



**GILBERT + TOBIN CENTRE OF PUBLIC LAW**

**ANNUAL REPORT**

**FOR THE YEAR ENDED 31 DECEMBER 2012**

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## **1. THE CENTRE**

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

The Centre's Members, Postgraduate Students and Visitors seek to actively engage with government, the legal profession and broader community through research, teaching, media and consultancy work and events including conferences and seminars.

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

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

In 2012 the Centre enjoyed another busy and productive year. As just two indicators of the level of activity, in 2012 the Centre organised six major events (not including several occasional seminars featuring visitors) and 21 submissions to parliamentary and other inquiries. This is a higher number of events than the Centre has held in any preceding year and the number of submissions equals the previous record of 21 in 2006. Particular highlights of the year past were the publication of three books (*Tomorrow's Federation – Reforming Australian Government*, edited by P Kildea, A Lynch & G Williams; *Climate Change, Forced Migration, and International Law* by J McAdam; and *Climate Change and Australia: Warming to the Global Challenge* by J McAdam with Centre Associate B Saul and others) and the arrival at the Centre of Professor Rosalind Dixon and Ms Shipra Chordia (the latter appointed as Research Associate in the Federalism Project).

This is my last Annual Report as Director of the Centre. When I was appointed to this position in 2008, having previously been the Acting Director and even earlier, Deputy Director to my predecessor Professor George Williams, I stated my view that the Centre was already functioning at an extremely high level in terms of the quality of its academic research, the prominence of its public profile and the degree to which it engaged with government, the profession and the wider community. Additionally, interaction within the Centre by its staff and student members was marked by a productive collegiality which has since served as a model to the Law School more generally. My most basic test

in the role was to maintain all these aspects of the Centre's performance and demonstrate that they were not solely dependent upon the highly effective leadership of the Foundation Director. I believe I have done that and thus confirmed that the Centre is sufficiently strong as an institution to continue its success under different Directors. This bodes well for its immediate and long-term future.

Additionally, in my first year as Director, I identified three priority areas where I thought the Centre could enhance its performance. These were: international linkages and reputation, postgraduate student experience, and collaborative and interdisciplinary links with other Australian academic centres and public organisations. In part, much of the success the Centre has since had in respect of all three simply reflects its steady growth in reputation as it entered its second decade. But deliberate effort was expended on all three goals and that accounts far more for the results achieved.

#### *International linkages and reputation*

With my direct encouragement, accompanied by a willingness to allocate Centre resources accordingly, Centre members have actively engaged with the international public law community, presenting research from its various projects at a number of overseas conferences and workshops. The most striking example of this was the attendance by several staff and students at the International Association of Constitutional Law's VIII World Congress in December 2010. All papers submitted from across the Centre's Federalism, Indigenous Legal Issues and Anti-Terrorism Projects (three in fact from the latter) were selected for presentation at that event (only a minority of papers is chosen for delivery at the congress). The Centre's prominent involvement in the IACL's Terrorism Law Research Group, under the convenorship of first Professor Martin Scheinin (European University Institute) and now Professor David Cole (Georgetown University), at that Congress was cemented at the Group meeting in December 2011 and culminated in the Centre, through its Laureate Project under Professor Williams, hosting approximately 25 terrorism law researchers from around the globe at the 2012 meeting at the end of last year.

The highly comparative nature of much of the research in the terrorism field has meant that it has been at the forefront of the Centre's international engagement, but this has frequently developed into links across other areas of the Centre's work. For example, initially through contact made by myself in 2008 with academics at the University of Durham's Law School to discuss terrorism law research, the Centre has enjoyed an ever-widening collaboration with staff from that institution. This has brought a series of top UK visitors to UNSW – Professors Phillipson, Fenwick and de Londras – all with large reputations in public law and human rights protection. Later in 2013, their junior colleague, Mr Alexander Williams will visit the Centre for several weeks. His research is on public and private institutions and rights protection and his initial interest in coming to UNSW was sparked by a post from Centre member Greg Weeks on the UK Constitutional Law blog (Greg, Dr Paul Kildea, Dr Fergal Davis and the occasional Centre intern have all made a number of posts to this extremely high quality site – conducted under the auspices of the IACL). But he was strongly encouraged by his own

colleagues to plan research time with the Centre. And earlier this year, Professor de Londras and Dr Davis obtained funding from the British Academy for a joint research project. In short, while the Centre maintains strong links with researchers in other UK institutions (eg LSE, Leeds, UCL and the recently founded independent Bingham Centre) our relationship with Durham Law School has evolved into a deep and continuing one across a number of aspects of public law research.

The Centre is now of an age that it enjoys the return of previous visitors – Canada’s Professors Janet Hiebert (Queens) and Kent Roach (Toronto) being just two examples. Professor Roach’s relationship with UNSW, fostered by the Centre, is such that he was appointed an Adjunct Professor at UNSW and regularly teaches in the postgraduate program. On his recommendation, a Canadian PhD student at the University of Ottawa, Mr Grant Hoole, visited the Centre for several months in 2012 supported by a Commonwealth Endeavour Fellowship. Junior visitors of this kind also bring enormous value, not least to the vibrancy of the Centre’s postgraduate cohort.

The establishment in 2011 by Professor Rosalind Dixon of an event co-hosted with the New South Wales chapter of the Australian Association of Constitutional Law and titled ‘The Final Courts Round-up’ serves to demonstrate both the Centre’s ongoing commitment to offering a platform for international perspectives on public law and the existence of sufficiently developed networks to procure expert speakers. The event is held at the Federal Court in Sydney and in the last two years featured very highly-regarded speakers from the Canada, New Zealand, the UK and the USA.

### *Postgraduate Student Experience*

There are currently 13 postgraduate students affiliated with the Centre. When I commenced as Director there were eight. Supervision of higher degree research (HDR) students having been the preserve of the Foundation Director in the first five years of the Centre is now a task in which almost all staff members of the Centre are involved. In accordance with Law School practice, all HDR students have two supervisors. For most Centre students both supervisors are also members of the Centre, while for some the Centre supervisor is paired with another member of Law School staff. Two students affiliated with the Centre are supervised entirely by academics who are not members, but who have asked that their students be able to participate in Centre activities given the nature of their research. The Centre’s students are an almost equal mix of those who are full-time on campus and those studying part-time.

HDR students have always been included in Centre activities, but it is fair to say that achieving a critical mass of such students has both increased the level of their involvement and the extent to which activities are designed around their needs or with their interests in mind. A small but significant example of that has been the holding of ‘Postgraduate Reading Group’ sessions, inviting visiting academics to select publications for circulation to the HDR students in advance of an event where they lead the students in discussing these materials. A more substantial example is the holding of a biennial Postgraduate Research in Public Law Workshop at which all the Centre’s students

present their work in thematically-organised sessions alongside HDR students from other Australian law schools whose submitted abstracts have been accepted. This event was held in 2010 and 2012 and gathered approximately 25 students from around the country on each occasion. It is the only such event for public law postgraduate students that is convened. It not only gives the students opportunities to present their research but also to network with their peers. It is an excellent way in which the Centre can keep track of emerging scholars in the field.

Lastly, there was a conscious decision to not only maximize the experience of HDR students in the Centre but to advertise this more widely. The Workshop certainly serves that purpose, but also substantial space was given in the Centre's 10<sup>th</sup> Anniversary publication to the postgraduate experience, seeking testimony from past and present students. The fact that academics overseas commend the Centre to PhD students as a research environment at which they could well spend profitable time (the case of Professor Roach's recommendation to Grant Hoole was mentioned above) is a very tangible sign that this message is being communicated.

In 2011 the UNSW Law School conducted a review of its HDR programs, which involved seeking feedback via a variety of forms from across the HDR student body. Amongst his conclusions, the report's author, a former General Manager of the Law School said:

... [It] is the feeling amongst many students that there is a two level research culture experience on offer which, put in its crudest form, depends on being part of the Gilbert + Tobin Centre or not. I have singled this centre out from all the Law School's centres because it is the one according to students which offers a stimulating, supportive and collegial research environment to HDR students.

#### *Collaboration and interdisciplinary links with other academic centres and public organisations*

In many ways, this remains the most challenging of the three priority areas. The opportunities for collaboration are highly dependent on the nature of the activity (with academic research being far more suitable than public engagement such as submissions to public inquiries), the institutional 'fit', and the reciprocal value of the association. The Centre errs on the side of wariness in attaching itself to enterprises which might lower the regard in which its reputation is held.

That said, there have been real strides in collaboration with domestic bodies over the last few years. Unsurprisingly, those links take root at the individual level before acquiring a more substantial institutional dimension. The work of the Federalism Project offers an ideal example in this regard. In 2008 the Centre established this project with a UNSW Goldstar grant of \$40,000. The following year it was awarded three years ARC Discovery Project funding, and in 2012 a further three years' funding was obtained under that same scheme. The initial internal money was used to hold a symposium on Australian federalism with researchers in law, political science and economics, the papers from which were subsequently published as a thematic issue of the UNSW Law Journal.

Many of the individual researchers who participated in that modest event have since been involved in a number of other activities and later events conducted under the ARC funded phases of the project, and others who saw the publication were keen to participate on these later occasions. The event that produced the 2012 book *Tomorrow's Federation – Reforming Australian Government*, with 19 chapters and 21 different authors across law, government, political science, economics, health and environmental policy, is clear evidence of the capacity of the Centre to bring researchers and experts together across disciplinary dividing lines.

At present, the Centre is leading a bid under the 2013 ARC Centres of Excellence round. Our team of Chief Investigators is compact but involves staff from three Faculties at UNSW, and colleagues in law, business and public policy research centres at the University of Queensland, Griffith University and Curtin University. Additionally, substantial progress has been made with many partner organisations across the Australian government sector. Both the academic and government participation in this funding application relies heavily upon the investment we have made in the past with individuals from academic and other institutions.

Other examples also illustrate the Centre's efforts to deepen our collaboration with other entities in the public law field. The AACL has long been the 'supporter' of the Centre's annual conference but this association traditionally had very limited substance. The revitalisation of the NSW chapter of the AACL has altered this and the Centre and the AACL now regularly reciprocate advertising each other's events. In particular, the AACL includes the conference in its calendar of upcoming events distributed to members and the Centre's conference material includes forms for the recruitment of new members to the AACL. More substantially, the two organisations collaborate in hosting the 'Final Courts Round-up' seminar each December. Although the primary responsibility is at the Centre's end, the AACL has input into the program and is crucial to its success in attracting a largely professional audience.

Lastly, in the Charter of Rights Project report in section 5.2 below, I have outlined the Centre's intended participation in a project with PIAC, the Human Rights Law Centre, the Australian Human Rights Commission and AustLII that would monitor the operation of the Commonwealth's new parliament-based system of human rights protection. Unfortunately, the funding program to which our application was made was unable to award any grants last year due to cuts to the Commonwealth budget. But I mention the project as further evidence of how the Centre has looked to seize opportunities to carry out collaborative work with those institutions with which it enjoys a long-standing relationship.

*Thanks*

It only remains for me to gratefully acknowledge the guidance and advice of both the Advisory Committee and Management Board. This has been invaluable in carrying out my duties as Centre Director. I also thank the Dean, Professor David Dixon, for his

constant encouragement and support. Lastly, I acknowledge my fantastic colleagues and students in the Centre who are, of course, the real reason for its many successes.

### **3. CENTRE COMMITTEES**

#### **3.1 Advisory Committee**

The composition of the Advisory Committee in 2012 was as follows:

Sir Anthony Mason, Former Chief Justice of the High Court (Chair)  
The Hon Justice John Basten, Court of Appeal Supreme Court of New South Wales  
Professor Rosalind Croucher, President, Australian Law Reform Commission  
Professor David Dixon, Dean, Faculty of Law, UNSW  
The Hon Stephen Gageler, High Court of Australia  
Mr Danny Gilbert, Managing Partner, Gilbert + Tobin  
Professor Andrew Lynch, Centre Director  
Dr Melissa Perry QC, New South Wales Bar  
Mr Michael Sexton SC, Solicitor-General of NSW

The Advisory Committee held its annual meeting on 17 May 2012.

#### **3.2 Management Board**

Professor David Dixon, Dean, Faculty of Law, UNSW (Chair)  
Associate Professor Andrea Durbach, Faculty of Law, UNSW  
Professor Andrew Lynch, Centre Director  
Mr Steven Glass, Gilbert + Tobin  
Professor Peter Saunders, Faculty of Arts and Social Sciences, UNSW  
Dr Claudia Tazreiter, Faculty of Arts and Social Sciences, UNSW

The Management Board held meetings on 11 April, 24 July and 30 October 2012.

### **4. STAFF**

#### **4.1 Centre Staff**

Centre Staff as at 31 December 2012 consisted of the following:

Dr Jessie Blackburn  
Email: [j.blackbourn@unsw.edu.au](mailto:j.blackbourn@unsw.edu.au)  
Phone: (02) 9385 9640  
Interests: Terrorism, Counter-Terrorism, Anti-Terror Laws.

Mr Sean Brennan (Director, Indigenous Legal Issues Project)



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

Ms Shipra Chordia (Director, Federalism Project)  
Email: s.chordia@unsw.edu.au  
Phone: (02)9385 6871  
Interests: Constitutional Law, Federalism, Intergovernmental Relations, Public Law, Media Regulation.

Dr Fergal Davis  
Email: f.davis@unsw.edu.au  
Phone: (02) 9385 9656  
Interests: Theories of Judicial Review, Scepticism and the Control of Executive Power through Non-Judicial Means.

Professor Rosalind Dixon  
Email: rosalind.dixon@unsw.edu.au  
Phone: (02) 9385 6964  
Interests: Constitutional Law, Comparative Constitutional Law, Constitutional Design, Constitutional Amendment, Socio-Economic Rights, Law and Gender.

Dr Ben Golder (Director, Public Law and Legal Theory Project)  
Email: b.golder@unsw.edu.au  
Phone: (02) 9385 1843  
Interests: Legal and Social Theory (particularly critical, feminist and post-structuralist approaches to law), Legal Philosophy, Criminal Law and Public Law (particularly critical approaches to counter-terrorist law and capital punishment).

Dr Paul Kildea (Director, Referendums Project)  
Email: p.kildea@unsw.edu.au  
Phone: 902) 9385 9655  
Interests: Public law, the process of Constitutional Reform, Political Participation, Deliberative Democracy.

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

Professor Jane McAdam (Director, International Refugee and Migration Law Project)  
Email: j.mcadam@unsw.edu.au  
Phone: (02) 9385 2210

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

Ms Belinda McDonald (Administrator)

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

Phone: (02) 9385 2257

Ms Nicola McGarrity

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

Phone: (02) 9385 3445

Interests: Constitutional law, Legal responses to Terrorism, Human rights, Constitutional Reform.

Dr Svetlana Tyulkina

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

Phone: (02) 9385 6676

Interests: Comparative Constitutional Law, Anti-Terrorism Legislation, International Human Rights Law, Political Participation Rights.

Mr Greg Weeks

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

Phone: (02) 9385 8242

Interests: Judicial Review, Public Law and Private Law Remedies against Public Authorities.

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

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

Interests: Constitutional Law, Human Rights and Electoral Law.

## **4.2 Centre Associates**

Tony Blackshield, Adjunct Professor, LLM Syd  
Dominique Dalla-Pozza, Lecturer, ANU  
College of Law, BA (Hons)/LLB (Hons) Syd  
PhD UNSW

Megan Davis, Professor, BA LLB UQ, LLM ANU

Arthur Glass, Associate Professor, BA LLB PhD Syd

Cassandra Goldie, CEO, ACOSS, B Juris LLB (Hons) UWA, LLM Dist UCL, PhD  
UNSW

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

Devika Hovell, Lecturer, Department of Law, London School of Economics, BA LLB  
(Hons) UWA, LLM NYU

David Hume, Solicitor, BA (Hons) LLB (UNSW) LLM (Harvard)

Jill Hunter, Professor, BA LLB UNSW, PhD Lond Syd

Garth Nettheim, Emeritus Professor, LLB Syd, AM Tufts

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

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

Alex Reilly, Associate Professor, University of Adelaide, UNSW, BA (Juris) LLB (Hons)

Adel, GDLP SA, LLM British Columbia

Ben Saul, Professor, University of Sydney, BA (Hons) LLB (Hons) Syd, DPhil Oxon

Jeremy Webber, Visiting Professor, BA British Columbia, LLB McGill, LLM Osgoode

### **4.3 Social Justice Internship Program**

The Centre continues to take part in the Social Justice Internship Program, an elective course designed to give later year undergraduate and Juris Doctor students experience in various aspects of social justice advocacy. The students working with the Centre during 2012 were Emily Burke (Semester I, 2012) and Jennifer Goh and Errin Walker (Semester II, 2012). Errin Walker's internship was specially designed to give concentrated support to the Centre's work on public law issues relating to Indigenous Australians.

### **4.4 Postgraduate Research Students**

The following postgraduate students were affiliated within and supported by the Centre during 2012:

Andrew Dahdal

Supervised by Theunis Roux

Topic: Section 51(xiii) - The Commonwealth Banking Power

Keiran Hardy

Supervised by Ben Golder and George Williams

Topic: Developing a Counter-Insurgency Model of Anti-Terrorism Law

Jackie Hartley

Supervised by Sean Brennan

Topic: Free, Prior and Informed Consent and the Rights of Indigenous Peoples to Lands, Territories and Resources

Grant Hooper

Supervised by Mark Aronson

Topic: Through the *Migration Act* Looking Glass: Can Natural Justice be Extinguished by a Legislative Code: Towards the Waterfall of Invalidity

Mitchell Landrigan  
Supervised by George Williams  
Topic: The Interface of Political and Religious Discourse Under the Commonwealth Constitution

Nicola McGarrity  
Supervised by Andrew Lynch  
Topic: Terrorism Laws and the Criminal Trial

Jennifer Norberry  
Supervised by Andrew Lynch and George Williams  
Topic: Law and National Security Crises - Contemporary Australian Experience

Soula Papadopoulos  
Supervised by Andrew Lynch and George Williams  
Topic: Co-operative Federalism is not a constitutional term

Sangeetha Pillai  
Supervised by Fergal Davis and George Williams  
Topic: Citizenship and Anti-Terror Laws

Tamara Tulich  
Supervised by Fergal Davis and George Williams  
Topic: The Judiciary as a Check on Anti-Terror Laws

Rebecca Welsh  
Supervised by Andrew Lynch and George Williams  
Topic: The Power to Restrain Liberty under Chapter III of the Australian Constitution: Control Orders and Preventative Detention Orders

Kelvin Widdows  
Supervised by Andrew Lynch and George Williams  
Topic: Sir John Latham: Judicial Reasoning in Defence of the Commonwealth

Tamara Wood  
Supervised by Jane McAdam  
Topic: Who is a refugee under Article I(2) of the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa?

## **5. KEY CENTRE ACTIVITIES**

### **5.1 Research Funding**

As at 31 December 2012, the Centre had the following external research grants supporting its research activities:

- 2012-14 ARC Discovery grant for \$215,000 to fund research into ‘Co-operative Federalism in Australian: Constitutional Principles and Practice’ (Lynch & Williams)

In addition, the position and work of two of its members are supported by ARC Fellowships. Professor Jane McAdam holds a 2011-15 ARC Future Fellowship of \$814,913 to fund research into ‘Moving with Dignity a Human Rights Approach to Slow-Onset Climate Change-Related Displacement and Relocation in the Pacific’. Professor George Williams holds a 2009-14 ARC Laureate Fellowship of \$2,211,430 to fund research into ‘Anti-Terror Laws and the Democratic Challenge’.

## 5.2 Research Projects

The **ARC Laureate Fellowship: Anti-Terror Laws and Democratic Challenge Project** (Project Director: George Williams) aims to answer the question of how democratic nations (especially Australia, Canada, India, New Zealand, the United Kingdom and the United States) can best reconcile traditional democratic processes, institutions, principles and individual freedoms with the likelihood that anti-terror laws granting war-time powers will remain in place for the foreseeable future.

This project had a very busy year with the publication of a number of articles in various academic journals including the *Federal Law Review* and *Melbourne University Law Review*. Opinion pieces have also been written for hard copy and online media. The expertise of the project members has been recognised through invitation to write chapters for forthcoming edited collections, the presentation of conference papers and the giving of interviews on both radio and television. The project has maintained its commitment to engage with the law reform process by submitting submissions to parliamentary committees and independent inquiries. A major international conference was convened by the Laureate project with the International Association of Constitutional Law: Constitutional Responses to Terrorism Research Group in December 2012. This event gathered together national and international experts in the field to discuss ‘States of Surveillance: Counter-Terrorism and Comparative’ and addressed the impact of post-9/11 surveillance practices on constitutionalist principles. An edited book of conference proceedings is now in preparation with Routledge.

The **Charter of Human Rights Project** (Acting Project Director: Andrew Lynch) has had as its aim to contribute to the debate about a national Charter of Human Rights and maintain a watching brief on the intersection of public law with human rights issues in Australia. The project’s nature has changed in recent years with the subsidence of community discussion and political support for a Commonwealth Charter. In 2011 the Commonwealth enacted the *Human Rights (Parliamentary Scrutiny) Act* which establishes the Joint Human Right Committee of the Commonwealth Parliament and requires the preparation of Statements of Compatibility, indicating the consistency with various international human rights instruments of bills as they are introduced into the legislature. The Acting Director was involved in making an application to the Attorney-

General's Department for funding under the Grants Australian Organisations Program (GAOP) to support research and resources connected with the new scheme. The Centre's role in this would have been through research and writing to be conducted by research assistants and our student interns. The bid was made under the leadership of the Public Interest Advocacy Centre, with the Australian Human Rights Commission, AustLII and the Human Rights Law Centre. Unfortunately, due to cuts made across the budgets of several Commonwealth departments, all applicants to the scheme were advised that funding would not be granted in 2012, but that the intention was to resume the scheme in 2013.

The **Federalism Project** (Project Director: Shipra Chordia) received a new body of external funds in 2012 through a Discovery grant of \$215,000 supplemented by \$100,000 from UNSW. This money will fund further research into the effect of intergovernmental co-operation on Australia's system of constitutional democracy and the relationship between harmonisation and 'co-operative' federal-state relations and constitutional principles such as responsible government and public accountability. The University's commitment of further funds to support the Centre's work in this area is in recognition of the considerable success that the Director and Foundation Director have had in obtaining consecutive Discovery grants in this field and aims to optimise the Centre's position to lead an collaborative bid in the next anticipated round of ARC Centres of Excellence funding for mid 2013. That bid is now well progressed and sees the Centre leading a team of researchers at the University of Queensland, Griffith University and Curtin University.

During 2012 the project welcomed its new director Shipra Chordia. Following the release of *Tomorrow's Federation* (which was launched by the Hon Barry O'Farrell, Premier of New South Wales, at the Centre's Constitutional Law Conference on 17 February 2012), the project has been busy engaging in policy debates with a strong federal dimension. During the second half of the year, the project has focussed on responding to the High Court's landmark decision on *Williams v Commonwealth* (School Chaplains Case). Centre members have been considering the wider ramifications of the decision for co-operative federalism in Australia and have been working on a number of academic publications to this end. Two articles on this topic have been accepted for publication in the *Federal Law Review* and *Melbourne University Law Review*.

The **Indigenous Legal Issues Project** (Project Director: Sean Brennan) is committed to continuing its work on the intersection between constitutional law and indigenous property rights. The project maintains a focus on constitutional issues with media work and presentations on constitutional reform as well as published material on the relevance of the Federal just terms guarantee to native title extinguishment by the States and Territories. The project director has provided written submissions on the Low Aromatic Fuel Bill 2012 and has written for the *Indigenous Law Bulletin* on the Torres Strait regional sea chain, a native title appeal granted special leave by the High Court. Attention has also been focused on alcohol regulation in the Northern Territory.

The **International Refugee and Migration Law Project** (Project Director: Jane McAdam) continued its focus on forced migration law generally, and the relationship

between climate change and mobility in particular. The project enjoyed a very productive year. Through an MOU with the United Nations High Commissioner for Refugees (UNHCR), UNSW students undertook two research projects: one on refugee claims based on sexual orientation and gender identity; and the other on the laws relating to statelessness and citizenship in the Pacific, which will ultimately form part of a UNHCR database on nationality laws around the world. The project ran a regular reading group on refugee and forced migration, attended by PhD and interested undergraduate students from UNSW and other universities. The project led a joint submission by 17 refugee law academics to the Expert Panel on Asylum Seekers established by the government in an attempt to break the impasse on boat arrivals. The submission was endorsed by leading refugee law scholars in the UK, US, Canada and the Netherlands.

The Director maintained a productive research agenda, including publishing two books: a sole-authored monograph, *Climate Change, Forced Migration, and International Law* (Oxford University Press, Oxford, 2012) and a co-authored book, *Climate Change in Australia: Warming to the Global Challenge* (Federation Press, Sydney, 2012). She undertook many research trips, including field work in Fiji and keynote addresses at conferences in Europe and the US. She was also busy on the community engagement front at home, running a number of professional training and information sessions on Australia's new complementary protection laws which took effect in March 2012. She was commissioned by the Refugee Review Tribunal (RRT) to write a comprehensive manual on complementary protection in Australia and to provide training to over 100 decision-makers and other RRT staff.

The Director was appointed a non-resident Senior Fellow of the Brookings Institution in Washington DC, collaborating on projects relating to climate change, forced migration and relocation. She was also invited to join several international bodies, including the Consultative Committee of the Nansen Initiative on Disaster-Induced Cross-Border Displacement; the Advisory Board of the Asia-Pacific Migration and Environment Network; the Refugee Law Initiative Network of Senior Research Associates; and was appointed the Co-Rapporteur of the International Law Association's Committee on International Law and Sea-level Rise.

The **Judiciary Project** (Project Director: Andrew Lynch) continues to house the work done by Centre members on the High Court and other courts as institutions. This includes the annual survey of decision-making on the High Court and media pieces, commentary and submissions to inquiries on issues affecting the Australian judiciary. The interest of this project in judicial disagreement continued during 2012 with an international conference paper on this topic. The project director made a submission and gave evidence to the Senate Legal and Constitutional Affairs Commission inquiry into the Judicial Misbehaviour and Incapacity Parliamentary Commission Bill 2012 and Court Legislation Amendment (Judicial Complaint) Bill 2012, and subsequently published a comment on the Bills in the *Public Law Review*.

The **Public Law and Legal Theory Project** (Project Director: Ben Golder) examines many of the foundational concerns of the Centre (public law, sovereignty, democracy, human rights and counter-terrorism) through the lens of contemporary political theory, legal philosophy and critical legal theory. Although on sabbatical during the second half of the year, the director undertook several major pieces that have been the focus on this project: an edited symposium on ‘Foucault and International Law’ forthcoming in the *Leiden Journal of International Law* and publication of a sole-edited collection *Rereading Foucault on Law: Power and Rights* (Routledge). In August, the project co-hosted, with the School of History and philosophy (FASS, UNSW) and the Faculty of Arts (Sydney) a workshop on ‘Contemporary Critical Approaches to Rights’. The event was structured around four separate, but interconnected, panels: ‘The History of Human Rights’, ‘The Politics of Human Rights’, ‘The Philosophy of Human Rights’ and ‘The Political Economy of Human Rights’.

The **Referendums Project** (Project Director: Paul Kildea) was created to explore the holding of referendums in Australia. Referendums have long been important to the work of the Centre in areas like federalism and Indigenous legal issues, but have not themselves been the subject of direct attention. Following the release in January 2012 of the Expert Panel’s report on constitutional recognition of Aboriginal and Torres Strait Islander peoples, Centre members have been highly active on the issue. Several opinion pieces calling for a sustained period of community education and debate to build on the work of the Expert Panel have been written. There has also been involvement in this area through submissions to parliamentary committees, speeches at various conferences and events and by offering information and advice to individuals and organisations (such as the National Congress of Australia’s First Peoples) on the political and legal aspects of the proposed reforms. The Centre has also been actively engaged in the process regarding the constitutional recognition of local government, with members making submissions and writing opinion pieces on the issue, and offering advice to organisations interested in the proposed reforms.

### 5.3 Events

The Centre held several successful events during 2012:

- 2012 Constitutional Law Conference and Dinner

On 17 February, the Centre again hosted its annual constitutional law conference at the Art Gallery of New South Wales. The conference, the eleventh in this series, gathered together practitioners, judges, scholars and members of the general public to discuss recent events and future trends in Australian constitutional law. The event attracted over 220 people and participants at the conference also enjoyed the dinner that night at New South Wales Parliament House. The guest dinner speaker was the Hon James Spigelman AC QC.



- 2012 Postgraduate Workshop in Public Law

On 12–13 July the Centre hosted a workshop to provide an opportunity for higher degree research students in the field of public law to gain experience in presenting their work to their peers and the wider academic public law community in a critically constructive yet supportive environment. This workshop brought together 24 postgraduate students from various institutions including the Universities of Adelaide and Melbourne, Monash University, Macquarie University, Swinburne University of Technology and UNSW students working under the supervision of members of the Centre. The sessions covered a range of topics within the Centre’s broad concerns – federalism, national security, rights protection under domestic and international law, legal theory and indigenous legal issues. The Workshop was opened with an address by Professor Jeffrey Goldsworthy of Monash University on the importance of theory in the field of public law.

- Workshop: Contemporary Critical Approaches to Human Rights

On 17-18 August the Centre held a workshop in collaboration with the Faculty of Arts and Social Sciences (UNSW) and the Faculty of Arts (Sydney). This event featured both local and international scholars (the latter from Columbia, the LSE, Kansas University and the EUI) to engage in an interdisciplinary dialogue across two days on rights, democracy and constitutionalism and brought to bear the insights of contemporary continental philosophy, political theory and critical legal theory on these concerns.

- Comparative Constitutional Law – Final Courts Round-up 2012

This event held on 11 December 2012 provided an outline of recent constitutional developments in three jurisdictions – the United Kingdom, Canada and the United States – that are of key interest to Australian constitutional lawyers. Experts from each jurisdiction, Professor Fiona de Londras (Durham University), Assistant Professor Vanessa MacDonell (University of Ottawa) and Professor David Cole (Georgetown Law Center) reported on two or three major constitutional cases argued or decided over the last year; changes in the composition and politics of each country’s highest court; and flagged the state of debate over constitutional reform.

- The Reshaping of Control Orders in the United Kingdom: Time for a Fairer Go Australia!

This event was held on 12 December 2012 in conjunction with the NSW Bar Association and included a lecture and an ensuing discussion on counter-terrorism policy in the UK by Professor Clive Walker (University of Leeds), legal adviser to the UK Independent Reviewer of Anti-terrorism Legislation. The discussants were Bret Walker SC, Independent National Security Legislation Monitor and the Hon Anthony Wealy QC, who is conducting the COAG review of counter-terrorism legislation. The event was chaired by Phillip Boulten SC, President of the NSW Bar Association.

- International Association of Constitutional Law: Constitutional Responses to Terrorism Research Group Workshop

On 13 December the Centre hosted the Annual International Association of Constitutional Law: Constitutional Responses to Terrorism Research Group Workshop. This year the theme of the Workshop was: “States of Surveillance: Counter-Terrorism and Comparative Constitutionalism” and the event attracted an impressive array of international experts to discuss the growth of surveillance after 9/11 and its implications for constitutionalism and the rule of law. This theme resonated with the Centre’s previous work on counter-terrorism and related directly to Professor George Williams’ ongoing Australian Research Council Laureate Fellowship: Anti-Terrorism and the Democratic Challenge.

## 6. PUBLICATIONS

Publications for the year ending 2012 are set out below.

### Joint Publications

Tanja Aalberts and Ben Golder, ‘Symposium on Foucault’, a Symposium Section (‘International Legal Theory’) (2012) 25(3) *Leiden Journal of International Law* 603-608;

Matthew Albert and Jane McAdam, *Manual for the Refugee Review Tribunal on Complementary Protection* (2012);

Jessie Blackbourn and Nicola McGarrity, ‘Listening and Hearings: Intercept Evidence in the Courtroom’, (2012) *Journal of Commonwealth Criminal Law* 257-282;

Alysia Blackham and George Williams, ‘The Appointment of Ministers External to Parliament in Australia’ (2012) 40 *Federal Law Review* 253-285;

Megan Bradley and Jane McAdam, ‘Rethinking Durable Solutions to Displacement in the Context of Climate Change’ (Brookings Institution Web-Ed, 14 May 2012);

Rosalind Dixon and Martha Nussbaum, ‘Children’s Rights & a Capabilities Approach: The Question of Special Priority’ (2012) 97 *Cornell Law Review* 549-593;

Paul Kildea, Andrew Lynch and George Williams (eds), *Tomorrow’s Federation: Reforming Australian Government*, (The Federation Press, Sydney, 2012);

Andrew Lynch and George Williams, ‘The High Court on Constitutional Law – the 2011 Statistics’ (2012) 35(3) *University of New South Wales Law Journal* 846-66;

Jane McAdam and Tamara Wood; ‘Australian Asylum Policy All at Sea: An Analysis of Plaintiff M70/2011 v Minister for Immigration and Citizenship and the Malaysia–Australia Arrangement’ (2012) 61 *International and Comparative Law Quarterly* 274-300;

Nicola McGarrity and Edward Santow, ‘Anti-Terrorism Laws: Balancing National Security and a Fair Hearing’ in Victor V Ramraj *et al* (eds), *Global Anti-Terrorism Law and Policy* (CUP, 2<sup>nd</sup> ed, 2012);

Sangeetha Pillai and George Williams, ‘Commonwealth Power over Higher Education’ (2011) 30 *University of Queensland Law Journal* 287-303;

Victor Ramraj, Michael Hor, Kent Roach and George Williams (eds), *Global Anti-Terrorism Law and Policy* (CUP, 2<sup>nd</sup> ed 2012), 1-691;

Edward Santow and George Williams, ‘Terrorism Threat Assessments: Problems of Constitutional Law and Government Accountability’ (2012) 23 *Public Law Review* 33-49;

Ben Saul, Jane McAdam, Steven Sherwood, Tim Stephens and James Slezak, *Climate Change and Australia: Warming to the Global Challenge*, Federation Press, Sydney, 2012.

#### *Joint Media*

Fergal Davis and Nicola McGarrity, ‘There aren’t many votes in supporting Hicks’, *The Drum Opinion*, ABC Online (18 October 2012);

Andrew Lynch and Jennifer Goh, ‘Failure to launch: what happened to indigenous recognition’, *The Conversation* (21 September 2012);

Fergal Davis and Svetlana Tyulkina: ‘Russia has already made Pussy Riot martyrs’, *The Punch* (16 August 2012);

Mary Crock, Daniel Ghezelbash and Jane McAdam, ‘Pacific Solution #2 Sparks Humanitarian Concerns’, *Crikey* (14 August 2012);

Jennifer Goh and Nicola McGarrity, ‘Just the beginning of a national security debate’, *Inside Story* (2 August 2012);

Jane McAdam and Ben Saul, ‘Assange’s Asylum Bid is Baseless and Ecuador’s Motives Are Suspect’, *The Australian* (21 June 2012).

#### **Sean Brennan**

‘Commercial Native Title Fishing Rights in the Torres Strait and the Question of Regulation versus Extinguishment’ (2012) 8(2) *Indigenous Law Bulletin* 17-19;

‘Section 51(xxxi) and the Acquisition of Property under Commonwealth-State Arrangements: The Relevance to Native Title Extinguishment on Just Terms’ (2011) 15 *Australian Indigenous Law Review* 74-86.

*Media*

‘Unlocking Native Title’, *Inside Story* (14 June 2012);

‘It’s time for our first peoples to get a fair go in the Constitution’, *The Age* (17 February 2012).

**Fergal Davis**

*Media*

‘1920’s Australia’s lesson for Gillard in the Asian Century’, *The Punch* (3 November 2012);

‘Fearing for the Future’ *Australian Jewish News* (2 November 2012);

‘Electoral avalanche may force Newman to focus on enemy within’, *The Sydney Morning Herald* (4 April 2012);

‘Lifting the veil on a court’s injustice’ *The National Times* (27 March 2012);

‘Human rights bills fail in the hands of law’ *The Drum Opinion* (22 March 2012).

**Rosalind Dixon**

‘A new inter(national) human rights experiment for Australia’, (2012) 23 *Public Law Review*, 75-80.

**Ben Golder**

‘Re-reading Foucault: On Law, Power and Rights’ (Routledge, Abingdon 2012);

‘The Distribution of Death: Notes Towards a Biopolitical Theory of Criminal Law’, in Matthew Stone, Illan Rua Wall and Costas Douzinas (eds), *New Critical Legal Thinking: Law, Politics and the Political* (London: Birkbeck Law Press, 2012) 91-111;

‘Human Rights *Contra* Critique: Preliminary Notes on the Politics of Interpretation’ (2011) 17(2) *Australian Journal of Human Rights* 185-214;

‘Foucault’s Critical (Yet Ambivalent) Affirmation: Three Figures of Rights’ (2011) 20(3) *Social & Legal Studies* 283-312.

## **Paul Kildea**

‘Making Room for Democracy in Intergovernmental Relations’ in Paul Kildea, Andrew Lynch and George Williams (eds), *Tomorrow’s Federation: Reforming Australian Government* (The Federation Press, Sydney, 2012) 73-91;

‘Towards Youth Engagement in the Referendum on Indigenous Recognition’ (2012) 37(3) *Alternative Law Journal* 161-65;

‘Balancing Symbolism and Function in Constitutional Preambles: A Reply to Twomey’ (2011) 15(2) *Australian Indigenous Law Reporter* 23-5.

### *Media*

‘Time for a referendum roadmap’ *Inside Story* (9 November 2012);

‘Constitution could bite news watchdog’ *Daily Telegraph* (16 March 2012).

## **Andrew Lynch**

Book review: ‘*The 9/11 Effect – Comparative Counter-Terrorism* by Kent Roach’ (2012) 32 *Legal Studies* 673-80;

‘Legislating Anti-Terrorism: Some Observations on Form and Process’ in Ramraj *et al* (eds) *Global Anti-Terrorism Law and Policy* (CUP, 2<sup>nd</sup> ed, 2012) 151-82;

‘Judicial Complaints and Suspension’ (2012) 23 *Public Law Review*, 81-4;

‘The Reference Power: The Rise and Rise of a Placitum?’ in Paul Kildea, Andrew Lynch and George Williams (eds), *Tomorrow’s Federation* (The Federation Press, Sydney, 2012) 193-209;

‘The Impact of Post-Enactment Review on Anti-Terrorism Laws: Four Jurisdictions Compared’ (2012) 18(1) *Journal of Legislative Studies* 63-81;

‘Commonwealth Financial Powers – Taxation, Direct Spending and Grants – Scope and Limitations’ (2011) 6 *Public Policy*, 23-32.

### *Media*

‘Gageler appointment welcome, but far from cage-rattling’, *The Drum - Unleashed*, ABC Online (22 August 2012);

‘School chaplains decision opens can of worms for federal funding’ *The Australian* (3 July 2012);

‘Federal bill is silent on how to handle issue of judicial incapacity’ *The Australian* (4 May 2012);

‘By nature, judges are seldom in agreement’, *The Australian* (17 February 2012);

‘All politics isn’t necessarily local’, *Inside Story* (10 January 2012).

### **Jane McAdam**

Book review: *Law of Asylum in the United States: 2011 Edition* by Deborah E Anker’, (2012) 24 *International Journal of Refugee Law* 656–57;

*Climate Change, Forced Migration, and International Law* (OUP, Oxford, 2012);

‘From Humanitarian Discretion to Complementary Protection: Reflections on the Emergence of Human Rights-Based Refugee Protection in Australia’ (2011) 18 *Australian International Law Journal* 53-76;

‘Australian Complementary Protection: A Step-by-Step Approach’ (2011) 33 *Sydney Law Review* 687-734.

### **Nicola McGarrity**

‘From Terrorism to Bikies: Control Orders in Australia’ (2012) 37(3) *Alternative Law Journal* 166-170.

### **Tamara Tulich**

‘Prevention and Pre-emption in Australia’s Domestic Anti-Terrorism Legislation (2012) 1(1) *International Journal of Crime and Justice* 52-64;

‘A View Inside the Preventive State: Reflections on a Decade of Anti-Terror Law’ (2012) 21(1) *Griffith Law Review* 209-244.

### **George Williams**

‘Removing Racism from Australia’s Constitutional DNA’ (2012) 37 *Alternative Law Journal* 151-155;

‘A Decade of Australian Anti-Terror Laws’ (2011) 35 *Melbourne University Law Review* 1136-1176;

‘Ten Years of Anti-Terror Law’ *Precedent* September / October 2012, Vol 112, 9-14;

‘Winning the Referendum to Recognise Aboriginal Peoples in the Constitution’ *Australia Law Students’ Association Reporter* (Winter 2012) 40-45;

‘Breaches of Privacy by Large Corporations the Real Problem’ in J Healey (ed), *Privacy and Information Rights* (Issues in Society, Vol 341, Spinney Press, 2012) 45;

‘Rewriting the Federation Through Referendum’ in Paul Kildea, Andrew Lynch and George Williams (eds) *Tomorrow’s Federation* (The Federation Press, Sydney, 2012) 294-309;

‘Anti-terror Legislation in Australia and New Zealand’ in Ramraj *et al* (eds) *Global Anti-Terrorism Law and Policy* (CUP, 2<sup>nd</sup> ed, 2012) 541-569;

‘The Path to Statehood: The Northern Territory as Australia’s Seventh State’ (2012) 2 *Northern Territory Law Journal* 145-153;

‘Recognising Australia’s Indigenous Peoples in the Constitution’ *Australian Options*, Autumn 2012, No 68, 6-8;

‘How the Australian Constitution Should Recognise Australia’s First Nations’ *Native Title News*, February 2012, 10(4&5), LexisNexis, 45-50.

#### *Media*

‘Dismissal Looms Large for a New Political Generation’ *Sydney Morning Herald* (20 November 2012);

‘Time to Give People Say in How Governor-General is Chosen’ *Sydney Morning Herald* (6 November 2012);

‘Law Letting ASIO Detain in Secret Belongs in a Police State’ *Sydney Morning Herald* (23 October 2012);

‘Time to Get Serious on Recognising Aboriginal Rights in the Constitution’ *Sydney Morning Herald* (9 October 2012);

‘States Leave Canberra Behind in Rush to Same-Sex Marriage’ *Sydney Morning Herald* (20 September 2012);

‘MP’s Aim to Become Mayor Runs a Legal Risk’ *Sydney Morning Herald* (7 September 2012);

‘Here’s Something Even Gillard and Abbott Might Agree On’ *Sydney Morning Herald* (28 August 2012);

‘Some of Our Anti-Terrorism Laws are Well Past Their Use-By Date’ *Sydney Morning Herald* (14 August 2012);

‘Fatal Flaw in GST Design Dooms us to State-Federal Funding Stalemate’ *Sydney Morning Herald* (31 July 2012);

‘Challenge to Print Media Regulation Would Almost Certainly Fail’ *Sydney Morning Herald* (17 July 2012);

‘Chaplaincy Ruling Casts Doubt on Federal Programs’ *The Age* (21 June 2012);

‘School Chaplains Ruling Alters Concept of Federal Funding’ *Sydney Morning Herald* (21 June 2012);

‘Referendums Lack Friendly Persuasion’ *Sydney Morning Herald* (19 June 2012);

‘State of Same-Sex Union: Federal Defeat Won’t Spell End of Debate’ *Sydney Morning Herald* (5 June 2012);

‘New Body Needed to Fill Cracks of Corruption’ *Sydney Morning Herald* (22 May 2012);

‘Human Rights Hypocrisy Hurts Canberra’s Role on World Stage’ *Sydney Morning Herald* (8 May 2012);

‘Judge Her on Merits: Roxon’s Proposed Reforms Well Constructed’ *Sydney Morning Herald* (24 April 2012);

‘No One Should be Allowed to Double Park, Not Even Clover Moore’ *Sydney Morning Herald* (10 April 2012);

‘Don’t expect the Court to Undo Carbon and Mining Taxes’ *The Age* (27 March 2012);

‘Tax Challengers Take a Swing, but Legislation is Unlikely to Buckle’ *Sydney Morning Herald* (27 March 2012);

‘Easier to Pick a Melbourne Cup Winner than Next High Court Judge’ *Sydney Morning Herald* (13 March 2012);

‘Donations Reform a Big Win, but Will it Last?’ *Sydney Morning Herald* (17 February 2012);

‘If There is a Union, It Won’t be Peaceful’ *Sydney Morning Herald* (14 February 2012);

‘Only Political Negligence can Kill off this Historic Referendum’ *Sydney Morning Herald* (31 January 2012);

‘A Referendum that Can, and Should, be Won’ *The Age* (17 January 2012);



‘Pathway to Referendum Success is Now Clear’ *Sydney Morning Herald* (17 January 2012).

## **7. PRESENTATIONS**

### **Joint Presentations**

Nicola McGarrity and George Williams, ‘From Covert to Coercive: A New Model of Surveillance by Intelligence Agencies?’ *States of Surveillance: Counter-Terrorism and Comparative Constitutionalism*, 2012 International Association of Constitutional Law Research Group on Constitutional Responses to Terrorism Workshop, UNSW, 14 December 2012;

Jessie Blackburn and Nicola McGarrity, ‘Listening and Hearings: Using Telecommunications Intercepts as Evidence in Terrorism Trials’, *Surveillance in/and Everyday Life Conference*, University of Sydney, 20 February 2012;

Megan Davis and Sean Brennan, ‘Koowarta: Constitutional Landmark, Turning Point or Missed Opportunity?’, *Turning Points: Remembering Koowarta v Bjelke-Petersen Symposium*, Melbourne Law School, 11 May 2012.

### **Sean Brennan**

‘The Significance of a Racial Non-Discrimination Clause in the Constitution’, Public Forum on Constitutional Reform and Recognition of Australia’s First Peoples, Lane Cove Residents for Reconciliation, Sydney, 20 September 2012;

‘Constitutional Change and Australia’s First Peoples’, Gilbert + Tobin Lawyers, Sydney, 8 June 2012;

‘Proposals to Change the Australian Constitution’, Board of the National Aboriginal Community-Controlled Health Organisation, Canberra, 1 June 2012;

‘Native Title and Economic Empowerment’, *Native Title Consultative Forum*, Old Parliament House, Canberra, 15 May 2012;

‘The Australian Constitution: The Basics’, *Constitutional Recognition Forum*, National Centre for Indigenous Excellence, Sydney, 15 March 2012.

### **Rosalind Dixon**

‘The Supreme Court of Canada and Constitutional (Equality) Baselines’ Osgoode Hall School of Law, 14 October 2012;

‘Transnational Constitutional Anchoring’ at ANU Centre for International and Public Law’s *Public Law Weekend*, Canberra, 20-22 September 2012.

### **Fergal Davis**

‘The ongoing threat of terrorism and the suspension of criminal justice norms: lessons from the Irish Free State’, *The Criminal Justice System: Towards a Systematic Approach – Perspectives from Asia and the Pacific Conference*, Pakistan, 16-19 April 2011.

### **Keiran Hardy**

‘What is “Cyber-Terrorism?” Computer Technology and Counter-Terrorism Laws’ at the *Cyber-Terrorism Workshop*, Swansea University, Wales, 13-14 September 2012.

### **Paul Kildea**

‘Ideas for Engaging Citizens in Constitutional Referendums’, *Electoral Regulation Research Network Forum*, Parliament House, Sydney, 18 October 2012;

‘Expert Panels and Constitutional Recognition’, *Conference of the Australian Study of Parliament Group (ASPG)*, Darwin, 4 October 2012;

‘Expert Panels, Citizen Engagement and Constitutional Reform’, *Conference of the Australian Political Studies Association (APSA)*, Hobart, 24 September 2012;

‘Expert Panels as a Mechanism of Constitutional Reform’ at ANU Centre for International and Public Law’s *Public Law Weekend*, Canberra, 20-22 September 2012.

### **Andrew Lynch**

‘*Williams v Commonwealth*’, *2012 Government Solicitors Conference*, Law Society of New South Wales, Sydney, 28 August 2012;

‘Judicial Diversity: Is Disagreement a Positive Objective in Law?’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, June 5-8;

‘Author Meets Reader: *The 9/11 Effect*’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, June 5-8;

‘Rule of Law & the Commonwealth Principles—Terrorism, Emergency Laws & Human Rights’, *Commonwealth Regional Law Association Conference*, Sydney, 19 April 2012.

### **Jane McAdam**

‘Conceptualizing Crisis Migration’, *Workshop on ‘Crisis Migration’*, Institute for the Study of International Migration, Georgetown University, Washington DC, 26–28 September 2012;

‘What Research on Climate Change and Human Mobility Can/Should Provide for Practitioners and Policy Makers’, *Research Roundtable*, The Brookings Institution, Washington DC, 26 September 2012;

‘Legal Solutions: If a Treaty Is Not the Answer, Then What Is?’, *Human Rights, Environmental Change, Migration and Displacement Conference* (Ludwig Boltzmann Institute, Vienna, 20–21 September 2012;

‘A Career as a Legal Academic’, *NSW Supreme Court’s Tipstaves and Researchers Conference*, Sydney, 7 September 2012;

Annual Sophia Holland Lecture, Australian Federation of Graduate Women, 4 May 2012;

‘From Sinking Islands to Flooded Deltas: Climate Change Migration, Displacement and Resettlement: Addressing the Legal Gaps’, The Brookings Institution, Washington DC, 3 April 2012;

‘International Norm-Making on Forced Displacement: Challenges and Complexity’, *American Society of International Law Conference*, Washington DC, 28–31 March 2012;

‘Complementary Protection in Australia’, *Law Council of Australia Immigration Law Conference*, 10 March 2012;

Keynote address, Young Women’s Leadership Seminar, NSW Parliament House, 8 March 2012.

### **Nicola McGarrity**

‘The New National Security Inquiry’, *Politics in the Pub*, Sydney, 26 October 2012;

‘The Constitutional Recognition of Local Government’, University of the 3<sup>rd</sup> Age, Redlands, 9 July 2012;

‘Policing’ Intelligence: The Powers of Intelligence Agencies in Comparative Perspectives’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, June 5-8;

‘Author Meets Readers: Kent Roach, *The 9/11 Effect*’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, June 5-8;

‘Much Ado About Nothing? Drafting Control Orders for Serious Organised Crime Groups after *Totani* and *Wainohu*’, Gilbert + Tobin Centre of Public Law 2012 *Constitutional Law Conference*, Sydney, 17 February 2012.

### **Tamara Tulich**

‘The Rise of the Preventive State? Prevention and Pre-emption in Mental Health, Serious Sex Offender and Anti-Terror Laws: notes on a case study of NSW mental health law’, *Gilbert + Tobin Centre of Public Law 2012 Postgraduate Workshop in Public Law*, University of New South Wales, Sydney, 12-13 July 2012;

‘Pre-emptive Surveillance: the curious case of the hybrid control order’, *Surveillance in/and Everyday Life: Monitoring Pasts, Presents and Futures*, University of Sydney, 20-21 February 2012.

### **Rebecca Welsh**

‘Interpreting Chapter III’, *Sydney Law School Postgraduate Conference*, University of Sydney, 1-2 November 2012;

‘Interpreting the Separation of Judicial Power: Fusing Form with Function’, *National Graduate Law Conference*, Australian National University, Canberra, 18 October 2012;

‘Interpreting Chapter III: The Case for Purposive Formalism’, *Gilbert + Tobin Centre of Public Law 2012 Postgraduate Workshop in Public Law*, University of New South Wales, Sydney, 12-13 July 2012.

### **Svetlana Tyulkina**

‘Militant Democracy: an Alien Concept for Australian Constitutional Law?’ at ANU Centre for International and Public Law’s *Public Law Weekend*, Canberra, 20-22 September 2012;

‘Prohibition of Political Parties: Effective Tool to Square the Circle in the Business of Protecting Democracy?’ *Conference of the Australian Political Studies Association (APSA)*, Hobart, 24 September 2012;

‘Constitutional exceptions to combat terrorism: a way to secure more justice or a shortcut to normalize the use of emergency powers?’, *Securing Justice – A Critical Examination of Security 10 Years after 9/11*, Centre for Interdisciplinary Justice Studies, University of Winnipeg, 10- 12 May 2012;

‘Terrorism and Constitutional Change: Lessons from Spain’, *Sociolegal Conversations across a Sea of Islands*, 2012 International Conference on Law & Society, Honolulu, USA, June 5-8.

## **George Williams**

‘Privacy and Freedom of Speech’ *Privacy in the 21st Century Symposium*, University of Technology Sydney, 7 December 2012;

‘The Constitution and Electoral Funding in NSW’ *Election Funding Forum*, Sydney, 29 November 2012;

‘The Constitutionality of Compulsory Voting: The Implications of *Holmdahl* for Australian Democracy’ *Electoral Regulation Research Network Public Forum*, University of Sydney, 26 November 2012;

‘Building your Research Profile’ *Public Law Research Forum*, Adelaide Law School, 23 November 2012;

‘Can South Australia Legislate for Marriage Equality?’ *2012 Dean Jaensch Lecture*, Flinders University, Adelaide, 22 November 2012;

‘Race and the Australian Constitution: A Historical Perspective’ *Blackheath History Forum*, Blue Mountains, 27 October 2012;

‘Mission Impossible? Achieving Social Justice Through Constitutional Change’ *10th Henry Parkes Oration*, Old Parliament House, Canberra, 24 October 2012;

‘ASIO’s Extraordinary Powers’ *NSW Council for Civil Liberties Annual Dinner*, Sydney, 19 October 2012;

‘Should Same-Sex Marriage be Legalised?’ Catholic Society of St Paul and Secular Society, University of New South Wales, Sydney, 9 October 2012;

‘Australia’s Exclusive Model of Parliamentary Rights Protection’ *Conference of the Australian Political Studies Association (APSA)*, Hobart, 24 September 2012;

‘Australia’s New Approach to Human Rights Protection: Can Parliament go it Alone?’ *13th International Criminal Law Congress*, Queenstown, New Zealand, 16 September 2012;

‘Does Constitutional Recognition Negate Aboriginal Sovereignty?’ YouMeUnity, *National Congress of Australia’s First Peoples and UNSW Indigenous Law Centre Open Forum*, Sydney Opera House, 13 September 2012;

‘Australia’s Exclusive Model of Parliamentary Rights Protection’ UNSW Law School Seminar, Sydney, 11 September 2012;

‘Can Tasmania Legislate for Marriage Equality?’ Faculty of Law Seminar, University of Tasmania, Hobart, 29 August 2012;

‘Indigenous Rights and Constitutional Recognition’ *The Politics of Citizenship in an Era of Human Rights: An International Research Workshop*, Whitlam Institute, University of Western Sydney, 28 August 2012;

‘Constitutional Recognition of Local Government’ *100th Local Government Conference: Treasuring the Past, Transforming the Future*, Local Government Association of Tasmania, Hobart, 13 July 2012;

‘Legal research and the Work of Courts and the Legal Profession’ *Australasian Law Teachers Association Conference*, Sydney, 3 July 2012;

‘What the School Chaplains Case Means for Local Government’, *National General Assembly of Local Government*, National Convention Centre, Canberra, 20 June 2012;  
‘Recognising Aboriginal Peoples in the Constitution’, KPMG National Board, Sydney, 18 June 2012;

‘Constitutional Recognition’, *National General Assembly of Local Government*, National Convention Centre, Canberra, 18 June 2012;

‘Refugees and Human Rights’, Manning Clark House Public Forum, National Press Club, Canberra, 9 June 2012;

‘Even Researching Referendums is Exciting!’, *The Passion of Socio-Legal Research*, Griffith Law School Research Colloquium, Gold Coast, 30 May 2012;

‘What’s it All About? Recognising Aboriginal Peoples in the Constitution’, KPMG National Reconciliation Week Forum, Reconciliation Australia, 29 May 2012;

‘Occasional Address’, All Faculty Graduation Ceremony, University of New South Wales, Sydney, 25 May 2012;

‘The Coming Referendum’, *Forum on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples*, AnTAR NSW, Sydney, 12 May 2012;

‘Human Rights in the Australian Parliament’, *Redressing the Democratic Deficit in Human Rights Conference*, UK Arts & Humanities Research Council, London, 18 April 2012;

‘The Australian Constitution: The Basics’, *Constitutional Recognition Forum*, National Centre of Indigenous Excellence, Sydney, 15 March 2012;

‘Regulation v Audit: Higher Education in Australia’, *Universities Australia 2012 Higher Education Conference*, Canberra, 8 March 2012;

‘Is the Idea of the University Dead?’, *Australian Universities: Today and Tomorrow*, National Tertiary Education Union, Sydney, 23 February 2012;

‘The Coming Referendum’, National Youth Advisory Council, National Centre of Indigenous Excellence, Sydney, 27 January 2012.

## **8. SUBMISSIONS TO INQUIRIES**

### **Joint submissions**

Shipra Chordia, Paul Kildea, Andrew Lynch, Nicola McGarrity and George Williams, Submission to the Joint Select Committee on Constitutional Recognition of Local Government (19 December 2012);

Sean Brennan, Paul Kildea, Andrew Lynch, and George Williams, Submission to the Joint Select Committee on on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (19 December 2012);

Rafe Andrews, Keiran Hardy and Andrew Lynch, Submission to the Legal and Constitutional Affairs Legislation Committee Inquiry into the Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012 (14 December 2012);

Lisa Burton, Fergal Davis, Andrew Lynch, Nicola McGarrity, Tamara Tulich, Rebecca Welsh and George Williams, Submission to the COAG Review of Counter-Terrorism Legislation (21 September 2012);

Lisa Burton, Andrew Lynch, Tamara Tulich, Rebecca Welsh and George Williams; Submission to the Independent National Security Legislation Monitor on Control Orders and Preventative Detention Orders under the *Criminal Code Act 1995* (Cth) (10 September 2012);

Lisa Burton, Nicola McGarrity and George Williams, Submission to Independent National Security Legislation Monitor on ASIO Powers (3 September 2012);

Liam Boyle, Timothy Boyle, Patrick Gardener and Rebecca Welsh, Submission to the Parliamentary Joint Committee on Intelligence and Security, Inquiry into Potential Reforms of National Security Legislation (13 August 2012);

Jessie Blackbourn, Fergal Davis, Jennifer Goh, Keiran Hardy, Nicola McGarrity and George Williams, Submission to the Parliamentary Joint Committee on Intelligence and Security, Inquiry into Potential Reforms of National Security Legislation (1 August 2012);

Jane McAdam and 16 refugee law academics, Submission to Expert Panel on Asylum Seekers on transport of asylum seekers (11 July 2012);

Nicola McGarrity and George Williams, Submission to NSW Department of Finance and Services 'Inquiry into Just Terms Compensation Legislation' (16 May 2012);

Emily Burke and George Williams, Submission to Joint Standing Committee on Treaties 'Inquiry into Treaties Ratification Bill 2012' (10 May 2012);

Andrew Lynch and Emily Burke, Submission to the Senate Legal and Constitutional Affairs Committee 'Inquiry into the Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 and Courts Legislation Amendment (Judicial Complaints) Bill 2012' (26 April 2012);

Emily Burke, Andrew Lynch and George Williams, Submission to the Senate Legal and Constitutional Affairs Committee 'Inquiry into the Marriage Amendment Bill 2010' (15 March 2012);

Emily Burke, Andrew Lynch and George Williams, Submission to the House of Representatives Social Policy and Legal Affairs Committee 'Inquiry into the Marriage Amendment Bill 2012 and Marriage Equality Amendment Bill 2012' (15 March 2012);

Michael Grewcock, Jane McAdam and George Williams, Submission to Senate Legal and Constitutional Committee 'Inquiry into the Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012' (20 February 2012);

Nicola McGarrity and George Williams, Submission to Senate Education, Employment and Workplace Relations Committee 'Inquiry into the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011' (20 January 2012).

### **Sean Brennan**

Submission to Senate Community Affairs Committee Inquiry into Low Aromatic Fuel Bill 2012 (24 July 2012).

### **George Williams**

Submission to House of Representatives Social Policy and Legal Affairs Committee Inquiry into Do Not Knock Register Bill 2012 (19 July 2012);

Submission to NSW Shadow Attorney General's 'Discussion Paper on Property Rights and Just Terms Compensation' (19 June 2012);

Submission to Standing Committee on Administration and Procedure, ACT Legislative Assembly 'Review of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)*' (8 February 2012).



