

Dear Friend

Welcome to the second newsletter of the Gilbert + Tobin Centre of Public Law for 2008.

The first half of the year has been a busy and productive one for all members of the Centre, kicked off as usual by our annual Constitutional Law Conference in February. The conference was held once again at the Art Gallery of New South Wales and was well attended by figures from the judiciary, profession, academia and the media. The conference dinner attracted record numbers and the special guest speaker was the Hon Justice Susan Crennan AO of the High Court.

The Centre held two other events in recent months. One was a Charter of Rights Roundtable organised and co-hosted by the Centre's Ed Santow with the Human Rights and Equal Opportunity Commission. The meeting brought together over 40 of the nation's leading experts and stakeholders in the debate over formal legal protection of individual rights in Australia. Later in June, a Federalism Research Roundtable saw an interdisciplinary gathering of researchers speak to papers on the prospects and priorities in reform of the nation's federal system. Full reports of both these events are inside this newsletter.

Congratulations go to Dr Jane McAdam, the director of the Centre's Climate Change 'Refugees' and International Law Project, for the publication of her edited book, *Forced Migration, Human Rights and Security* by Hart Publishing UK. Jane's work in this rapidly emerging area continues to draw well-deserved international recognition.

Finally, there have been a few further changes to staffing at the Centre. We welcomed Nicola McGarrity as our new full-time Research Associate. Nicola comes to us from the Sydney Bar and with significant experience in teaching and research and has already had a big impact on the team.

In February, Professor George Williams stood down from the position of Centre Director and I have since replaced him in that role. As foundation director, George accomplished an enormous amount and swiftly established the Centre and its reputation for academic research and public engagement with great success. I feel very fortunate to be following on from George and look forward to continuing to work with him and all at the Centre on its various projects and activities.

Associate Professor Andrew Lynch
Director

2009 Constitutional Law Conference and Dinner

Our next Constitutional Law Conference and Dinner will be held on 20 February 2009 at the Australian National Maritime Museum. The dinner will be hosted by NSW Attorney-General, the Hon John Hatzistergos MLC at NSW Parliament House.

Centre Activities

Australia's system of government has passed its use-by date in too many respects. The federal arrangements are dysfunctional, ministerial responsibility has broken down and the system fails to adequately protect fundamental rights and freedoms. Too many of the processes that made sense when Australia became a nation are now antiquated and ineffective, and as a consequence many of the rules of our democracy are second rate.

George Williams
'Thawing the Frozen Continent' (2008) 19
Griffith Review 11.

2008 Constitutional Law Conference

On 8 February 2008 the Centre with the support of the Australian Association of Constitutional Law again hosted a major conference at the Art Gallery of New South Wales.

The conference, the seventh of this annual event, gathered together practitioners, judges, scholars and members of the general community to discuss recent events and future trends in Australian constitutional law.

The event attracted over 200 participants and a number of high profile speakers and chairpersons. Associate Professor Anne Twomey and the Hon Justice Catherine Holmes updated participants on the 2007 Term of the High Court and the State and Federal Courts.

The second session gave concentrated attention to three recent cases. Associate Professor Graeme Orr discussed the right to vote in Australia in the wake of *Roach v Electoral Commissioner*, while Stephen McLeish considered the meaning of 'other than



Session 3 of the 2008 Con Law Conference: 'Separation of Judicial Power'

State insurance' in *Attorney-General (Vic) v Andrews*. Professor Geoffrey Lindell rounded out the trio with a paper on the scope of the defence and other legislative powers as featured in *Thomas v Mowbray*. The third session was dedicated to issues arising from the Separation of Judicial Power. Professor Denise Meyerson focused on Chapter III and control orders, with *Thomas v Mowbray* again under

the microscope, while Emma Armson spoke on the constitutionality of the takeovers panel and other tribunals and Graeme Hill pondered the scope of section 75(v) after *Bodruddaza*.

The fourth and final session of the conference was on the very broad issues of the intersection of law, politics and judicial activism. Dr Jason Pierce, Dr Janet Al-



Session 4 Panel of the 2008 Con Law Conference: The Hon Justice Robert French, Dr Janet Albrechtsen and Dr Jason Pierce

2008 Constitutional Law Trivia Quiz Questions

1. Justice Michael Kirby has said that he fantasises about attending a dinner party with which well-known newspaper columnist?
2. Who were the first and last Justices to be appointed to the High Court, having previously served terms as federal Attorney-General?
3. Who were the most recent Labor and Liberal Prime Ministers to have served at least one year in office without having an opportunity to make an appointment to the High Court?
4. Upon his arrival at the High Court, Justice Kirby entered his new chambers and found a notable item in his desk drawer. What was it?
 - (a) Lionel Murphy's wig
 - (b) An early draft of Justice Rich's reasons in the 1938 *Sun newspapers case*
 - (c) An old form guide belonging to Justice Knox
 - (d) A tape recording of Justice Keith Aickin's voice
5. In 2006 artist Josonia Palaitis entered a portrait of Justice Kirby in the Archibald Prize. Prior to this Ms Palaitis had gained renown for painting the portrait of which Australian Prime Minister?
6. Which former High Court Justice became a successful appellant in the High Court after suing the driver of a vehicle that knocked him down on Sydney's Phillip Street in 1938?

Answers Page 8



The Hon Susan Crennan speaking at the 2008 Constitutional Law Conference Dinner

brechtsen and the Hon Justice Robert French gave papers on, respectively, the opinions of Australia's judges to the methodology employed by the High Court under Chief Justice Mason, the Evils of Judicial Activism and the Mythical Monsters of Judicial Activism.

Participants at the conference enjoyed dinner that night at New South Wales Parliament House. The speaker was The Hon Justice Susan Crennan of the High Court and her Honour's address was a consideration of the history behind those fundamentally democratic provisions of the Commonwealth Constitution – sections 7 and 24. As is now customary, a High Court trivia quiz again followed the dinner.

The 2008 High Court Trivia Quiz again proved to be very challenging, with the highest score of 77% going to Table 10: 'Walsh'. The people on this table were Andrea Durbach, Kathryn Fitzhenry, Katherine Gelber, Chris Holt, Jeremy Kirk, Denise Meyerson, Graeme Orr, Anne Susskind, Paul Taylor and David Yarrow. Placed in equal second place were tables 4: 'Crennan' and 13: 'Knox' both on 76%.

Papers from the conference and the trivia questions and answers are available on the Centre website, www.gtcentre.unsw.edu.au.

When the ACT was granted self-government in 1988, the Commonwealth imposed major conditions. This left Canberra's system of government with several features more akin to a nineteenth century colonial possession than a modern Australian territory.

George Williams 'More than Just a Flag' *Canberra Times* (5 April 2008).



The Hon Justice Annabelle Bennett chairing a session at the 2008 Con Law Conference

[T]he best way to protect a person's human rights is to ensure that those rights are not violated in the first place. [A Charter of Rights] will only be truly effective if it is supported by a range of mechanisms that help to prevent human rights violations from occurring.

Edward Santow
 "Putting the Charter to good use: now and in the future": paper delivered at *To Make a Difference: Human Rights and Homelessness* Conference Melbourne (14 March 2008)

Federalism Roundtable

On Friday 13 June, the Centre held a Federalism Research Roundtable at the Faculty of Law, University of New South Wales. The purpose of the Roundtable was to gather a number of experts across the fields of public law, economics and political science to discuss present problems with Australia's federal arrangements and suggest future directions for substantive reform. The day was divided into three sessions with the first dedicated to constitutional change. Dr AJ Brown delivered a paper which revealed public attitudes towards constitutional recognition of local government in Australia while Associate Professor Anne Twomey considered the difficulties with moving Australia's federal arrangements to a system of regional governance. The third paper in the session was co-authored by Dr Andrew Lynch and Professor George Williams and considered whether constitutional amendment so as to recognise a particular mode of federal relationship might be achievable and what benefits this might bring.

The second session of the day focused very much upon extra-constitutional mechanisms and institutions. Professor Neil Warren presented research indicating the way in which the Commonwealth Grants Commission's formula for addressing horizontal fiscal imbalance affects state budgets and planning and discussed alternative models from overseas, while Dr Alan Fenna considered the role of specific purpose payments in Commonwealth-State financial relations. The final paper for this session was presented by Mr Geoff Anderson (and co-authored with Professor Andrew Parkin) and considered the development in recent years of the Council of Australian Governments with his view being that in recent years this body has been marked by a spirit of 'cooperative centralism'.

The final session of the day was dedicated to specific questions about the future of federal relations in particular areas of public importance with Associate Professor Cameron Stewart considering the possible further centralisation of responsibilities in health care while Professor Jennifer McKay outlined the history of water management between the Commonwealth and the States in Australia and spoke to the new provisions in the *Water Act 2007* (Cth). The very last paper of the day was presented by Professor Brian Galligan and considered the broader possibilities and desirability of reform of Australia's federal relations. The structure of the day's proceedings was based solidly upon discussion of papers which had been already circulated in advance and it is hoped that many of these will appear as contributions to a forthcoming thematic issue of the University of New South Wales Law Journal later this year.

The day concluded with a casual dinner amongst the interstate participants at the roundtable at nearby Coogee Beach's Deep Blue Restaurant. Our thanks to the participants at this event which was supported by the Centre's 2008 Goldstar Grant from the University of New South Wales.

Report from the 2020 Summit: George Williams

Along with a thousand other Australians, I was lucky to attend the 2020 Summit. I was not sure what to expect, but imagined reams of butcher's paper and the latest in group management techniques.

I was right about both, but failed to anticipate just how chaotic and challenging the Summit would be. The main problem was how little time there

was to spell out, let alone to debate, the key issues. Despite the event running over two days, each of the ten streams of 100 delegates was given only seven hours to come up with its big ideas.

It was inspiring to spend a weekend with a thousand Australians who had given up their time to debate the future of the nation. Many had travelled great distances at their own expense.

I was in the governance stream. Our areas included reforming parliament, fixing the federation, protecting human rights and media freedom, open government, participatory democracy and the republic. Many of these have been on the agenda for decades and already have well debated solutions. They are less in need of new ideas than a dose of political will.

The republic issue demonstrated the strengths and weaknesses of the Summit. A highlight was the strong support for putting the republic back on the agenda. At the final session the republic received the largest and most sustained applause. Like the apology to the Stolen Generations, it showed how we can be inspired by aspirations and symbols and that people want a system of government for a modern, open democracy.

The Summit was geared to produce big ideas like the republic. Unfortunately, some smaller ideas got lost along the way. These included reforming donations to political parties and many sensible parliamentary reforms. It also included my proposal that a new preamble, or opening set of words, to the Australian Constitution should be put to a national competition. This could capture the public imagination like the 1901 competition to design the Australian flag which attracted over 32,000 entries. The competition would start up a conversation in schools and around the country about the values and the principles that bind us together.

My hope is that the Summit is only the beginning of more national conversations about how we are governed and the country we aspire to be in the future. I would like to see governments hold more ideas summits, though not too soon and certainly taking account of the lessons from this time round. We should also hold a constitutional convention every ten years, or half-generation, so that engaging with our system of government and its problems is a regular, expected part of our public life.

Centre Submissions

The Centre has made several submissions to public inquiries on a range of topics since the last newsletter. Perhaps the most unusual of these was that made to the 2020 Future Summit in April. Sean Brennan, Andrew Lynch, Jane MacAdam and George Williams collaborated on the submission

which addressed four of the ten 'streams' around which the summit was structured. Those streams were 'Population, sustainability, climate change, water and the future of our cities' (Jane MacAdam); 'Options for the future of Indigenous Australia' (Sean Brennan); 'The Future of Australian Governance' (George Williams) and 'Australia's future security and prosperity in a rapidly changing region and world' (Andrew Lynch). The submission was unique in that it drew together a great many of the areas central to the Centre's work and allowed them to be presented in a very general way, rather than applied to critique a specific piece of proposed legislation or respond to a single issue. A copy of the Centre's submission to the 2020 summit, along with all others, is available via the Centre's website.

Additionally, and as the shape of the new Commonwealth Parliament begins to settle, a number of particular inquiries have elicited contributions from the Centre. In April, Andrew Lynch and George Williams made a submission to the Senate Legal and Constitutional Affairs Committee on a number of constitutional and democratic issues arising from the Rights of the Terminally Ill (Euthanasia Law Repeal) Bill 2008 proposed by Senator Bob Brown with a view to legalising euthanasia in the territories of Australia once more. Andrew also co-authored a submission with Centre Intern, Jemma Hollonds, to the Parliamentary Joint Committee on the Australian Crime Commission in response to its inquiry into the legislative arrangements to outlaw serious and organised crime groups. The main point of our contribution was to highlight the danger of seepage from anti-terrorism laws directed at organisations into other areas of the law – particularly when there are real problems with the terrorism provisions in question. It is important that these are not used as the basis for the production of similarly defective laws in other areas.

The other submission produced in connection with the Terrorism and Law Project was that authored by Andrew, George and Nicola McGarrity and made to the inquiry into the circumstances surrounding the case of Dr Mohamed Haneef which is being headed up by the Hon John Clarke QC and has to report by 30 September of this year. Our submission essentially made two points. First, it highlighted the defects – of legislative process and substance – at the heart of the law which allowed the pre-charge detention of Dr Haneef to run for 12 days. Second, it made the more general argument that excessive width in anti-terrorism laws virtually ensures that worrying incidents like the Haneef affair will occur and that encouraging executive overreach does not make the community safer but undermines public confidence when it is most needed and risks alienating those in the community who may be most susceptible to radicalisation.

The effective functioning of the legal system demands that it be administered by people – especially lawyers – who are committed to playing by the rules of the system and who will not seek to undermine their operation.

Edward Santow
"Fostering Civic Professionalism":
paper delivered to the *Future of Legal Education* Conference, Georgia State University, Atlanta, USA (24 February 2008).

The deprivation by the state of a person's liberty without justification and absent a fair process is the most fundamental denial of an individual's freedom. Compensation can go some way to making amends for its consequences. It also has the advantage of strongly impressing upon governments that they should not allow rights to be similarly disregarded in the future.

Andrew Lynch, 'When 'sorry' is not enough' *Australian Policy Online* (11 January 2008).

Foundation Director Report - George Williams

When I joined the Faculty of Law at the University of New South Wales in December 2000, I became the inaugural Director of the Gilbert + Tobin Centre of Public Law. At that time, the Centre was no more than a name plate on a door and the six years since have involved tremendous amounts of work, co-operation and good humour from many people to build the Centre up to what it is today. The strength of the Centre has always been based upon the quality and commitment of the many people who have come to work with us, ranging from senior and brand new academics to our administrator to research assistants and to our interns. It has been a great pleasure to work with so many talented and inspiring people.

After seven years, it was the right time to step down from being the Director of the Centre in February this year. I did so with some regrets, because there will always more things that a Centre like this can achieve, but the time was right for a new leadership and new ideas at the top. The time was also right for me to refocus on some longer term research projects and to take a step back from the day to day running of the Centre.

Although I am no longer the Centre's Director, I am still very much involved. I am proud to remain a member of the Centre and, like so many other academic staff, hope to make important contributions to the Centre under its new leadership.

The Faculty of Law is very fortunate that Dr Andrew Lynch was willing, and so eminently able, to step in as Acting Director from February. Andrew has been the Deputy Director for some time, and has played the lead role over recent years in the organisation and leadership of some of our biggest events and largest grants. I look forward to working with Andrew and others at the Centre in the future.

The short term finds me based in Canberra as a Visiting Fellow at the Australian National University College of Law. Sometimes after stepping down from a role like being Director of a centre, it is good to have a bit of space, both physical and otherwise, from the day to day demands of such a job. With a change of federal government and some time to re-engage with research projects, Canberra is proving an excellent base for some time away from the UNSW campus in Randwick.



Centre Research Associate, Nicola McGarrity

Nicola McGarrity

I commenced at the Gilbert + Tobin Centre of Public Law just over two months ago in May. Prior to this, I had an eclectic employment history, which ranged from lecturing and tutoring at Macquarie University and the University of Sydney to working as the Associate to a Federal Court Judge to practising at the New South Wales Bar, principally in the areas of immigration and administrative law, intellectual property law, and human rights law. However, the highlight was undoubtedly the several months in the summer of 2006/2007 that I spent volunteering at a legal centre in Zanzibar, Tanzania, and researching the human rights situation on the island.

The Gilbert + Tobin Centre provides me with an exciting opportunity to again pursue my interest in the protection of human rights. For the next 18 months, I will be working with Andrew Lynch and George Williams on the Terrorism and the Law Project. Thus far, the majority of my time with the Centre has been spent in researching the largely-neglected issue of the proscription of terrorist organisations in Australia. I have also contributed to a submission that the Centre made to the Clarke Inquiry into the Haneef Case and co-authored an opinion-editorial with Andrew on the contrast between the responses of Australia and Canada to the 'extraordinary rendition' by the United States of Mamdouh Habib and Maher Arar.

The short time that I have been at the Gilbert + Tobin Centre has impressed me with a sense of the dynamism of the Centre, being at the forefront of both academic debate and law reform. For exam-

Centre Research Associate, Nicola McGarrity and friend in the streets of Stone Town, Zanzibar



ple, in the last month, I have been fortunate to attend two Roundtables conducted by the Gilbert + Tobin Centre, the first on a National Charter of Rights and the second on Federalism. I look forward greatly to the rest of my time with the Centre and to becoming increasingly involved in its various projects and activities.

Centre Visitors



Kath Gelber

Kath has been working on several projects since starting at the Centre this year. The first was the completion of Vromen, Gelber & Gauja *Power-scape: Contemporary Australian Political Practice*, published by Allen & Un-

win this year. Since that was finished, Kath has been working primarily on an ARC-funded project into freedom of speech in Australia, including empirical research into free speech practice in Australia. This has also included the drafting of a theory-based article on the limits of free speech, which has been submitted to a journal for review. Kath is also currently drafting an article tentatively titled 'The False Analogy between Vilification and Sedition'. In June she attended a workshop at the Legal Intersections Research Centre, University of Wollongong on the topic of Religion and the Law, and presented a paper on 'Religion and Free Speech'.

Gavin Phillipson



Centre Visitor Gavin Phillipson

I was keenly looking forward to my visit to the G+T Centre at UNSW, and to the city of Sydney, after meeting Andrew Lynch in Durham, where he'd come to give an illuminating paper on anti-terror-

ism law in Australia. Not only did we have major cross-overs in research interests, but he promised me that UNSW Law School would be a great place to visit. And so it proved. After I'd been efficiently ensconced in George William's huge office, with a lovely view of the cricket pitch, his book collection a min-library in itself, Andrew worked tirelessly to make sure I met as many UNSW folk as possible, setting up lunches, drinks and dinners by the dozen. I gave a staff paper on privacy to an audience bigger than the entire Durham Law Faculty and even managed to get a few laughs at the idea of activist, pro-privacy English judges becoming mini-Obamas – *Yes we can!* During numerous conversations, I picked up quite a passionate sense of concern about an Australian government bent on ever ramping up state anti-terror powers – would much change with the arrival of Kevin Rudd? – and a High Court that seemed increasingly conservative and determined to remain aloof from the march towards effective human rights protection around the Western world. But there was also genuine excitement about the possibility of a Federal Human Rights Act, which ensured numerous animated conversations about legal and political developments around the UK's HRA – particularly the reasons for its political unpopularity and the pledge of the Conservative opposition to repeal it. Prue Vines painted vividly for me the huge national stir caused by Kevin Rudd's public apology to the Aborigines and how nearly all the Faculty had gathered to watch it live on TV in the common room.

Away from law, it was a great pleasure to meet Andy Durbach, who was kind enough to coach me a little on my deplorably bad South African accent, after realising what my much praised imitation of Hansie Cronse ("*We're gonna distroy you boys aut thi*") was meant to be. Prue Vines very kindly invited me to dinner in her home with other faculty and on my last day took me on a wonderful trip to Botany Bay, where she gave me some fascinating lessons in early Australian history over fantastic fish and chips. The weather was beautiful – warm (but not stifling) clear sunshine, after the oven that had been Melbourne. Coogee beach was 10 minutes walk away, Sydney Harbour 20 on the bus, and I met numerous very friendly Sydney folk in town.

I'm hoping, with colleagues at Durham, to be bringing Andrew and George in to give an Australian perspective to a big terrorism law project over the next few years and have been telling every law academic I know to get out to UNSW. Thanks so much to everyone, especially Andrew, who gave me such a wonderful couple of weeks. Next time I will certainly come for longer.

It was revealed two weeks ago ... that officials in Pakistan and Australia were aware as early as 22 and 23 October 2001 that [Mamdouh] Habib might be "rendered" by the United States to Egypt ... the real question has become not whether the Australian government had knowledge of Habib's rendition and detention, but why they did nothing in 2001 to prevent the violations of Habib's human rights and continue to do nothing today to acknowledge or remedy these violations.

Andrew Lynch and Nicola McGarrity. 'Disentangling the story of Mamdouh Habib', *Australian Policy Online*, (6 June 2008).

... an inquiry would also cut through the years of dissembling about Habib by government figures. It would establish, once and for all, who knew what when, and what they did or did not do about it. ... It seems odd that ... Australia's most prominent public inquiry at the moment is examining the circumstances of the sinking of the HMAS Sydney during the second world war. Let's hope we don't have to wait over 60 years to discover the full story behind our government's role in the treatment of Mamdouh Habib.

Andrew Lynch and Nicola McGarrity, 'Disentangling the story of Mamdouh Habib', *Australian Policy Online*, (6 June 2008).

Postgraduate Research

Paul Kildea

Topic: 'Public engagement in constitutional reform in Australia'



PhD Student Paul Kildea

The aim of my research is to investigate the extent to which ordinary people are engaged in the process of constitutional reform in Australia. My interest in this topic stems from the seeming disconnect between the existence of a Constitution that derives its authority from the people, and a people that famously have little knowledge or interest in their Constitution. I hope, through my research, to better understand the attitudes of Australian citizens towards their Constitution, the barriers to greater popular engagement, and possible reforms that might facilitate more active participation in constitutional debates.

Recently I have concentrated on the lead up to the 1999 referendum on the republic and preamble. By analysing materials such as parliamentary debates, media reports, voting returns and survey results, I hope to explore the extent to which the general public participated in, and deliberated about, those constitutional issues. Later in the year I plan to investigate the work of the Constitutional Centenary Foundation, and to conduct a series of focus groups to gauge attitudes towards the Constitution and the idea of participating more actively in debates about constitutional issues. At the heart of my thesis is a strong notion of popular sovereignty that, drawing on deliberative democratic theory, emphasises the importance of giving all citizens opportunities to engage in effective deliberation about proposals for constitutional change.

Social Justice Report

Jemma Hollonds



Social Justice Intern,
Jemma Hollonds

During my internship at the Centre over the past semester, I've had the opportunity to contribute to a wide range of project areas and tasks. Among these were preparing submissions to the Australia 2020 Summit, developing responses to common arguments against charters of rights, and researching international state responses

towards 'climate change refugees'. A substantial part of my time was spent researching and writing fact sheets about the federal alcohol bans in the NT for the website project on the NT intervention. This internship has been an invaluable opportunity to increase my understanding of public law and policy issues and to develop my research and analytical skills. I'd like to thank the Centre staff, Andrew Lynch, Sean Brennan, Jane McAdam, Ed Santow and George Williams, for their support and for providing me with such diverse and challenging projects.

Trivia Quiz Answers

1. Janet Albrechtsen, who has a weekly column in the *Australian*.
2. Sir Isaac Isaacs, who was appointed to the Court in 1906 and Lionel Murphy, who was appointed in 1975.
3. John Curtin (Labor) and Harold Holt (Liberal).
4. (d) A tape recording of Keith Aickin's voice.
5. John Howard.
6. Albert Piddington.
7. (c) Puppet Strings.
8. Justice Ian Callinan.

Charter of Rights

Project Director: Edward Santow



2008 Bill of Rights Conference Brochure

Recent events have added fuel and public focus to the debate on whether Australia should enact a federal charter of human rights. The Australian Labor Party went to the 2007 federal election promising that, if elected, it would establish a broadly inclusive consultation process to consider how best to recognise and protect human rights. In the May 2008 budget, the ALP, now in Government, allocated \$2.8 million to an inquiry that would

make good on this promise. This inquiry is likely to commence within the next 6-12 months. The Centre will certainly contribute to this inquiry.

While Victoria and the Australian Capital Territory are the only Australian jurisdictions to have enacted a human rights statute or charter, in the last nine months separate inquiries in Tasmania and Western Australia have recommended the enactment of a human rights statute. Both reports recommended the adoption of models similar to those in Victoria and the ACT, which preserve parliamentary supremacy by not giving a power to the judiciary to

strike down legislation that is inconsistent with the human rights statute. Interestingly, both reports also proposed the legislative protection of some economic, social and cultural rights.

On 2 June 2008, the Centre and the Human Rights and Equal Opportunity Commission organised a Charter of Human Rights roundtable. This roundtable brought together over 40 of Australia's most prominent human rights experts and stakeholders to discuss how best to contribute to the current debate and reform processes on the legislative protection of human rights. The roundtable was chaired by the Centre's Foundation Director, Professor George Williams, and it was addressed by the Charter Project Director among others.

On 3 October 2008, the University of Melbourne will host the *Protecting Human Rights Conference*. This annual conference is organised by the Centre for Comparative Constitutional Studies, the Regulatory Institutions Network, the Australian Human Rights Centre and the Gilbert + Tobin Centre of Public Law. The conference will examine the Victorian *Charter of Human Rights and Responsibilities*, the ACT *Human Rights Act* and other charters of rights. Leading Australian and international speakers will address the role of judges in assessing limitations on rights and the use of international and comparative law, the intersection of anti-discrimination laws with human rights legislation, the effect of human rights protection on the private sector and the relevance of human rights in criminal trials. The Charter Project Director will be one of the speakers at this conference. More information is available at <www.gtcentre.unsw.edu.au/events/index.asp>.

Can Northern Territory ('NT') fishers trawl coastal waters that lie within the boundaries of Aboriginal land, without the consent of traditional owners? That was the legal question tested in the High Court over two days in early December 2007. The answer will have economic significance for fishers, traditional owners and the NT Government.

Sean Brennan and Peta MacGillivray, 'Fishing Case Tests Economic Waters for Traditional Owners' (2008) 7(2) *Indigenous Law Bulletin* 18.

2008 Protecting Human Rights conference

The Centre is co-hosting a national conference on Australian Bills of Rights on Friday, 3 October 2008 at the Melbourne Law School. The conference provides an important opportunity to examine the Victorian Charter of Human Rights and Responsibilities, the Australian Capital Territory's Human Rights Act, as well as other charters of rights. Leading Australian and international speakers will address the conference on topics including: the role of judges in assessing limitations on rights and the use of international and comparative law; the intersection of anti-discrimination laws with human rights legislation, the effect of human rights protection on the private sector and the relevance of human rights in criminal trials. The day is aimed at both a legal and non-legal audience.

Key confirmed speakers include:

- The Right Hon Chief Justice Dame Sian Elias, New Zealand
- Lord Justice Sir Stephen Sedley, Judge of the Court of Appeal of England and Wales (via dvd)
- Professor Johannes Chan SC, Dean of the Faculty of Law, University of Hong Kong
- The Hon Robert McClelland MP, Commonwealth Attorney General
- The Hon Justice Marcia Neave, Court of Appeal, Victoria
- Debbie Mortimer SC, the Victorian Bar
- Sally Sheppard, Partner, Clayton Utz
- Joanna Davidson, Special Counsel Human Rights, Victorian Government Solicitor's Office
- Associate Professor Carolyn Evans, Deputy Director CCCS, Associate Dean (Research), the Melbourne Law School
- Associate Professor Jeremy Gans, Melbourne Law School, Human Rights Adviser to the Victorian Parliament's Scrutiny of Acts and Regulations Committee
- Professor Hilary Charlesworth, RegNet and Director of the Centre for International Governance and Justice (CIGJ), ANU
- Edward Santow, Charter of Human Rights Project Director at the Gilbert + Tobin Centre of Public Law

The full program and registration form is available at <http://cccs.law.unimelb.edu.au>

Climate Change 'Refugees' and International Law

Project Director: Jane McAdam

The past six months has been a busy time for the 'Climate Change "Refugees" and International Law' project, and its growing prominence has led to a number of invitations and opportunities. The Project Director, Jane McAdam, was fortunate to receive some funding from the UNSW Law Faculty to conduct field work in the Pacific island nations of Kiribati and Tuvalu in November this year. This will help her to obtain a first-hand, informed understanding of the impacts of climate change on vulnerable nations, including its day-to-day effects on affected populations, and how these translate into rights at risk in international law terms. She plans to speak with local NGOs and government officials about the way they perceive climate change impacting on their communities, whether they view migration/protection as an adaptation strategy, and how they would ideally see this implemented.

Jane was invited to join the Steering Committee of Green Cross Australia's 'Sea-Level Rise: A People's Assembly', along with Tim Costello (Chief Executive, World Vision), Julian Burnside QC, Prof Jan McDonald (Griffith University), Dr Andrew Ash (CSIRO Sustainable Ecosystems), Prof Ian Lowe AO (President, Australian Conservation Foundation), Tony Coleman (Chief Risk Officer, IAG), and Prof



Jane McAdam launching NSW Young Lawyers' publication *New Land, New Law: A Guide to the Legal System in NSW*, 13 May 2008

Part of the controversy is the perception that private corporations, who make money from the development of land, should have to negotiate with existing landowners, and they shouldn't be able to tap governments on the shoulder and invite them to use their draconian powers of compulsory acquisition to enhance the profitability of those private corporations.

Sean Brennan, 'Land Appropriation in the Northern Territory', *The Law Report*, ABC Radio National, 20 May 2008.

Paul Hardisty (WorleyParsons) (see www.greencross-australia.org). The People's Assembly is a project involving 14 Australian citizens in a European-style 'consensus conference'. Following intensive briefings and research sessions with experts from law, science, business, security and environmental fields, the citizens' panel will deliver a 'verdict' on how Australia should tackle the issue of sea-level rise and displacement in the Asia-Pacific region. Jane's research has formed a core part of the People's Assembly background briefing workshops, at which she has also presented, and she will also deliver a public lecture at the conference at which the group's recommendations will be presented (as part of the Brisbane Riverfestival in August).

In conjunction with Professor Andy Pitman, Co-Director of the Climate Change Research Centre at UNSW, and Anna Samson, National Policy Director at the Refugee Council of Australia, Jane presented on 'Climate Change and Migration' at a UNSW Environment and Development Public Forum on 23 May. A podcast of this event is available at http://www.youtube.com/watch?v=n5CHtYR_Sik. In June, Jane was invited on the Centre's behalf to present her research at the inaugural lunch for large law firm pro bono coordinators, hosted by the Law Society of NSW.

In March this year, Jane's new edited book *Forced Migration, Human Rights and Security* was published by Hart Publishing, UK, see <http://www.hartpub.co.uk/books/details.asp?isbn=9781841137704>

She has recently completed a book chapter entitled 'An Insecure Climate for Human Security? Climate-Induced Displacement and International Law' with former G+T Centre member, Dr Ben Saul, which will be published in A Edwards and C Ferstman (eds), *Human Security and Non-Citizens in the New Global Order* by Cambridge University Press. Jane has also been invited to write a chapter on 'Environmental Migration' for an edited book on *Global Migration Governance* being published by Oxford University Press in 2009, which will examine the role and relevance of international institutions in influencing States' policies towards international migration. This book forms part of a large \$500,000 project funded by the MacArthur foundation, based in the Department of Politics and International Relations at Oxford, in association with the Global Economic Governance Programme, the Centre for International Studies, and the Centre on Migration, Policy and Society at Oxford University (COMPAS). She has also written a number of shorter pieces, and contributed to the Centre's submission to the 2020 Summit in the stream of 'Population, sustainability, climate change, water and the future of our cities'.

Jane would also like to thank a number of students who have provided excellent research for this Project. G+T intern, Jemma Hollonds, conducted

some fascinating research into responses by the UK, US and Japan to the Montserrat volcanic eruptions in the 1990s, examining whether any of those responses might have any application in the context of climate-induced displacement. Kate Purcell has also been undertaking research for the Project about the international law issues relating to a State becoming uninhabitable and, ultimately, disappearing (which is a real possibility for Kiribati and Tuvalu). Nicole Dicker, currently an intern at the Office of the United Nations High Commissioner for Human Rights in Fiji, has been very helpful in providing field work contacts and research material from the Pacific.

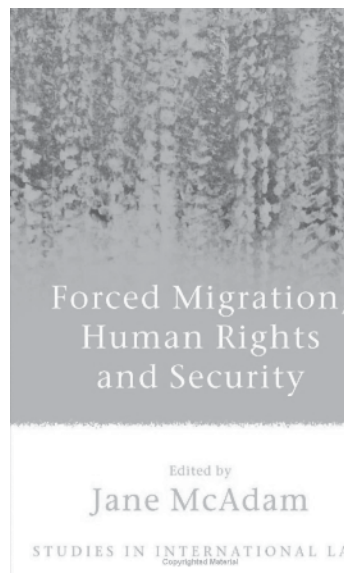
Jane's work in international refugee law was recently acknowledged through her appointment as a Research Associate at the Refugee Studies Centre, University of Oxford, a position she holds concurrently with her UNSW roles.

Indigenous Rights, Land and Governance

Project Director: Sean Brennan

A small team of researchers has continued work on coming to grips with the many elements of the Commonwealth Intervention into Northern Territory Aboriginal communities. Fact sheets for each element (such as income management, regulation of community stores and alcohol measures) are being posted on the project resource page on the Centre website as they are completed. Additional documents, gathering information on the implementation of each element, are also being prepared and posted.

Meanwhile, Sean Brennan has been continuing work on a variety of writing projects in the area of land rights and native title. Several book chapters and refereed articles will be finalised in the next couple of months and details will appear in the newsletter following their publication.



Cover of Jane McAdam's new edited book 'Forced Migration, Human Rights and Security'

The protesters have won this round. Next time they are not likely to be so fortunate. The Federal Court decision illuminates the fragile nature of freedom of speech in Australia. The right deserves better protection than the legal presumption that Parliament does not intend to breach the right unless it sets this out in clear terms. It is long past time that such an important freedom was safeguarded in a national charter of human rights.

Nicola McGarrity and George Williams, 'A Victory Only until the Next Time' *Sydney Morning Herald* (16 July 2008).

In May Sean contributed commentary to a segment on The Law Report (ABC Radio National) about the recent High Court decision on compulsory acquisition of native title land in the Northern Territory (*Griffiths v Minister for Lands*). Sean also gave a presentation in April on the constitutional options for protection of Indigenous rights, for the Brooklyn Project. That Project, facilitated by the Edmund Rice Centre, is designed to focus on young Australians and the next 100 years and to give greater voice to those who were excluded when the Constitution was first drafted in the 1890s.

Terrorism and Law Project

Project Director: Andrew Lynch

Compared to the strong emphasis on national security under the previous Commonwealth government, it has been a fairly quiet time in the area of anti-terrorism law in recent months. This is not to say that nothing is happening – a lot is, both locally with the trials of those arrested in Operation Pendennis in November 2005 now finally underway, and internationally with the United States Supreme Court continuing to chip away at the legality of the Bush administration's treatment and isolation of Guantanamo Bay detainees and the United Kingdom's Brown government introducing its extended period of detention of terror suspects to the legislature for enactment. But certainly, the pace of domestic legislation has slowed – indeed, the Rudd Government has yet to propose any major new terrorism legislation. Nor, it must be noted with regret, does it seem very much minded to amend and improve what it has inherited from the Howard era. This is unfortunate since the changes which are necessary to existing laws have been identified very clearly by a string of independent or bipartisan reports at the government's disposal. As some of the current laws are of very dubious effectiveness and may actually lead to further embarrassments like the Haneef affair of 2007, it is to be hoped that attention is given to these matters sooner rather than later. This was one of the central recommendations of that part of the Centre's submission dealing with Australia's future security which we made to the 2020 Future Summit. Similar arguments were contained in the submission which the Project made to the public inquiry under the auspices of the Hon John Clarke QC investigating the circumstances surrounding the detention, charging, and revocation of the work visa of Dr Mohamed Haneef last year.

The Centre had the pleasure of a visit by Professor Gavin Phillipson of the University of

Durham in late March. Gavin's work takes in several areas of contemporary legal importance but his research in respect of the United Kingdom's Human Rights Act and also how this has impacted on anti-terrorism laws were of particular interest to Centre and Faculty staff. Gavin was able to let us know something of the mood in his home country about future terrorism initiatives being floated by the Brown Labour government and the likelihood that they might come to pass. It was an absolute delight to have Gavin working with us and we hope he is able to visit the Centre for a longer stay next time.

In early March, Andrew enjoyed the hospitality of the Socio-Legal Research Centre in the School of Law at Griffith University for a week of research conducted in highly collegial surroundings and the opportunity to present a paper on Australia's control order regime to the staff. Thanks go to the Director of the Centre, Professor Richard Johnstone for his support of this visit. During his stay at Griffith University, Andrew was able to visit the very impressive headquarters of the new Centre for Excellence in Policing and Security at the University's Mt Gravatt campus and able to discuss areas of mutual interest with one of its Chief Investigators, Professor Mark Finnane.

The Project has recently been joined by Nicola McGarrity, who replaces Edwina MacDonald, as its research associate. Nicola is actively involved in the Project's main activities for the rest of 2008. Taking advantage of the political hush which has descended upon the national security debate, Project staff are in the process of completing major academic treatments of two significant areas of Australian anti-terrorism law – the process by which 'terrorist organisations' are proscribed and a comparative and constitutional analysis of control orders for terrorism suspects.

Federalism Roundtable held at the Centre



Publications and Presentations

PUBLICATIONS

Joint Publications

Sean Brennan and Peta MacGillivray, 'Fishing Case Tests Economic Waters for Traditional Owners' (2008) 7(2) *Indigenous Law Bulletin* 18;

Andrew Lynch and George Williams, 'The High Court on Constitutional Law – the 2007 Statistics' (2008) 31 *University of New South Wales Law Journal* 31;

Andrew Lynch and George Williams 'National Security and Counter-Terrorism' *Chain Reaction (Online) – Special Issue on Counter-Terrorism and Human Rights*, December 2007.

Dominique Dalla-Pozza

'Promoting Deliberative Debate? The Submissions and Oral Evidence Provided to Australian Parliamentary Committees in the Creation of Counter-Terrorism Laws' (2008) 23(1) *Australasian Parliamentary Review* 39-61.

Andrew Lynch

'Exceptionalism, politics and liberty: a response to Professor Tushnet from the Antipodes' (2008) 3 *International Journal of Law in Context* 305.

Jane McAdam

Forced Migration, Human Rights and Security, Hart Publishing: Oxford;

'The Refugee Convention as a Rights Blueprint for People in Need of International Protection' in J McAdam (ed), *Forced Migration, Human Rights and Security*, Hart Publishing: Oxford: 263–82;

'*International Migration Law: Developing Paradigms and Key Challenges*, by R Cholewinski, R Perruchoud and E MacDonald (eds), (2007) 19 *International Journal of Refugee Law* 776–79.

Ed Santow

'What can the Victorian Charter do for homeless people?' (2008) 21 *Parity* 16.

George Williams

'High Court Appointments: The Need for Reform' (2008) 30 *Sydney Law Review* 163;

'Inclusion Must Begin with Racism-Free Law' *Mosaic*, Iss 18, April 2008, 27;

'A National IR Model' *CCH Industrial Law News*, Iss 2, 6 March 2008, 3;

'A National IR Model' *CCH Work Alert*, Issue 1, 19 February 2008, 1;

'Thawing the Frozen Continent' (2008) 19 *Griffith Review* 11;

Working Together: Inquiry into Options for a New National Industrial Relations System (Final Report, November 2007);

'A Charter of Rights for Western Australia' *New Critic*, Iss 6, October 2007.

PRESENTATIONS

Joint Presentations

Andrew Lynch and George Williams, 'Beyond a Federal Structure: Is a Constitutional Commitment to a Federal Relationship Possible?' Federalism Roundtable, Gilbert + Tobin Centre of Public Law, University of New South Wales, 13 June 2008.

Sean Brennan

'Indigenous People and the Australian Constitution', The Brooklyn Gathering, Sydney, 3 April 2008.

Dominique Dalla-Pozza

'The Australian Approach to Enacting Counter-Terrorism Laws', NSW Human Rights and Security Network of Amnesty International Australia's Monthly Meeting Sydney, 16 April 2008.

Andrew Lynch

'National Security and Australia's Culture of Control', Division of Law, Macquarie University, Sydney, 1 May 2008;

'From Blair's Britain with Love: Control Orders in Australia', Socio-Legal Research Centre, Griffith University, Brisbane, 10 March 2008.

A modern Charter still enables parliaments to remove recognised rights - but they are obliged to do so transparently, not by ambush or stealth. Charters promote political accountability and respect for the people beyond their role at the ballot box every few years. They enrich, rather than diminish, democracy - for all 'ordinary citizens'.

Andrew Lynch, 'Bill of rights will help the hoi polloi, not just the haughty torty' *The Australian* (25 April 2008).

Jane McAdam

Address on 'Climate Change "Refugees"' to Large Law Firm Pro Bono Coordinators, Law Society of NSW, 11 June 2008;

Training on 'Climate-Induced Displacement and International Law', Green Cross Australia's 'Sea-Level Rise: A People's Assembly', 6-7 June 2008;

'Climate Change and Migration', UNSW Environment and Development Public Forum, 23 May 2008 (with Prof Andy Pitman);

'Environmental Law Forum', Sydney University Law Students' Society, 14 May 2008 (with Prof Andy Pitman and Dr Tim Stephens);

Keynote address to launch NSW Young Lawyers' *New Land New Law: A Guide to the Legal System in NSW*, Law Society of NSW, 13 May 2008;

'The Standard of Proof in Complementary Protection Cases: Comparative Approaches in North America and Europe', *Research Workshop on Critical Issues in International Refugee Law*, York University, Toronto, 1-2 May 2008.

Edward Santow

'Putting the Charter to good use: now and in the future', *To Make a Difference: Human Rights and Homelessness Conference*, Melbourne, 14 March 2008;

'Fostering Civic Professionalism', *Future of Legal Education Conference*, Georgia State University, Atlanta, USA, 24 February 2008.

George Williams

'A Charter of Rights for Australia', Federal Government General and Administrative Policy Caucus Committee, Parliament House, Canberra, 23 June 2008;

'Human Rights and "Your Rights at Work"' CPSU Forum, Canberra, 16 June 2008;

'Research and Charters of Rights' *Mapping the Law: Postgraduate Research Conference*, ANU College of Law, Canberra, 12 June 2008;

'Lessons from the Victorian Charter of Human Rights and Responsibilities' ANU College of Law, Canberra, 5 June 2008;

'Educating Young Australians about their System of Government: Meeting the Challenge' *2008 National Civics and Citizenship Education Forum: From Curriculum to Community — The Impact of Civics and Citizenship Education*, Australian Curriculum Studies Association, National Museum of Australia, Canberra, 3 June 2008;

'The Current State of Australian Law and Policy in Protecting of Human Rights' *Charter of Human Rights Roundtable*, Gilbert + Tobin Centre of Public Law and Human Rights and Equal Opportunity Commission, Sydney, 2 June 2008;

'Government Accountability under the Constitution' *AboveBoard Public Accountability Forum: Minds and Machinery*, Canberra, 24 May 2008;

'New Federalism', Association of Former Members of the Parliament of Australia, Old Parliament House, Canberra, 15 May 2008;

'Stepping Forward from the Summit', Griffith Review Seminar, State Library of Queensland, Brisbane, 7 May 2008;

'Recognising and Protecting Human Rights and Freedoms' Justice & Governance Policy Forum, Parliament House, Brisbane, 7 May 2008;

'A National IR System for Australia' *Life after Work-Choices – Forward with Fairness*, Employment and Industrial Forum, Canberra, 6 May 2008;

'2020 Summit Debrief', Centre for International and Public Law and Centre for International Governance and Justice seminar, Australian National University, Canberra, 5 May 2008;

'The Great Debate: Our Sporting heroes: Human Rights Defenders Too?', Amnesty International Australia, Canberra, 3 May 2008;

'Alteration of the Constitution' Roundtable on Constitutional Reform, House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament House, Canberra, 1 May 2008;

'A Bigger Picture: Towards a National Charter of Rights' Breakfast Seminar, Australian Lawyers for Human Rights (ACT Branch) and ACT Human Rights Commission, Canberra, 15 April 2008;

'Reconciliation and the Constitution', Reconciliation Australia seminar, Canberra, 9 April 2008;

'A Charter of Rights/Responsibilities for Australia – When will we Catch up with the United Kingdom... or Europe' Civil Liberties Australia Annual General Meeting, National Europe Centre, Australian National University, 5 April 2008;

'Under a Centralising Government, what is the Future for States' Rights and the Separation of Powers between the Commonwealth and the States embodied in the Australian Constitution of 2001?' *Manning Clark House 2008 Weekend of Ideas*, Canberra, 30 March 2008;

'Re-imagining Australia: A New Vision' Griffith Review Seminar, National Library of Australia, Canberra, 12 March 2008;

'Human Rights Strategies' Australian Lawyers for Human Rights, National Meeting, Sydney, 7 March 2008;

'The Path to a National IR System' Centre for Employment & Labour Relations Law, University of Melbourne, 6 March 2008;

'Reviving Australian Radicalism' Griffith Review Seminar, Gleebooks, Sydney, 28 February 2008;

'Reflections on Rights and Obligations, Academic Freedom, and Scientific Independence' *Forum on the Rights and Obligations of Scientists and Researchers*, Federation of Australian Scientific and Technological Societies Canberra, 22 February 2008;

'A National Industrial Relations System?' Industrial Relations Society of the ACT, Canberra, 20 February 2008;

'Securing our Safety' *Canberra Times* (21 June 2008).

MEDIA PUBLICATIONS

Joint Media Publications

Andrew Lynch and Nicola McGarrity, 'Disentangling the story of Mamdouh Habib' *Australian Policy Online* (6 June 2008).

Andrew Lynch

'Bill of rights will help the hoi polloi, not just the haughty torty' *The Australian* (25 April 2008);

'Shaky foundations' *Australian Policy Online* (29 January 2008);

'A change in anti-terrorism tactics' *The Courier-Mail* (22 January 2008);

'When 'sorry' is not enough' *Australian Policy Online* (11 January 2008).

George Williams

'Now to Say, Never Again' *Canberra Times* (7 June 2008);

'Odds are Against Rudd Hearing a Resounding Yes to Reform' *The Age* (31 May 2008);

'Truth Takes a Beating' *Canberra Times* (24 May 2008);

'Peril in Self-Rule Gaps' *Canberra Times* (10 May 2008);

'A Wild, Inspiring Ride' *Canberra Times* (26 April 2008);

'In the Republic Domain' *The Australian* (19 April 2008);

'Getting Down to Brass Tacks on Indigenous Treaty' *Canberra Times* (12 April 2008);

'Pollies' Inertia Stalls Law Reform Action' *Hobart Mercury* (8 April 2008);

'More than Just a Flag' *Canberra Times* (5 April 2008);

'Bickering Aside, we need a Rights Charter' *The Australian* (4 April 2008);

'Frozen Continent' *Sydney Morning Herald* (29 March 2008);

'It's Time to repair Australia's Tattered Federalism' *Canberra Times* (28 March 2008);

'New Laws Whittle Away Academic Freedom' *Canberra Times* (1 March 2008);

'Next Step: A Treaty and Racism-free Law' *Canberra Times* (16 February 2008);

'All People Need a Say in Constitutional Reform' *Canberra Times* (9 February 2008);

'Speculation on Queen Before any Choice Needs to be Made' *Herald Sun* (31 January 2008);

'A Court Short on Answers' *The Australian* (26 January 2008).

SUBMISSIONS

Joint Submissions

Andrew Lynch, Nicola McGarrity and George Williams, Submission made to the Clarke Inquiry into the case of Dr Mohamed Haneef, 16 June 2008;

Andrew Lynch and Jemma Holland, Submission made to the Parliamentary Joint Committee on the Australian Crime Commission, 'Inquiry into the legislative arrangements to outlaw serious and organised crime groups', 30 April 2008;

Sean Brennan, Andrew Lynch, Jane MacAdam and George Williams, Submission to the 2020 Future Summit, April 2008;

Andrew Lynch and George Williams, Submission made to the Senate Legal and Constitutional Affairs Committee on 'Inquiry into the Rights of the Terminally Ill (Euthanasia Law Repeal) Bill 2008', 27 March 2008.

The Howard government's "war on terror" has left a dreadful legacy. In the years after September 11 Federal Parliament enacted 44 anti-terror laws – one new law every seven weeks. No other Western nation comes close to this. Nor, with the exception of the United States, where the problem is being slowly being wound back by Congress and the Supreme Court, has any democratic nation transferred so much power to government at the expense of parliament and the courts.

George Williams, 'Securing our Safety' *Canberra Times* (21 June 2008)

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