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GILBERT + TOBIN CENTRE OF PUBLIC LAW NEWSLETTER JULY 2017

Photo above:
Audience at 2016 Mason Conversation

‘While governments have easy access to media to share their opinion, too few journalists are willing and able to probe their claims. Public housing tenants’ voices are too often dismissed. What needs to happen for us all to start listening, and will we start before it’s too late?’

Gemma McKinnon, ‘Tenants’ calls for safe public housing fall on deaf ears’, *The Conversation* (27 June 2017)

GILBERT+TOBIN

CENTRE
OF
PUBLIC
LAW

Dear Friend

Welcome to a bumper edition of the Gilbert + Tobin Centre of Public Law newsletter, covering the past year up to 30 June. As we go to press the recommendations of the Referendum Council have just been released. The Council was established in 2015 to advise on next steps regarding constitutional recognition of Aboriginal and Torres Strait Islander peoples. The Council supported an Indigenous designed and led deliberative process, a series of Regional Dialogues around Australia culminating in the First Nations Constitutional Convention at Uluru in May. The Uluru Statement, issued on the 50th anniversary of the 1967 referendum, called for substantive constitutional and legislative reform that went beyond symbolic recognition.

The Dialogues and the Uluru Convention were crucial in reconnecting the debate over ‘constitutional recognition’ with the views of the people Australia was looking to recognise. Our UNSW colleague Professor Megan Davis jointly led the Dialogue process with co-chair of the Referendum Council, Pat Anderson AO. Constitutional reform relating to First Peoples has been a core concern for our Centre since its inception and it was a privilege to be invited with colleagues Gemma McKinnon and Gabrielle Appleby to provide pro bono legal support to the dialogues and at Uluru. You can read more inside about that, and the contributions of many colleagues on this issue over the past 12 months.

Also inside, from the Comparative Constitutional Law Project, Ros Dixon recounts an extremely busy year of engagement with scholars from Asia, Latin America, the United States and Europe, while Melissa Crouch reports on her work organising workshops and supporting legal education and skills development in Myanmar, facilitating international internship opportunities for students, and continued research and commentary about Indonesian legal affairs. Grant Hoole outlines his new Inquisitorial Justice Project with its focus on practices and procedures adopted by inquisitorial tribunals and commissions. The co-directors of the Judiciary Project, Gabrielle Appleby and Andrew Lynch, have had a prolific year individually and collaboratively. Their report includes news of an important survey of Australian judges, a report to the Judicial Conference of Australia on use of acting judges, two new books and a range of other work with colleagues in Australia and overseas.



Centre Director, Sean Brennan

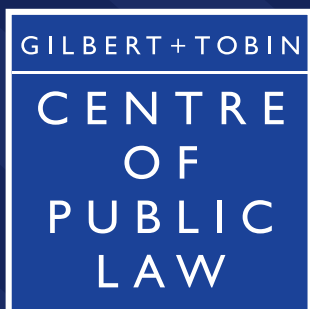
Nicola McGarrity reports on academic analysis and media commentary that she, George Williams and Sangeetha Pillai have been doing in the area of anti-terrorism, detention and citizenship law – including a new website and several expert submissions. In the Public Law and Legal Theory Project, Ben Golder and Daniel McLoughlin have put the finishing touches to a book on legality in a neoliberal age and Daniel also released an edited collection on Italian philosopher Giorgio Agamben. Paul Kildea, from the Referendums Project, has had a very busy year here and in the UK, writing and commenting on referendums, plebiscites and monitoring ‘truth in politics’.

The Centre has been pleased to host and co-host a record number of events, including a new fixture in the Centre calendar, the Mason Conversation. In its first year it featured Sir Anthony himself in dialogue with George Williams and a large audience. As well as a report on that, there is coverage of two book forums, Gabrielle Appleby’s event celebrating 100 years of the Commonwealth Solicitor-General, a Rights Night on women’s health, Conor Gearty of the London School of Economics speaking on human rights in Brexit-era UK, ad hoc and work-in-progress seminars, and our flagship February events, the Constitutional Law Conference and Public Law in the Classroom.

This newsletter also introduces you to a new Centre member, Lauren Butterly, who joined UNSW as a Lecturer in 2017 and whose research focuses on administrative law, environmental law and Indigenous rights. Lauren will make an enthusiastic and telling contribution to the Centre’s work in administrative law and is keen to engage with the profession in that area. Our best wishes to Greg Weeks who has left us to join ANU Law School. Welcome also to PhD student Zsafia Korosy, who joined the Centre in 2017, and Sangeetha Pillai who re-joined us after the Kaldor Centre for International Refugee Law snared her back to UNSW as a Senior Research Associate. Inside you will also hear from our recent overseas visitors and from the last two Social Justice Interns, Andrew Roberts and Nakul Bhagwat. One of our PhD students who has been a Joint Editor for AUSPUBLAW over the past 12 months, Lynsey Blayden, gives us the latest from the blog that has consolidated its national reputation, with a regular diet of stimulating and diverse online scholarship and legal analysis. My thanks to Lynsey and to the Blog Co-ordinator Gabrielle Appleby and Joint Editor Paul Kildea.

Congratulations are due to a range of colleagues for personal and professional achievements. We feature a report from recent PhD graduate Jackie Hartley (and congratulate her on the recent birth of her son Alex). I also want to acknowledge the appointment to leadership positions of Andrew Lynch as Head of School, Ros Dixon to lead (with Richard Holden) UNSW’s Grand Challenge on Inequality, Ben Golder as Associate Dean (Education) (and his promotion to Associate Professor), Gabrielle Appleby as Associate Dean (International and External Engagement) and Nicola McGarrity as Director of Experiential Learning. You will see reference to seven books in our reports and listings, the products of assiduous work by Gabrielle Appleby, Melissa Crouch, Rosalind Dixon, Ben Golder, Andrew Lynch, Daniel McLoughlin and Centre Fellow Brendan Lim.

As part of its 2025 Strategy, UNSW is offering Scientia PhD scholarships, a unique scheme to attract exceptional higher degree research students to UNSW. Several Centre staff are involved in offering opportunities in areas such as gender and constitutions; Aboriginal activism and law reform; supranational criminal law; security and precarious populations; racial segregation, sport and Aboriginal identity; and economic development on Indigenous land. Interested applicants need to contact potential supervisors by 21 July and more information is available [here](#).





Session 1 Panel at 2017 Constitutional Law Conference: Sean Brennan, Sarah Murray and Richard Niall QC

Finally, I want to thank Professor Peter Saunders for his expert assistance as a member of the Centre's Steering Committee from 2002-16. Megan Davis has agreed to join that committee. Our appreciation also to Justice Stephen Gageler, who has stood down from the Centre's Advisory Committee after first joining while at the NSW Bar. And a very special thanks to Sir Anthony Mason who has retired from the Centre's Advisory Committee, having served as Chair since our inception in 2001. Sir Anthony has shown extraordinary generosity towards the Centre and its community of scholars. He has been a regular participant in major public events and smaller workshops, and our postgraduate students have been particularly touched and honoured by his willingness to engage with their work over many years. He has also donated prizes and scholarships, and been an invaluable source of advice and support to me and my predecessors as Centre Director. It was a pleasure to have Lady Mason and several members of the Mason family as our guests in October, at the inaugural Conversation event named in honour of Sir Anthony's contribution to UNSW and the Centre.

*Associate Professor Sean Brennan
Centre Director*

For details of Centre events, publications, submissions and so on please go to our website: www.gtcentre.unsw.edu.au

The Centre's Twitter account keeps you up to date between newsletters and e-bulletins: [@GTCentre](https://twitter.com/GTCentre)

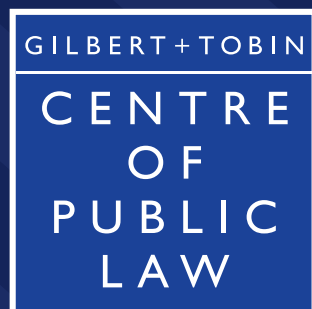
Or if you prefer Facebook:
www.facebook.com/pages/Gilbert-Tobin-Centre-of-Public-Law/138063326284705



Dylan Lino (UWA), Sean Brennan, Megan Davis, Gemma McKinnon and Gabrielle Appleby in Mutitjulu at the end of the Uluru First Nations Constitutional Convention. Photo: Jimmy Widders Hunt



Session 4 Panel at 2017 Constitutional Law Conference: Jeremy Gans, Justice Margaret McMurdo, Belinda Baker, Nicola McGarrity and Jonathon Hunyor



ACTIVITIES

REGIONAL FIRST NATIONS DIALOGUES AND ULURU CONVENTION

On 26 May 2017, over 200 Aboriginal and Torres Strait Islander delegates gathered at Uluru, in the centre of Australia, issued a consensus statement on the changes they want to legal and constitutional arrangements regarding First Nations people. The Uluru Statement from the Heart urged two reforms: a constitutional amendment to give First Nations a representative Voice to Parliament, and legislation to establish a Makarrata Commission, that will supervise a modern treaty-making process and oversee a national process of truth-telling about the past.

The gathering of national delegates at Uluru was the culmination of a process of deliberative discussions that were designed and led by Aboriginal and Torres Strait Islander members of the Referendum Council – notably Professor Megan Davis, a colleague at UNSW Law and recently appointed Pro Vice-Chancellor Indigenous. These First Nations Regional Dialogues were held across the country, in a dozen locations from Hobart to Broome and Perth to Thursday Island.

The three day dialogues were organised to maximise local Indigenous leadership and participation. Both the male and female co-convenor came from the relevant region, and along with five working group leaders also drawn from the region, they facilitated discussions amongst approximately eighty to one hundred participants. Each dialogue ran according to the same deliberative model, which included information provision, whole group and break-out discussions that workshoped different options for reform, the settlement of a Record of Meeting and the election of delegates to the national convention at Uluru.

From December 2016, the dialogues built a region-by-region response to the Referendum Council on specific options for constitutional reform and Aboriginal and Torres Strait Islander views more generally about constitutional change. The process moved to a national level with the gathering of elected delegates at Uluru in May and reached a historic climax with the release of the Uluru Statement, on the 50th anniversary of the 1967 referendum.

Throughout the process, from the detailed planning and consultation stages that preceded the first dialogue in Hobart to the closing ceremony at Mutitjulu next to the rock, Centre members Gabrielle Appleby, Sean Brennan and Gemma McKinnon provided pro bono technical support and advice on constitutional law. They travelled to all of the regional locations in which the dialogues were held, briefing participants on technical issues, responding to questions, assisting with the conduct of elections, and so on. They were joined on different occasions by other lawyers including Dr Dylan Lino, a graduate of UNSW and now lecturer at the University of Western Australia, who was also there for the final meeting at Uluru.

The Referendum Council was a body of distinguished Australians, Indigenous and non-Indigenous, appointed in 2015 to report on progressing the cause of constitutional change regarding Aboriginal and Torres Strait Islander people. It went out of existence on 30 June 2017 after delivering its report to the Prime Minister and Leader of the Opposition. As we go to press, the report has just been released. In the meantime, you can find out more about the Uluru Statement, stay apprised of developments and, if you wish, sign a petition in support of the Statement, all at the website www.1voiceuluru.org.



Pauline O'Loughlin (UTS), Paul Ashton (UTS), Brett Bondfield (Sydney University) and Andrew Lynch at launch of *Great Australian Dissents*



Ben Golder kicks off Session 1 at the 2017 Public Law in the Classroom Workshop



2017 CONSTITUTIONAL LAW CONFERENCE

Around 200 people packed into the Domain Theatre at the Art Gallery of New South Wales for the Centre's 16th consecutive Constitutional Law Conference on 17 February 2017. This year's event featured a lively panel on the overlap between constitutional law and criminal justice. The discussion between Justice Margaret McMurdo AC, Professor Jeremy Gans (Melbourne Law School), PIAC Director Jonathon Hunyor and Crown Prosecutor Belinda Baker was steered by moderator Dr Nicola McGarrrity. There were keynote addresses on the past year's constitutional cases in the High Court, and in the Federal and State Courts, by Dr Sarah Murray (UWA) and Richard Niall QC (Solicitor-General of Victoria) respectively. Barristers Craig Lenehan and Celia Winnett joined Emeritus Professor Tony Blackshield AO in dissecting important High Court cases from 2016. And to round out the day, Dr Paul Kildea and David Coleman MP delved into the past failings and future prospects of constitutional reform by referendum, while Professor Megan Davis explained and analysed the Indigenous designed and led Regional Dialogues on constitutional change that began in December 2016.

It was a great opportunity for barristers, government lawyers and parliamentary drafters, members of the private profession, judges, academics, students, journalists and others to rub shoulders and hear expert analysis on contemporary constitutional law issues. There were tweaks to the event following the very helpful survey feedback given by attendees at the 2016 conference that made for better timekeeping and greater audience participation. In lieu of a brief oral presentation, Andrew Lynch and George Williams provided a more detailed written paper on the statistics of High Court decision-making, with the statistical overview of the Court during Robert French's tenure as Chief Justice attracting strong media interest.

The day ended with Sir Anthony Mason launching [Great Australian Dissents](#) (Cambridge University Press, 2016) edited by Andrew Lynch. It was great to have so many chapter authors present for the event, all of whom participated in a Centre-hosted workshop in 2015 during the production stage of the book. A copy of Sir Anthony's address can be found at the [event page](#) on the Centre's website. There you will also find video files for each session of the conference, the stats report from Lynch and Williams, and papers and powerpoint slides forwarded by some of our presenters.

In the evening, guests attending the Conference Dinner at NSW Parliament House were treated to a highly entertaining speech by the Chief Justice of the Queensland Supreme Court, the Honourable Catherine Holmes. Her thorough research revealed little known and colourful facts about past litigants in cases under section 44 of the Constitution, which concerns eligibility to be a Senator or federal MP.

PUBLIC LAW IN THE CLASSROOM 2017

The third Public Law in the Classroom workshop was held on Thursday, 16 February 2017. Over sixty public law teachers from across Australia, New Zealand and the UK attended the workshop, which was co-hosted by the Gilbert + Tobin Centre of Public Law (UNSW Law) and the Public Law and Policy Research Unit (University of Adelaide).

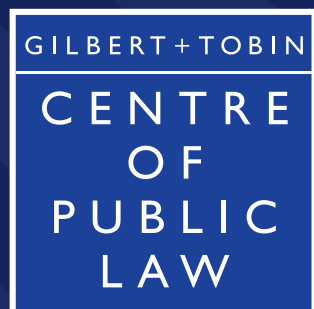
The first session concerned the values and theories that inform our teaching. Ben Golder (UNSW) opened the session, with a challenge for public law teachers to teach public law 'publicly'. Responding to his challenge were panelists Rebecca Ananian-Welsh (UQ), Yee-Fui Ng (RMIT) and Leighton McDonald (ANU) and a lively discussion with workshop participants followed.



Conor Gearty at *On Fantasy Island* book launch



Women's Health Rights Night Panel:
Denele Crozier, Syl Freedman, Mehreen Faruqi, Christine Forster and Andrea Durbach



The second session on tools, techniques and teaching research started with an engaging presentation from Professor Conor Gearty, visiting UNSW Law from the London School of Economics. Professor Gearty entertained the audience with his experience of 'guerrilla teaching', and explained his UK Constitution project, in which he organised a series of public and online forums to crowd-source the drafting of a Constitution for the UK.

Also presenting in this session were Cornelia Koch (Adelaide), Jonathan Crowe (Bond), Susannah Sage-Jacobson (Flinders) and Ron Levy (ANU). The final session on the research/teaching nexus considered how public law teachers can bring their research into the classroom, with contributions from Peter Burdon (Adelaide), Ann Genovese (Melbourne), Danielle Ireland-Piper (Bond) and Oscar Roos (Deakin).

The online community around the workshop also continues to grow. A Storify page captured the storm of #publawteach social media activity. Contributions to that feed came not only from those in the room, but from public law teachers not able to attend the event and practitioners, as well as current and former students. The event [page](#) on the Centre website includes links to the Storify [page](#) as well as to PDFs of the posters that were selected for presentation at the workshop.

This year, the workshop closed with a launch at the UNSW Bookshop of *The Critical Judgments Project: Re-Reading Monis v The Queen* (Federation Press, 2016). This [collection](#), edited by UNSW's Gabrielle Appleby and Rosalind Dixon, was workshopped at the previous Public Law in the Classroom in 2016.

ON FANTASY ISLAND

The Australian Human Rights Centre and the Gilbert + Tobin Centre of Public Law hosted the Sydney launch of *On Fantasy Island – Britain, Europe and Human Rights* by Conor Gearty, Professor of Human Rights Law, London School of Economics on 7 February 2017.

Conor Gearty's new book dispels myths about the UK Human Rights Act and, in the Brexit era, argues the importance of keeping the existing legal framework for protecting human rights. Andrew Byrnes, Professor of International Law, and Chair of the Steering Committee of the Australian Human Rights Centre, commented from an Australian perspective on recent developments in rights protection and debates.

WOMEN'S HEALTH RIGHTS NIGHT

Rights Nights in collaboration with the Australian Human Rights Centre and the G + T Centre held a seminar on 7 December 2016 exploring the right to health against the backdrop of women's access to health information, to resources and to health services in Australia. The panel of experts included Dr Christine Forster, UNSW Law, Dr Edith Weisberg, Director of Research, Sydney Centre for Reproductive Health Research, Denele Crozier, CEO Women's Health NSW, Dr Mehreen Faruqi, MLC, The Greens and Syl Freedman, Co-Founder, EndoActive. The Moderator was Professor Andrea Durbach, Director of the Australian Human Rights Centre. Discussion centred around the current status of reproductive rights in Australia, access to medication to treat diseases and illnesses that primarily affect women, and current deficiencies in medical research and public discussion on women's health. The seminar was part of Rights Nights, a week of free, nightly expert panel events across Sydney open to the public and focusing on a range of human rights topics in Australia, which ran from 5 to 9 December.



Audience at 'Celebrating 100 Years of the Solicitor-General' event



Professor George Williams and Sir Anthony Mason at the Inaugural Mason Conversation



CELEBRATING 100 YEARS OF THE SOLICITOR-GENERAL

On Monday 24 October 2016, around 250 people gathered in the Banco Court of the New South Wales Supreme Court for an event hosted by the Gilbert + Tobin Centre of Public Law and the Australian Association of Constitutional Law (NSW Chapter), to celebrate 100 years since the introduction of the first Commonwealth Solicitor-General.

Up to October 2016, ten lawyers had held the role of the Solicitor-General, and the audience heard from five of them. Sir Anthony Mason [opened](#) the event. A panel discussion followed between former Solicitors-General, the Hon Robert Ellicott QC (1969-1973), Dr Gavan Griffith AO QC (1984-1997), Dr David Bennett AC QC (1998-2008) and the Hon Justice Stephen Gageler (2008-2012). The panel discussion was facilitated by the organiser of the event Associate Professor Gabrielle Appleby.

The event celebrated a centenary milestone for the office of Commonwealth Solicitor-General, but it happened to coincide with one of the more momentous periods in its long history. On the day of the event, just before it got underway, the serving Solicitor-General, Justin Gleeson SC, resigned from the office. He said that his relationship with the Attorney-General, Senator George Brandis QC, was 'irretrievably broken'. His resignation followed a protracted and public series of disagreements between the Attorney-General and the Solicitor-General, the catalyst of which was the issue of a direction by the Attorney-General restricting access to the Solicitor-General by others in government. In his resignation letter, the Solicitor-General said that there was 'an urgent need to negotiate an effective way forward between the Law Officers'.

The Attorney-General subsequently withdrew the legal services direction. Stephen Donaghue QC commenced a five year term as the eleventh Commonwealth Solicitor-General on 16 January 2017.

Online you can find a Storify [page](#) capturing social media commentary about the 100 Years event, prepared by Lynsey Blayden and Gabrielle Appleby.

MASON CONVERSATION

On 4 October the Centre and UNSW Law hosted the Inaugural Mason Conversation featuring a dialogue between Sir Anthony Mason, Professor George Williams and members of a large public audience, including many UNSW Law students. Sir Anthony discussed present trends and future challenges for Australian law and government. He talked about influences and milestones in his long career as barrister, judge and public figure, and his personal reflections were delivered with Sir Anthony's customary clarity, succinctness and dry wit.

A video of the conversation is available [online](#) at the Centre's website.

The Mason Conversation series will become a feature event in the Centre's calendar. It is named in honour of Sir Anthony and his outstanding generosity and contribution over decades to the University of New South Wales, and in particular to UNSW Law and the Gilbert + Tobin Centre of Public Law community. Each year, the event will present a prominent person in conversation about contemporary issues in public affairs with a particular focus on public law.



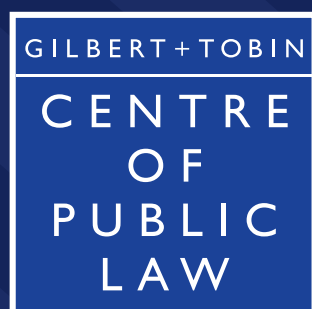
Book forum on Gabrielle Appleby's *The Role of the Solicitor General: Negotiating Law, Politics and the Public Interest*



Panel at Greg Weeks book forum: Robin Creyke, Matthew Groves, Keith Mason, Greg Weeks, Mark Aronson and Linda Pearson



Frederick Schauer presenting at a Centre seminar in November 2016



UNSW BOOK FORUMS

Two book forums were held in the second half of 2016. This series of regular forums brings author, commentators and an interested public audience together to discuss a book recently released by a Faculty member of UNSW Law.

On 24 August a forum was dedicated to Greg Weeks's monograph, *Soft Law and Public Law Authorities: Remedies and Reform* (Hart, 2016). The distinguished panel of commentators discussing this publication consisted of Professors Robin Creyke, Matthew Groves and Linda Pearson. It was chaired by Emeritus Professor Mark Aronson.

On 7 September an expert panel of readers assembled in front of a large audience to discuss Gabrielle Appleby's *The Role of the Solicitor General: Negotiating Law, Politics and the Public Interest* (Hart, 2016). The panel featured Justice Stephen Gageler of the High Court of Australia, Professor Anne Twomey from Sydney University and Dr Yee-Fui Ng, a specialist on executive power from RMIT University.

CENTRE SEMINARS

27 March 2017

Dr Jessie Blackburn (Oxford University) and Dr Nicola McGarrity (UNSW), *Responding to the Foreign Fighters Phenomenon: Is Legislation the Answer?* (co-hosted with the UNSW Criminology and Criminal Justice Cluster)

20 March 2017

Professor Roger Masterman (Durham Law School), *Constitutional Adjudication and the Common Law*.

16 November 2016

Professor Fred Schauer (University of Virginia), *A Slightly Skeptical Examination of the Marketplace of Constitutional Ideas*.

9 November 2016

Justice Dennis Davis, High Court of South Africa, *South Africa's Transformative Constitution unravelling: implications for constitutionalism* (co-hosted with the Australian Human Rights Centre)

3 November 2016

Professor Kent McNeil (Osgoode Hall), *Recent developments in Aboriginal title law in Canada: Tsilhqotin Nation v British Columbia (SCC 2014) and its impact* (co-hosted with the Faculty's Property Law Group, Private Law Group and the Indigenous Law Centre).

31 August 2016

Professor Vicki Jackson (Harvard Law), *Proportionality and Equality*.

WORK IN PROGRESS SEMINARS

The Centre held a number of work in progress seminars for PhD students to present draft chapters of their research for discussion by peers in the Higher Degree Research program and Faculty colleagues.

Jason Donnelly – 'Reshaping Separation of Powers in Australia – The Non-Justiciable Nature of the National Interest', 29 May 2017;

Harry Hobbs - 'Beyond Constitutional Recognition: Democratic Citizenship and Indigenous Sovereignty', 21 June 2017 and 28 November 2016;

Sarah-jane Morris - 'Finality and administrative law adjudication', 27 October 2016;

Lynsey Blayden - 'The Separation of Judicial Power and the Unreasonableness Ground of Judicial Review in Australia', 10 October 2016.



THE AUSPUBLAW BLOG

For over two years now, the AUSPUBLAW blog, hosted by the Gilbert + Tobin Centre of Public Law, has provided its readers with a high standard of public law scholarship and commentary from leading experts across Australia and beyond. In 2017 the blog has featured posts by Sarah Moulds (Adelaide) evaluating the quality of dialogue between the committees of the Australian Parliament; Dr Heather Roberts (ANU) on the significance of the swearing in of Susan Kiefel as Chief Justice of Australia; Emeritus Professor Tony Blackshield explaining the decisions of the High Court, sitting as the Court of Disputed Returns, in *Re Culleton and Re Day*; Dr Jessie Blackbourn (Oxford) outlining comparisons between the United Kingdom's Independent Reviewer of Terrorism and Australia's Independent National Security Legislation Monitor; Dr Kate Bond (UNSW) on issues connected with the regulation of flag burning in Australia; Matthew Butt (National Social Security Rights Network) highlighting the administrative law issues raised by Centrelink's automated debt collection system; Professor Conor Gearty (LSE) examining the potential effects Brexit may have on human rights in the United Kingdom; Byron Karemba (Leeds) on what the United Kingdom Supreme Court's decision in *R(Miller) v Secretary of State for Exiting the European Union* (the Article 50 case) might mean for executive power; Dr Yee-Fui Ng (RMIT) on banning foreign political donations; Dr Anna Olijnyk (Adelaide) analysing what *Burns v Corbett* said about state administrative tribunals and judicial power; Dan Westbury (UTas) on the outcome of *Palmer v Ayres*, Clive Palmer's High Court challenge to the Federal Court's bankruptcy jurisdiction; Dr Sangeetha Pillai (UNSW) on *Plaintiff M96A/2016 v Commonwealth* and executive detention; Dr Dylan Lino (UWA) regarding the Uluru Statement from the Heart and federalism as treaty; Lauren Butterly (UNSW) providing an update on land claims over sea country since the 2008 *Blue Mud Bay* case; and Dr Lisa Burton Crawford on the rule of law and the Australian Constitution.



Andrea Durbach, Dennis Davis and Sean Brennan at Justice Davis's seminar on South Africa's Constitution

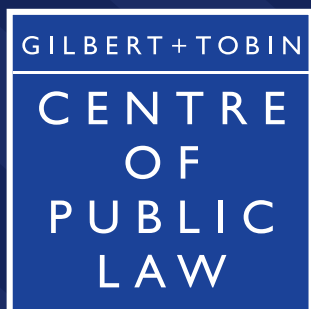


At the Mason Conversation reception: Andrew Lynch, Sarah-jane Morris, Gabrielle Appleby and Lynsey Blayden

In addition to these and other substantive posts, the blog publishes a very useful monthly events roundup detailing upcoming public law lectures and conferences across Australia. To subscribe to the blog, sign up at www.auspublaw.org or follow it on Twitter [@auspublawblog](https://twitter.com/auspublawblog). To submit a post for consideration at the blog, or to advise an upcoming public law event, contact the editors at auspublaw@unsw.edu.au.

Reflection from Lynsey Blayden, HDR editor of AUSPUBLAW Blog 2016-17:

Working as part of the team editing the AUSPUBLAW Blog, under the leadership of Associate Professor Gabrielle Appleby and alongside Dr Paul Kildea, has been a highly rewarding experience. Perhaps the highlight for me has been the collaborative nature of the AUSPUBLAW project. Although the Blog is hosted by the Gilbert + Tobin Centre, it publishes the work of people from many institutions, at all stages of their careers. This has provided me with exposure to up-to-the-minute research across a range of public law areas, and, in an aspect of the role I particularly enjoyed, given me the opportunity to liaise with other early career researchers to help get their work into the public domain.





New Centre member Lauren Butterly

'All sides of the contemporary debate – Indigenous communities, the full range of the political spectrum and the mining industry – acknowledge that major reform is needed. This is an opportunity to amend the legislation to be a world leader in cultural heritage protection.'

Lauren Butterly (with Ambelin and Blaze Kwaymullina), 'Opportunity is There for the Taking: Legal and Cultural Principles to Re-start Discussion on Aboriginal Heritage Reform in WA' (2017) 91(5) *Australian Law Journal* 365



PEOPLE

NEW CENTRE MEMBER: LAUREN BUTTERLY

Lauren Butterly has recently joined UNSW Law and the Gilbert + Tobin Centre, having previously worked at the Law Schools of both the Australian National University and the University of Western Australia (UWA). Lauren researches in the areas of administrative law, environmental law and Indigenous rights. She is particularly interested in the intersections of those areas. At UNSW Law, Lauren will be teaching administrative law. She is particularly passionate about bringing the 'real world' of administrative law to students and inspiring them to think about the 'bigger picture' of government accountability.

Lauren holds a Bachelor of Arts (History) focusing on Indigenous history and a Bachelor of Laws with First Class Honours, both from UWA. Her Honours thesis considered the intersection of water law reform and native title. Following graduation from university, Lauren served as the Principal Associate to Chief Justice Wayne Martin of the Supreme Court of WA, and then worked as an environmental law solicitor at Blake Dawson (now Ashurst) in Sydney. At Blake Dawson, Lauren was instructing solicitor on administrative law litigation relating to mining matters in NSW.

As well as being a Lecturer at UNSW Law, Lauren is also a PhD Candidate supervised by Professor Megan Davis, Centre Director Associate Professor Sean Brennan and Professor Bronwen Morgan. Lauren's PhD research relates to Indigenous rights to sea country in the Northern Territory, in terms of their historical evolution and suggestions for future reforms. Always keeping busy, Lauren has a wide range of research projects beyond her PhD 'on the go'. Being a Western Australian, she has a keen interest and expertise in WA legal issues. She has a number of publications, jointly authored with UWA Law School's Ambelin Kwaymullina, relating to the hot topic of Aboriginal heritage law reform in WA. Lauren has also recently co-authored with Justice Rachel Pepper of the NSW Land and Environment Court in relation to the intersection of environmental law, administrative law and Indigenous heritage law. Beyond her own publications, Lauren is also an editor of the *Australian Environment Review* and the *Australian Indigenous Law Review*, as well as a regular contributor to the *Environmental Law Reporter*.

One of the reasons Lauren is looking forward to working with the Gilbert + Tobin Centre is to engage with the profession – solicitors, barristers and the judiciary. In particular, she wants to work with those members of the profession with interest and expertise in, as well as enthusiasm for, administrative law in all its various forms.

At UNSW Law, Lauren is also a member of the Environment Futures Group and will continue her pre-existing association with the Indigenous Law Centre.

CENTRE VISITORS

Byron Karemba

HDR Visitor (July-August 2016)

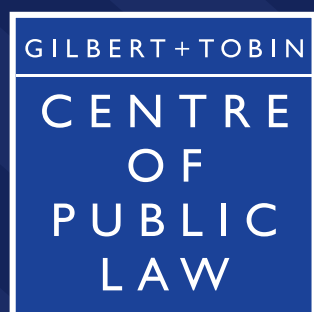
I chose to visit the G+T Centre for Public Law because of the extensive expertise in constitutional law theory in the Centre. My doctoral thesis is an investigation into the constitutional role and status of the Supreme Court of the United Kingdom. I aim to locate the UK Court within the existing framework of apex courts around the world. Therefore, the project involves an element of comparing the relatively



Centre Visitor Byron Karemba



Centre Visitor Philip Weiser



new Supreme Court in Britain with top courts in other common law jurisdictions including Australia. My main objective in visiting the Centre was to improve my understanding of the constitutional role of the High Court of Australia and to develop a better appreciation of the broader constitutional settlement in Australia.

As well as having one-to-one meetings with faculty members working in my field, I was also afforded an opportunity to ‘audit’ the Contemporary Constitutional Law course for advanced Bachelors and JD students. These classes provided invaluable insights into the tenets of Australian Constitutional Law and they opened potential lines of enquiry for my doctoral project. By looking at recent High Court judgments, the course provided an introduction to the operations of the High Court, and the type of litigation which reaches the final court of appeal in Australia. During my visit, I was also allowed access to seminars and lectures given by different external and internal speakers. I was invited to a seminar on the treatment of precedent by the UK Supreme Court by James Lee (Kings College London), a book forum held to launch *Soft Law and Public Authorities* by Greg Weeks (UNSW) and I attended the 2016 Hal Wooten Public Lecture delivered by Brett Walker SC on ‘Law and Politics.’

Whilst at UNSW, I presented at the Centre’s biennial Postgraduate Workshop in Public Law and also presented at a work-in-progress seminar on my current research into investigatory powers reform in the UK. The visit was a great and informative experience. I am grateful to all the faculty members and the wider HDR community at UNSW for their support and hospitality during my stay. My visit was funded through the University of Leeds 110th Anniversary Scholarships Scheme.

Philip Weiser

From August to December 2016, I enjoyed the wonderful hospitality of the Gilbert + Tobin Centre at the University of New South Wales. For me, this opportunity came at a perfect time—having just finished up five years of service as Dean of the University of Colorado Law School and two years of service in the Obama Administration—and it enabled me to reflect on entrepreneurial leadership in government and opportunities to improve public administration. The most concrete result of the visit is an article that both follows up my earlier work on institutional innovation (see [here](#), for example) and sets the agenda for continuing work in the area. The article on entrepreneurial administration is posted [here](#).

In addition to the opportunity for reading, writing, and reflection, the collegiality and stimulation of the visit made for a most enjoyable and interesting experience.

Before the visit, I had not reflected deeply on comparative law issues or legal education in other countries, and I return to the United States with enriched perspectives and relationships. I also return with a great appreciation for the Centre and respect for its range of interesting speakers, thought-provoking conferences, and community of scholars that made for a most productive and stimulating experience. I look forward to remaining a colleague and supporter of the Centre’s great work in the years to come.

SOCIAL JUSTICE INTERN REPORTS

Nakul Bhagwat

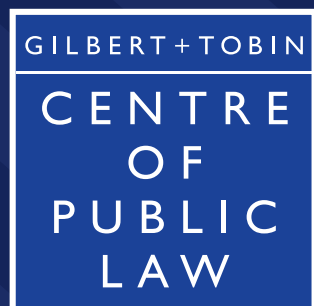
My internship at the Gilbert + Tobin Centre of Public Law has been a wonderful experience. It has deepened my understanding of public law issues, and given me an appreciation of the important work the Centre does to influence law reform and create a more just society.



Centre Social Justice Intern, Nakul Bhagwat

'Designing an anti-corruption commission is a difficult task with multiple intersecting objectives. A commission must be sufficiently empowered to achieve its objectives of investigating corruption and fostering public confidence. But it must respect the rights and reputation of individuals who come before it.'

Gabrielle Appleby and Grant Hoole, 'Anti-corruption commissions should only rarely hold public hearings', *The Australian* (21 April 2017)



During my internship, I worked with academics at the Centre on a wide range of issues. With Sean Brennan's assistance, I put together a briefing note for Centre members on *Knights v Victoria*, a case that has been heard by the High Court but is yet to be decided, which tests the outer limits of the *Kable* doctrine. This involved engaging with the parties' arguments on whether a new Victorian parole law impermissibly eroded the institutional integrity of a Ch III court, and allowed me to further my understanding of a significant line of contemporary constitutional jurisprudence.

It was also inspiring to be able to contribute to the Centre's scholarship on some of the most critical legal and political issues of our time. I conducted research on comparative constitutional design, the relationship between neoliberalism and populism, instances of unconstitutional executive action in fledgling democracies, and the process of treaty-making in British Columbia. I also gathered empirical data on the number of cases being heard by the High Court in its original and appellate jurisdictions. These projects gave me an insight into the sheer breadth of work being done at the Centre.

I was particularly struck by the work the Centre does to bridge the gap between academia, policy debate and law reform. In my time at the Centre, Sean Brennan, Gabrielle Appleby and Gemma McKinnon were involved in the First Nations regional dialogues and the National Convention at Uluru as part of the process for constitutional recognition of Aboriginal and Torres Strait Islander people, with Professor Megan Davis at UNSW Law also serving on the Referendum Council. During the semester the Centre also made a submission to the Independent National Security Legislation Monitor, for which I did some preliminary work. The Centre has become influential in both of these areas, and observing the work being done by members to shape policy outcomes has allowed me to better understand the important role the legal academy has in the process of law reform.

I am extremely grateful to the Centre and all its members for making me feel so welcome and involving me in such interesting work. In particular, I must thank Centre Director, Sean Brennan, for generously offering me his time and knowledge as my supervisor. He provided valuable guidance throughout the semester and ensured my experience was fulfilling.

Andrew Roberts

My semester as the Social Justice Intern at the Gilbert + Tobin Centre of Public Law has been one of the most rewarding experiences of my law degree. It has been an honour to have been given the opportunity to be involved with the Centre's work.

One of the most enjoyable aspects of the internship was the opportunity to work with a number of different Centre members on a wide variety of tasks. Some of the key research tasks that I was involved with include research into constitutional change in Malaysia and Singapore; the role of foreign judges in Pacific Island states; and recognition of indigenous sovereignty in international law. I was also lucky enough to be able to assist Centre members in the preparation of various submissions. I worked with Dr Nicola McGarrity on a submission to the Independent National Security Legislation Monitor in relation to recent amendments to Commonwealth counter-terrorism legislation. I also assisted Professor George Williams in preparing a submission to the Joint Standing Committee on Electoral Matters' inquiry into the 2016 federal election. In particular, I was looking into the fascinating issue of whether it would be possible or desirable for the Commonwealth to pass 'truth in political advertising' regulations.

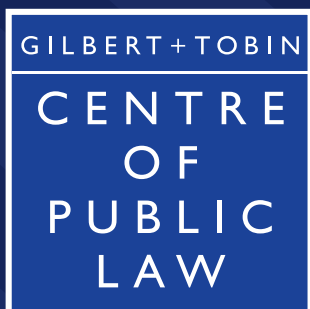
I was also involved with many other Centre-related activities. I assisted Associate Professor Gabrielle Appleby with the events roundup on the AUSPUBLAW blog.



Centre Social Justice Intern, Andrew Roberts



PhD Graduate Jackie Hartley



I conducted some background research for Dr Melissa Crouch in relation to Southeast Asian research centres in Australia. I was also lucky enough to attend a range of excellent Centre events, including roundtables, seminars and book forums. I particularly enjoyed the inaugural Mason Conversation, and I look forward to seeing how this event develops in the coming years.

As this brief survey shows, the work I was involved with was highly diverse. I think it is a testament to the quality of the Centre's work that its activities are so varied and innovative and so engaged with contemporary public law issues. I think one of the most important aspects of the Centre's work is how seriously it takes its role as a civil society institution that proactively engages with the wider profession, the political process and the general public.

I am indebted to all the Centre members that I have worked with during my internship. Their support and direction has been invaluable to me in developing my legal skills and understanding the Centre's work. In particular, Associate Professor Sean Brennan has been wonderfully supportive over the course of the semester. I know that the experiences and the skills I have developed during my internship will serve me well as I complete my law degree at UNSW and move into my legal career.

PHD REPORT

Jackie Hartley

I graduated with a PhD from UNSW Law in November 2016. Recently, I received a UNSW Law PhD Excellence Award for my thesis. I completed my PhD under the expert supervision of Sean Brennan, Megan Davis and Theunis Roux.

My thesis explored the obligations of governments to consult, and obtain the consent of, Indigenous peoples before conducting development activities that affect their territories. It involved a comparative study of international human rights law, Australian native title law and Canadian Aboriginal rights law.

I examined an emerging international standard on when governments must obtain the free, prior and informed consent of Indigenous peoples. I observed that the test used in this standard resembles well-established tests used in Canada and Australia. After finding these domestic tests display features that disadvantage Indigenous peoples, I proposed reforms to the international standard to avoid the same results.

I had the pleasure of being part of the Gilbert + Tobin Centre while completing my PhD. A highlight of my time as a PhD student was the opportunity to teach public law subjects as a Nettheim Doctoral Teaching Fellow. Teaching alongside my colleagues from the Centre was an invaluable experience. They fostered an incredibly supportive teaching environment. I enjoyed working with them to create teaching exercises and try new techniques.

The Centre also hosted PhD student workshops and made us feel welcome at conferences and seminars. I highly recommend the Centre for anyone who is thinking about undertaking further studies in public law.

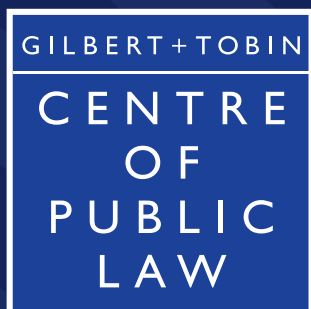
I'm now working in a research and policy role with the NSW Law Reform Commission and Sentencing Council Secretariat. Among other things, the PhD process teaches you to conduct rigorous research, analyse sources critically, write clearly and concisely, deal with setbacks constructively and to manage large, complex projects. I use these skills every day in my current role. I'm grateful for the opportunities offered by UNSW Law (and the Centre especially) to develop as a researcher and a teacher.



Vicki Jackson presenting at a Centre seminar in August 2016



Session 2 Panel at 2017 Constitutional Law Conference: Tony Blackshield, Celia Winnett, Ros Dixon and Craig Lenehan



PROJECT REPORTS

COMPARATIVE CONSTITUTIONAL LAW PROJECT

Project Director - Rosalind Dixon:

The comparative Constitutional Law Project has had a busy year. Since the last newsletter, it hosted a conference on 10 June 2016 with leading Australian constitutional scholars on 'Australian constitutional values': values-based arguments are a common part of comparative constitutional argument and practice, but to date have had a limited explicit role in shaping Australian constitutional argument. The conference considered how that might change if a range of values – such as liberty, equality, free trade, the rule of law or democratic experimentalism - were to be accepted as legitimate sources of influence in the interpretation of the Australian Constitution. The resulting edited collection is being published by Hart, and will be published at the end of this year.

On 12 August 2016, the CCL Project hosted a workshop on recent informal changes to the 'Pacific Clause' (Art 9) of the Japanese Constitution, and the implications of this for both comparative constitutional law and international relations and security. Speakers included Professor Yasuo Hasebe (Waseda), Professor Hajime Yamamoto (Keio), Professor Rosalind Dixon and Guy Baldwin (UNSW) and Professor Craig Martin (Washburn), Professor Hitoshi Nasu (ANU), Dr Luca Siliquini-Cinelle (Deakin), and Associate Professor Stacey Steel (Melbourne).

On 15 August 2016, it hosted a companion event on comparative constitutional change, featuring presentations on 'Theoretical & Comparative Perspectives' by Rosalind Dixon and Dr Bui Ngoc Son (NUS); 'The View from Latin America' by Associate Professor Juliano Zaiden Benvindo (Brasilia) and Associate Professor Carlos Bernal Pulido (Macquarie); and 'The View from South Asia' by Purush Purushothaman (VUW) and Dr Ridwanul Hoque (La Trobe).

On 12-13 December 2016, the Project hosted its annual comparative Constitutional Law Roundtable and Final Courts Roundup. Papers at the Roundtable were presented by Associate Professor David Fontana (GWU), Professor Pip Nicholson (Melbourne), Associate Professor Naomi Schoenbaum (George Washington) and Professor Philip Weiser (Colorado). This year, the Final Courts event was specifically focused on constitutional developments in the US, after the election of President Trump. It was co-hosted by the US Studies Centre at the University of Sydney as well as our longstanding partner, the Australian Association of Constitutional Law (AACL).

On 14 February this year, the Project hosted a workshop on constitutional 'social rights', or rights such as those pertaining to housing, health-care and social security. The workshop featured a presentation on privatisation and its consequences for social rights, by Centre visitor Professor Aoife Nolan, as well as papers and comments from Professor Denise Myerson (Macquarie), Associate Professor Carlos Bernal Pulido (Macquarie), Associate Professor Beth Goldblatt (UTS), Dr Murray Wesson (UWA) and Project Director Rosalind Dixon. Further plans are also underway to host a related and larger workshop on similar themes in August 2017, in conjunction with the Australian Human Rights Centre and UNSW Grand Challenge on Inequality.

We note that Associate Professor Bernal (a leading social rights scholar) has been a generous contributor to the work of the CCLP in this and other contexts, and was recently appointed as a justice of the Constitutional Court of Colombia. The CCLP warmly congratulates him on this appointment!



Early career commercial lawyers participating in training in Myanmar



Launch of the Professional Legal Education Training program in Myanmar



In addition, over the last 12 months, the CCL Project hosted a number of distinguished international visitors for special seminars, including James Weinstein (ASU) on 'Hate Speech Bans, Democracy & Political Legitimacy', Professor Vicki Jackson (Harvard Law School) on 'Proportionality and Equality', and Professor Fred Schauer (University of Virginia) on 'A Slightly Skeptical Examination of the Marketplace of Constitutional Ideas'.

The Director, Rosalind Dixon, has also been a visiting professor at the University of Chicago and Columbia University, and appointed to the board of the International Journal of Constitutional Law and council of the International Society of Constitutional Law. She has also assumed the role as co-lead, together with Professor Richard Holden (UNSW Business), of the University's Grand Challenge on Inequality.

Deputy Director - Melissa Crouch:

Melissa Crouch has been appointed to the Editorial board of the *Asian Journal of Comparative Law*, National University of Singapore (published with Cambridge University Press).

Melissa has received several grants in relation to her research and teaching on Myanmar. She was successful in obtaining a major Asian Development Bank project on 'Strengthening Law, Regulation, and the Legal Profession for a Better Investment Climate in Myanmar (2016-2017, USD283,000). The focus will be on improving legal education and skills integral to the transactional practice and adjudication of commercial law for private lawyers, prosecutors and judges. In April-May 2017, Melissa Crouch led and facilitated a major professional legal education project for commercial lawyers, law officers of the Union Attorney-General's Office and other ministries such as the Ministry of Energy and Ministry of Finance in Myanmar. The intensive training course includes a focus on company law, major projects, project finance and international trade agreements, and was conducted in collaboration with leading law firms in Myanmar, funded by the Asian Development Bank. The second stage of the training course takes places in July.

Melissa is currently facilitating several major student international internship opportunities. She is a Board member of the Australian In-country Consortium for Indonesian Studies, which has a new Law Practicum for students launching in January 2018, with scholarships available for UNSW students. Melissa was also part of a successful cross-faculty UNSW application for a *Myanmar Ambassador Internship Program* funded by the New Colombo Plan that will offer scholarships to five law students to undertake a 4-6 week law internship in Myanmar.

Melissa was selected to attend the UNSW Indonesia Roadshow in August 2016 which included visits to the University of Indonesia and the University of Gajah Mada. Along with Dr Fritz Siregar, she was successful in a grant application for the UNSW Indonesia Seed Funding program. She also was awarded the UNSW Law Research Fellowship for 2017, and the UI Resolv Visiting Scholars program to visit the University of Indonesia in November 2017.

In November 2016, Melissa Crouch, along with faculty members Martin Krygier and Theunis Roux, organised two major workshops. The first workshop in Yangon was on Building Constitutionalism and brought together a wide range of professors, lawyers, civil society organisations and students. The second workshop was for the Myanmar Constitutional Tribunal on the Role and Function of Constitutional Courts in Comparative Perspective. This built on a long-standing engagement in Myanmar, with several workshops on constitutional law held every year since 2013.

Melissa's research on Indonesian law and Myanmar law has also appeared frequently in the news. Melissa appeared on ABC News 24 and Channel 7 News,

'Kiefel CJ does not merely share in her predecessor's view that deliberation and collaboration pose little threat to each judge's decisional independence; she has also emphasised those practices as vital to the efficient performance of the court's responsibilities.'

Andrew Lynch, *The Australian* (20 January 2017)

and was interviewed for numerous articles appearing in *The New York Times*, *Sydney Morning Herald*, *The Guardian* and other national and international media outlets on the conviction of the former governor of Jakarta, Ahok, for the crime of blasphemy in Indonesia, as well as on the criminal trial of Sara Connor in Bali, and the issue of constitutional and legal reform in Myanmar.

Indigenous Legal Issues Project

Project Director: Sean Brennan

Work in the area of Indigenous Legal Issues has been dominated by the unfolding process of Indigenous designed and led Regional Dialogues on Constitutional Change, culminating in the First Nations Constitutional Convention at Uluru held on 24-26 May 2017. Sean Brennan, Gabrielle Appleby and Gemma McKinnon have attended as pro bono legal advisors at preparatory meetings and a trial dialogue in Melbourne, the twelve Regional Dialogues that followed around Australia and the final gathering at Uluru. Details about the Uluru meeting, the Dialogues and the technical support role played by Centre people are contained in the report near the front of this newsletter.

A range of Centre colleagues published chapters, articles and opinion pieces on topics relating to constitutional change relating to First Nations people in the past 12 months – as well as Gabrielle, Gemma and Sean, that has included Harry Hobbs, Paul Kildea and George Williams. A full listing of publications and presentations on this issue, amongst many, can found later in the newsletter.

In the area of land and heritage, Lauren Butterly (with Ambellin and Blaze Kwaymullina) published on Aboriginal heritage law reform in Western Australia in a recent special edition of the *Australian Law Journal*. And Sean Brennan wrote a chapter in Andrew Lynch's edited collection *Great Australian Dissents* on the judgment of Justice Anthony North in the Miriuwung Gajerrong native title decision from the Full Federal Court in 2000 (*Western Australia v Ward*).

Inquisitorial Justice Project

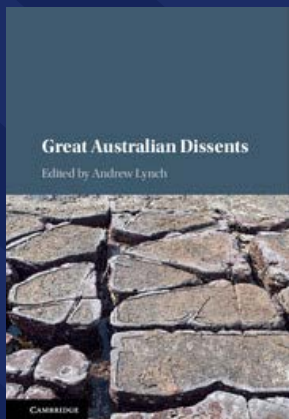
Project Director: Grant Hoole

The Inquisitorial Justice Project was initiated in March 2017. Its aim is to provide a forum for scholarship and public discussion about the use of inquisitorial methods by administrative tribunals, standing and ad hoc commissions, and other official bodies. A distinctive feature of the project is its focus on pragmatic subjects of legal practice and procedure. The project studies the hearing structures, methods of examination and cross-examination, evidentiary standards, and professional knowledge, skills, and commitments that pertain in different inquisitorial settings. It attempts to reconcile these practical subjects with coherent and principled accounts of the purposes animating various inquisitorial bodies, focusing particularly on the distinct values they are intended to contribute within legal systems. With future ambitions to consider ombudsman's proceedings, coronial inquests, and other inquisitorial settings, current project work focuses on the design and conduct of Australia's standing anti-corruption commissions, and on the internationally comparative study of royal commissions.

The Project's work on anti-corruption commissions originated in a 2016 submission by Gabrielle Appleby, Sean Brennan, Shipra Chordia, and Grant Hoole to the Senate Select Committee on the Establishment of a National Integrity Commission. In 2017, Associate Professor Appleby and Dr Hoole have built from this work to participate in ongoing debates related to the design of a prospective federal anti-corruption commission. They contributed a plenary discussion paper on the subject to Transparency International Australia's first biennial conference, *National Integrity 2017*, reproduced in the document 'A federal anti-corruption agency for

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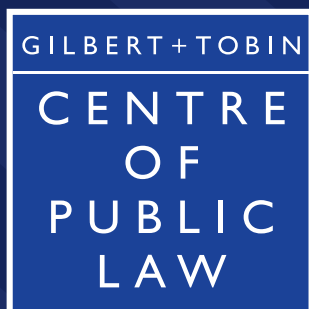


Great Australian Dissents, a collection edited by Andrew Lynch



The Judge and Power: Empirical Revelations of Judicial Practice panellists at the International Society of Public Law's Annual Conference in Copenhagen.

Bottom from left: Andrew Lynch, Cora Hoexter, Hugh Corder, Julia Hughes, Gabrielle Appleby.
Top from left: Brian Opeskin, Suzanne Le Mire, Philip Bryden, HP Lee and Alan Paterson (Mathilde Cohen absent)



Australia', with accompanying commentary by Professor AJ Brown, Professor Adam Graycar, and Anthony Whealy QC. Associate Professor Appleby and Dr Hoole also contributed a submission to the new Senate Select Committee on a National Integrity Commission, supplemented by an opinion piece in *The Australian* and by Associate Professor Appleby's testimony before the Committee on 11 May 2017. Drawing from legal process scholarship, and aiming to present design choices that strengthen the governance frameworks within which anti-corruption commissions operate, Associate Professor Appleby and Dr Hoole have advanced the controversial thesis that such bodies should only rarely hold public hearings, with public scrutiny of individuals limited by relatively strict statutory thresholds. This position grapples with one of the most important and contested issues surrounding the powers of anti-corruption commissions, and has garnered a significant reaction amongst scholars and commentators in the field.

In addition to work on anti-corruption commissions, Project Director Grant Hoole has been advancing his own scholarship related to royal commissions and ad hoc commissions of inquiry. This includes work on a book manuscript concerning the conduct of judge-led commissions, for which Dr Hoole has recently been travelling in his home country of Canada to meet with former inquiry commissioners and discuss their experiences. Dr Hoole has also been completing comparative research on design of royal commissions in South Africa, Australia, and Canada, exploring the merit and pitfalls of different methods for facilitating public participation in processes that confront systemic wrongdoing.

Finally, as the Inquisitorial Justice Project remains in early stages, Dr Hoole has been meeting with scholars and practitioners to seek input on future avenues for the project, including events that would benefit the legal community, policymakers, and others engaged in the work of inquisitorial agencies.

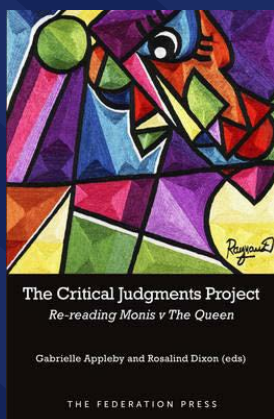
Judiciary Project

Project Co-Directors: Gabrielle Appleby and Andrew Lynch

The Centre's Judiciary Project has been extremely busy and productive. Both co-directors have had edited books published over the period since the last newsletter.

Great Australian Dissents, edited by Professor Andrew Lynch and published by Cambridge University Press, is the result of a workshop of the same title that was convened by the Centre in 2015. Over 17 chapters, 21 authors nominate and champion a dissenting judicial opinion that they submit merits recognition for 'greatness'. While each entry is fascinating and can be appreciated in its own right, collectively the chapters put under the spotlight the whole question of why judges dissent, what value this has and what makes some dissents memorable when so many are forgotten. Deeper themes such as strategic and collegial decision-making and the role of judicial reputation also recur across the chapters. *Great Australian Dissents* was formally launched at the conclusion of this year's Constitutional Law Conference by Sir Anthony Mason AC KBE on 17 February 2017.

Just the day before, at the conclusion of the Public Law in the Classroom Teachers Workshop at UNSW, a book co-edited by Associate Professor Gabrielle Appleby and Professor Rosalind Dixon was also launched. This is an exciting and innovative study published in November with Federation Press and titled *The Critical Judgments Project: Re-reading Monis v The Queen*. The book provides a new perspective on the growing critical 're-reading' movement. The collection is written for students learning critical legal theory, and includes a series of reimagined judgments from the constitutional freedom of political communication case *Monis v The Queen*.



The Critical Judgments Project: Re-reading Monis v The Queen, an edited collection from Gabrielle Appleby and Rosalind Dixon

'In Australia, at a time of increasingly rancorous global political debate, we may... be tempted to celebrate the very quiet – rather than loud and raucous – transition that marked Chief Justice Kiefel's appointment.'

Rosalind Dixon, 'Judicial appointments in the age of Trump: from Kiefel to Gorsuch', *Australian Financial Review* (2 February 2017);



The judgments each take a different critical perspective, and the authors of the judgments are an array of leading Australian scholars drawn from the disciplines of law, politics, economics, criminology, and race and gender studies.

On other fronts, Andrew and Gabrielle, together with Professor Brian Opeskin (UTS) and Associate Professor Suzanne Le Mire (University of Adelaide), presented at two international conferences the findings from their survey of Australian judicial officers (n=142) from across the different Australian jurisdictions. Participants were asked what they considered to be the most pressing challenges that face the various levels of the Australian judiciary, and whether the current regulatory and support environment achieves international best practice. An initial report of the data has been compiled and forwarded to all participating courts. The data gathered from this exercise is very rich and is being used by the research team to develop an agenda of forthcoming publications that are focused on specific areas of judicial concern. Members of the research team presented the initial survey findings at the Law and Society meeting in Mexico City in June, and organised a panel at the International Society of Public Law's Annual Conference, in July in Copenhagen, on *The Judge and Power: Empirical Revelations of Judicial Practice*. The panel brought together internationally renowned scholars who have undertaken empirical research into different facets of judicial practice.

The same research team has recently completed a large study on the use of temporary or acting judicial officers across the States and Territories for the Judicial Conference of Australia, with its report, *Temporary Judicial Officers in Australia: A Report for the Judicial Conference of Australia*, delivered in January 2017. Members of the team will present these findings to the Judicial Conference of Australia Colloquium on October.

Gabrielle has been continuing her work with Associate Professor Erin Delaney (Pritzker School of Law, Northwestern University, Chicago) on the design of federal judicial systems. They organised a panel on *Judicial Design in Federal Systems* for the International Society of Public Law's Annual Conference in July. Panelists provided a review and analysis of judicial system designs in the United States and Australia, Canada, Germany, Malaysia, Brazil and Argentina. This follows Gabrielle and Erin's recent publication of a chapter on 'Federalism, Judicial Systems' in the *Max Planck Encyclopedia of Comparative Constitutional Law*, and Gabrielle's recent seminar presented at the Pritzker School of Law, *Integrity and Diversity: Comparing Rights and Structure in Judicial Federalism* in April.

Gabrielle has also been writing and commenting on the need for reform for judicial recusal procedure, and the current practice in Australia and the United States, as well as other common law countries, or self-recusal. Her article, 'Pride and Prejudice: A Case for Reform of Judicial Recusal Procedure' co-authored with Stephen McDonald, has been published in *Legal Ethics*, together with a comment, 'Justice Ginsburg, President Trump, and the need for judicial disqualification reform'. Commenting on these matters, she was invited to be a panelist in the opening session of the *Conference on World Affairs* (University of Colorado, Boulder), entitled: *Supreme Challenges to the Supreme Court*.

Finally, Gabrielle and Dr Alysia Blackham (University of Melbourne) made a submission to the Standing Committee on the Model Code of Professional Conduct Federation of Law Societies of Canada in September. The Committee was conducting an inquiry into post-judicial return to practice. The submission drew on the research and conclusions from the paper its authors presented to the International Legal Ethics Conference VII in New York in July, *The Shadow of the Court: Ethics for Former Judges*.

'Detention Warrants permit individuals who may not be suspected of any crime to be detained for up to seven days. In Australia, executive detention is the exception — not the rule. It should only be permitted where there is a clear justification for doing so.'

Nicola McGarrity and George Williams,
Submission to Parliamentary Joint
Committee on Intelligence and Security
Review of ASIO's Questioning and Detention
Powers (21 April 2017)

It is obvious from all of the above that the success of the Judiciary Project, like so many of the Centre's activities, owes much to the spirit of collaboration — not just of Centre members themselves, but crucially our colleagues who are researching and teaching in other institutions. We gratefully acknowledge the generous contributions of the latter to the work of the Judiciary Project over 2016/17 and value these ongoing research relationships with so many people whom we admire and whose work informs and stimulates us as public law academics.

Public Law and Legal Theory Project

Project Co-Directors: Ben Golder and Daniel McLoughlin

Over the past year the Directors of the project, Ben Golder and Daniel McLoughlin, have continued their work on the contemporary politics and theory of constitutionalism. They have just finished editing final proofs of their edited collection *The Politics of Legality in a Neoliberal Age*, which emerged from a two-day conference that was partly funded by the Gilbert + Tobin Centre of Public Law. The volume examines the role that legality plays in the theory and practice of neoliberalism, which is the dominant economic force of our time. It offers a legal corrective to scholarship in economics and political economy that has paid insufficient attention to legal ideas and, at the same time, a political economic corrective to legal scholarship which has only recently turned to theorising neoliberalism. The volume will be published with Routledge in August of this year.

Ben and Daniel are also currently advertising a Scientia PhD Scholarship for a student to work with them and Dr Vicki Sentas on a project entitled "Security, Precarious Populations and the Neoliberal Age." These competitive and well funded scholarships are part of UNSW's 2025 strategy designed to attract top researchers to the University.

Ben has also deepened his engagement with human rights theory through work on the role of universalism in human rights discourse and the historical treatment of human rights in contemporary legal scholarship. Daniel recently signed a contract with Stanford University Press for a monograph on the influential Italian Philosopher Giorgio Agamben, and the analysis of sovereignty and government that he has developed over the last 20 years in the *Homo Sacer* project. He also published an edited volume in late 2016 entitled *Agamben and Radical Politics*, which brought together many of the leading scholars in the field to consider Agamben's recent work on the theological roots of modern concepts of government, and his attempt to rethink the politics of radical democracy.

Referendums Project

Project Director: Paul Kildea

In May, the First Nations Constitutional Convention met at Uluru to discuss constitutional recognition. Following three days of deliberations the Convention issued a *Statement from the Heart* that called for a First Nations Voice to be enshrined in the Constitution, and for the creation of a Makarrata Commission 'to supervise a process of agreement-making between governments and First Nations and truth-telling about our history'. More details on the Convention are included elsewhere in this newsletter - including the substantial contributions of Centre members to both the Uluru event and the preceding regional dialogues. Several members, including Gabrielle Appleby, Sean Brennan, Gemma McKinnon, George Williams and Harry Hobbs, also published a variety of expert commentary pieces on the event (in *Guardian Australia*, the *Sydney Morning Herald*, *The Conversation* and *Inside Story*), explaining its significance and reflecting on its likely impact.

The year 2017 marks two referendum anniversaries. The first is the 50th anniversary of the 1967 referendum, which granted the Commonwealth legislative



George Williams, Colin Picker and Melissa Crouch of UNSW meeting with a delegation from the Law Faculty of Sultan Agung University, Indonesia

‘Chastened by past defeats, we risk becoming preoccupied with “winning” the next referendum, when we can more productively put our energies into carrying on a better, more open national conversation about our constitutional future.’

Paul Kildea ‘What to Make of a History of Repeated Referendum Failure’, Constitutional Law Conference, Sydney (17 February 2017)



power over Indigenous issues and ensured that the nation’s first peoples be included in the population count. It remains the most successful federal referendum: more than 90 per cent of voters supported the proposed amendments. The second anniversary is less inspiring: 2017 marks 40 years since Australians last approved an amendment to the Constitution. Paul Kildea reflected on the significance of this at the Gilbert + Tobin Centre’s constitutional law conference in February. Paul argued that we risk becoming obsessed about referendum ‘failure’, and that we should instead focus on improving referendum processes to make them more participatory, deliberative and inclusive. He called for a randomly selected constitutional convention (similar to that run in Ireland in 2012) to kick-start our constitutional debate.

Referendums aside, the past year has seen a great deal of debate about plebiscites. In September 2016, the federal government introduced legislation to hold a plebiscite on same-sex marriage in early 2017. Among other things, the Bill set a plebiscite question (‘Should the law be changed to allow same-sex couples to marry?’) and authorised public funding of Yes and No campaign committees up to \$7.5 million each. The Bill passed the House of Representatives but was defeated in the Senate by four votes as a result of opposition from the ALP, Greens, NXT and Derryn Hinch. Among the arguments presented against the plebiscite were its non-binding nature, its cost, and the risk that the campaign would provide a platform for the dissemination of homophobic and other harmful messages. The future of the same-sex marriage debate is now uncertain, but a popular vote on the issue now seems unlikely.

Centre members provided expert commentary on the plebiscite proposal over many months. George Williams published an analysis of the Plebiscite Bill in the *Sydney Morning Herald*, in which he criticised the provision of public funding for campaign groups, and noted the possibility that some aspects of the Bill could be vulnerable to a constitutional challenge. Paul Kildea published a detailed study of the constitutional and regulatory aspects of plebiscites in the *Public Law Review*, including specific analysis of the proposed vote on same-sex marriage. Paul also presented conference and seminar papers on the plebiscite to audiences in the UK and Ireland. Separately, he participated in ongoing UK debates about improving referendum practice in the wake of the Brexit vote, including in a panel discussion and blog post where he argued against the establishment of a ‘truth commission’ to monitor the veracity of campaign statements.

Terrorism Law Reform Project

Project Director: Nicola McGarrity

Counter-terrorism law and policy has been at the forefront of public and political debate over the last six months. Terrorist attacks in the United Kingdom and on home soil – in Brighton, Melbourne, in June 2017 – have been the catalyst for a flurry of legislative activity. Proposals to reform the legislative regime include: narrowing the circumstances in which citizenship will be granted; strengthening parole and bail conditions; and introducing investigative detention powers nationwide. Professor George Williams, Dr Nicola McGarrity and Dr Sangeetha Pillai have been frequent commentators on these topics in the media.

As a way of consolidating publicly available information about anti-terrorism laws and terrorism-related prosecutions in Australia, a new website and associated blog were launched by Dr Nicola McGarrity and Dr Jessie Blackbourn (Oxford University) earlier this year. It can be found at ausnatsec.wordpress.com (and by following [@ausnatsec](https://twitter.com/ausnatsec) on Twitter).

'At the heart of democracy is the protection of minorities, rather than simply the rule of the majority.'

Melissa Crouch, 'Jokowi's Islamist Challenge: Curbing Terrorism and Religious Intolerance', *The Guardian* (31 August 2016)

There have been two major inquiries to which members of the Terrorism Law Reform Project have made submissions and been invited to give evidence. The first was the Independent National Security Legislation Monitor's review of control orders, preventative detention orders, search and seizure provisions, and the offence of entering a declared zone. The other was a review of ASIO questioning and detention powers conducted by the Parliamentary Joint Committee on Intelligence and Security. Both inquiries are yet to report.

Finally, at the Centre's annual Constitutional Law Conference held in February 2017, Dr Nicola McGarrity chaired a session on Constitutional Law and Criminal Justice. The session brought together practitioners, public interest advocates, academics and members of the judiciary to discuss the intersection between procedural and substantive criminal law and the Constitution. An important topic which was addressed in this session was the manner in which national security (and the spectre of terrorism in particular) has impacted upon the jurisprudence of the High Court in this context.

PUBLICATIONS AND PRESENTATIONS

PUBLICATIONS

Joint Publications

Rebecca Ananian-Welsh, Gabrielle Appleby and Andrew Lynch, *The Tim Carmody Affair - Australia's Greatest Judicial Crisis*, (NewSouth Publishing, 2016);

Rebecca Ananian-Welsh and George Williams, 'State Judges as Lieutenant Governors' in R Ananian-Welsh and J Crowe (eds), *Judicial Independence in Australia: Contemporary Challenges* (Federation Press, 2016), 194;

Gabrielle Appleby and Erin Delaney, 'Federalism, Judicial Systems' in Rainer Grote, Frauke Lachenmann, Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (Max Planck Foundation for International Peace and the Rule of Law and Oxford University Press, 2017);

Gabrielle Appleby and Rosalind Dixon (eds), *The Critical Judgments Project: Re-reading Monis v The Queen* (Federation Press, 2016);

Gabrielle Appleby and Rosalind Dixon, 'Critical Thinking in Constitutional Law and *Monis v The Queen*' in Gabrielle Appleby and Rosalind Dixon (eds), *The Critical Judgments Project: Re-reading Monis v The Queen* (Federation Press, 2016) 1;

Gabrielle Appleby and Suzanne Le Mire, 'The Australian Judiciary: Resistant to Reform?' in Adam Dodek and Richard Devlin (eds), *Regulating Judges: Challenges, Controversies and Choices* (Edward Elgar, 2016) 35;

Gabrielle Appleby, Suzanne Le Mire, Andrew Lynch and Brian Opeskin, *Temporary Judicial Officers in Australia: A Report for the Judicial Conference of Australia* (January 2017);

Gabrielle Appleby and Stephen McDonald, 'Pride and prejudice: a case for reform of judicial recusal procedure' (2017) *Legal Ethics* <http://dx.doi.org/10.1080/1460728x.2017.1261521>;

Gabrielle Appleby and Heather Roberts, 'Law and Literature' in Gabrielle Appleby and Rosalind Dixon (eds) *The Critical Judgments Project: Re-reading Monis v The Queen* (Federation Press, 2016) 28;

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The government has introduced legislation to reform Australia's citizenship regime, under the guise of strengthening the integrity of citizenship. The bill, if passed in its current form, confers sweeping new powers on the immigration minister.

Sangeetha Pillai, 'Minister to get unprecedented power if Australia's new citizenship bill is passed', *The Conversation* (15 June 2017)

Gabrielle Appleby and Heather Roberts, 'He who would not be muzzled: Justice Heydon's Last Dissent in *Monis v The Queen* (2013)' in Andrew Lynch (ed), *Great Australian Dissents* (Cambridge University Press, 2016) 335;

Alysia Blackham and George Williams, 'A Balancing Act: Courts and Social Media', *Law Institute Journal*, May 2017, 28;

Alysia Blackham and George Williams, 'Social Media and the Judiciary: A Challenge to Judicial Independence?' in R Ananian-Welsh and J Crowe (eds), *Judicial Independence in Australia: Contemporary Challenges* (Federation Press, 2016) 223;

Lauren Butterly, Ambelin Kwaymullina and Blaze Kwaymullina, 'Opportunity is There for the Taking: Legal and Cultural Principles to Re-start Discussion on Aboriginal Heritage Reform in WA' (2017) 91(5) *Australian Law Journal* 365;

Rosalind Dixon and Sam Issacharoff, 'Living to Fight Another Day: Judicial Deferral in Defense of Democracy' 2016(4) *Wisconsin Law Review* 683;

Rosalind Dixon and David Landau, 'Competitive Democracy and the Constitutional Minimum Core' in Tom Ginsburg & Aziz Huq (eds), *Assessing Constitutional Performance* (Cambridge University Press, 2016) 268;

Rosalind Dixon and Melissa Vogt, 'Comparative Constitutional Law and the Kable Doctrine' in Rebecca Ananian-Welsh and Jonathan Crowe (eds), *Judicial Independence in Australia: Contemporary Challenges, Future Directions* (Federation Press, 2016);

Rosalind Dixon and Adrienne Stone, 'Constitutional Amendment and Political Constitutionalism: A Philosophical and Comparative Reflection' in David Dyzenhaus & Malcolm Thorburn (eds), *Philosophical Foundations of Constitutional Law* (Oxford University Press, 2016);

Ben Golder and Daniel McLoughlin (eds.), *The Politics of Legality in a Neo-Liberal Age* (Routledge, 2017);

Keiran Hardy and George Williams, 'Australian Legal Responses to Foreign Fighters' (2016) 40 *Criminal Law Journal* 196;

Keiran Hardy and George Williams, 'Special Intelligence Operations and Freedom of the Press' (2016) 41 *Alternative Law Journal* 160;

Harry Hobbs, Andrew Lynch and George Williams, 'The High Court under Chief Justice Robert French' (2017) 91 *Australian Law Journal* 53;

Andrew Lynch and George Williams, 'The High Court on Constitutional Law: The 2015 Statistics' (2016) 39 *University of New South Wales Law Journal* 1161;

Daniel Reynolds and George Williams, 'Petitioning the Australian Parliament: Reviving a Dying Democratic Tradition' (2016) 31 *Australasian Parliamentary Review* 60;

Daniel Reynolds and George Williams, 'A Human Rights Act For Queensland? Lessons from Recent Australian Experience' (2016) 41 *Alternative Law Journal* 81;

Daniel Reynolds and George Williams, 'Australian Democracy Could be Improved by Breathing New Life into an Ancient Tradition' on AUSPUBLAW (10 November 2016) <auspublaw.org/2016/11/breathing-new-life-into-an-ancient-tradition/>;

Anna Rienstra and George Williams, 'Creating New States from Australia's Existing States' on AUSPUBLAW (19 September 2016); <auspublaw.org/2016/09/creating-new-states-from-existing-states/>;

Svetlana Tyulkina and George Williams, 'Combating Terrorism in Australia through Preventative Detention Orders' in Tulich, T, Ananian-Welsh, R, Bronitt, S, and Murray, S (eds), *Regulating Preventative Justice: Principle, Policy and Paradox* (Routledge, 2017) 136;

'As non-Indigenous Australians we should resist the temptation to rush to know every single detail and have every question answered. Aboriginal and Torres Strait Islander people travelled a long and painful journey to arrive at their message of unity and strength last Friday. ... This week is a time to pause. To reflect on what was achieved at Uluru. And to listen to the message that for so long we have struggled to stop and hear.'

Gabrielle Appleby and Sean Brennan, 'Let's not waste this opportunity', *The Guardian* (30 May 2017)

Alexander Williams and George Williams, 'The British Bill of Rights Debate: Lessons from Australia' (2016) *Public Law* 471;

George Williams and twelve others, 'Consensus Statement on the Reform of the Tasmanian Constitution' (2016) 35 *University of Tasmania Law Review* i-vi.

Gabrielle Appleby

'The Law Officers of the Commonwealth' (2017) 28 *Public Law Review* 97;

'Justice Ginsburg, President Trump, and the need for judicial disqualification reform' (2017) *Legal Ethics* DOI: <http://dx.doi.org/10.1080/1460728x.2017.1326433>

'Reform of the Attorney General: Comparing Britain and Australia' [2016] *Public Law* 573;

'Navigating a Complicated Relationship: The Role of the Solicitor-General' (2016) 29 *Law Society Journal* 70.

Sean Brennan

'Constitutional Amendment and the Issue of Trust' in Simon Young, Jennifer Nielsen and Jeremy Patrick (eds), *Constitutional Recognition of Australia's First Peoples: Theories and Comparative Perspectives* (Federation Press, 2016);

'Certainty, Co-existence and the Legacy of *Mabo*: Justice North in the Miriuwung Gajerrong Native Title Case (2000)' in Andrew Lynch (ed), *Great Australian Dissents* (Cambridge University Press, 2016).

Melissa Crouch

The Business of Transition: Law Reform, Development and Economics in Myanmar (ed), Cambridge University Press, 2017;

'The Expansion of Emergency Powers: Social Conflict and the Military in Indonesia' (2017) 41(3) *Asian Studies Review*;

'Myanmar's Advocate for Constitutional Reform: Saya U Ko Ni' (2017) 18(1) *Australian Journal of Asian Law* 1;

'The Everyday Emergency: Between the Constitution and the Criminal Procedure Code in Myanmar' in Andrew Harding (ed), *Constitutionalism and Legal Change in Myanmar* (Hart Publishing, 2017);

'Negotiating Legal Pluralism in Court: Fatwa and the Crime of Blasphemy in Indonesia' in Gary Bell and Veronica Taylor (eds), *Festschrift in Honour of M B Hooker* (Institute for Southeast Asian Studies, 2017);

'Understanding the Business of Transition in Myanmar' in M Crouch (ed), *The Business of Transition: Law Reform, Development and Economics in Myanmar* (Cambridge University Press 2017);

Professional Legal Education in Commercial and Corporate Law in Myanmar: An Assessment of the Legal Profession, the Attorney General's Office and the Courts (Asian Development Bank, January 2017);

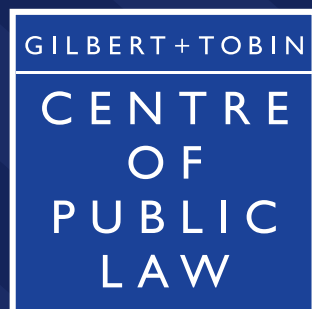
'Buddhism, Politics and the Limits of Law: The Pyrrhic Constitutionalism of Sri Lanka' (2017) 4(2) *Asian Journal of Law and Society*;

'Legislating Reform? Law and Conflict in Myanmar' in Nick Cheesman and Nich Farrelly (eds), *Conflict in Myanmar: War, Politics, Religion* (Singapore Institute for Southeast Asia Studies, 2016).

Rosalind Dixon

'Constitutional Carve-Outs' (2016) 36 *Oxford Journal of Legal Studies* 1;

'The Future of Constitutional Comparison: A Colloquy on Ran Hirschl's Comparative Matters: Toward a Realistic Comparative Constitutional Studies?' (2016) 64 *American Journal of Comparative Law* 193;



‘Some people have responded by rejecting the idea of a treaty out of hand. They see it as beyond the realm of the possible, and alien to our legal traditions. Neither view is correct. All comparable countries have treaties in place with their Indigenous peoples, including Canada, New Zealand and the United States. Some of these agreements have been negotiated in recent years.’

George Williams, ‘Indigenous People Need Constitutional Respect and a Treaty’, *Sydney Morning Herald* (8 August 2016)

‘An Australian (Partial) Bill of Rights’ (2016) 14 *International Journal of Constitutional Law* 80.

Ben Golder

‘Contemporary Legal Genealogies’ in Justin Desautels-Stein and Chris Tomlins (eds), *Searching for Contemporary Legal Thought* (Cambridge University Press, 2017), 80;

‘On the Varieties of Universalism in Human Rights Discourse’ in Petr Agha (ed), *Human Rights between Law and Politics: The Margin of Appreciation in Post-National Contexts* (Hart, 2017), 37.

Harry Hobbs

‘Revisiting the Scope of the Race Power after *McCloy*’ (2016) 27 *Public Law Review* 264;

‘Towards a Principled Justification for the Mixed Composition of Hybrid International Criminal Tribunals’ (2017) 39 *Leiden Journal of International Law* 177.

Paul Kildea

‘The Constitutional and Regulatory Dimensions of Plebiscites in Australia’ (2016) 27 *Public Law Review* 290;

‘Achieving Fairness in the Allocation of Public Funding in Referendum Campaigns’ (2016) 37(1) *Adelaide Law Review* 13.

Brendan Lim

Australia’s Constitution after Whitlam (Cambridge University Press, 2017).

Andrew Lynch

Great Australian Dissents (ed), Cambridge University Press, 2016;

‘Introduction – What Makes a Dissent Great?’ in A Lynch (ed), *Great Australian Dissents* (Cambridge University Press, 2016) 1;

‘Unrequited but Still Great – The Dissent of Justices Dixon and Evatt in *R v Federal Court of Bankruptcy; Ex parte Lowenstein* (1938)’ in A Lynch (ed) *Great Australian Dissents* (Cambridge University Press, 2016) 39.

Daniel McLoughlin

Agamben and Radical Politics (Edinburgh University Press, 2016);

‘Glorious Labour: Agamben and the Post-Fordist Spectacle’ in D. McLoughlin (ed), *Agamben and Radical Politics*, (Edinburgh University Press, 2016);

‘Post-Marxism and the Politics of Human Rights: Lefort, Badiou, Agamben, Ranciere’ *Law and Critique*, published online 16 March 2016.

Sangeetha Pillai

‘Plaintiff M96A and the elusive limits of immigration detention’ on AUSPUBLAW (29 May 2017) <auspublaw.org/2017/05/plaintiff-m96a-and-the-elusive-limits-of-immigration-detention/>.

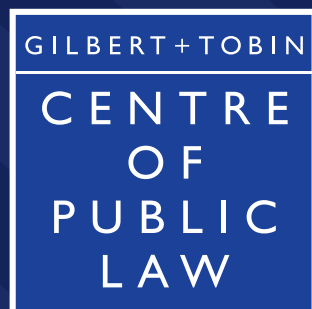
George Williams

‘Human Rights and the Tasmanian Dam Case’ in Coper, M, Roberts, H, and Stelliou, J (eds), *The Tasmanian Dam Case 30 Years On: An Enduring Legacy* (Federation Press, 2017), 129;

“‘Lone, Vehement and incredulous’”: Chief Justice Latham in the Communist Party Case’ in A. Lynch (ed), *Great Australian Dissents* (Cambridge University Press, 2016), 97;

‘Bryan Pape and his Legacy to the Law’ in *Upholding the Australian Constitution* (The Samuel Griffith Society, 2016), Vol 26, 207;

‘The Solution? Stronger Legal Protections and Greater Political Will’ (2016) *Law Society of NSW* 32.



‘What this long and unedifying saga has revealed is that the Solicitor-General’s capacity to act as a trusted, independent and authoritative legal adviser is far from guaranteed. The government must think seriously about reform to the office to reduce the damage caused by recent events, and guard against similar controversies.’

Gabrielle Appleby, ‘Restoring the Independence of the Solicitor-General’, *Inside Story* (17 November 2016)

PRESENTATIONS

Joint Presentations

Gabrielle Appleby and Grant Hoole, ‘Integrity of Purpose: Designing a Federal Anti-Corruption Commission’, *National Integrity 2017: Transparency International Australia’s First Biennial Conference*, Brisbane, 16-17 March 2017;

Gabrielle Appleby and Anna Olijnyk, ‘Constitutional Deliberation in the Legislative Process’, *Australasian Study of Parliament Group Annual Conference*, September 2016;

Jessie Blackburn and Nicola McGarrity, ‘Legal Regulation of Terrorism-Related Uses of Social Media’, *Terrorism and Social Media*, Swansea University, 28 June 2017;

Jessie Blackburn and Nicola McGarrity, ‘Responding to the Foreign Fighters Phenomenon: Is Legislation the Answer?’, *Criminal Justice and Criminology Seminar Series*, University of New South Wales, 27 March 2017;

Rosalind Dixon and Tom Ginsburg, ‘Constitutions as Political Insurance’, *Northwestern/UNSW Conference on Comparative Judicial Review*, 7-8 October 2016;

Rosalind Dixon and David Landau, ‘Tiering Constitutional Amendment’, *University of Chicago Constitutional Law workshop*, 3 October 2016;

Will de Waal and Harry Hobbs, ‘A Survey of Academic Commentary on the Cape York Institute Model’, *Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples: A Voice to the Federal Parliament Workshop*, UNSW, 15 December 2016.

Gabrielle Appleby

‘Horizontal Accountability: The Rights-Protective Promise and Fragility of Executive Integrity Institutions’, Seminar for the Australian Association of Constitutional Law and the Public Law and Policy Research Unit, University of Adelaide, April 2017;

‘Integrity and Diversity: Comparing Rights and Structure in Judicial Federal Design’, Staff Seminar, Pritzker School of Law, Northwestern University, Chicago, April 2017;

Keynote speaker, *Conference on World Affairs*, University of Colorado, April 2017;

‘Government Lawyers’, Lunchtime Seminar, University of Tasmania, 17 November 2016;

‘The Role of the Solicitor-General: Negotiating Law, Politics and the Public Interest’, *UNSW Book Forum*, 7 September 2016.

Shipra Chordia

‘Structured proportionality after *McCloy* and *Murphy*’, Australian Association of Constitutional Law, Federal Court of Australia, Sydney, 17 May 2017;

‘The problem of balancing: structured proportionality and tiered scrutiny’, Harvard Law School Visiting Scholar Colloquium Series, Harvard Law School, Cambridge, 30 November 2016.

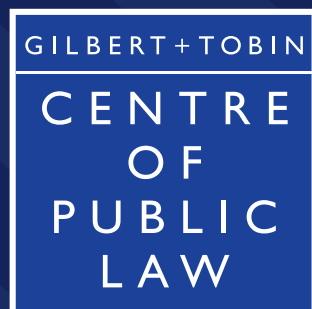
Melissa Crouch

‘Myanmar’s Constitutional Tribunal’ *ICON Conference on Courts and Public Power*, 4-7 July 2017;

Invited speaker, *The Future for Justice Sector Reform in Myanmar*, World Bank, Yangon, Myanmar, 31 March 2017;

Invited chair, *Religion and the State in Myanmar*, ANU Myanmar/Burma Update in Canberra. 17-19 February 2017;

Invited Lecturer and course designer, *Principles and Processes of Constitution-Making in Myanmar*, International Institute for Democracy and Electoral Assistance, February 2017;



The establishment of a truth commission is not the way to address concerns about false and misleading statements made during referendum campaigns.

Paul Kildea, 'Improving the conduct of referendums: There are better options than a "truth commission"', *The Constitution Unit Blog* (15 November 2016)

Invited Guest Lecturer, 'Law and Society in Southeast Asia' at the Harvard Law School's *Institute for Global Law & Policy Workshop*, Bangkok, 3-12 January 2017;

Speaker and Co-Organiser, *Workshop on the Role and Function of Constitutional Courts in Comparative Perspective*, with the Constitutional Tribunal of Myanmar, Naypyidaw, 25-26 Nov 2016;

Speaker and Co-Organiser, *Workshop on Building Constitutionalism, Australia-Myanmar Constitutional Democracy Project*, Yangon, 22-23 Nov 2016;

Invited speaker, *Book Launch, Islam and the State in Myanmar*, National University of Singapore, 3 November 2016;

Roundtable on Regional Cooperation for Refugee Protection in the Asia-Pacific, Kaldor Centre for International Refugee Law, 12-13 September 2016;

'*The Rise in Religious Intolerance in Contemporary Indonesia*', S.Rajaratnam School of International Studies (RSIS), Jakarta, 24-26 August 2016;

UNSW Roadshow, University of Indonesia, LIPI, and UGM, Yogyakarta and Jakarta, 1-6 August 2016;

Invited speaker, *Publishing Strategically for Early Career Researchers*, Sydney Southeast Asia Centre, University of Sydney, 30 July 2016;

'The Politics of Governance in Myanmar', *Politics in Action: Democratic Updates from Southeast Asia*, Sydney Southeast Asia Centre, University of Sydney, 29 July 2016;

Invited speaker, *Roundtable on Political Islam and International Law*, Melbourne Law School, University of Melbourne, 28 July 2016.

Rosalind Dixon

'Responsive Judicial Review', Presentation of Work in Progress at Comparative Constitutional Law Roundtable, Montpelier, Virginia, 30 September, 1 October 2016.

Harry Hobbs

'Democratic Theory and Indigenous Peoples', *Aboriginal and Torres Strait Islander Peoples and the Law Workshop*, Sydney University, 9-10 February 2017;

'Reflecting on the Reasons for the Re-Emergence of Hybrid International Criminal Tribunals', *Hybrid Justice: Internal and External Resilience in Post-Conflict Societies Workshop*, London, 24-25 March 2017.

Paul Kildea

'What to Make of a History of Repeated Referendum Failure', Gilbert + Tobin Centre of Public Law *2017 Constitutional Law Conference*, Sydney, 17 February 2017;

'Improving Referendum Regulation', *The Regulation of the EU Referendum seminar*, UCL Constitution Unit, London, 25 October 2016;

'The Use and Abuse of Direct Democracy: Australia's Plebiscite on Same-Sex Marriage', *Political Studies Association of Ireland Annual Conference*, Belfast, 9 October 2016;

'Australia's Plebiscite on Same-Sex Marriage: Uncharted Territory in the Use and Regulation of Direct Democracy', *Constitutional Law Discussion Group*, Edinburgh Law School, University of Edinburgh, 27 September 2016.

Nicola McGarrity

'Metadata Retention and Proportionality in Australia', *Regulation of Communication Networks Surveillance and the Principle of Proportionality*, Jerusalem, 6 June 2017;

'Counter-Terrorism and the Law', *Law Students Society Q&A Series*, University of New South Wales, 27 April 2017;

'Meaningful structural change is desperately needed to give Aboriginal and Torres Strait Islander people power over their own lives. It is only through change of this type that Australia will come to terms with the truth of its colonial past, and look into the future with hope and pride.'

Gabrielle Appleby, 'Power, Treaty and Truth', *Inside Story* (30 May 2017)

Moderator, 'Constitutional Law and Criminal Justice', Gilbert + Tobin Centre of Public Law *2017 Constitutional Law Conference*, Sydney, 17 February 2017.

George Williams

'The Future of Legal Education', *The Australian Legal Week Lunch*, Sydney, 16 June 2017;

'Constitutional Recognition, Treaty and Sovereignty', Victorian Civil and Administrative Tribunal Reconciliation Week Forum, Melbourne, 1 June 2017;

'Reflections on the 1967 Referendum', Twilight Seminar, The Constitutional Centre of Western Australia, Perth, 25 May 2017;

'Constitutional Change', Schools Seminar, Constitutional Centre of Western Australia, Perth, 25 May 2017;

'The Problem of Race and the Australian Constitution', Faculty Seminar, Faculty of Law, Arizona State University, Phoenix, United States, 1 May 2017;

'Democracy in Action', Rainbow Street Public School, Sydney, 3 April 2017;

'Comment on *Liberal Democracies and the Torture of their Citizens*', RegNet, ANU, Canberra, 28 March 2017;

'A Treaty with Indigenous Australians', NSW Young Lawyers International Law Committee and Australian Institute of International Affairs, Sydney, 21 March 2016;

'Indigenous Law Reform', Randwick Boys High School, Sydney, 20 March 2017;

'Pros and Cons of Constitutional Change', *2017 National Schools Constitutional Convention*, Parliament House, Canberra, 16 March 2017;

'History of Indigenous Recognition', *2017 National Schools Constitutional Convention*, Parliament House, Canberra, 16 March 2017;

'Information Technology & the Law', *Asian Law Schools Deans' Forum 2017*, National University of Singapore, Singapore, 21 February 2017;

'Gender Equality Among Barristers before the High Court', NSW Bar Association, Sydney, 15 February 2017;

'Toast to the ANU Law Lecturers of the 1990s', *New Ways Forward: Reform and Renewal in Constitutional Interpretation and Legal Education: Conference in Honour of Professor Michael Coper*, ANU, Canberra, 2 December 2016;

'Transnational Challenges to the Rule of Law', The Dickson Poon School of Law, King's College London, 17 November 2016;

'The Limits of Administrative Law', *Administrative Justice Workshop*, University of Cape Town, South Africa, 17 October 2016;

'Administrative Justice in the Constitutional Era', *Symposium to Honour Hugh Corder*, University of Cape Town, South Africa, 15 October 2016;

'Gender Equality among Barristers before the High Court', Women Lawyers Association of the ACT, Canberra, 11 October 2016;

'Petitioning the Australian Parliament', *Australian Study of Parliament Group Annual Conference*, Parliament House, Adelaide, 6 October 2016;

'Does Australia Have a Human Rights Problem?', *Legal Aid NSW Civil Law Conference*, Sydney, 22 July 2016;

'Scrutiny of Primary Legislation Principles and Challenges: Where are We Now and Where are We Headed?', *Australia-New Zealand Scrutiny of Legislation Conference*, Parliament House, Perth, 12 July 2016;

'How Effective is the Federal Parliament's New Scrutiny Regime for Human Rights?', *Australia-New Zealand Scrutiny of Legislation Conference*, Parliament House, Perth, 12 July 2016.

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‘Ultimately, there is enormous variety in the Australians dissents gathered here and presented as great. No two dissents are the same in even essential respects, excepting one common characteristic: they are not forgotten.’

Andrew Lynch, ‘Introduction – What Makes a Dissent Great?’ in A Lynch (ed), *Great Australian Dissents* (Cambridge University Press, 2016)

MEDIA PUBLICATIONS

Joint Media

Gabrielle Appleby and Grant Hoole, ‘Anti-corruption commissions should only rarely hold public hearings’, *The Australian* (21 April 2017);

Gabrielle Appleby and Sean Brennan, ‘It’s been a long, painful journey to unity at Uluru. Let’s not waste this opportunity’, *The Guardian* (30 May 2017);

Gabrielle Appleby and Sean Brennan, ‘The Long Road to Recognition’, *Inside Story* (19 May 2017);

Gabrielle Appleby and Gemma McKinnon, ‘Indigenous recognition: Lessons of 1967 referendum still apply to debate on Constitution’, *The Conversation* (11 May 2017).

Gabrielle Appleby

‘Power, Treaty and Truth’, *Inside Story* (30 May 2017);

‘Restoring the Independence of the Solicitor-General’, *Inside Story* (17 November 2016);

‘Role of Solicitor-General has been damaged and the government must work to fix it’, *The Conversation* (25 October 2016);

‘George Brandis is playing politics with good government’, *Sydney Morning Herald* (17 October 2016);

‘Standoff between Brandis and solicitor-general threatens the rule of law’, *The Conversation* (6 October 2016);

‘FactCheck Q&A: would the Constitution need to be changed to ban political donations from unions?’, *The Conversation* (19 September 2016);

‘FactCheck Q&A: who is responsible for going to war in the Westminster system?’, *The Conversation* (15 July 2016);

‘The Political Imperative for a Legal War’, *Inside Story* (13 July 2016).

Melissa Crouch

‘Ahok, Indonesia’s Nemo, sentenced to jail’, *Policy Forum* (12 May 2017);

‘Myanmar’s legal voice of conscience: A personal tribute to U Ko Ni’, *New Mandala* (31 January 2017);

‘Blasphemy charges against Ahok a win for Islamists in Indonesia’, *East Asian Forum* (17 November 2016);

‘Reigning in Emergency Powers in Myanmar’, *East Asia Forum* (3 November 2016);

‘Jokowi’s Islamist Challenge: Curbing Terrorism and Religious Intolerance’, *The Guardian* (31 August 2016);

‘The Constitutional Implications of Myanmar Peace Process’, *ConstitutionNet* (26 July 2016).

Rosalind Dixon

‘Judicial appointments in the age of Trump: from Kiefel to Gorsuch’, *Australian Financial Review*, 2 February 2017;

‘Compromising on Imperial succession reform’, *Japan Times*, 12 September 2016;

‘Legal “outsiders” rather than “insiders” to head Royal Commission’, *Australian Financial Review*, 5 August 2016.

Harry Hobbs

‘Listening to the Heart: What now for Indigenous Recognition after the Uluru Summit?’, *The Conversation* (26 May 2017);

'Australia's largest human rights settlement ... is unquestionably a practical win for the plaintiffs in the case, who stand to receive substantial individual payouts. But it's also the latest, and largest, lost opportunity to clarify the legal boundaries of Australia's immigration detention.'

Sangeetha Pillai, 'Offshore detention: What the landmark settlement fails to resolve', *Lowy Interpreter* (15 June 2017)

'Explainer: why 300 Indigenous leaders are meeting at Uluru this week', *The Conversation* (23 May 2017);

'Will treaties with Indigenous peoples overtake constitutional recognition?', *The Conversation* (20 December 2016).

Paul Kildea

'Referendums, informed voting and the trouble with a "truth commission"', *Democratic Audit UK* (28 November 2016);

'Improving the conduct of referendums: There are better options than a "truth commission"', *The Constitution Unit Blog* (15 November 2016);

'With a vote delayed, where does this leave constitutional recognition of Indigenous Australians?', *The Conversation* (10 August 2016);

'Treaty debate will only strengthen recognition process', *The Conversation* (23 June 2016).

Andrew Lynch

'Susan Kiefel era signals continuity, not change', *The Australian* (20 January 2017).

Gemma McKinnon

'Tenants' calls for safe public housing fall on deaf ears', *The Conversation* (27 June 2017).

Sangeetha Pillai

'Offshore detention: What the landmark settlement fails to resolve', *Lowy Interpreter* (15 June 2017);

'Minister to get unprecedented power if Australia's new citizenship bill is passed', *The Conversation* (15 June 2017).

George Williams

'Mabo has Not Been the Panacea Many Visualised', *The Age* (5 June 2017);

'High Hopes Only Partially Met: The Mabo Decision was No Panacea', *Sydney Morning Herald* (5 June 2017);

'The Legal Landscape', *The Australian* (2 June 2017);

'Uluru's Great Question', *Sydney Morning Herald* (29 May 2017);

'Uluru Statement Offers a Clear Message from Those Who Must be Heard', *Sydney Morning Herald* (29 May 2017);

'Politicians Tackling Today's Challenges Using Horse-and-Buggy Era Rules', *Sydney Morning Herald* (22 May 2017);

'More MPs Could be Caught in Net', *Sydney Morning Herald* (24 April 2017);

'State Fix Isn't Enough to Save Community Legal Centres', *Sydney Morning Herald* (10 April 2017);

'As Trump Rattles US Sabre, Australia Must Learn from our Mistakes in Iraq', *Sydney Morning Herald* (27 March 2017);

'Only in America? Trump-Style Travel Ban Wouldn't be Hard to Implement Here', *Sydney Morning Herald* (13 March 2017);

'The Stark Truth about Justice, Women, and our Highest Court', *Sydney Morning Herald* (27 February 2017);

'Female Barristers are Unequal in the Eyes of the Law', *Canberra Times* (27 February 2017);

'The Silent Truth About Australia's Female Barristers', *The Age* (27 February 2017);

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‘Petitioning has endured because of a strong community desire to speak directly to those in power. People want their grievances heard, and their ideas responded to. It has long been accepted that a democracy must provide a means for this beyond the casting of a vote every few years at the ballot box.’

George Williams, ‘Petition not Just a Piece of Paper but Powerful Force’, *Sydney Morning Herald* (22 August 2016)

‘With No Bill of Rights, Australia is Ill-Prepared for a Down Under Version of Trump’, *Sydney Morning Herald* (13 February 2017);

‘The Rise in Popularity of a “Whatever it Takes” Approach will Challenge First Female Chief Justice’, *Canberra Times* (30 January 2017);

‘“Whatever it Takes” Approach Poses Big Challenge for Kiefel’, *Sydney Morning Herald* (30 January 2017);

‘The Constitution is Not in Great Shape and Needs to be Updated and Renewed’, *Canberra Times* (2 January 2016);

‘Our Nation’s Rulebook Grows More Whiskery by Day’, *The Age* (2 January 2016);

‘Our Neglected National Rulebook Needs Reinvigorating’, *Sydney Morning Herald* (2 January 2016);

‘Ditch Old, Redundant Rule and Allow Expats to Vote’, *Sydney Morning Herald* (19 December 2016);

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Joint Submissions

Rebecca Ananian-Welsh, Nicola McGarrity, Tamara Tulich and George Williams, Submission to Parliamentary Joint Committee on Intelligence and Security Inquiry into the Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016 (12 October 2016);

Gabrielle Appleby and Alysia Blackham, Submission to the Standing Committee on the Model Code of Professional Conduct Federation of Law Societies of Canada, on their Post-Judicial Return to Practice Discussion Paper (6 September 2016);

Gabrielle Appleby, Rosalind Dixon, Gemma McKinnon and Sean Brennan, Submission to the Parliamentary Joint Committee on Human Rights on Freedom of Speech in Australia Inquiry (21 December 2016);

Gabrielle Appleby and Grant Hoole, Submission to the Select Committee on a National Integrity Commission (7 April 2017);

Jessie Blackbourn, Andrew Lynch, Nicola McGarrity, Tamara Tulich and George Williams, Submission to Independent National Security Legislation Monitor Inquiry into Statutory Deadline Reviews (27 April 2017);

Khanh Hoang and Sangeetha Pillai, Submission to the Department of Immigration and Border Protection's discussion paper on strengthening the test for Australian citizenship (1 June 2017);

Nicola McGarrity and George Williams, Submission to Parliamentary Joint Committee on Intelligence and Security Review of ASIO's Questioning and Detention Powers (21 April 2017);

Nicola McGarrity and George Williams, Submission to Independent National Security Legislation Monitor Inquiry into ASIO Questioning and Detention Powers (24 June 2016);

George Williams and Harry Hobbs, Submission to Select Committee on a National Integrity Commission Inquiry into the Establishment of a National Integrity Commission (4 April 2017).

Gabrielle Appleby

Submission to the Senate Legal and Constitutional Affairs Reference Committee on the nature and scope of the consultations prior to the making of the Legal Services Amendment (Solicitor-General Opinions) Direction 2016 (3 October 2016).

George Williams

Submission to Productivity Commission Inquiry into Horizontal Fiscal Equalisation (5 June 2017);

Submission to ACT Legislative Assembly Select Committee on 2016 ACT Election and Electoral Act (6 May 2017);

Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the Status of the Human Right to Freedom of Religion or Belief (1 March 2017);

Submission to Joint Standing Committee on Human Rights Inquiry into Freedom of Speech in Australia (30 November 2016);

Submission to Joint Standing Committee on Electoral Matters Inquiry into the 2016 Federal Election (13 October 2016).



At Coogee Beach, from left: Simon Halliday, Belinda McDonald, Harry Hobbs, Grant Hoole, Jemimah Roberts and Lynsey Blayden

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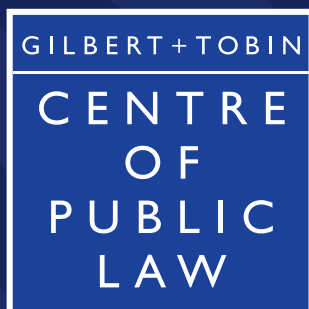
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