dublin.

Janina Boughey, Panel on automated administrative decision-making, NSW Legal Aid Conference, 20 September 2022.

Sean Brennan

‘The Legal and Political State of Play’, The Role of Law Schools in the Upcoming Referendum, Online, 5 September 2022.

‘The Proposed Constitutional Amendment’, First Nations Voice Referendum – National Zoom Forum for public law academics, 25 July 2022.

Lisa Burton Crawford

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Melissa Crouch

Melissa Crouch (2022) ‘Judicial Loyalty to the Military in Authoritarian Regimes: How the Courts are Militarised in Myanmar’ *Law & Social Inquiry* (online)

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Rosalind Dixon

Rosalind Dixon, ‘Responsive Judicial Review’, presentation at Federal Judiciary 20th International Legal Book Fair, 17 November 2022 (Zoom)

Rosalind Dixon, ‘Adjudicating House Rights’, presentation at Centre of Constitutional Studies of the Sutherland School of Law, University College Dublin, Ireland, 10 May 2022 (Zoom)

Rosalind Dixon, ‘Responsive Judicial Review – in Taiwan and Globally’, presentation at *Academica Sinica*, 25 August 2022 (Zoom)

Rosalind Dixon, 'Reforming the Supreme Court', presentation on 9 July 2022 (Zoom)

Rosalind Dixon, 'The Appointment of State, Territory and Federal Judges', presentation at Banco Court, 7 July 2022

Rosalind Dixon, presentation at Joint Select Committee on Parliamentary Standards, 19 September 2022 (Zoom).

Rosalind Dixon, presentation at Democracy: Risk, Relevance, Revival, 29 November 2022 (Zoom).

Andrew Lynch

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George Williams

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MEDIA PUBLICATIONS

Gabrielle Appleby

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Gabrielle Appleby and Megan Davis, 'Lawyers "pressure test" Indigenous voice proposal' *ABC Radio National, The Law Report* (11 October 2022)

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'Model for Republic Ready to Debate When Time is Right' *The Australian* (20 June 2022).

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SUBMISSIONS

Joint submissions

Gabrielle Appleby, Megan Davis, Janine Gertz, Sophie Rigney and Eddie Synot, *Submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples* (November 2022)

George Williams

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REPORTS

Joint reports

Gabrielle Appleby, *Inquiry into options for reform of the management of delegated legislation in New South Wales Discussion Paper prepared for the Regulation Committee of the NSW Legislative Council* (May 2022)

Gabrielle Appleby, Rosalind Dixon and Prabha Nandagopal, *Managing Misconduct: A principled response to behavioural misconduct in constitutionally significant workplaces* (Gilbert + Tobin Centre of Public Law, November 2022)

Gabrielle Appleby

Gabrielle Appleby, *Inquiry into options for reform of the management of delegated legislation in New South Wales Discussion Paper prepared for the Regulation Committee of the NSW Legislative Council* (May 2022)

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