



MELBOURNE LAW SCHOOL

Australia's first, Australia's global

Research Report 2009





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Welcome

It is my great pleasure to present the Research Report of the Melbourne Law School (MLS) for 2009. The report reflects another year of outstanding research from MLS staff and students. We highlight in this report the work of four of our academics and three PhD students to demonstrate the wide range of research being undertaken by MLS researchers. In addition, a full list of the 2009 research publications by MLS members is included. In 2009, MLS researchers authored or edited 19 books on topics including taxes, corporations law, contract and equity, the republic debate, international law, intellectual property and family law. There is also a record in this report of many fine articles in leading Australian and international journals by members of the Law School. The fourteen research students who completed their PhD or masters by research degrees, who are listed in this report, also covered a wide range of topics, asking questions on everything from the legality of armed resistance to the Iraq invasion, to the viability of trusts law in China, to the right of children to health care, to the forcible removal of bullets from criminal suspects.

This year saw eight new Australian Research Council (ARC) Discovery projects commence. The topics that will be explored during the grant include the criminalisation of cartels, the patenting strategies of drug companies, defamation and privacy, climate change and policy based reasoning in private law. Two of the Discovery Grants included post-doctoral fellowships for two of

our colleagues: Amanda Whiting who will write on the role of lawyers in Malaysia and Sarah Biddulph who will research police detention in China. In addition, three new ARC Linkage grants will bring together Melbourne researchers with a range of external partners. These include the Australian Institute of Judicial Administration and the Australia New Zealand Policy Advisory Agency for a project on how jurors perceive expert evidence; the Workplace Ombudsman for a project on enforcing workplace rights; and the Victorian Health Services Commission and Avant Mutual Group Ltd for research on the quality of patient consent and medical negligence claims. MLS continued our strong tradition of success in ARC grant applications being awarded nearly a third of the research grants in law and justice granted in Australia for research commencing in 2010.

The Centres and Research Groups continued to provide intellectual homes for academics and students with shared scholarly interests. The description of the work of the Centres and Groups in this report illustrates the extraordinary range of scholarly activities being carried out at MLS. The Centres ran major conferences, seminars, workshops and student events and played host to visitors from many countries. In addition, the Law School itself played host to a number of important intellectual events including the regular Monday lunchtime seminar in which academics present their work in progress.

This is my last report as Associate Dean (Research)



and I would like to take this opportunity to thank the many members of academic and professional staff who support the research of the law school. In particular, my thanks to Christine Parker and Gerry Simpson for their outstanding work as PhD co-ordinators and to grant mentors Sean Cooney and Chris Dent who have played a critical role in MLS's grant success. The team in the Research Office has provided very high quality support to academics and PhD students and I would like to acknowledge the wonderful work of the Research Manager, Lucy O'Brien, as well as the high

quality professional support provided by Mas Generis, Domingo Cordoba and Melanie Williams. My particular thanks to Angela Hendley-Boys who has taken primary responsibility for the design and content of the Research Report.

It has been a privilege to be able to assist the talented scholars and research students of the Melbourne Law School for the last three years. Associate Professor Sean Cooney commenced as Associate Dean (Research) on 1 July 2010 and I wish him all the best in this role.

A handwritten signature in black ink, reading "Carolyn Evans". The signature is written in a cursive style with a large, sweeping initial 'C'.

Carolyn Evans

Associate Dean (Research)



Law Building

Melbourne Law School
Main Entrance
185 Pelham Street

ACADEMIC RESEARCH FOCUS

Elise Bant



Associate Professor Elise Bant graduated from The University of Western Australia in 1992 with joint Bachelor of Arts and Bachelor of Laws (Hons) degrees. She has also been awarded the degrees of Bachelor of Civil Law with Distinction (1997) and D Phil (Law) (2008) from the University of Oxford, where she held scholarships from the Clarendon fund, the Rotary Foundation and the Banking and Financial Services Law Association. Before joining Melbourne Law School in 2008 as an Associate Professor, Elise practised as a solicitor, associate and litigation consultant at Freehills, Perth and was a Lecturer and Senior Lecturer at The

University of Western Australia, where she currently holds the title of Honorary Fellow (Law).

Elise's teaching and research interests span the private law. The full range of her research interests is possibly best represented by the diversity of topics addressed in *Exploring Private Law*, a collection of essays edited by Elise with her colleague Dr Matthew Harding, in honour of another colleague Professor Michael Bryan and to be published with Cambridge University Press in 2010. Essays in that collection (which include an Introduction by Matthew and Elise) traverse cutting edge topics of judicial method in private law, contract, unjust enrichment and restitution, equity and trusts, property and remedies.

Her current research projects fall into three broad, albeit overlapping, categories. The first arises from her doctoral research. Her thesis on the defence of change of position considered the operation of that defence to claims in unjust enrichment and for wrongs, as well as the historical and doctrinal links between that defence and related areas in estoppel, rescission and agency law. It also required her to grapple with notoriously difficult issues of 'decision causation'. In 2009, Elise published the fruits of that research in a monograph that built upon and expanded her doctoral thesis: *The Change of Position Defence* (Hart Publishing, Oxford 2009). This work has since been described in (2010) 126 *Law Quarterly Review* 334-337, by Professor McInnes, a

renowned expert in the law of unjust enrichment, as 'a model of clarity and accessibility' and 'authoritative'. Her work on causation was further developed and published as 'Causation and Scope of Liability in Unjust Enrichment' (2009) 17 *Restitution Law Review* 60. Following the publication of her thesis, Elise has continued to develop and publish her work in this and related areas: her 2009 case note 'Restitution from the Revenue and Change of Position' (2009) 2 *Lloyd's Maritime & Commercial Law Quarterly* 166 has been cited by the English Court of Appeal and she has accepted an invitation to contribute her subsequent article, 'When Can Change of Position be a Defence to Claims for Restitution of Unlawfully Exacted Tax?' to a collection of papers by international scholars on the subject of restitution from the Revenue, to be published in 2010/2011.

Elise's second area of specialisation is the wider law of unjust enrichment and restitution. In 2009, she reviewed 'Structure and Justification in Private Law: Essays for Peter Birks' in (2009) 48 *Canadian Business Law Journal* 164, at the invitation of the journal editors. She also published 'Incapacity, Non Est Factum and Unjust Enrichment' in (2009) 33 *Melbourne University Law Review* 368. Together with her co-author, she is currently working on the second edition of J Edelman and E Bant, *Unjust Enrichment in Australia*, to be published in 2011 with Hart Publishing. She is also responsible for chapters addressing 'Restitution and Disgorgement Damages', 'Proprietary Remedies' and a chapter section

on 'Rescission' for the fifth edition of *Tilbury's Remedies: Commentary and Materials* (Thomson Reuters, 2011). Elise's final and most recent area of specialisation is the law of proprietary remedies. Together with Professor Michael Bryan, Elise has been awarded a three-year Australian Research Council Discovery Grant for their project entitled '*The Principles of Proprietary Remedies*'. The aim of the project is to develop a rigorous model of proprietary remedies that can provide guidance to judges, practitioners and litigants in what is widely recognised as a critically important, but also critically confused, area of the private law. The aims of the project are explored and the key substantive issues examined in E Bant, 'Trusts, Powers and Liens: An Exercise in Ground-clearing' (2009) 3 *Journal of Equity* 286. A further paper, E Bant, 'Rights and Value in Rescission' will be presented at the Obligations V conference in Oxford in July 2010. Elise and Michael will be collaborating in 2010 to develop a working model of rescission, which will be the subject of a colloquium in December 2010. At this event, judges and leading academics in the field of proprietary remedies will consider and provide critical feedback on the project's findings to date, the results of which will form part of a planned monograph provisionally entitled '*The Principles of Proprietary Remedies*' (anticipated publication date, circa 2013).

Elise coordinates and teaches Remedies for both the LLB and JD courses, Restitution as an LLB elective and (together with William Swadling of the University of Oxford) Equity and Commerce in the Masters programme. She is also a guest lecturer at The University of Western Australia each year, coordinating and co-teaching the intensive LLB subject Unjust Enrichment and Restitution Law. Elise is co-director of the Obligations Group at MLS with Professor Andrew Robertson. The Obligations Group supports research and scholarly discourse on topics within private law areas such as contract, tort, unjust enrichment and restitution, equity and trusts, property, remedies and private law theory. The group provides a forum for academic discussion of these topics and facilitates interaction between academics and practitioners on issues of current interest.



THE CHANGE OF
RESTITUTION DEFENCE
Elise Bant

Matthew Bell

Agreements to undertake construction work, and disputes arising from them, have a history dating back thousands of years. Yet, the coordinated academic study of the law relating to construction – and its teaching within law schools – is a relatively new phenomenon.

Indeed, when Matthew Bell entered legal practice in the mid-1990s, construction law was regarded as something of an arcane niche area in which many lawyers, of necessity, dabbled but very few could claim expertise.

Matthew was, therefore, deeply fortunate to be able to learn about construction law with colleagues and clients at national law firm Clayton Utz (and, later, at Clifford Chance in London) and also as one of the first students to enrol in the Law School's Masters program in Construction Law when the program commenced in 2000. Matthew completed his Masters degree at King's College in London and, in 2005, returned to Melbourne to take up a Lecturer position with the Law School. His responsibilities included taking over the Co-Directorship of the program from Dr Paula Gerber.

Since then, Matthew has undertaken teaching and research, predominately in construction law but also in the broader areas of contracts and remedies. Under his direction, and that of Professor Ian Bailey SC, along with the guidance of the Construction Law Advisory Board, the construction law program has become

one of the largest and most successful Masters-level programs of its type in the world. At the same time, our construction law teaching has continued to students in the Architecture, Building and Planning Faculty and, for the first time, has been offered by way of optional subject to undergraduate law students.

Matthew regards his research as being integrally linked to his teaching and the overall strategic direction of the construction law program. To that end, he has published a number of significant articles on key areas within the construction law curriculum, including defective work damages, security of payment legislation, standard form contracting and the operation of the prevention principle. These have appeared in both journals specific to the field, including the *International Construction Law Review* and *Building and Construction Law Journal*, and leading generalist journals including the *Melbourne University Law Review* and *Australian Law Journal*.

In 2008, Matthew published, with Ian Bailey, *Understanding Australian Construction Contracts*. This is the first substantial text in Australia focussing exclusively upon the use and detailed provisions of standard forms of construction contract. It has been recognised by practitioners and students as being of significant assistance in illuminating this important yet often poorly understood area of legal analysis. Matthew and Ian are currently working on the third edition of the *Construction Law in Australia*.



Matthew has also contributed to expanding the existing body of knowledge within construction law through his editing of, and consultation to, journals and other fora for debate and research in the area. Since its first edition in 2006, Matthew has been an editor of *Construction Law International*, the publication of the International Bar Association's International Construction Projects Committee. In that role, he is able to act as something of a clearing house for construction law discussion around the world, and actively encourages the involvement of our students in writing for this and other publications.

Matthew has also assisted the editors of construction law journals to ensure that they are appropriately recognised within the broader academic community. It is indicative of the increasing profile of such publications that there are now four construction law-specific publications ranked on the *Excellence in Research of Australia* listing.

Matthew's research efforts have been recognised by his peers. A paper he wrote on defective work damages was highly commended in the 2008 Hudson Prize offered by the Society of Construction Law in the UK, and he was awarded the 2009 Building Dispute Practitioners' Society Prize for an article he wrote on standard forms of contract. Matthew is always very keen to foster such success amongst his current and former students, and is delighted that many of our Undergraduate and Masters-level students have gone on to have their research essays published in leading journals or commended in internationally-recognised competitions.

Matthew maintains a number of appointments outside the Law School which he regards as integrally linked to his teaching, research and administrative responsibilities. These include his role (part-time) as Professional Support Lawyer to the Construction and Major Projects Group at Clayton Utz, his being Chair of the Academic Subcommittee and a Committee member of the Society of Construction Law Australia, and his membership of the TEC List Users' Group and the Law Council of Australia's Construction and Infrastructure Law Subcommittee.

Arlen Duke



Arlen Duke was appointed a Lecturer at Melbourne Law School in 2005 and was promoted to Senior Lecturer in 2009. Arlen is a graduate of the Melbourne Law School, having been awarded an LLB degree (with first class honours) in 2000. Arlen also holds a B.Comm and a LLM from the University of Melbourne. Arlen teaches in the LLB, JD and MLM programmes. He also presents training seminars to staff of the Australian Competition and Consumer Commission, commercial law firms and inhouse counsel.

Arlen's research interests are wide ranging although he primarily researches in the field of competition law. As a result much of Arlen's research is cross-disciplinary and collaborative in nature. He has published articles examining a range of competition law and private law issues.

In his article 'The Need to Close the 'Take Advantage' Gap in the Regulation of Unilateral Anti-competitive Conduct' (2008) 15 *Competition and Consumer Law Journal* 28, Arlen identified a gap in the regulation of unilateral anti-competitive conduct and critiqued the recently introduced predatory pricing prohibition. This article was cited in support of legislative reform in the Trade Practices Legislation Amendment Bill Bills Digest (30 July 2008) and referred to in a second reading speech. Arlen has also undertaken research relating to merger regulation. He wrote the Merger Control Chapter in *Competition Law* (Kluwers Encyclopaedia of Law Series) and has published 'A More Efficient Use of Efficiencies in Merger Authorisation Determinations' (2007) 35 *Australian Business Law Review* 278–292 in which he develops an argument that Australia's merger authorisation process has led to the multifaceted nature of merger-related efficiency effects being overlooked by decision makers.

Arlen's first major collaborative and cross disciplinary research was with Dr Rhonda Smith (Senior Lecturer, Faculty of Commerce, University of Melbourne)

and Professor David Round (Centre for Regulation and Market Analysis, University of South Australia) on a project looking at the anti-competitive use of signalling. In 'Signalling, Collusion and s45 of the Trade Practices Act' (2009) 17 *Competition and Consumer Law Journal* 22, the authors identify conditions that, if satisfied, would justify drawing an inference that an anti-competitive agreement exists in circumstances where market participants have not reached an explicit agreement. This research will be relevant to the current government inquiry into whether legislative amendment is necessary to redress a perceived judicial narrowing of the circumstances in which parties can be said to have reached an anti-competitive understanding for the purposes of the cartel offences. Arlen has also worked collaboratively with Professor Megan Richardson. In their paper 'Music Markets and Bad Actors in Copyright and Competition Law' (2008) 16 *Competition and Consumer Law Journal* 203-219, Arlen and Megan examined the rise of moralistic reasoning (as opposed to welfarist reasoning) in recent cases concerning copyright infringement and anti-competitive practices associated with copyright protected material.

In 2009 Arlen turned his mind to the extraterritorial operation of Australian competition laws. In an article to be published in a forthcoming edition of the *Federal Law Review* Arlen develops an argument that the extraterritorial reach of the cartel prohibitions should be extended. The article also considers how to affect this

extension without provoking international backlash that would hinder investigation and enforcement efforts.

Arlen is also the co-author of field leading student texts. In 2008 he joined Dr Jeannie Paterson and Professor Andrew Robertson as a co-author of *Contracts: Cases and Materials* (Thomson Reuters) and *Principles of Contract Law* (Thomson Reuters). He will also join Associate Professor John Duns and Professor Mark Davison as a co-author of the next edition of *Competition Law: Cases and Materials* (LexisNexis).

In the next few years Arlen plans to commence a PhD that will consider whether Australia's incredibly prescriptive competition laws help or hinder the meaningful incorporation of economic reasoning into competition law decisions. He will also be part of a cross disciplinary team that will investigate how advances in technology are likely to transform the process of book writing, publishing and distribution. The team will include researchers from several schools and faculties including Arts (Culture and Communications), the Melbourne Law School and the Melbourne Business School.

Selected publications may also be viewed or downloaded from [SSRN](#).



Cheryl Saunders

Cheryl Saunders is a professor in the Law School, a laureate professor of the university and an active member of the Centre for Comparative Constitutional Studies, of which she was the founding director. She is also the Director of Studies of the Government Law specialisation in the Melbourne Law Masters and, with Gerry Simpson, of the specialisation in Public and International Law. She is the editor of the *Public Law Review*, a specialist refereed journal covering the public law of Australia and New Zealand and an advisory or editorial board member of a range of other journals in Australia and overseas.

Cheryl Saunders' original research interest was intergovernmental relations in Australia, on which she wrote her doctoral thesis. She still researches and consults in the area, which has recently had a new lease of life through government policy and High Court decisions and she will teach *Intergovernmental Relations* in the Melbourne Law Masters in 2010. Through intergovernmental relations she developed an interest in constitutional change, originally as an aspect of intergovernmental co-operation and subsequently as a significant issue in its own right. She has written widely on the history and practice of constitutional change in Australia and has also had practical involvement with it, as an officer assisting the Australian Constitutional Convention from 1973-1985 and as Deputy Chair of the Constitutional Centenary Foundation from 1991-2000.

While the initial focus of her interest was the Australian constitutional system, Cheryl Saunders now works increasingly in comparative constitutional law or on the Australian Constitution from a comparative perspective. Her early comparative work drew on her areas of particular expertise in Australia: federalism and constitution-making and change. More recently, however, she has become engaged in projects across the field of comparative constitutional law, working on aspects of history, theory and method. Her insights into comparative constitutional law have been much assisted by her active involvement in a range of international networks. In 2009 she was President of the International Association of Centres for Federal Studies, immediate past President of the International Association of Constitutional Law, a member of the Program Committee of the Forum of Federations, a Board member of International IDEA and a member of the International Academy of Comparative Law.

Cheryl Saunders' activities in 2009 illustrate how these varied research interests complement each other. In the first part of the year she was on study leave in Oxford, as a Visiting Fellow at Corpus Christi College, with affiliations to the Law Faculty through the Melbourne-Oxford research exchange and to the Institute of European and Comparative Law. During this time, she wrote most of a book on the Australian Constitution, which will be published in the Hart series on Constitutions of the world towards the end of 2010.



She also prepared a proposal for a monograph on comparative constitutional law, which she is writing for Oxford University Press. Other book projects on which she was engaged at this time included an edited volume on Intergovernmental Relations in Federal Systems, with Johanne Poirier and an edited collection of essays on values in national constitutional systems with Dennis Davis and Alan Richter. While in Oxford, Cheryl Saunders also delivered papers on aspects of comparative federalism in Brussels, Edinburgh and Madrid, on comparative method at Oxford, and on the

interface between domestic and international law at Cambridge.

On her return, she taught a course on Australian Constitutional Law at Peking Law School and delivered a keynote address to the Third Asian Constitutional Forum in Taipei. Her publications in the course of the year included a chapter exploring the constitutional character of the relationship between Australia and New Zealand for a volume to honour the New Zealand scholar Mike Taggart, an article entitled 'Towards a Global Constitutional Gene Pool' for the *National Taiwan University Law Review* and an analysis of the recent decision of the High Court of Australia in *Pape v Commissioner of Taxation*. Activities in the nature of knowledge transfer included a presentation to the Commonwealth Office of Parliamentary Drafting on 'Drafting and Australian Federalism' and an oral submission to an Inquiry into the Machinery of Referendums conducted by the House of Representatives Standing Committee on Legal and Constitutional Affairs.

With colleagues, Cheryl Saunders supervises doctoral theses on a range of public law subjects including, in 2009, Judicial Review (Emily Hammond); Constitution-Making in the Pacific (Katy Leroy); Religion and Federalism in Malaysia (Nurhafilah Musa); the Judicial Branch in Constitution-Making (John Simpkins); and the High Court and Judicial Activism (Tanya Josev).



FUNDED RESEARCH

Commencing Australian Research Council (ARC) Discovery Projects in 2009

Caron Beaton-Wells, Christine Parker,
Fiona Haines and David Round
(2009-2011)

'A Cancer on our Economy? An Empirical Interdisciplinary Study of the Criminalisation of Serious Cartel Conduct in Australia'

Funding: \$340,000

Serious cartel conduct is seen as highly damaging to Australia's economic welfare but only recently has it been regarded as criminal. This research will inform public debate about the impetus and justification for this major shift in competition law policy and enforcement. It will provide robust empirical evidence about public opinion and business behaviour and derive insights into whether criminalisation will promote greater compliance with the law. It will assist in refining practical implementation measures to ensure the effectiveness of a criminal regime and it will aid legislators and regulators in policy-making, regulatory design and enforcement in relation to competition law and business regulation more generally.

Sarah Biddulph
(2009-2011)

'The Prospects for Justice in the Legal Reform of Police Administrative Detention'

Funding: \$321,248

Australia's security and economic well-being is becoming increasingly closely tied to China. Australia has a strong interest in China's continued economic well-being, as well as promoting the rule of law and valuing the protection of human rights. The effective legal protection of human rights is of vital concern to our relationship, to China's long term stability and to China's increasing participation in international human rights fora. This project will enhance our understanding of struggles to effect legal reform of contentious police powers and to improve protection of citizens' rights through reforming law enforcement practices. It will contribute to ongoing Sino-Australian cooperation to promote human rights protection.

Andrew Christie, David Studdert,
Peter McIntyre and **Chris Dent**
(2009-2011)

'Drug Companies, their Patenting Strategies and High-Cost Pharmaceuticals: An Empirical Investigation'

Funding: \$290,000

Pharmaceuticals are a vital part of clinical services that maintain and improve Australia's health; they are also costly, absorbing a substantial proportion of the national health expenditures. By conferring market protections, the patent system helps the manufacturers of pharmaceuticals to recoup the high costs of research associated with developing new products. Abuses of the patent system by pharmaceutical manufacturers have the potential to stifle competition and inappropriately raise the costs of pharmaceuticals to society. This innovative, cross-disciplinary, research will investigate the existence of abusive patents and, if necessary, propose reforms that will prevent further abuse and reduce the size of the health budget.

Colin Fenwick, William van Caenegem,
Chris Arup and **Chris Dent**
(2009-2011)

***"Nothing Can Be Created Out of Nothing":
Workers, Their Know-How and the
Employment Relationships that Support Them'***

Funding: \$220,000

The importance of innovation, either in the form of intellectual property or know-how, to the Australian economy cannot be over-stated. Unlike statutory intellectual property schemes, worker-created know-how is both 'incentivised' and controlled through the contractual provisions of the worker-employer relationship. This project, through its empirical focus, will explore if (and how) the law, as it relates to know-how, promotes innovation in the workplace. Through the development of guidelines for best practice and reform proposals to fill gaps in the law, this research will increase the potential for innovation in all worker-employer relationships which will, in turn, maximise this country's creative and technological capability.

Lee Godden, Jacqueline Peel and Rod
Keenan
(2009-2011)

***'Responding to Climate Change: Australia's
Environmental Law and Regulatory
Framework'***

Funding: \$226,000

Climate change presents Australia with unparalleled sustainability challenges. Impacts on environmental resources will require an integrated legal and socio-economic regulatory response. An effective and adaptable environmental law framework will be crucial for adaptation and mitigation measures. The project addresses this need by undertaking a comprehensive, interdisciplinary evaluation of Australia's legal capacity to respond to climate change, so identifying appropriate governance structures and regulatory tools. This analysis is vital to positioning Australian environmental law to manage climate change impacts and associated social, ecological and economic costs and to ensure compliance with international obligations.

Andrew Kenyon
(2009-2013)

***'Defamation and Privacy: Law, Media and
Public Speech'***

Funding: \$230,000

This project investigates important recent legal changes in defamation and privacy, laws which can considerably limit public speech. It addresses the urgent need in law for a more sophisticated understanding and evaluation of the practices of media professionals. It will assist lawyers and judges to apply the changed laws, contribute to scheduled reviews of legislation, assist publications and journalists deal with risks of legal liability, develop critical academic and legal debates about the media, and clarify the parameters of lawful public speech. It promotes better legal understanding of popular media forms, which have key roles in contemporary economies and public debate.

Andrew Robertson

(2009-2011)

'Policy-Based Reasoning in Private Law'

Funding: \$138,931

The Australian community devotes a great deal of attention to improving the regulation of commercial and consumer relations through participative, public processes such as law reform commissions and parliamentary inquiries. The important role of judicial law-making in regulating economic and social relations is often overlooked. This project will examine the way in which the pursuit of policy goals influences judicial law-making in the private law sphere. The project will make an important contribution to the international debate about the legitimacy of policy considerations in judicial-making in private law, and the extent of the legitimate law-making role of the courts in a democratic system.

Amanda Whiting

(2009-2012)

'Lawyers, Civil Society and the State in Post-colonial Malaysia'

Funding: \$280,000

This study investigates how Malaysian lawyers have mobilized to defend core legal values in response to key political events in Malaysian history. It will contribute to Australian understanding of civil society and the rule of law in our regional neighbour and build bridges between Malaysian and Australian lawyers and scholars. The development of deeper respect for the rule of law in this region plays an important role in increasing regional stability and creating a safe and more predictable environment. Understanding the role that lawyers play in this process is a vital component of regional security.

Commencing Australian Research Council (ARC) Linkage Projects in 2009

Jacqueline Horan, Jane Goodman-Delahunty, Mark Israel and Ian Freckelton (2009-2011)

'Australian Jurors' Perspectives on Expert Evidence'

Funding: \$142,000

Partner Organisations: Australian Institute of Judicial Administration
Australian New Zealand Policy Advisory Agency

Patent law is central to the key economic aim of encouraging an innovative culture. The harmonisation of patent systems around the world means Australian law will change. There is a significant risk that, without effective lobbying, the reforms will only reflect the needs and interests of the dominant economies, like the US. This project, with its comparative analysis of the patent examination process, will explore the ways in which this integral part of the patent system may be improved. This research will lead to proposals for reform that are in line with the interests of Australia's unique economy.

John Howe and **Sean Cooney** (2009-2012)

'New Initiatives in Enforcing Employment Standards: Assessing the Effectiveness of Federal Government Compliance Strategies'

Funding: \$180,000

Partner Organisations: Workplace Ombudsman

The well-being of more than eight million Australian employees is underpinned by statutory workplace entitlements. For the large majority of those employees, these are set by federal legislation. The statutory entitlements are meaningful only in so far as they are complied with, and improving the effectiveness of the federal enforcement agency, the Workplace Ombudsman, is therefore of crucial public importance. This project provides the first comprehensive scholarly empirical evaluation of the Workplace Ombudsman. Its findings will identify multiple ways in which enforcement practices can be improved, not only for the Workplace Ombudsman, but also for comparable compliance agencies domestically and overseas.

David Studdert and Russell Gruen (2009-2010)

'When Informed Consent Goes Poorly? A Descriptive Study of Health Care Complaints and Medical Negligence Claims'

Funding: \$174,000

Partner Organisations: Victorian Health Services Commission
Avant Mutual Group Limited

To correct process failures effectively, one must understand them. This project will improve knowledge of problems and disputes that arise when patients are 'consented' for medical treatment – an enterprise in which thousands of Australians, many at very vulnerable stages of their lives, are engaged daily. Study findings will advance understanding of breakdowns in the informed consent process and help shape strategies for reducing them. The partner organisations are extraordinarily well-placed to carry insights from this work to health professionals in the field, enhancing opportunities for real benefits to patients from the research. The project fits with the national research priority of promoting and maintaining good health.


Marcia Langton, **Maureen Tehan, Miranda Stewart,**
Lee Godden, Carian O'Fairchellaigh, J Taylor and Lisa Strelein
(2009-2012)

'Poverty in the Midst of Plenty: Economic Empowerment, Wealth Creation and Institutional Reform for Sustainable Indigenous and Local Communities'

Funding: \$480,000

Partner Organisation: Office of Indigenous Policy Coordination
Department of Families, Housing, Community
Services and Indigenous Affairs
Woodside Energy Ltd
Rio Tinto Ltd
Santos Ltd
Marnda Mia Central Negotiating Committee Pty Ltd

The project researches government, private sector and indigenous initiatives enhancing indigenous economic development and well-being outcomes. It provides culturally relevant data to analyse the flow of benefits (incl. employment) from the resources sector to indigenous peoples; links between government policy/services for indigenous well-being; and investigates legal forms (land title, securities, taxation law/incentives) for indigenous economic empowerment. The project strengthens the socio-economic fabric of indigenous communities benefiting the nation, indigenous peoples in commercial engagements, corporations seeking a 'licence to operate' and government agencies responsible for indigenous economic/social development.

A man with short dark hair and a goatee, wearing a light pink button-down shirt, is sitting at a desk. He is smiling and looking towards the camera. His right arm is resting on his lap, and his left hand is on a laptop keyboard. The background is a blurred office or library setting with bookshelves. The overall lighting is soft and professional.

Takele Bulto

*PhD Candidate from Ethiopia
Teaching Fellow 2009 & 2010*

GRADUATE RESEARCH FOCUS

Melissa Crouch



Melissa Crouch is in her second year of her PhD at the Asian Law Centre, the Melbourne Law School. Her doctoral thesis is on the legal regulation of religious diversity in post-Suharto Indonesia through a case study of Muslim-Christian relations in the province of West Java (1998-2009). This is supported by a doctoral scholarship from Professor Tim Lindsey's ARC Federation Fellowship 'Islam and Modernity: Syari'ah, Terrorism and Governance in South-East Asia'. She is supervised by Professor Tim Lindsey and Dr Amanda Whiting.

In 2006, Melissa graduated from the University of Melbourne with a Bachelor of Arts and Bachelor of Laws (Hons). Melissa then completed her Articles of

Clerkship at a law firm based in the city of Melbourne. Melissa has been working as a Research Assistant with the Asian Law Centre since 2006. During this time, she has conducted research on areas including Islamic law, law in Indonesia, and fatwa (Islamic legal opinions) in Singapore, Malaysia, Brunei and Indonesia. She has recently been promoted to a Principal Research Assistant. Melissa is also the Editorial Assistant of the Australian Journal of Asian Law, and occasionally tutors some Indonesian PhD students through the AusAID Tutor Program.

In 2009, Melissa had the following article published: 'Religious Regulations in Indonesia: Failing Vulnerable Groups?' 43(2) *Review of Indonesian and Malaysian Affairs* 53-103. She had a translation and case note published: 'Stretching the Scope of Special Autonomy in Aceh: The Controversial Qanun Requirement for Political Candidates' 11(1) *Australian Journal of Asian Law* 135-158. She also published a policy paper which is accessible from the Asian Law Centre website: 'Indonesia, Militant Islam and Ahmadiyah: Origins and Implications' *ARC Federation Fellowship 'Islam, Shariah and Governance' Background Paper Series No 4*.

As part of her doctoral research, Melissa conducted field research in Indonesia from February to March 2009, and then from July to December 2009 where she was hosted by the State Islamic University in Yogyakarta. The former trip was funded by an ARC Federation

Fellowship Travel Scholarship, while the later trip was generously funded by an Endeavour Australia Research Fellowship. In addition to conducting interviews and collecting data, Melissa also made two presentations on her research while in Indonesia. She presented a paper on 'The regulation of religion in Indonesia' at a conference on 'Islam, Democracy and Good Governance in Indonesia' hosted by Leiden University and the State Islamic Institute of Walisongo in Semarang from 6-8 October 2009. She also presented a paper on 'Religious education, child protection and proselytisation in Indonesia' at the 'International Graduate Student Conference on Indonesia' hosted by Gadjah Mada University in Yogyakarta from 1-3 December 2009. Earlier in the year, Melissa also gave a presentation on 'Challenges concerning the construction of places of worship in Indonesia' at the '4th Asian Graduate Forum on Southeast Asia Studies' hosted by the Asia Research Institute at the National University of Singapore from 13-17 July 2009; and a presentation on 'State responses to religious regulations in Indonesia' at the 'ANU Asia Pacific Week' hosted by the Australian National University in Canberra in 27-30 January 2009.

Luis Eslava

Luis Eslava is in the second year of his PhD at Melbourne Law School. He works in the areas of International Law and Law and Development. His research investigates the anthropological and political economic dimensions of today's global order from a jurisprudential perspective.

His doctoral research, supervised by Professor Anne Orford and Associate Professor Shaun McVeigh, explores the emergence of local jurisdictions (e.g. cities and municipalities) on the international scene. In the last three decades, local jurisdictions have become the preferred spaces to promote global ideals of democracy, peace, and human, economic and environmental development. Luis's thesis interrogates the rationale and contradictions that have accompanied this trend, using Bogotá as a case study. Through a critical examination of Bogotá's development policies and laws, and fieldwork that studies how the city interacts with its illegal neighbourhoods, Luis's thesis offers a thick ethnographic account of the everyday operations of local jurisdictions in the current global moment.

Before commencing his PhD, Luis finished a Master of Law and Development at Melbourne Law School, a LLB at Universidad Externado de Colombia and a Diploma of Community Development at Swinburne University of Technology. He worked as a solicitor in different areas of economic law in Colombia, and has also worked as a research officer for projects in social housing, international transparency and corporate

social responsibility. Luis has been invited to teach and present his work at postgraduate programmes in law, political science, international relations, development and refugee studies in Colombia and Australia.

In 2009, Luis edited a special edition of *Sortuz Journal of Emergent Socio-Legal Studies* on critical legal methodologies with fellow PhD candidates Olivia Barr and Yoriko Otomo. The articles in this special edition were selected from presentations delivered at the workshop *In Search of Authority, Rebellion and Action* that Luis and his co-editors convened at Melbourne Law School in December 2008. Last year, Luis published two articles about the current model of global governance: 'Constitutionalization of Rights in Colombia' (2009) 22 *Revista Derecho del Estado* 183 and 'Decentralization of Development and Nation-Building Today' (2009) 2(1) *The Law and Development Review* 281. The latter article won the 2009 Melbourne Law School Postgraduate Student Published Research Prize. Luis's forthcoming publications include a book chapter about the internationalisation of cities for a textbook in Latin American urban law and a critical analysis of the role of local jurisdictions in the history of international law and empire, co-authored with Mónica García-Salmones (Erik Castrén Institute of International Law and Human Rights, University of Helsinki).

Luis has recently presented his work at the Institute of Global Law and Policy at Harvard Law School, the Study Space workshop in Rio de Janeiro (a joint project of



Georgia State University, Seattle University, Fundação Getulio Vargas and Latina & Latino Critical Legal Theory Inc.), and in community activist workshops in Bogotá organized by a coalition of local NGOs and the International Centre on Housing Rights and Evictions.

In July 2010, Luis is co-convening international workshop *The South of International Law* with Associate Professor Sundhya Pahuja, Associate Professor Shaun McVeigh and Professor Gerry Simpson at Melbourne Law School.

A selection of Luis's publications can be downloaded from [SSRN](#).

Ed Mussawir



Melbourne is a unique place to study and to do jurisprudence. In 2009 I completed a doctoral thesis at the Melbourne Law School entitled *Jurisdiction: The Expression and Representation of Law*. The thesis approached the philosophy of Gilles Deleuze in terms of a theory of jurisdiction. Jurisdiction interested me as a topic of academic study for a number of reasons. One of these was that it seemed to offer a way of negotiating an uncertainty in legal scholarship about whether there is still a connection between law's theory and its technical knowledge. On the one hand theoretical scholarship sometimes remains aloof in relation to what it sees as mere technicalities of law, and on the other hand 'black-letter' scholarship often

struggles to get past dry legalistic detail. Law schools experience this problem more acutely than other faculties. The academic approaches present in a law school are diverse, but they are at least held together by a discipline of jurisprudence which combines our technical and theoretical resources. For me, jurisdiction offers a way of thinking about how to navigate the law in terms of its technical knowledges as well as in terms of a theory of legal 'expression'.

Melbourne is fortunate also to have a rich community of legal scholars and students at the moment. I owe a lot to the people who have worked to foster a culture of critical studies there and especially to those who I worked with during my PhD candidature. My principal supervisor Peter Rush has been an ever-reliable source of intellectual support over the years. I have also been lucky enough to follow in the footsteps of some of the other scholars at the Melbourne Law School whose work has developed the local theories of jurisdiction. Among these, Shaun McVeigh in particular has had an important influence on the theoretical directions of my research. Great teachers help us imagine life as a kind of apprenticeship. What I admire most about the people I studied with at Melbourne nevertheless is not necessarily the proficiency of their scholarly work. I like to think that what connects us to the law school is something much less overstated. Jurisprudence for example, is not necessarily suited to great thinkers of law, but for a group who perhaps happen to find only a limited justification for their existence in 'law', and who

therefore have an immediate investment in its practical-theoretical description.

The highlights from my candidature at the Melbourne Law School were the many small breakthroughs and encounters that one finds, sometimes unexpectedly along the way: chance encounters with ideas (old and new), encounters with other students who are perhaps going in different directions but who happen to offer you something indispensable. It was exciting that Melbourne hosted some workshops organized by research higher degree students on themes of critical and creative methodologies in legal scholarship. Friends like Yoriko Otomo, Luis Eslava and Olivia Barr as well as James Parker and Bec Goodbourn have worked hard to renew a generation of critical theory at Melbourne through these kinds of forums. Many other colleagues and fellow research students have also offered creative inspiration during the course of my PhD. Connal Parsley, Cressida Limon, Jothie Rajah, Juliet Rogers and Marc Trabsky among others have all been important voices for me in that behind-the-scenes murmur of student life.

Since completing my PhD I have been living in Melbourne, teaching and publishing work based on my research. Parts of my work will be published this year in the *Griffith Law Review* and *Law, Culture and the Humanities* on the topic of procedure in jurisprudence. A research monograph based on my PhD thesis is also due to be published this year.

Teaching Fellows

The Melbourne Law School launched a unique program of Law Teaching Fellowships for outstanding PhD candidates in 2009.

The Fellowships add a new dimension to PhD candidature at the Law School, adding value to the research program by offering a clear career path into academia.

The first of its kind in Australia, these prestigious Fellowships include paid teacher training and mentoring, teaching and administrative experience, and full inclusion in the intellectual life of the Law School, providing unparalleled training for leading academics of the future.



The Teaching Fellows in 2009 (from left to right) were: Amanda Scardamaglia, Tania Josev, Meg Brodie, Genevieve Grant and Takele Bulto.

ATLAS

(Association of Transnational Law Schools)

Melbourne Law School is proud to be a founding member of Association of Transnational Law Schools (ATLAS) as part of our ongoing commitment to foster outstanding researchers and research degrees of international relevance. ATLAS is a consortium of institutions of higher education from around the world dedicated to the intellectual formation of highly talented doctoral students and fostering reflection and research on issues broadly related, but not limited, to comparative legal and regulatory responses to various forces of globalization, international governance challenges and the evolution of transnational law.

In 2009, ATLAS was held in the United Kingdom at the London School of Economics. The participants from the Melbourne Law School were Peter Dirou, John Simpkins and Chris Young.



STUDENT RESEARCH PRIZES

2009 Harold Luntz Graduate Research Thesis Prize Winner

The Harold Luntz Graduate Research Thesis Prize is awarded annually to the Melbourne Law School graduate research student judged to have presented the best thesis in the previous year, provided that the nominee meets an overall level of excellence required for the award. It is named for Emeritus Professor Harold Luntz, a world expert on torts law and a former dean and professor at the Melbourne Law School.

The 2009 Harold Luntz Graduate Research Thesis Prize was won by:

Michelle Welsh

Dr Welsh, a Senior Lecturer at Monash University, was awarded the prize for her thesis entitled '*Civil Penalties under the Corporations Act 2001 (Cth) and the Enforcement Role of the Australian Securities and Investments Commission*'.

Dr Welsh was supervised by Professor Ian Ramsay.

Dr Welsh's thesis investigated the power of the Australian Securities and Investment Commission (ASIC) to apply for 'civil penalties' under the Corporations Act 2001 (Cth). The thesis examines the scope and changing character of the civil penalty provisions under the act and reveals that the civil penalty provisions play a less central role in ASIC's enforcement strategy than might have been anticipated.

The Selection Committee for the Prize said that 'Dr Welsh's thesis on civil penalties investigates an area of both practical and theoretical importance in Australian law. Her invitation to participate in a high level Treasury roundtable as a result of the work published out of the thesis is evidence of the practical import of the thesis and the comments of the examiners, her invitation to Hong Kong as a distinguished lecturer, and her impressive publications list is evidence of the academic significance of the work.'



Dr Michelle Welsh

Student Published Research Prize

The Student Published Research Prize is awarded annually for outstanding pieces of writing by students of the University of Melbourne Law School.

Two prizes are awarded, one to a PhD or Masters law student and the other to an LLB or JD student.

Postgraduate 2009 Winner



Mr Luis Eslava

'Decentralization of Development and Nation-Building Today: Reconstructing Colombia from the Margins of Bogotá'

(2009) 2 (1) *The Law and Development Review*
281-366

LLB/JD 2009 Winner

Mr Aakash Desai

'Commercial Trusts and Securitisation: Lessons from the Global Financial Crisis'

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2009 Published Research

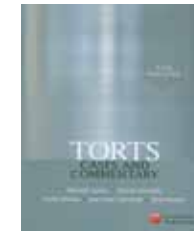
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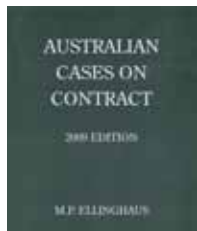
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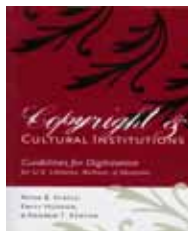
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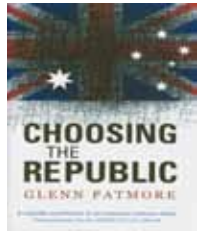


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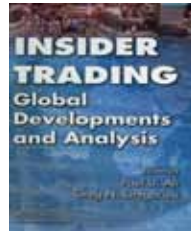


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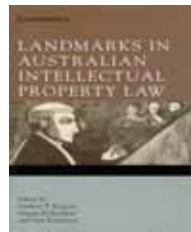
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Gaze, E, *Scrutiny of Acts and Regulations Committee: Exceptions and Exemptions to the Equal Opportunity Act 1995, Options Paper*, Parliament of Victoria, Australia (2009)

Gover, K, *Legal Pluralism and State-indigenous Relations in Western Settler Societies*, International Council on Human Rights Policy, Switzerland (2009)

Landau, I, Mitchell, R, **O'Connell, A**, **Ramsay, I** and Marshall, S, *Broad-Based Employee Share Ownership in Australian Listed Companies: Survey Report*, University of Melbourne Law School, Australia (2009)

Marshall, S and **Ramsay, I**, *Stakeholders and Directors' Duties: Law, Theory and Evidence*, Centre for Corporate Law and Securities Regulation, University of Melbourne Law School, Australia (2009)

Ramsay, I and **Sim, C**, *Personal Insolvency in Australia: An Increasingly Middle Class Phenomenon* Centre for Corporate Law and Securities Regulation, University of Melbourne Law School, Australia (2009)

Ramsay, I and **Sim, C**, *Trends in Personal Insolvency in Australia*, Centre for Corporate Law and Securities Regulation, University of Melbourne Law School, Australia (2009)

Computer Software

Lambiris, M, *Business Organisations in Australia*, Version 1, CCH Australia, Australia (2009)

Lambiris, M, *Case Studies for Revision*, Version 1, CCH Australia, Australia (2009)



CENTRES, INSTITUTES AND GROUPS 2009

The Asian Law Centre, an initiative of the Melbourne Law School, commenced activities in 1985. It is the first Australian centre established to teach and undertake research on the legal systems within Asia. It is now the largest centre for the study of Asian legal systems in the world.

The Centre has pioneered extensive programs of teaching and research on the laws and legal systems of Japan, China, Indonesia, Vietnam, Taiwan and Malaysia and on Islamic law and Asian commercial law. It has also worked on law in Singapore, Korea, Thailand, Laos, East Timor and the Philippines.

Objectives

The Centre's objectives are:

- to improve knowledge and understanding of the laws of our region;
- to support the rule of law in Asia;
- to promote teaching and research on Asian legal systems at both graduate and undergraduate levels, in Australia, Asia and elsewhere;
- to promote the development of Asian studies and Asian languages in other disciplines and to encourage links with legal studies;
- to promote the importance of comparative law in Asian legal studies and research; and

- to promote exchanges of staff and students between the Melbourne Law School and Asian universities and institutions

Research Projects

Centre members are engaged in research on a diverse range of topics relating to Asian legal studies. Members of the ALC worked on the following research projects in 2009:

- ARC Federation Fellowship: 'Islam and Modernity: Syari'ah, Terrorism and Governance in South-East Asia' (2006-2011) (Lindsey, T)
- ARC Discovery Grant: 'Enforcement of Chinese Employment Law, Regulatory Innovation and Wage Arrears' (2007-2009) (Cooney, S, Biddulph, S and Zhu, Y)
- ARC Discovery Grant: 'The Media and ASEAN Transitions: Defamation Law, Journalism and Public Debate in Indonesia, Malaysia and Singapore' (2006-2009) (Lindsey, T, Whiting, A, Kenyon, A and Marjoribanks, T)
- ARC Discovery Grant: 'Testing Court Reform Projects in Cambodia and Vietnam' (2008-2010) (Cameron, C and Nicholson, P)

Significant Publications, 2008

- Biddulph, S, 'Justice and Order in Shanghai: The Case of Forced Housing Demolition and Relocation' in M Farquhar (ed), *21st Century China: Views from Australia*, Cambridge Scholars Publishing, United Kingdom (2009), 55-76
- Butt, S and Lindsey, T, 'The Peoples Prosperity? Indonesian Constitutional Interpretation, Economic Reform, and Globalization' in J Gillespie and R Peerenboom (eds), *Regulation in Asia: Pushing Back on Globalization*, Routledge, United Kingdom (2009) 270-295
- Godwin, A, 'The Professional 'Tug of War': The Regulation of Foreign Lawyers in China, Business Scope Issues and Some Suggestions for Reform' (2009) 33 *Melbourne University Law Review* 132-162
- Nicholson, P and Pitt, S, 'Vietnamese Legal Reform: The Discourses of Aid?' in P Bergling, J Ederlof and V Taylor (eds), *Rule of Law Promotion: Global Perspectives, Local Applications*, Iustus Forlag, Sweden (2009), 287-315

Australian Journal of Asian Law

The Asian Law Centre jointly publishes the Australian Journal of Asian Law (AJAL) with colleagues from the Australian National University and the University of Hong Kong. A peer-refereed scholarly journal, the AJAL is now a leading forum for debate for scholars and professionals concerned with the laws and legal cultures of Asia.

Asian Law Online

<http://alc.law.unimelb.edu.au/bibliography>

Asian Law Online, launched in 2002, is the first online bibliographic database of Asian law materials in the world. Offered to the public as a free service to assist students, scholars and practitioners of Asian legal systems, it is a collection of English language materials on Asian laws available throughout the world and includes books, chapters in books, journal articles and theses.

The database is organised by countries in East Asia and a selection of basic legal areas. The database can be searched for any word or a more specific advanced search can be conducted. The database is also linked to a list of useful websites for each country and legal area.

Seminars

Comparative Law Seminar Series

In this series, internationally recognised scholars of comparative law and/or socio-legal theory, present on its application to Asia.

Occasional Seminar Series

In this series, distinguished scholars and leading practitioners present on current Asian legal issues.

Recent seminars include:

- **11 March 2009** – 'Creating a Constitutional Court for a New Democracy' (with Melbourne Law School - Seabrooks Chambers Lecture), *Professor Dr Jimly Asshiddiqie*, Founding Chief Justice, Constitutional Court of Indonesia
- **10 August 2009** – 'Enforcement Problem in the WTO – Success, Limitations and Possible Improvement' (with IILAH), *Professor Yasuhei Taniguchi*
- **7 September 2009** – 'The Enforcement of Intellectual Property Rights in China: Institutional Challenges' (with IPRIA), *Professor Nie Jianqiang*
- **9 November 2009** – 'An Introduction to the Intellectual Property High Court of Japan' (with IPRIA), *Judge Hiroki Morishita*

Brown Bag Seminar Series

In this series, postgraduates, academics or visitors who are researching and writing on Asian legal topics present papers on work in progress or rehearse a conference or article submission. The forum provides a collegial atmosphere for peer feedback.

Recent seminars include:

Ms Melissa Crouch - '*Regulating Sacred Sites: Conflict at Places of Worship in Indonesia*' (with Centre for Islamic Law and Society), (15 April 2009)

Mr Neri Colmenares - '*The Writ of Amparo and Impeachment: Effectiveness in Holding Human Rights Violators Accountable*', (22 April 2009)

Ms Nur Hidayah – '*Gendering Islam or Islamizing Gender? A Case Study of Progressive Muslim Women's Organization in Indonesia*' (with Centre for Islamic Law and Society), (29 April 2009)

Ms Dina Afrianty – '*Women's Movement in Aceh: Identity, Mobilization and Autonomy*' (with Centre for Islamic Law and Society), (27 May 2009)

Mr Usman Hamid – '*Justice for Munir*', (10 June 2009)

Judge Injin Park and Mr Donghoon Kim – '*A Day in the Life of a Korean Court Clerk*', (10 August 2009)

Dr Arskal Salim – '*Politics and Islamisation in Aceh: An Update*' (with Indonesia Forum), (18 August 2009)

Ms Farha Abdul Kadir Assegaf – '*Muslim Women in Radical Islamic Circles: The Case of Al-Mukmin Pesantren, Ngruki*' (with Centre for Islamic Law and Society), (26 August 2009)

Ms Helen Pausacker – '*Playboy on Trial: 'Pornography', The Law and the Islamic Defenders Front in Indonesia*' (with Centre for Islamic Law and Society), (19 September 2009)

Mr Trevor Ryan – '*Japanese Innovations in the Public-Private Divide: Lessons for Australia?*', (28 September 2009)

Mr Stewart Fenwick – *'Yusman Roy and the Language of Devotion: 'Innovation' on Trial in Indonesia'* (with Centre for Islamic Law and Society), (7 October 2009)

Associate Professor Andrew White – *'Reviving Islamic Traditions of Sulh for Resolving Islamic Finance Disputes'* (with Centre for Islamic Law and Society), (20 October 2009)

Mr Jeremy Kingsley – *'Weak State - Strong Communities? Tuan Guru, Tradition and Peace-Building in Lombok'* (with Centre for Islamic Law and Society), (28 October 2009)

Dr Minako Sakai – *'Growing Together in Partnership: Women's Views of the Business Practices of an Islamic Savings and Credit Cooperative'* (with Centre for Islamic Law and Society), (24 November 2009)

Asian Legal Dialogues

These seminars on Asian legal issues are conducted in Asian languages. Recent seminars include:

Judge Atsushi Shiriashi – *'A Judges' Work'* (Japanese), (10 February 2009)

Professor Dr Jimly Asshiddiqie, Founding Chief Justice, Constitutional Court of Indonesia – *'Conversation with Jimly Asshiddiqie'* (Bahasa Indonesia), (13 March 2009)

Mr Hamid Chalid, University of Indonesia – *'Jaringan Islam Liberal (JIL): Its Anatomy and Legal Thinking'* (with Centre for Islamic Law and Society) (Bahasa Indonesia), (20 March 2009)

Associate Professor Xie Chuanyu – *'Dealing with Drug Addicts, Sex Workers and Minor Offenders: Debates about Reforming the Administrative Powers of the Chinese Police'* (Chinese), (1 April 2009)

Dede Syarif; Samsul Mujiharto; and Lalu Zaenuri – *'Islam and Religious Minorities in Post-Reformasi Indonesia'* (with Centre for Islamic Law and Society) (Bahasa Indonesia), (7 May 2009)

Mr Muhammad Hasan Basri; Mr Muhammad Subhan Setowara; and Mr Cucu Surahman – *'Public Religion and Intergenerational Change in Indonesia: A Snapshot of Current Developments'* (with Centre for Islamic Law and Society) (Bahasa Indonesia), (11 June 2009)

Continuing Legal Education Seminar Series

In 2009, the Centre established a new seminar series, to engage more closely with the legal profession:

Mr Andrew Godwin – *'Foreign Lawyers in Asia: Developments in Market Access with a Specific Focus on China'*, (4 March 2009)

Major Events

In 2009, the Centre hosted the following major events:

9-20 February 2009 – Chuo Law School Melbourne Summer School

17 February 2009 – Workshop on 'Enforcement of Labour Law in China and Australia'

13 March 2009 – 'Transnational Judging: A Judicial Conversation on Foreign and International Law in Domestic Courts' (with Centre for Comparative Constitutional Studies)

16 March 2009 – Book Launch – 'Examining Practice, Interrogating Theory: Comparative Legal Studies in Asia' (edited by Pip Nicholson and Sarah Biddulph)

15-16 October 2009 – 'Interpreting Legal Transfers: A Comparative Analysis' Workshop, hosted by the Asia-Pacific Business Regulation Group, Monash University and the Asian Law Centre, The University of Melbourne, held in Prato, Italy

Visitors

The ALC regularly hosts visits by renowned international scholars. It participates in the following programs:

Supreme Court of Japan Overseas Training and Research Program

Each year since 2003, the Asian Law Centre has hosted a Judge from Japan as part of the Overseas Training and Research Program of the Supreme Court of Japan. The Program enables Judges from Japan to experience life in a jurisdiction outside Japan for a twelve-month period and provides them with a valuable opportunity to study Australian law courses, access University resources and undertake research and training activities, including visits to Victorian courts and meetings with court personnel.

Supreme Court of Korea Overseas Research and Study Program

Each year since 2006, the Asian Law Centre has hosted a Judge from Korea as part of the Overseas Research and Study Program of the Supreme Court of Korea. The Program enables Judges from Korea to experience life in a jurisdiction outside Korea for a 6-12 month period and provides them with a valuable opportunity to study Australian law courses, access University resources and undertake research and training activities, including visits to Victorian courts and meetings with court personnel.

Chuo Law School Melbourne Summer School

Each year since 2005, the Asian Law Centre has hosted the Chuo Law School Melbourne Summer School. The Summer School continues the relationship with Chuo Law School that was developed – and originally taught – by the late Professor Malcolm Smith when he joined Chuo Law School as Professor of Law, in 2004.

The Chuo Law School students enjoy interacting with Melbourne Law School students who participate in the Summer subject 'Issues in Japanese Law'. They have recently been accompanied to Melbourne by Chuo Law School academics, Professor Satoru Osanai, Professor Dan Rosen and Professor Hisaei Ito.

In 2009, the Centre hosted a large number of visitors, including the following:

Canada

Professor Andrew Harding, Centre for Asia-Pacific Initiatives, University of Victoria

People's Republic of China

Ms Xiaowei Lan

Mr Shen Xiaoping, PhD Candidate, Law School, Wuhan University

Associate Professor Xie Chuanyu, Social Order Department, Chinese People's Public Security University

Professor Xu Zhangrun, Tsinghua University

Professor Xue Gangling, China University of Political Science and Law

Germany

Dr Arskal Salim, Postdoctoral Fellow, Max Planck Institute for Social Anthropology

Indonesia

Mr Huala Adolf, Universitas Padjadjaran, Bandung

Professor Dr Jimly Asshidiqie, Founding Chief Justice, Constitutional Court of the Republic of Indonesia

Mr Hamid Chalid, University of Indonesia

Mr Usman Hamid, KontraS (Committee for Missing Persons and Victims of Violence)

Japan

Judge Toshiyuki Abe, Yokohama District Court

Judge Denda, Saitama District Court

Associate Professor Kota Fukui, School of Law and Politics, Osaka University

Judge Ikemoto, Utsunomiya District Court

Judge Daisaku Kaneko, Tokyo High Court

Associate Professor Ryu Kojima, Faculty of Law, Kyushu University

Judge Yoshimitsu Kawai, Naha District Court

Judge Hiroki Morishita, Intellectual Property Court of Japan

Professor Yasuhei Taniguchi, Tokyo Keizai University

Professor Zhan Kun Sun, Faculty of International Studies, Meijigakuin University

Korea

Mr Donghoon Kim, Uijeongbu District Court

Judge Chan Ho Park, Chang-won District Court

Mr Injin Park, In-Cheon District Court

Mongolia

Dr Gunbileg Boldbaatar, National University of Mongolia

Philippines

Mr Neri Colmenares

United Kingdom

Ms Kristin van Zwieten, PhD Candidate, University of Oxford

Vietnam

Vietnam WTO Research Program

Staff

Director:

Professor Tim Lindsey (Indonesia, Islam & Law in Southeast Asia)

Associate Directors:

Associate Professor Pip Nicholson (Vietnam; Director, Comparative Legal Studies Program)

Associate Professor & Reader Sarah Biddulph (China)

Associate Professor Sean Cooney

Mr Andrew Godwin (Asian Commercial Law)

Ms Stacey Steele (Japan)

Dr Amanda Whiting (Malaysia)

Manager:	Ms Kathryn Taylor
Senior Administrator:	Ms Jessica Cotton
Administrator:	Ms Kelly McDermott
Administrative Assistant:	Ms Tessa Shaw

Contact ALC

The Centre's website can be accessed at:
<http://alc.law.unimelb.edu.au>

The Centre can be contacted by email at:
law-alc@unimelb.edu.au

The logo for Asian Law, featuring the words "Asian Law" in a serif font. "Asian" is in white and "Law" is in gold, both set against a dark blue rectangular background.

Asia Pacific Centre for Military Law



The Asia Pacific Centre for Military Law (APCML) was established in 2001 as a collaborative initiative of Defence Legal in the Australian Department of Defence and the Melbourne University Law School, to facilitate cooperation amongst military forces of the Asia Pacific Region in the research, training and implementation of the laws governing military operations.

The APCML aims to promote greater understanding of, and increased respect for, the rule of law in all aspects of military affairs both within the Australian Defence Force and amongst militaries in the Asia Pacific Region. It operates from both a military and a university node.

In 2009, until April, the Director of the Centre was Professor Tim McCormack, Foundation Australian Red Cross Professor of International Humanitarian Law, and from April to December the position was held by Professor Stuart Kaye. The Deputy Director was WGCDR Ian Henderson. Associate Directors (University node) were Professor Stuart Kaye until April, and Associate Professor Alison Duxbury from April to December. The Associate Director (Military node) was Mr Peter Jeffrey.

Melbourne Law School staff associated with the Centre in 2009, in addition to Professor Tim McCormack, Professor Stuart Kaye and Associate Professor Alison Duxbury, were Associate Professor Andrew Mitchell, Associate Professor John Tobin and Associate Professor Tania Voon. Dr Bob Mathews is a Principal

Research Fellow in the Centre. The Rt Hon Malcolm Fraser AC CH, Professorial Fellow of the University of Melbourne, and The Hon Alastair Nicholson AO RFD QC, Professorial Fellow, Melbourne Law School (appointed June 2009), are attached to this Centre. The Centre Administrator is Ms Cathy Hutton and enquiries can be directed to law-apcml@unimelb.edu.au

Visitors in 2009

APCML Sir Ninian Stephen Visiting Scholar

Professor Ramesh Thakur

Director, Balsillie School of International Affairs, Distinguished Fellow, Centre for International Governance Innovation, and Professor of Political Science at the University of Waterloo in Canada.

Professor Thakur visited the APCML from 27 November to 8 December and delivered a public lecture entitled 'Legality, Legitimacy and the United Nations' on Monday 7 December.

The author or editor of over thirty books and 300 articles and book chapters, he also writes regularly for quality national and international newspapers around the world. His most recent books include *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge: Cambridge

University Press, 2006) – winner of the Academic Council on the UN System 2008 Award for the best recent book on the *UN system*, and *The United Nations and Nuclear Orders*, co-edited with Jane Boulden and Thomas G. Weiss (UN University Press, 2009). His next book is *Global Governance and the UN: An Unfinished Journey*, co-written with Thomas G. Weiss (Indiana University Press, 2010).

Ramesh Thakur was a Commissioner and one of the principal authors of *The Responsibility to Protect* (2001), and Senior Adviser on Reforms and Principal Writer of the United Nations Secretary-General's second reform report (2002).

Major Research Projects in 2009

Australia's Post World War II War Crimes Trials: a systematic and comprehensive Law Reports Series - Australian Research Council grant, in partnership with Defence Legal and The Australian War Memorial

This project redresses the remarkable lack of comprehensive and systematic analysis of Australia's post-World War II war crimes trials by producing a comprehensive law reports series of the 300 trials held pursuant to the War Crimes Act 1945. The reports will provide valuable Australian legal and historical precedent

in an increasingly important area of international and

domestic law.

Dr Narrelle Morris and Dr Georgina Fitzpatrick were appointed in January 2009 as Legal Researcher and Historian (part-time) respectively. Dr Morris completed reports on 70 out of 300 trials, and has compiled and updated important aids for the project, including charts of accused, trial personnel and an index to the trial proceedings. Dr Fitzpatrick has completed 2 out of 8 essays on the trial locations and has undertaken substantial research on other topics related to the trials for later drafting into historical essays.

Academic publishers Martinus Nijhoff in Leiden have offered to publish a multi-volume set of law reports and accompanying essays and are enthusiastic about the project's outcomes.

International Operations and the Australian Federal Police: Devising a Legal Framework - *Australian Research Council grant, in partnership with The Australian Federal Police*

In an important collaboration with the AFP, combining academic expertise with practical experience, this project will provide a clear legal framework and operations guidelines for the planning, management and conduct of AFP deployments.

The project will produce three key outputs:

A comprehensive collection of primary source materials relevant to the legal bases for the establishment and functioning of UN peace operations, each document being prefaced with a brief commentary explaining its rationale, its broader political and legal context and the key legal principles contained in it. Documents on the Law of UN Peace Operations will be published by OUP in March 2010.

An Operations Handbook for the management and conduct of civil policing in peace operations, especially focussed towards the AFP and their overseas deployments. A draft of the Handbook was completed in November 2009, for final approval by the AFP, with publication expected by the end of 2010.

An international workshop to discuss and test the legal findings from the research that has been undertaken for the production of both the above publications. The workshop will bring together leading academic thinkers and practitioners with extensive police operational experience from multiple deployments around the world.

Post-graduate Completions

Six APCML PhD students completed their theses and graduated in 2009. Ben Clarke's thesis was entitled '*Occupation, Resistance and the Law: Was Armed Resistance to the Occupation of Iraq Justified under International Law?*'; Andrew Coleman's thesis was entitled '*The International Court of Justice and Claims for Self-Determination*'; Carrie McDougall's thesis was entitled '*Giving the Green Light to Prosecutions of Nationcide: Proposed Solutions to the Jurisdictional & Definitional Issues Surrounding the Crime of Aggression*'; Bruce Oswald's thesis was entitled '*The Application of International Law to United Nations and Regional Peace Operations*'; Jadranka Petrovic's thesis was entitled '*Deliberate Destruction of Cultural Property During Armed Conflict: How Does International Law Respond: The Case of the Old Bridge of Mostar*' and Nicole Schlesinger's thesis was entitled '*Making International Criminal Law: Factors Influencing Judicial Behaviour at the ICTY and ICTR*'.

Contact APCML

The Centre's website can be accessed at:
<http://www.apcml.org>

The Centre can be contacted by email at:
law-apcml@unimelb.edu.au



Centre for Comparative Constitutional Studies



The Centre for Comparative Constitutional Studies (CCCS) is a focal point for research, scholarship, teaching and information about Australian constitutional law and the constitutional law of other countries whose systems are most relevant to Australia. The objectives of the Centre for Comparative Constitutional Studies are:

- to examine and evaluate the Australian constitutional system and to contribute actively to the debate on the Australian system of government;
- to examine and advise on the constitutional and legal framework for relations between levels of government, in theoretical and practical operation;
- to introduce comparative constitutional concepts and knowledge on comparative constitutional principles, institutions and practices into the Australian constitutional debate;
- to develop and promote a sound understanding of the constitutional systems of countries in the neighbouring region, both in underlying theory and practical operation;
- to contribute to the debate on constitutional issues elsewhere in the world in the light of the experience of Australia and the Asia-Pacific region; and

- to provide a public and specialist resource on constitutional and comparative constitutional issues.

The Centre pursues these objectives through its activities - research, teaching, information exchange, resource centre, consultancies and research collaboration. The Centre's aims and objectives are set out in full on our website: <http://cccs.law.unimelb.edu.au/>

Major Conferences

The Centre marked its 21st Birthday with a major Conference held on Friday 27 November at Melbourne Law School: *International and Comparative Perspectives on Constitutional Law*. The Conference was attended by constitutional law scholars, practitioners and judges from around Australia and the region. The opening session of the conference featured papers by Chief Justice the Hon Robert French on "The Future of Australian Constitutionalism" and Founding Director Cheryl Saunders on "The Internationalisation of Constitutional Law". There followed a lively panel on which Professor Sujit Choudhry, Scholl Chair, Faculty of Law, University of Toronto, presented his paper "Comparative Constitutional Law: The Rights Revolution and Beyond" which was commented on by Professor Carolyn Evans (CCCS) and Dr Alison Young (Oxford). After lunch, the conference split into two parallel sessions featuring

papers on recent developments in constitutional law in Australia and a range of other countries (including South Africa, Canada, the United Kingdom and Fiji). The speakers in these sessions included Justice Rachel Pepper, Land and Environment Court, Professor Theunis Roux, University of New South Wales, Professor Simon Evans, Deputy Dean, Melbourne Law School, Associate Professor Kris Walker, Melbourne Chambers, and Ed Santow, University of New South Wales. The conference closed with a final plenary session on Constitutional Comparativism in the Court which featured Stephen Gageler SC, Solicitor General for the Commonwealth of Australia, and Centre Director Professor Adrienne Stone. The Conference was followed by a dinner which provided an occasion to celebrate the Centre's 21 years and its contributions to comparative constitutional studies. Sir Anthony Mason, who launched the Centre in 1988, returned to give a key note speech which noted the outstanding achievements of Foundation Director Professor Cheryl Saunders.

On 2 October the Centre co-hosted the 2009 *Protecting Human Rights Conference* which discussed developments in the legislative protection of human rights in Australia. The conference considered the National Human Rights Consultation, and also provided an update of developments in the Victorian Charter of Human Rights and Responsibilities, the ACT Human Rights Act and in NSW human rights law. Leading Australian and international speakers considered the

National Consultation process, and what reforms it might lead to in Australia. Fr Frank Brennan AO, chair of The National Human Rights Consultation, was a keynote speaker and provided his reflections on the process and outcomes of the report from both his perspective and that of his fellow committee member, Mary Kostakidis.

Selected Seminars and Events

11 March 2009 - Seabrook Chambers Lecture - CCCS/Asian Law Centre Public Lecture: Creating a Constitutional Court For a New Democracy. *Professor Dr Jimly Asshiddiqie, Foundation Chief Justice of the Constitutional Court of the Republic of Indonesia, Jakarta.*

13 March 2009 - Judicial Roundtable: Transnational Judging - A Judicial Conversation on Foreign and International Law in Domestic Courts. *Justice Jimly Asshiddiqie, Foundation Chief Justice of the Constitutional Court of the Republic of Indonesia, Jakarta, Chief Justice French and Justice Hayne of the High Court of Australia, Chief Justice Black of the Federal Court, Justice Weinberg of the Court of Appeal of Victoria and Justice Vickery of the Supreme Court of Victoria.*

24 March 2009 - CCCS Book Launch: 'Challenging Women' by Dr Madeline Grey (ASP 2009), *launched by the Minister for Women's Affairs, Maxine Morand MP*

7 April 2009 - Politicians' Influence over Regulatory Decisions Ostensibly Based on Sound Science. *Professor Peter Strauss, Columbia Law School, New York*

4 September 2009 - Backlash Against Judicial Activism: The case of Israel. *Professor Claude Klein, The Hebrew University of Jerusalem*

21 September 2009 - The Constitutionalisation of South African Administrative Law: Has it Worked?. *Professor Hugh Corder, Dean of Law, University of Cape Town*

5 October 2009 - Reassessing the New Commonwealth Model of Constitutionalism. *Professor Stephen Gardbaum, Professor of Law, University of California, Los Angeles*

21 October 2009 - The National Human Rights Consultation: Outcome from the AHRC Perspective. *The Hon Catherine Branson QC, President, Australian Human Rights Commission*

19 November 2009 - Women's Autonomy - Religion on Trial. *Professor Frances Raday, Hebrew University, Jerusalem*

Major Presentations

Associate Professor Carolyn Evans presented a paper on 'Religious Freedom under the European Convention: Cracks in the Intellectual Architecture?' at Oxford and Emory Universities. She also presented a Distinguished Public Lecture on 'Constitutional Narratives: the Religion Clauses in the Australian and Malaysian Constitution' at Emory.

Professor Cheryl Saunders delivered a key-note address to the Third Asian Forum of Constitutional Law, Taipei, on 'Towards a Global Constitutional Gene Pool'. She presented a paper on 'Implications of Globalisation

for the Methodology of Comparative Constitutional Law' to an International Round Table on Globalisation and Constitutionalisation, held under the auspices of the International Association of Constitutional Law, in Seoul.

Associate Professor Simon Evans participated in the 'The Commonwealth Bill of Rights model and Australian democracy' session of the 2009 Protecting Human Rights Conference co-organised by the CCCS and presented a response to Professor Stephen Gardbaum's paper 'The New Commonwealth Bill of Rights Model in Australia'.

Dr Michelle Foster attended the International Association of Refugee Law Judges' 8th World Conference, Cape Town where she provided a commentary on a paper entitled 'Violations of Socio-economic Rights as a Form of Persecution and as an Element of Internal Protection' by Kate Jastram, Anne Mactavish, and Penelope Mathew.

Community Engagement and Knowledge Transfer

Associate Professor Beth Gaze was a consultant to the Scrutiny of Acts and Regulations Committee (Victorian Parliament) and the Inquiry into the Exceptions and Exemptions in the Equal Opportunity Act 1995 (Vic).

Professor Adrienne Stone, Professor Cheryl Saunders and Mr Glenn Patmore gave evidence to the House of Representatives Legal and Constitutional Affairs Committee as part of its 'Machinery of Referenda Inquiry'.

Associate Professor Carolyn Evans travelled to Nepal to participate in a workshop on Constitution Building.

Associate Professor Kris Walker participated in a roundtable organised by the Australian Human Rights Commission in Sydney at which a group of constitutional experts agreed that the Constitution poses no obstacle to the enactment of a federal Human Rights Act. She spent two weeks in Nauru, advising the Committee of the Whole of the Parliament of Nauru on proposed amendments to the Constitution.

Associate Professor Jeremy Gans testified at a NSW Parliamentary inquiry in 'The use of victims' DNA'

Dr Michelle Foster participated in a roundtable discussion with the United Nations High Commissioner for Refugees.

Dr Joo-Cheong Tham joined the International Foundation for Electoral Systems' Advisory Group on Global Standards in Political Finance. Dr Tham also made a 72-page submission on the federal government's Electoral Reform Green Paper: Donations, Funding and Expenditure.

Management

Director: Professor Adrienne Stone

Deputy Director: Associate Professor Carolyn Evans

Administrator: Dr Madeline Grey

Contact CCCS

The Centre's website can be accessed at:
<http://cccs.law.unimelb.edu.au>

The Centre can be contacted by email at:
law-cccs@unimelb.edu.au



CENTRE FOR
COMPARATIVE
CONSTITUTIONAL
STUDIES

Overview

The Centre for Corporate Law and Securities Regulation (CCLSR) commenced in January 1996 in recognition of the growing importance of corporate law and securities regulation nationally and internationally, and in recognition of the University of Melbourne's strength in these areas.

The objectives of the Centre and its members are:

- to undertake and promote research on corporate law and securities regulation;
- to undertake the teaching of corporate law and securities regulation subjects at the University of Melbourne and to develop and promote innovative teaching methods and teaching materials;
- to host conferences to disseminate the results of research undertaken under the auspices of the Centre or in other programs associated with the Centre;
- to develop and promote links with academics in other Australian universities and in other countries who specialise in corporate law and securities regulation;

- to establish and promote links with similar bodies, internationally and nationally, and provide a focal point in Australia for scholars in corporate law and securities regulation;
- to promote close links with peak organisations involved in corporate law and securities regulation;
- to promote close links with those members of the legal profession who work in corporate law and securities regulation; and
- to attract students of the highest calibre to the graduate program and provide opportunities for their involvement in corporate law research projects.

The activities of the Centre include teaching (members of the Centre teach or coordinate the teaching of 22 specialist subjects), maintaining a strong research program, and conducting conferences and seminars.

Staff

The Director of the Centre is Professor Ian Ramsay. Other academic staff associated with the Centre are Associate Professor Paul Ali, Hellen Blue, Andrew Godwin, Associate Professor Pamela Hanrahan, Associate Professor John Howe, Associate Professor Cally Jordan, Jurgen Kurtz, Professor Tim Lindsey,

Associate Professor Christine Parker and Stacey Steele. The Centre Administrator is Josephine Peters.

Publications

Members of the CCLSR published a significant number of journal articles in 2009. Please refer to the 'Published Research' section of this report.

The Centre also published the following research reports in 2009:

- Newman, S, *Refinancing and Workouts of Financially Distressed Companies - Lessons from The Bell Group Ltd (in Liquidation) v Westpac Banking Corporation*
- Ankoor, J and Jordan, C, *Diversity and Resilience: Lessons from the Financial Crisis*
- Ramsay, I and Sim, C, *Personal Insolvency in Australia: An Increasingly Middle Class Phenomenon*
- Lamba, A and Ramsay, I, *The Cost of Corporate Litigation in Australia: A Research Note*
- Marshall, S and Ramsay, I, *Stakeholders and Directors' Duties: Law, Theory and Evidence*
- Landau, I, Mitchell, R, O'Connell, A, Ramsay, I and Marshall, S, *Broad-Based Employee Share Ownership in Australian Listed Companies: Survey Report*

- Ramsay, I and Sim, C, *Trends in Personal Insolvency in Australia*
- Wong, S, *Forgiving a Director's Breach of Duty: A Review of Recent Decisions*
- Taing, C, *A Report on Enforceable Undertakings Accepted by ASIC from 1998 to 2008*
- Dermansky, P, *Should Australia Replace Section 181 of the Corporations Act 2001 (Cth) With Wording Similar to Section 172 of the Companies Act 2006 (UK)?*

Seminars and Conferences

A significant part of the Centre's activities is the holding of seminars/conferences on important issues. In 2009 the Centre held the following seminars/conferences:

The Supreme Court of Victoria Inaugural Commercial Law Conference - Current Issues in Commercial Law (12 November 2009)

Speakers: Mark Moshinsky SC, Victorian Bar; Allan J Myers AO QC, Victorian Bar; The Hon Justice Tony Pagone, Supreme Court of Victoria; Professor Ian Ramsay, University of Melbourne; The Hon Marilyn Warren AC, Chief Justice of the Supreme Court of Victoria; Jon Webster, Allens Arthur Robinson

The James Hardie Case - A Timely Reminder to Consider Your D&O Cover and Deeds of Indemnity, Insurance and Access

(5 November 2009 Sydney and 11 November 2009 Melbourne)

Speakers: David Abell, Senior Manager, ANZ Banking Group (Melbourne seminar); Craig Claughton, NSW Manager - FINPRO Marsh Pty Ltd (Sydney seminar); David Gerber, Senior Associate, Clayton Utz (Sydney seminar); Fred Hawke, Partner, Clayton Utz (Melbourne seminar); Peter Mann, Partner, Clayton Utz (Sydney seminar); Nancy Milne, Consultant, Clayton Utz (Sydney seminar); Charles Rosedale, Partner, Clayton Utz (Melbourne seminar); Paul Smyth, Manager, Aon insurance (Melbourne seminar)

Regulation of Executive Renumberation: An Empirical Study of the First Three Years of a 'Voting and Disclosure' Regime in Australia and the UK

(4 September 2009)

Speaker: Kym Sheehan, University of Sydney

Corporate Social Responsibility: International Legal Developments

(1 September 2009)

Speaker: Michael Kerr, Natural Advantage, Canada

Directors' Duties in a Time of Crisis

(12 August 2009 Melbourne and 8 September 2009 Sydney)

Speakers: Tim Bednall, Partner, Mallesons Stephen Jaques (Sydney seminar); David Crawford, A.O. (Melbourne seminar); David Gonski, A.C. (Sydney seminar); Alison Lansley, Partner, Mallesons Stephen Jaques (Melbourne seminar); Stuart McCulloch, Partner, Allens Arthur Robinson (Sydney seminar); Jon Webster, Partner, Allens Arthur Robinson, (Melbourne seminar)

Enforceable Undertakings Roundtable

(23 June 2009)

On 23 June 2009, the Centre for Corporate Law and Securities Regulation co-hosted an invitation only roundtable on enforceable undertakings (EUs). The roundtable was attended by representatives of government agencies, regulators and academics. The topics discussed included the decision-making process of EUs, the content of EUs, accountability, transparency and inclusion of stakeholders in negotiation and content of EUS, and the effectiveness of EUs. The roundtable was co-hosted with Melbourne Law School, the Socio-Legal Research Centre at Griffith University, EPA Victoria and the Centre for Employment and Labour Relations Law.

The James Hardie Decision - Implications for Directors and Their Advisors

(16 June 2009 Melbourne and 25 June 2009 Sydney)

Speakers: Priscilla Bryans, Partner, Freehills (Melbourne seminar); Alan Cameron, A.M. (Sydney seminar); Quentin Digby, Partner, Freehills (Sydney seminar); Colin Galbraith, A.M. (Melbourne seminar); Bill Koeck, Partner, Blake Dawson (Sydney seminar) and Marie McDonald, Partner, Blake Dawson (Melbourne seminar)

Issues in Market Integrity and Regulatory Responses

(23 April 2009 Melbourne and 13 May 2009 Sydney)

Speakers: Cathie Armour, Executive Director, Macquarie Capital Advisers (Sydney seminar); Belinda Gibson, Commissioner, Australian Securities and Investments Commission (Melbourne and Sydney seminars); Michael Hoyle, Division Director, Macquarie Capital Advisers (Melbourne seminar); John Kluver, Executive Director, Corporations and Markets Advisory Committee (Melbourne and Sydney seminars); Robert Nicholson, Partner, Freehills (Melbourne seminar); Leon Pasternak, Partner, Freehills (Sydney seminar)

Links with Key Organisations

The Centre has developed links with peak organisations with an interest in corporate and securities law. During 2009 academic members of the Centre were also members of:

- The Australian Securities and Investments Commission External Advisory Panel (Professor Ian Ramsay)
- The Audit Quality Review Board (Professor Ian Ramsay)
- The Takeovers Panel (Professor Ian Ramsay)
- The Corporations and Markets Advisory Committee (Professor Ian Ramsay)
- The Companies Auditors and Liquidators Disciplinary Board (Professor Ian Ramsay)
- The Law Committee of the Business Law Section of the Law Council of Australia (Associate Professor Pamela Hanrahan, Associate Professor Cally Jordan and Professor Ian Ramsay)
- The Corporations Law Committee of the Australian Institute of Company Directors (Professor Ian Ramsay)
- The Executive Committee (and former President) of the Corporate Law Teachers Association (Professor Ian Ramsay)

Editorial Positions

Members of the Centre continued in 2009 to occupy editorial positions with major corporate law publications including the *Company and Securities Law Journal*, the *Journal of Corporate Law Studies* and the *Corporate Law Bulletin*.

Corporate Law Bulletin

2009 saw the continued development of the Corporate Law Bulletin which is edited by Professor Ian Ramsay. The monthly electronic Bulletin is published with the support of the Australian Securities and Investments Commission, the Australian Securities Exchange and leading national law firms and distributed in partnership with SAI Global. The Bulletin is distributed widely within companies, regulators, law firms and government departments.

By the end of 2009, 148 issues of the Bulletin had been published.

Corporate Law Judgments Database

The Centre for Corporate Law established, with the support of the Australian courts, the corporate law judgments database. It contains a comprehensive database of corporate law judgments delivered by courts of all Australian jurisdictions since September 1999. It also contains decisions of the Takeovers Panel. By the end of 2009, almost 7,404 judgments were included in the database and available on the Centre for Corporate Law and Securities Regulation website.

Media Coverage of Centre Activities

The research activities of Centre members received significant coverage in the media in 2009. Members of the Centre gave more than 150 reported interviews to the media in 2009.

Further Information

The Centre's website can be accessed at:
<http://cclsr.law.unimelb.edu.au>

The Centre can be contacted by email at:
cclsr@law.unimelb.edu.au



Centre for Employment and Labour Relations Law



Goals of the Centre for Employment and Labour Relations Law

The Centre for Employment and Labour Relations Law was established in the Faculty of Law in 1994. Its broad aims are to consolidate the teaching of, and research into, labour and employment law at the University of Melbourne, to contribute to the development of labour and employment law teaching and research throughout Australia, and to engage with labour and employment law scholars throughout the world. Centre Members are responsible for teaching labour and employment law subjects in the undergraduate and graduate programs in the Faculty of Law, with the graduate program leading to both Masters Degrees and Graduate Diplomas specialising in labour and employment law.

Centre Members in 2009

Associate Professor John Howe (Director), Ms Anna Chapman, Associate Professor Sean Cooney, Ms Tessa Dermody (Coordinator), Associate Professor Beth Gaze, Associate Professor Colin Fenwick, Mr Glenn Patmore, Mr Stephen Sempill (until June 2009), Dr Joo-Cheong Tham.

Research

The Centre is Australia's first and only research centre devoted exclusively to developing an understanding of the role and function of legal regulation of the labour market. Research in the Centre generally takes place within broad and ongoing research frameworks.

These frameworks include:

- Law and Labour Market Regulation;
- Reform of Australian Labour Law; and
- International and Comparative Labour Law

Centre members during 2009 pursued a number of more specific research projects within the parameters of these three broad research programs. These are (listed in alphabetical order):

- Employee Happiness and Labour Law
- Employee share Ownership Plans: Current Practice and Regulatory Reform
- Employment Rights of International Students: Enhancing protection through a community-university collaboration
- Improving the Effectiveness of Australia's Anti-Discrimination Laws
- Labour Regulation in East Asia

- Law and Labour Market Regulation in Southern Africa
- New Initiatives in Enforcing Employment Standards: Assessing the Effectiveness of Federal Government Compliance Strategies
- 'Nothing Can Be Created Out of Nothing': Workers, Their Know-How and the Employment Relationships that Support Them
- Security of Employment and Unfair Dismissal Law
- What the Social Inclusion Agenda Means for the Integration of Labour Market Regulation and Social Policy
- Work, Care and Family: Revealing and Reconstituting Legal Norms

Conferences/Seminars

Labour Law Seminar Series

These free public seminars are intended to be of interest to a wide audience including academics, members of the legal profession, and those engaged in the day to day business of industrial relations and/or human resource management. Among other things, the Labour Law Seminar Series provides an opportunity for Centre members, visitors and associates, together with invited speakers, to present preliminary results

of their research into the operations of labour and employment law. Sean Cooney and John Howe co-ordinated the Labour Law Seminar Series during 2009.

Five seminars were held during the course of the year.

- **Ms Anna Chapman**, Senior Lecturer, Melbourne Law School and member of Centre for Employment and Labour Relations Law on 'Unfair Dismissal Law: From Work Choices to the Fair Work Act 2009' (22 April).
- **Ms Mary Gardiner**, past Master of Labour Relations Law student at the Melbourne Law School on 'His Master's Voice? Work Choices as a Return to Master and Servant Concepts' (13 May).
- **Professor Judy Fudge**, Lansdowne Chair in Law, University of Victoria, Canada on 'Temporary Foreign Workers in Canada: The Low-Skilled Stream' (27 August).
- **Dr Andrew Frazer**, Senior Lecturer, Faculty of Law, University of Wollongong on 'The Regulatory Paradigm in Australian Labour Law' (4 November).
- **Professor Gordon Anderson**, Faculty of Law, Victoria University, Wellington, New Zealand on 'Change and Evolution in New Zealand Employment Law' (3 December).

Sponsors' Seminar Series

The Centre conducts a series of seminars for members of the Centre's sponsoring firms and organisations. Three seminars were held in 2009:

- **Mr Richard Niall**, Victorian Bar on 'The Management of Injured Workers: Can an Employer require an employee to attend a Medical Examination?' (12 February).
- **Mr Nick Harrington**, Victorian Bar on 'Right of Entry and the Henny Penny Principle: is the sky a-going to fall?' (25 June).
- **Ms Natalie James**, Workplace Relations Legal Group, DEEWR on 'The Fair Work Act: The first 12 months' (28 July).

Roundtables and Workshops

Forum on the Proposed Building and Construction Division of Fair Work Australia (26 February 2009)

The Centre held a Forum on the Proposed Building and Construction Division of Fair Work Australia at the Law School on Thursday 26 February 2009. The Forum was held at the request of the Honourable Murray Wilcox, who was conducting an Inquiry into the Proposed Building and Construction Division on behalf of the federal government. Justice Wilcox attended the Forum which was intended to assist him in preparing his final report.

Book Launch and Panel Discussion: 'Fair Work: the New Workplace Laws and the Work Choices Legacy' (6 May 2009)

On Wednesday 6 May 2009 the Centre hosted the launch for the newly published book by Federation Press - 'Fair Work: The New Workplace Laws and the Work Choices Legacy' edited by Anthony Forsyth and Andrew Stewart.

The book was launched by Commissioner Greg Smith AM (Australian Industrial Relations Commission), and was followed by a panel presentation and an opportunity for questions from the audience.

General Protections in the Fair Work Act and Anti-discrimination Workshop: Questions, Quirks and Quandaries (11 November 2009)

The Centre hosted a workshop on Wednesday 11 November which aimed to examine the interconnections between the new general protections provisions in the Fair Work Act 2009 (Cth) and longer standing anti-discrimination regimes at the federal and State levels. The focus was on both broader policy questions of the meaning of discrimination in the workplace relations context, and questions of practice to do with choice of jurisdiction and litigation strategy.

Significant Publications

Patmore, G, *'Choosing the Republic'*, University of New South Wales Press, Australia (2009)

Centre Working Paper Series

Anna Chapman edited the Centre Working Paper Series during 2009, overseeing the publication of three issues:

- **Fudge J and MacPhail F**, *The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour*, Centre for Employment and Labour Relations Law, The University of Melbourne, Working Paper No. 45, August 2009.
- **Chapman A**, *Employment Entitlements to Carer's Leave: Domesticating Diverse Subjectivities*, Centre for Employment and Labour Relations Law, The University of Melbourne, Working Paper No. 46, November 2009.
- **Andrades C**, *Intersections between 'General Protections' under the Fair Work Act 2009 (Cth) and Anti-Discrimination Law: Questions, Quirks and Quandaries*, Centre for Employment and Labour Relations Law, The University of Melbourne, Working Paper No. 47, December 2009.

Contact CELRL

The Centre's website can be accessed at:
<http://celrl.law.unimelb.edu.au>

The Centre can be contacted by email at:
law-celrl@unimelb.edu.au



The Centre for Islamic Law and Society (CILS) was established in 2005 and is now located in the Melbourne Law School at the University of Melbourne.

Given global events over the last few years, Islam and Islamic legal studies have received renewed attention. The Centre aims to facilitate and support Islam-related research and education projects across the University, particularly those related to contemporary Islamic legal issues. It also aims to improve Australian understandings of Islam, both within the University and throughout the wider community. The Centre has developed a focus on Islamic law issues in Southeast Asia, but this is not exclusive.

Aims

The specific aims of the CILS include:

- to create a global centre of excellence in the study of Islamic law and society at the University of Melbourne;
- to promote interdisciplinary approaches to contemporary Islamic thought at the University of Melbourne, with particular focus on areas such as law, human rights, pluralism, interreligious relations and causes of, and responses, to militant Islam;

- to attract researchers/specialists in the study of contemporary Islamic legal thought of the highest calibre to the University of Melbourne; and
- to function as a think-tank for issues related to Islam, law and Muslim societies, particularly in Southeast Asia.

Research Projects

CILS is associated with the following research projects:

- ARC Federation Fellowship: 'Islam and Modernity: Syari'ah, Terrorism and Governance in South-East Asia' (2006-2011) (Lindsey, T)
- Collier Charitable Fund Grant: 'Revealing Islam to a New Generation' (Lindsey, T)

Significant Publications 2008

- Crouch, M, 'Stretching the Scope of Special Autonomy in Aceh: The Controversial Qur'an Requirement for Election Candidates' (2009) 11 *Australian Journal of Asian Law* 135-158

- Butt, S and Lindsey, T, 'The People's Prosperity? Indonesian Constitutional Interpretation, Economic Reform, and Globalization' in J Gillespie and R Peerenboom (eds), *Regulation in Asia: Pushing Back on Globalization*, Routledge, United Kingdom (2009), 270-295

Briefing Paper Series

CILS publishes the *CILS Islamic Issues Briefing Paper* series, which is available in hard copy and on the CILS website.

Papers are also jointly published with the *Islam, Syari'ah and Governance Background Paper Series*, published by Tim Lindsey's ARC Federation Fellowship. The *Islam, Syari'ah and Governance Background Paper Series* seeks to provide a considered analysis of important issues relevant to Islam, syari'ah and governance in Southeast Asia.

Papers published in 2009 include:

- 'Politics, Criminal Justice and Islamisation in Aceh', Dr Arskal Salim
- 'Indonesia, Militant Islam and Ahmadiyah: Origins and Implications', Ms Melissa Crouch

Seminars

Islam Research Seminar Series

CILS Islam Research Seminar Series are informal lunchtime seminars and are often presented by postgraduate students.

Ms Melissa Crouch - '*Regulating Sacred Sites: Conflict at Places of Worship in Indonesia*'
(with Asian Law Centre)
(15 April 2009)

Ms Nur Hidayah - '*Gendering Islam or Islamizing Gender? a Case Study of Progressive Muslim Women's Organization in Indonesia*'
(with Asian Law Centre)
(29 April 2009)

Ms Dina Afrianty - '*Women's Movement in Aceh: Identity, Mobilization and Autonomy*'
(with Asian Law Centre)
(27 May 2009)

Professor Dr Mohammad Hashim Kamali - '*Reforming Islamic Law*'
(with National Centre of Excellence in Islamic Studies)
(15 July 2009)

Dr Arskal Salim - '*Politics and Islamisation in Aceh: An Update*' (with Indonesia Forum)
(18 August 2009)

Ms Farha Abdul Kadir Assegaf - '*Muslim Women in Radical Islamic Circles: The Case of Al-Mukmin Pesantren, Ngruki*' (with Asian Law Centre)
(26 August 2009)

Ms Helen Pausacker - '*Playboy on Trial: 'Pornography', The Law and the Islamic Defenders Front in Indonesia*'
(with Asian Law Centre)
(19 September 2009)

Mr Stewart Fenwick - '*Yusman roy and the Language of Devotion: 'Innovation' on Trial in Indonesia*'
(with Asian Law Centre)
(7 October 2009)

Associate Professor Andrew White - '*Reviving Islamic Traditions of Sulh for Resolving Islamic Finance Disputes*' (with Asian Law Centre)
(20 October 2009)

Mr Jeremy Kingsley - '*Weak State - Strong Communities? Tuan Guru, Tradition and Peace-Building in Lombok*' (with Asian Law Centre)
(28 October 2009)

Dr Minako Sakai - '*Growing Together in Partnership: Women's Views of the Business Practices of an Islamic Savings and Credit Cooperative*'
(with Asian Law Centre)
(24 November 2009)

Conferences

CILS hosts an annual national postgraduate conference on Islamic Studies, which is open to students from throughout Australia.

This conference aims to bring together postgraduate students around Australia who are researching topics relating to Islam, in the broadest sense. It provides students with a supportive, collegial atmosphere and

the opportunity to meet students with similar interests. Students benefit from feedback received from their peers and selected academic experts in the field.

The 5th annual Islamic Studies Postgraduate Conference was held on 23-25 November. In 2009, the conference was co-hosted by the National Centre of Excellence in Islamic Studies. *Associate Professor Michael Feener, Emeritus Professor Clive Kessler, Mr Robert Kingham, Dr Minako Sakai and Dr Sally White* attended as PhD mentors. 24 PhD students presented at the conference, from 9 universities around Australia.

Staff

Director:	Professor Tim Lindsey
Senior Associate:	Professor Abdullah Saeed
Manager:	Ms Kathryn Taylor
Senior Administrator:	Ms Jessica Cotton
Administrative Assistant:	Ms Kelly McDermott

Federation Fellowship PhD Scholars

Ms Melissa Crouch
Mr Jeremy Kingsley

Contact CILS

The Centre's website can be accessed at:
<http://www.cils.law.unimelb.edu.au>

The Centre can be contacted by email at:
cils-info@unimelb.edu.au

The Centre for Media and Communications Law (CMCL) is a centre for the research, discussion and teaching of all aspects of media and communications law and policy.

The CMCL:

- undertakes large scale research projects;
- holds public seminars about legal and regulatory developments;
- supports research visits from Australian and international academics, lawyers and policy makers; and
- supervises teaching and learning in media and communications law within the Melbourne Law School's teaching programs.

The CMCL has a team of Directors from the Law School, Associates drawn mainly from across the University of Melbourne, and Research Staff. It is assisted by an Advisory Board representing a wide variety of expertise in media and communications industries and legal practices, and receives support from the Melbourne Law School as well as external sponsors and research partners.

It is the editorial base for the *Media & Arts Law Review*, a leading refereed journal in the field.

Staff

During 2009, the Director was Professor Andrew Kenyon and the Deputy Director was Professor Megan Richardson. Bronwen Wolff was the Centre Administrator and Heng Leng Ang and Robin Wright were Research Fellows.

Visitors

Tanya Aplin - Lecturer, School of Law, Dr Kings College, London

Nicole Moreham - Senior Lecturer, Faculty of Law, Victoria University of Wellington, New Zealand

Brian Murchison - Professor, Law Faculty, Washington and Lee University School of Law, Lexington, Virginia

Steven Price - New Zealand Barrister

Current Research Projects

In 2009, staff associated with CMCL were involved in five major research projects and two research infrastructure projects:

- ARC Linkage Project - Cultural Collections, Creators and Copyright: Museums, Galleries, Libraries and Archives and Australia's Digital Heritage

- ARC Discovery Project - The Media and ASEAN Transitions: Defamation Law, Journalism and Public Debate in Indonesia, Malaysia and Singapore
- ARC Discovery Project - Amateur Hour: The Sociological Construction of Amateur Media
- ARC Discovery Project - Defamation and Privacy: Law, Media and Public Speech
- Joint Research Project - Telstra and University of Melbourne: Open for Business? China's Telecommunications Market and the WTO
- ARC Linkage Infrastructure Equipment and Facilities Project - The Australian Legal Scholarship Library: Enhancing Research Infrastructure for Australian Law
- ARC Linkage Infrastructure Equipment and Facilities Project - Australian Social Science Data Archive: Provision of Advanced Research Infrastructure and Collaborative Environment

Major Event

2009 CMCL Copyright Conference
Cultural Collections, Creators and Copyright: Museums, Galleries, Libraries and Archives and Australia's Digital Heritage
(23 October 2009, State Library of Victoria)

Keynote speaker:

- Terry Cutler - Cutler & Company

Other speakers and commentators:

- Robin Ayres - Arts Law Centre of Australia
- Paula Bray - Powerhouse Museum
- Donna Brett - Art Gallery of NSW
- Delia Browne - MCEETYA
- Shane Carmody - State Library of Victoria
- Andrew Christie - Melbourne Law School
- Fiona Gunn - National Film & Sound Archive
- Emily Hudson - Melbourne Law School
- Andrew Kenyon - Melbourne Law School
- Sally McCausland - Special Broadcasting Service
- Ian McDonald - Australia Copyright Council
- Derek Whitehead - Swinburne University of Technology
- Robin Wright - Swinburne University of Technology

CMCL Seminars

ISPs and the Authorisation of their Customers' Copyright Exploitations - An Industry/Academic Forum

Frank Rittman, Motion Picture Association, Asia Pacific Regional Legal Counsel; Jane Perrier, Telstra, General Counsel Intellectual Property; David Brennan,

Melbourne Law School, University of Melbourne; Kim Weatherall, TC Beirne School of Law, University of Queensland
(5 February 2009, Melbourne Law School, hosted by CMCL and IPRIA)

Privacy Case Law Implications for Contemporary Media Practices

Michael Rivette, Chancery Chambers, Melbourne; Professor Megan Richardson, Melbourne Law School; Karin Clark, Special Counsel, Allens Arthur Robinson
(25 February 2009, Melbourne Law School);

Michael Tilbury, Law Reform Commissioner of NSW
(26 February 2009, Allens Arthur Robinson, Sydney)

Exhibition Moot - Oxford IP Moot Team

Held before the Honourable Justice Heerey of the Federal Court, Professor Sam Ricketson and Warwick Rothnie. Student Participants - Henry Boylan, Mason Clarke-Jones and Caroline Wong
(10 March 2009, Melbourne Law School)

Internet Censorship and the Government's Proposed Filter Program

Professor Andrew Kenyon, CMCL, Melbourne Law School; Michael Malone, iiNet; Peter Eckersley, Electronic Frontier Foundation, San Francisco
(17 March 2009, Maddocks, Melbourne, hosted by CMCL & Maddocks)

'Landmarks in Australian Intellectual Property Law' Book Launch

Edited by Professor Andrew Kenyon, Melbourne Law School; Professor Megan Richardson, Melbourne Law School and Professor Sam Ricketson, Melbourne Law School. Launched by Dr Emmerson QC
(25 March 2009, Mallesons Stephen Jaques, Melbourne)

That IceTV is a Hard Case Making Bad Law - An Academics' Debate

David Lindsay, Monash University; David Brennan, Melbourne Law School; William van Caenegem, Bond University; Kim Weatherall, University of Queensland
(28 May 2009, Melbourne Law School and 29 May 2009, Baker & McKenzie)

Privacy Law Reform and the Media

Professor Michael Tilbury, Law Reform Commission of NSW; Gail Hambly, Group General Counsel, Fairfax; Anne Flahvin, Special Counsel, Baker & McKenzie
(9 September 2009, Baker & McKenzie, Sydney)

Will Freeing Parallel Imports Make Books Cheaper at the Cost of Authors?

Professor Allan Fels, chair of the Australian Competition and Consumer Commission (ACCC); Professor Rhonda Smith, Department of Economics, Melbourne University; Arlen Duke, Melbourne Law School; Graeme Connelly, CEO and Director of Melbourne University Bookshop; Professor Sam Ricketson, Melbourne Law School
(15 September 2009, Melbourne Law School, hosted by CMCL and IPRIA)

Piracy or Parody: Coming Through the Rye Still Banned in the USA?

Shaun Miller, Partner, Marshalls & Dent Lawyers; Colin Golvan SC, Victorian Bar and author on copyright, writers and law; Ken Gelder, Professor of English, School of Culture and Communications, University of Melbourne (8 October 2009, Melbourne Law School, hosted by CMCL and IPRIA)

Blogging and Media Law

Professor Brian Murchison, Washington and Lee University School of Law; Steven Price, New Zealand barrister and blogger (17 November 2009, Mallesons Stephen Jaques, Sydney and 18 November 2009, Melbourne Law School)

The Future of Breach of Confidence

Dr Tanya Aplin, Kings College London; Professor Michael Bryan, Melbourne Law School; Dr Nicole Moreham, Victoria University of Wellington; Professor Brian Murchison, Washington & Lee University School of Law; Michael Rivette, Chancery Chambers, Melbourne; Professor Michael Tilbury, Commissioner, New South Wales Law Reform Commission (2 December 2009, Melbourne Law School)

Media & Arts Law Review

The *Media & Arts Law Review* is a quarterly, refereed journal examining all areas of media and arts law, including: Communications, Contempt, Copyright, Cultural Heritage, Defamation, Digitisation,

Entertainment, Free Speech, IP, Journalism, Privacy, and the Public Interest.

The Review has a distinguished Editorial Board and publishes independently refereed articles, from Australian and international authors, as well as conference reports and book reviews. It also includes regular update reports about media and arts law developments from a team of International Contributing Editors. The updates offer a snapshot of matters such as case law, legislation, law reform, international conventions, and changes in industry self-regulation. Reports include the US, Canada, the UK, Africa, Hong Kong, the European Union, New Zealand and Australia.

The *Media & Arts Law Review* is published by Lexis Nexis. Articles published in 2009, Volume 14 included:

Lawrence McNamara, School of Law, University of Reading, *Closure, Caution and the Question of Chilling: How have Australian Counter-terrorism Laws Affected the Media?*

Megan Richardson, University of Melbourne; and David Tan, NUS Law School, National University of Singapore, *The Art of Retelling: Harry Potter and Copyright in a Fan-literature Era*

Sophia Christou, and Alana Maurushat, University of New South Wales, *'Waltzing Matilda' or 'Advance Australia Fair'? User-generated Content and Fair Dealing in Australian Copyright Law*

Dario Milo, University of Witwatersrand, Johannesburg, *Developments in South African Defamation Law: Reasonable in Publication, Public Interest, and Alternative Remedies*

Sally McCausland, Special Broadcasting Service, *Getting Public Broadcaster Archives Online: Orphan Works and Other Copyright Challenges of Clearing Old (but in Copyright) Cultural Material for Digital Use*

Marie McGonagle, National University of Ireland, Galway, *Defamation law in Europe: A Rapprochement between Reynolds and the ECHR*

Maira Paterson, Monash University, *Surveillance in Public Places and the Role of the Media: Achieving an Optimal Balance*

David Rolph, University of Sydney, *Showing Restraint: Interlocutory Injunctions in Defamation Cases*

Dan Meagher, Deakin University, *Investigating 'Indecent, Obscene or Pornographic' Art: Lessons from the Bill Henson Controversy*

Contact CMCL

The Centre's website can be accessed at: <http://www.law.unimelb.edu.au/cmcl>

The Centre can be contacted by email at: law-cmcl@unimelb.edu.au

About the Centre

The Centre for Resources, Energy and Environmental Law (CREEL) has experienced a resurgence of activity in 2009 consistent with growing attention to issues of resources regulation, energy and environmental sustainability. In 2009 Centre staff contributed a number of submissions to government bodies on environmental policy and law reform, as the pace of legal change in these fields accelerated. In concert, the scope of research being conducted expanded with several doctoral students becoming affiliated with the Centre. Emerging research areas within the Centre include the intersections between energy and climate change regulation, renewable technology regulation, environmental taxation and fiscal instruments, and interdisciplinary climate change governance. Long-standing research continues in environmental law and governance, adaptive water law and management and the regulation of resources and mining in federal systems and in indigenous interests in land and resources.

Overall, CREEL aims to promote research, teaching and publication that engages with laws related to:

- production and distribution of energy;
- sustainable development of natural resources;
- protection of the environment;
- planning for urban areas; and

- Indigenous peoples' rights and interests in land and resources.

CREEL oversees the Diploma of Energy and Natural Resources in the Melbourne Law Masters and in 2009 the teaching program expanded with several new subjects such as climate change law being offered.

Centre Activities and Linkages

CREEL consolidated links with the legal profession, multidisciplinary researchers and cognate international law schools. CREEL has established strong links with University of Melbourne researchers in the energy, resources and environmental fields with the Centre Director serving on the Board of Management for the Melbourne Sustainable Society Institute and as Associate Director for the Office for Environmental Programs. Indeed, interdisciplinary research is a particular strength of Centre researchers with several interdisciplinary workshops being conducted under the auspices of CREEL in 2009.

The Centre also has strong linkages with international legal researchers in energy and environmental law, including the Academic Advisory Group (SEERIL) for the International Bar Association and the Environmental Law Commission for IUCN. Melbourne Law School joined the

IUCN Academy of Environmental Law at the University of Ottawa Canada in 2009. This group is a coalition of law schools around the globe that teach environmental law. The Centre Director spent several weeks on research leave at the IUCN Academy in October 2009.

In late 2009 CREEL became associated with the National Climate Change Adaptation Research Facility for Water Governance.

Research Activities

Lee Godden and **Jacqueline Peel** commenced research on the Australian Research Council Discovery project, 'Responding to Climate Change: Australia's Environmental Law and Regulatory Framework'. The project is funded from 2009-2011.

Jacqueline Peel conducted research in the western USA and Australia under a United States Studies Centre Research Grant, entitled 'Californian Climate Change Law - Lessons for Australia'.

Margaret Young's article, 'Fragmentation or Interaction: The WTO, Fisheries Subsidies and International Law' *World Trade Review* 8 (4): p.477-515 (2009), addresses the perverse economic incentives that currently lead to too many boats catching too few fish world-wide. She examines the possibility of joint ecological and

trade solutions and argues that the resulting interaction between trade and environmental legal regimes has important lessons for international law.

Lee Godden and **Maureen Tehan** finalised an edited collection *Sustainable Futures Comparative Perspectives on Communal Lands and Individual Ownership*, London: Routledge (forthcoming in 2010).

Maureen Tehan, **Miranda Stewart** and **Lee Godden** were part of a team of researchers awarded an ARC Linkage Project 2009-2012 titled 'Poverty in the Midst of Plenty: Economic Empowerment, Wealth Creation and Institutional Reform for Sustainable Indigenous and Local Communities'.

Lee Godden and Mahala Gunther, (in association with other University researchers) were awarded University of Melbourne Social Justice Initiative funding for the project, 'Climate Change and International Intervention – Examining the Implications of Donor Based Organisations and Ecological Service Provision' (2009-2010).

In July 2009, **Dr Margaret Young** convened an international conference on *Regime Interaction in International Law: Theoretical and Practical Challenges* at the University of Cambridge.

Kirsty Gover's article 'Genealogy as Continuity: Explaining the Growing Tribal Preference for Descent Rules in Membership Governance in the United States', *American Indian Law Review*, 33(1): 243-309 (2009), looks at changes in the way United States tribes have

determined membership since the 1930s, with an emphasis on the increased tribal use of blood quantum rules.

Maureen Tehan's participation in the Land Titling Experts panel convened by the Forum of Federations and the First Nations Tax Commission (Canada) produced two papers: 'Land Titling Developments in Australia' *First Expert Advice Session: Land Title Reform and Economic Development in Canada: Forum of Federations*, February, Calgary, Canada (2009) and 'Commentary on Legislative Design, Institutional Framework and Intergovernmental Mechanisms for Creating First Nations' Land Title Certainty' *Second Expert Advice Session: Land Title Reform and Economic Development in Canada: Forum of Federations* September, Montreal, Canada (2009).

CREEL co-supported a *Special Edition of the Melbourne Journal of International Law Symposium — Climate Justice and International Environmental Law: Rethinking the North–South Divide*.

Lectures, Seminars and Workshops

Centre Director, Lee Godden presented her Inaugural Professorial lecture entitled, '*Death, Desire, Sin, Redemption: Climate Change and the Rationality of Law*' on 4 November 2009.

CREEL was very pleased to have the leader of the Australian Greens, Senator Bob Brown, launching Samuel Alexander's book *Voluntary Simplicity: The Poetic Alternative to Consumer Culture*, Whanganui, New Zealand: Stead & Daughters Ltd.

Senator Bob Brown also spoke to the LLB Environmental Law class and some members of CREEL about his experiences during the Wielangta case in the public lecture, 'Brown v Forestry Tasmania'.

CREEL and the Office for Environmental Programs presented the lunchtime seminar '*Breeding Asian Tigers: The Shifting Regulation of Wildlife Trade in South-East Asia*' by Chris Turton of TRAFFIC, an international wildlife trade monitoring organisation established as a joint project of WWF and the IUCN.

Lee Godden and Sam Kirk (PhD), presented papers at the conference *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges*, 16-18 April, 2009, The University of Auckland. This conference brought together international researchers on the theme of property law's contribution to sustainability.

A workshop on Systemic and Adaptive Water Governance was held in December 2009 and was to progress work begun by CREEL and UniWater (Melbourne and Monash University joint initiative) on a systemic and adaptive water governance research program. This research has culminated in leadership of the governance theme of the Adaptation Research Network for Water, National Climate Change Adaptation Research Facility (NCCARF). Speakers included:

- Peter Morison: Urban water governance – current imperatives
- Paul Sinclair: An NGO assessment of the status of Australia's water governance

- Henry Atkinson: Indigenous perspectives on water governance
- Patricia Geraghty: CMA level perspective – future needs for water governance
- Barry Hart: Constraints and possibilities for systemic and adaptive governance

Lee Godden and Anita Foerster, 2009, 'Climate Change and Water Law Prospects for Adaptive Governance', Workshop on Systemic and Adaptive Water Governance, Monday 14th December, Melbourne Law School, University of Melbourne. This paper drew in particular on the PhD research work of Anita Foerster.

Under the auspice of the ARC Linkage project *The Implementation of Agreements and Treaties with Indigenous and Local Peoples in Postcolonial States*, Centre members Lee Godden and Maureen Tehan co-convoked and presented at a specialist workshop on *The Problem with s223 of the Native Title Act 1993*. The workshop brought together, judges, practising lawyers and anthropologists, academics and leading Indigenous thinkers to explore the issues and propose reforms to the Act.

Lee Godden chaired a session on climate change and the future of the suburb at the University of Melbourne's *Festival of Ideas* in July 2009.

PhD Students

Samuel Alexander
 Danny Edgar
 Anita Foerster
 Yoriko Otomo

Takele Bulto
 George Kailis
 Angus Frith
 Virginie Tassin

Completions

Anita Foerster submitted her thesis, *'Law, Policy and Practice for Ecologically Sustainable Water Allocation and Management? An analysis of institutional developments to provide for environmental water needs in the Murray-Darling Basin (NSW and Victoria), 1994-2008'*, co-supervised by Professor Lee Godden and Associate Professor Jacqueline Peel, in December, 2009, just weeks ahead of the arrival of her third daughter! The thesis was very well received by examiners.

Danny Edgar successfully completed his Doctoral thesis on *'Indigenous Right to Self-determination and the 'State' in the Northern Territory'*. The thesis was co-supervised by Professor Marcia Langton and Associate Professor Maureen Tehan.

Visiting Scholars

CREEL sponsored Dr Shaunnagh Dorsett, Reader from the Faculty of Law, The University of Wellington to visit the Melbourne Law School. Shaunnagh Dorsett and Lee Godden collaborated on research into natural resources law with a focus on customary law and governance in offshore areas. Shaunnagh Dorsett and Shaun McVeigh collaborated on a book considering Jurisdiction and the Forms of Law examining the conceptual and institutional formation of contemporary jurisdictional thought.

Submissions

CREEL has a special interest in impacting on policy development in the area of resources, energy and environmental law and the rights of Indigenous peoples. CREEL members engaged strongly with legal development and law reform with submissions in the following areas:

Godden, L, *'Submission to the Senate Standing Committee on Environment, Communications and the Arts: Inquiry into Water Licences and Rights'*
 16 October 2009

Godden, L, Kallies, A. and Godden, C, *'Submission to the EPBC Act Review Panel Interim Report'*,
 7 August 2009

Godden, L, Peel, J, Kallies, A and Power, M, *'Comments on the Exposure Draft of the Carbon Pollution Reduction Bill 2009'*, 14 April 2009.

Godden, L, Peel, J and Kallies, A, '*Submission to the Senate Select Committee Enquiry on Climate Change*', 8 April 2009.

Godden, L, Tehan, M, Frith, A and Birrell, K, '*Submission to the Department of the Environment, Water, Heritage and the Art on Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*' Discussion Paper (Proposed Amendments).

Godden, L, Stewart, M, Tehan, M, and Langton, M, '*Submission to Department Of Families, Housing, Community Services and Indigenous Affairs on Discussion Paper Optimising Benefits From Native Title Agreements*'.

Knowledge Transfer Activities

Miranda Stewart and Maureen Tehan's research '*Harnessing Legal Resources for Indigenous Empowerment*' received a grant from the University to work with Native Title Services Victoria to develop a partnership for a) student internships and b) professional development for staff and Board members.

Maureen Tehan was an Expert Consultant Reviewer for a Comparative Literature Review of Aboriginal Heritage Act 2006 (Vic).

Godden, L, '*Water Crisis and Climate Change*', Melbourne City Council Public Lecture Series, BMW Edge, Federation Square, Melbourne, Thursday 19

February 2009 (invited presentation). Video available online at:

<http://www.themonthly.com.au/water-crisis-what-will-it-mean-you-melbourne-conversations-event-p2-1482>

Miranda Stewart, Consultant with Professor Gavin Wood of RMIT-AHURI (Australian Housing and Urban Research Institute) (economist) and Dr Rachel Ong (Curtin University) (economist), Housing Taxation and Transfers, Report commissioned by the Henry Review (Australian Treasury) on the tax law and economic policy of housing in Australia's tax-transfer system (final report delivered October 2009 has not yet been released).

Miranda Stewart, Consultant (with KPMG), Northern Territory Government Department of Business Economic and Regional Development, Review of Tax Incentives and Other Mechanisms for Stimulating Investment and Economic Activity on Aboriginal Land (report has not yet been released).

Climate Law Blog

Jacqueline Peel has established a climate change law blog. To access the blog please follow this link:

http://blogs.unimelb.edu.au/peel_climatechange/

Contact CREEL

The Centre's website can be accessed at:
<http://www.creel.law.unimelb.edu.au>

The Centre can be contacted by email at:
law-creel@unimelb.edu.au



The Institute for International Law and the Humanities (IILAH) is dedicated to integrating the study of international law with contemporary approaches to the humanities. It facilitates and promotes innovative scholarship and critical thinking on emerging questions of international law, governance and justice, and strengthens the role of Melbourne Law School as a leading centre of research in this area.

Aims and Objectives

IILAH supports interdisciplinary scholarship on emerging questions of international law, governance and justice. Many of the significant modes of thought that have framed the way in which international lawyers understand the world have developed in conversation with the humanities. IILAH continues this engagement, through fostering dialogue with scholars working in disciplines such as anthropology, cultural studies, geography, history, linguistics, literature, philosophy, politics and theology.

IILAH focuses on encouraging the work of younger scholars and those developing new approaches to the field of international law, and facilitates engagement between scholars and the community of professionals and activists working on issues of international law and governance. It has developed networks with scholars in international law and the humanities from Canada,

Colombia, Egypt, Finland, France, India, New Zealand, South Africa, Sweden, the United Kingdom and the United States. IILAH is currently focusing on developing links with scholars in the global South, in order to explore the shared legal legacies of colonialism.

IILAH hosts visits of distinguished and emerging international scholars; organises conferences, public lectures, workshops and reading groups; supervises and supports the work of graduate research students; and undertakes and facilitates collaborative and interdisciplinary research projects both within the University of Melbourne and internationally.

IILAH Research Programmes

The activities of the Institute are currently organised around eleven key research programmes. The programmes build on the breadth of research expertise and interest amongst the faculty at Melbourne Law School, and represent areas of dynamic development and change in the fields of international and transnational law.

Comparative Tribal Constitutionalism

Programme Director: Dr Kirsty Gover

Fragmentation and Regime Interaction in International Law

Programme Director: Dr Margaret Young

Global Trade

Programme Directors: Associate Professor Andrew Mitchell and Associate Professor Tania Voon

Histories of International Law and Empire

Programme Director: Professor Anne Orford

International Criminal Justice

Programme Director: Associate Professor Peter Rush

International Environmental Law

Programme Director: Associate Professor Jacqueline Peel

International Human Rights Law

Programme Director: Professor Dianne Otto

International Investment Law

Programme Director: Mr Jürgen Kurtz

International Refugee Law

Programme Director: Dr Michelle Foster

Jurisdictions of the South

Programme Director: Associate Professor Shaun McVeigh

Law and Development

Programme Director: Associate Professor Sundhya Pahuja

Peace and Security in International Law

Programme Director: Professor Anne Orford

IILAH Research Students

The following research students were affiliated with IILAH during 2009.

Olivia Barr

Geographies of Jurisdiction: Aboriginal Sovereignty and the Common Law in Australia

Supervisors: Dr Jennifer Beard and Associate Professor Maureen Tehan

Megan Brodie

Agents of Change: What Power Do National Human Rights Institutions Have to Affect the Process of Transformative Social Change?

Supervisors: Professor Dianne Otto, Dr John Chesterman (external) and Professor Brian Burdekin (external)

Takele Soboka Bulto

The Imperatives of Extraterritorial Application of the Human Right to Water: A Case Study of the Nile Basin

Supervisors: Associate Professor Carolyn Evans and Associate Professor Jacqueline Peel

Luis Eslava

The Spatial Dimensions of Law and Development: Transforming Sovereignty, State and Citizenship

Supervisors: Dr Jenny Beard and Professor Anne Orford

Carolyn Graydon

Domestic Violence in Timor-Leste: Is There a Place for Indigenous Justice Systems?

Supervisors: Professor Tim Lindsey and Professor Dianne Otto

Lia Kent

Exploring Expectations of Transitional Justice in Timor Leste

Supervisors: Professor Dianne Otto, Dr Jennifer Balint (external) and Dr Julie Evans (external)

Eve Lester

Making Migration Law Work in Australia: Paradoxes and Prospects

Supervisors: Dr Jenny Beard and Associate Professor Shaun McVeigh

Daniel Muriu

Recognition, Redistribution and Resistance: The Legalisation of the Right to Health and its Potential and Limits in Africa

Supervisors: Professor Anne Orford and Dr Jenny Beard

Yoriko Otomo

Unconditional Life: The Time and Technics of International Law

Supervisors: Professor Anne Orford and Dr Jenny Beard

Mickaël Ho Foui Sang

Law and the Protection of Historical Truth: A Comparative Study of Legal Responses to Situations of Political Injustices

Supervisor: Professor Anne Orford

(This project is being conducted under a Cotutelle agreement with the University of Paris X)

Olivera Simic

Gender Based Violence and Human Rights Violations Committed by UN Peacekeepers

Supervisors: Professor Dianne Otto and Dr Michelle Foster

Deborah Whitehall

Cosmopolitan Justice and Constitutional Dialogues with International Human Rights

Supervisors: Professor Anne Orford and Dr Ann Genovese

The following two students completed their doctoral theses in 2009.

Edward Mussawir

Jurisdiction: The Expression and Representation of Law

Supervisors: Associate Professor Peter Rush and Professor Anne Orford

John Tobin

Children's Right to Health: Seeking Clarity in the Content of Article 24 of the UN Convention on the Rights of the Child

Supervisors: Professor Anne Orford and Professor Philip Alston (external)

Research Activities

IILAH hosted a wide range of events in 2009.

21 January 2009: IILAH Seminar, The Regulation of Female Nudity in Public Spaces: Why are Breasts Such a Threat?, presented by Ms Chantal Morton (Osgoode Hall Law School)

(Convenors: Associate Professor Andrew Mitchell and Associate Professor Tania Voon)

24 February 2009: PhD Completion Seminar, Hosted by IILAH, Recognition, Redistribution and Resistance: Assessing the Usefulness of the Right to Health in Sub-Saharan Africa, presented by Mr Daniel Muriu (Melbourne Law School)
(Convenor: Professor Anne Orford)

17 March 2009: IILAH Seminar, WTO Dispute Settlement: Recent Australian Experience, presented by Ms Amanda Gorley (DFAT)
(Convenors: Associate Professor Andrew Mitchell and Associate Professor Tania Voon)

25 March 2009: IILAH Seminar, State Building and International Law: Problems, Paradigms and Prospects, presented by Professor Antony Anghie (University of Utah) (Convenor: Professor Dianne Otto)

2 April 2009: IILAH Seminar, Safety standards and indigenous products: what role for traditional knowledge?, presented by Ms Meredith Kolsky Lewis (Victoria University of Wellington Law School)
(Convenors: Associate Professor Andrew Mitchell and Associate Professor Tania Voon)

29 April 2009: IILAH Seminar, Situational Gravity Under the Rome Statute, presented by Mr Kevin Jon Heller (Melbourne Law School)
(Convenor: Professor Anne Orford)

3 June 2009: IILAH Seminar, Transnational Law and Transnational Legal Pluralism: Methodological Observations, presented by Professor Peer Zumbansen (Osgoode Hall Law School, York University)
(Convenor: Professor Anne Orford)

26-27 June 2009: Regime Interaction in International Law: Theoretical and Practical Challenges, (Lauterpacht Centre for International Law and Pembroke College, Cambridge) (Convenor: Dr Margaret Young)

15 July 2009: IILAH Seminar, International Law and Translation: Overcoming Legal Pluralism and Linguistic Diversity, presented by Ms Sieglinde E. Pommer (Harvard Law School)
(Convenor: Professor Anne Orford)

22 July 2009: IILAH Workshop, National Human Rights Institutions Workshop: Creating change? NHRIs' (In) Action in the Asia-Pacific Region
(Convenors: Professor Dianne Otto and Ms Megan Brodie)

28 July 2009: IILAH Seminar, From Security Council Resolution 1325 to 1820, presented by Ms Gina Heathcote (School of Oriental and African Studies, University of London)
(Convenor: Professor Anne Orford)

5 August 2009 and 9 September 2009: Global Justice Centre and IILAH Film Nights screened at the Melbourne Law School
(Convenors: Professor Anne Orford and Professor Gerry Simpson)

10 August 2009: Asian Law Centre and IILAH, Enforcement Problem in the WTO - Success, Limitations and possible Improvement, presented by Professor Yasuhei Taniguchi (Sydney Law School)
(Convenors: Professor Anne Orford and Ms Stacey Steele)

17 August 2009: The Role of the WTO in Protecting the Global Commons - is there scope for Unilateral Environmental Measures?, presented by Ms Jo Feldman (Office of International Law, Attorney-General's Department) (Convenor: Dr Margaret Young)

20 August 2009: IILAH Public Seminar, Multilateralism as Terror: International Law, Haiti and Imperialism, presented by Dr China Miéville
(Convenor: Professor Anne Orford)

7 September 2009: IILAH Workshop, The Court as Archive Project Workshop, Melbourne Law School
(Convenor: Dr Ann Genovese)

28 October 2009: IILAH Symposium, Interregnums: Between the National and the Post-National, Melbourne Law School (Convenor: Dr Ann Genovese)

9-10 November 2009: IILAH/ARC Workshop, Reasons of State: Security, Civility, Immunity, Life, Melbourne Law School (Convenor: Professor Anne Orford)

19 November 2009: IILAH/CCCS Seminar, Women's Autonomy: Religion on Trial, presented by Professor Frances Raday
(Convenors: Associate Professor Carolyn Evans and Professor Dianne Otto)

11-12 December 2009: CERDIN/IILAH Workshop, Evaluating Critical Approaches to International Law, Université Paris I (Panthéon-Sorbonne)
(Convenors: Professor Emmanuelle Jouannet (CERDIN) and Professor Anne Orford (IILAH))

Staff

The Director of the Centre is Professor Anne Orford. Other academic staff associated with the Centre are Dr Michelle Foster, Dr Kirsty Gover, Mr Jurgen Kurtz, Associate Professor Shaun McVeigh, Associate Professor Andrew Mitchell, Professor Dianne Otto, Associate Professor Sundhya Pahuja, Associate Professor Jacqueline Peel, Associate Professor Peter Rush, Associate Professor Tania Voon and Dr Margaret Young.

The Centre Administrator is Vesna Stefanovski.

Contact iLLaH

The Centre's website can be accessed at:
<http://www.iilah.law.unimelb.edu.au>

The Centre can be contacted by email at:
law-iilah@unimelb.edu.au



Established in 2002, IPRIA is one of the world's few, and Australia's only, multidisciplinary research organisation specialising in research on the law, economics and management of intellectual property. The Institute was established with the broad aim of increasing the understanding, creation, use and exploitation of intellectual property by Australian organisations and individuals. It is based at the University of Melbourne, comprising directors and staff from the Melbourne Law School, the Faculty of Economics and Commerce, and the Melbourne Business School. Professor Megan Richardson assumed the role of Associate Director (Law) in January 2009.

IPRIA aims to produce world-class information and analysis on the operation and impact of intellectual property (IP) systems. IPRIA's activities aim to:

- support and generate development of **high-level public policy** in relation to intellectual property issues;
- improve the **protection, management and exploitation** of intellectual property by all Australian stakeholders, including research institutions, public and private sector interests; and
- help create an **informed environment** for, and contribute to, **on-going public debate** in Australia about intellectual property issues and related matters, including innovation policy and economic growth.

Selection of Research Projects undertaken by IPRIA Staff in the Law School

- Harmonisation of Patent Examination in Australia, US and Europe
- Comparative Examination of Opposition Processes in Patent Law
- Employee Rights to the Benefits of their Innovation
- Drug Companies, their Patenting Strategies and High-Cost Pharmaceuticals
- Amateur Hours: The Socio-Legal Construction of Amateur Media

Events

Seminars

'Ambus Marketing'

Dr Owen Morgan (Senior Lecturer, University of Auckland Business School), Ms Emily Hudson (PhD Candidate, University of Melbourne) and Mr Malcolm McBratney (Partner, McCullough Robertson Lawyers), June 2009, Sydney, Brisbane and Melbourne)

'That *IceTV* is a Hard Case Making Bad Law' - An Academics' Debate'

Dr David Lindsay (Faculty of Law, Monash University), Associate Professor David Brennan (Melbourne Law School, University of Melbourne), Professor William van Caenegem (Faculty of Law, Bond University) and Ms Kimberlee Weatherall (TC Beirne School of Law, The University of Queensland), May 2009, Melbourne and Sydney

'Should Genes be Patented?' - Public Forum and Panel Discussion

Professor Joshua Gans (Professor of Management - Information Economics, Melbourne Business School, University of Melbourne), Dr Chris Dent (Senior Research Fellow, IPRIA), Dr Kwanghui Lim (Senior Lecturer in Strategic Management, Melbourne Business School and Associate Director IMBS, IPRIA), Dr Gillian Mitchell (Head of Familial Cancer Centre, Peter MacCallum Cancer Centre, Melbourne), Professor Gregory Mandel (Visiting Professor, Temple University Law School), Professor Dianne Nichol (University of Tasmania, Faculty of Law) and Professor Dan Peled (Economist, Haifa University, Israel), 24 April 2009, Melbourne

'Seminar: Unauthorised Sequels'

Professor Megan Richardson (Chair), Shaun Miller, Colin Golvan and Ken Gelder, 8 October 2009, Melbourne

'UWA vs Gray'

Professor Ann Monotti (Monash University, Paul Greenfield (Brisbane), Ivan Mellado (Melbourne) and Mike Finney (KCA - Perth), November 2009, Melbourne, Brisbane and Perth

'Do the Most Legally Secure Trade Marks Make Good Brands'

Dr Don O'Sullivan (IPRIA), Professor Janice Luck (Melbourne Law School, University of Melbourne), Trevor Stevens (DCC/IPTA), December 2009, Melbourne, Sydney and Brisbane

Significant Publications

Books

Kenyon A., Richardson, M and Ricketson, S, *Landmarks in Australian Intellectual Property Law*, Cambridge University Press, Australia (2009)

Book Chapters

Richardson, M and Bosland, J, 'Copyright and the New Street Literature' in C Arup and W van Caenegem (eds), *Intellectual Property Policy Reform: Fostering Innovation and Development*, Edward Elgar Publishing, United Kingdom (2009), 199-217

Refereed Journal Articles

Dent, C, 'Generally Inconvenient': The 1624 Statute of Monopolies as Political Compromise' (2009) 33 *Melbourne University Law Review* 415-453

Dent, C, 'Not All Practices Are Equal: An Exploration of Discourses, Governmentality and Scale Free Networks' (2009) 19 *Social Semiotics* 345-361

Dent, C, 'Copyright, Governmentality and Problematisation: An Exploration' (2009) 18 *Griffith Law Review* 129-150

Dent, C, Hall, E and Christie, A, 'For the Health of the Economy and Patent System: Rationale and Scope of Patent Attorney Privilege' (2009) 4 *Journal of Intellectual Property Law and Practice* 23-32

Hall, E, Dent, C and Christie, A., 'Patent Attorney Privilege in Australia: Options for Reform' (2009) 20 *Australian Intellectual Property Journal* 178-193

Richardson, M, 'Patents and Exhibitions' (2009) 12 *The Journal of World Intellectual Property* 402-421

Richardson, M and Tan, D, 'The Art of Retelling: Harry Potter and Copyright in a Fan-literature Era' (2009) 14 *Media and Arts Law Review* 31-45

Rotstein, F and Dent, C, 'Third Party Challenges in Europe, the United States and Australia: A Comparative Analysis' (2009) 12 *Journal of World Intellectual Property* 467-499

Contact IPRIA

The Centre's website can be accessed at:
<http://www.ipria.org>



The Obligations Group at Melbourne Law School supports research and scholarly discourse on the law of obligations, which includes the law of contract, tort, unjust enrichment and restitution, equity and trusts, property, remedies and private law theory. The group provides a forum for academic discussion of these topics and facilitates interaction between academics and practitioners on issues of current interest.

The Directors of the Obligations Group are Professor Andrew Robertson and Associate Professor Elise Bant.

Conferences and Seminars

February

27 February 2009: Mistaken Gifts presented by Dr Birke Haecker, Lecturer at Ludwig-Maximilians-Universität München, Germany

April

29 April 2009: Andrew Burrows (QC) (Hons) FBA, Norton Rose Professor of Commercial Law at the University of Oxford and Fellow of St Hugh's College Oxford, was guest speaker at an 'Unjust Enrichment and Restitution' 'round table' for academics and practitioners at MLS.

August

6 August 2009: Policy Arguments for Proprietary Restitution presented by Mr William Swadling, Senior Fellow, Brasenose College, Reader in Property Law and CUF Lecturer in Law at the University of Oxford.

October

9 October 2009: Loss of Chance in Medical Negligence presented by Professor Harold Luntz, Emeritus Professor, Melbourne Law School.

November

23 November 2009: Internationalisation or isolation: The Australian Cul De Sac? The Case of Contract Law presented by Justice Finn, Federal Court of Australia.

26 November 2009: Book launch by the Honourable Justice Kenneth Hayne, High Court of Australia:

- *The Change of Position Defence*, by Associate Professor Elise Bant; and
- *The Goals of Private Law*, edited by Professor Andrew Robertson and Associate Professor Tang Hang Wu.

December

11 December 2009: Remedies Conference; a one day conference at the Melbourne Law School provided scholars from Australia and New Zealand with an opportunity to present work in progress and to facilitate a collegial discussion of issues related to teaching in this challenging field.

The presentations included:

David McLaughlan (Victoria University of Wellington): *'Remoteness Reinvented'*

Katy Barnett (Melbourne Law School): *'Substitutability and Disgorgement Damages in Contract'*

Joellen Riley (University of Sydney): *'Injunctions Enforcing Negative Covenants in Personal Service Contracts: A Critical Assessment of Contemporary Developments'*

Barry Allan (University of Otago): *'Class Actions and cy-près Remedies'*

Robyn Carroll (University of Western Australia) and **Normann Witzleb** (Monash University): *'Vindicating Plaintiffs or Vindicating Rights? Towards Greater Recognition of Subjective Party Interests in the Selection of Remedies'*

Elise Bant (Melbourne Law School): *'Trusts, Powers and Liens: An Exercise in Ground-Clearing'*

Presentation sessions were chaired by Andrew Robertson, Michael Bryan and Matthew Harding of Melbourne Law School.

In addition to the presentations, a morning session was devoted to a roundtable discussion of research and publications issues in Remedies, facilitated by a panel of Michael Bryan (Melbourne Law School), David McLauchlan (Victoria University of Wellington) and Andrew Robertson (Melbourne Law School).

The afternoon session contained a roundtable session on teaching issues in Remedies chaired by Michael Tilbury (then NSW Law Reform Commissioner, now at Hong Kong University) and led by Jeff Berryman (University of Windsor, Canada).

The conference lunch was sponsored by Thomson Reuters.

Vistors

In addition to the guest speakers listed above, the Obligations Group held a number of informal lunchtime sessions at which visitors were welcomed to the Law School and legal issues of mutual interest were discussed. These additional sessions included:

15 June 2009: Dr Michael Rush, Barrister, Victorian Bar and Visiting Fellow, Melbourne Law School.

30 July 2009: Michael Tilbury, then a Commissioner of the New South Wales Law Reform Commission (now Professor of Law at Hong Kong University)

11 September 2009: The Honourable Keith Mason AC QC, Visiting Professorial Fellow and UNSW and former President of the New South Wales Court of Appeal

Other Research Activities / Projects performed by Centre Staff

Consumer Law

Jeannie Paterson, 'Contracting in the Age of the Digital Native: E-information for E-Consumers' (work in progress)

Contract Law

Jeannie Paterson, 'Contracting in the Age of the Digital Native: E-information for E-Consumers' (work in progress)

Equity and Trusts

Elise Bant, 'Restitution of rights and value in unjust enrichment: lessons from rescission'

Elise Bant, chapters on Equity, Trusts, Unjust Enrichment and Property for Portuguese comparative law collection (work in progress)

Private Law Theory

Andrew Robertson, 'Constraints on Policy Based Reasoning in Private Law' (ARC Discovery Grant 2009-2011)

Matthew Harding and **Ian Malkin**, 'Overruling in the High Court of Australia: Theory and Practice' (work in progress)

Property

Matthew Harding, 'Property, Contract and the Forged Registered Mortgage' (work in progress)

Remedies

Elise Bant, Chapter on Restitution and Disgorgement in Tilbury's Remedies: Commentary and Materials (5th ed) (forthcoming)

Tort

Andrew Robertson and **Ian Malkin**, 'Policy Considerations and the Law of Negligence'

Unjust Enrichment and Restitution

Elise Bant, 'Restitution of rights and value in unjust enrichment: lessons from rescission' (work in progress)

Elise Bant, chapter on Restitution and Disgorgement in Tilbury's Remedies: Commentary and Materials (5th ed) (work in progress)

Elise Bant, article on the change of position defence and public authorities (work in progress)

Staff

Associate Professor Elise Bant (Co-director)
Professor Andrew Robertson (Co-director)
Mr Matthew Bell
Associate Professor David Brennan
Professor Michael Bryan
Professor Michael Crommelin AO
Mr Arlen Duke
Mr Andrew Godwin
Mr Matthew Harding
Associate Professor Cally Jordan
Associate Professor Ian Malkin
Professor Ian Ramsay

PhD Student

Katy Barnett

Contact the Obligations Group

The Obligations Group website can be accessed at:
www.obligations.law.unimelb.edu.au



The Tax Group at Melbourne Law School is a focal point for excellence in tax research and education. Members of the Tax Group carry out a range of tax research projects with a technical and a policy focus and contribute actively to public debate on tax reform. The Tax Group brings together academic faculty and experienced tax professionals including members of leading law and accounting firms and leading members of the Tax Bar, to provide a comprehensive and detailed Tax Masters degree program.

Activities of the Tax Group include:

- academic research into tax law and policy;
- offering a diverse range of more than 20 advanced tax subjects in the Melbourne Law Masters as well as teaching tax law in the Melbourne LLB, JD and B.Comm degrees; and providing additional training programs and seminars to government officials in Australia and overseas;
- organising significant workshops, seminars and lectures on tax policy and law; and
- developing and maintaining relationships with leading tax academics and centres of tax research and teaching, including the Oxford University Centre for Business Taxation; the Institute for Tax Law and Policy Research at Monash University; and leading US institutions including the University of Michigan Law School

and the University of Florida Levin College of Law.

Research Projects

Tax group members are currently working on the following significant research projects, many of which are collaborative and interdisciplinary in nature and both build on and contribute to professional work carried out by members of the Group. Key research projects of the Tax Group included projects on employee share ownership; tax reform and international tax rules in a globalized world; and the taxation of housing.

Employee Share Ownership

Associate Professor Ann O'Connell continued work with Professor Ian Ramsay of the Centre for Corporate Law and Securities Regulation and Professor Richard Mitchell (Monash University) on a 3 year ARC-funded research project, 'Employee share ownership: current practice and regulatory reform'. In 2009, the project focused on the use of employee share plans by listed and unlisted entities and on why employees participate in plans. Ann O'Connell gave evidence to the Senate Economics References Committee on employee share scheme tax reform, gave a number of industry presentations and produced a number of publications as well as a major report on a survey of listed entities.

Tax Policy for Housing

Associate Professor Miranda Stewart prepared a major research report on tax policy for housing in Australia with Professor Gavin Wood (RMIT) and Dr Rachel Ong (Curtin) in a consultancy for the Henry Tax Review. This report fed into further research by her on 'Housing Tax Expenditures: Rethinking Benchmarks and Policy Goals', presented at a comparative conference at Osgoode Hall Law School, Toronto, Canada. She also organized an interdisciplinary symposium on this topic with the Australian Tax Research Foundation; the papers will be published by the Australian Tax Research Foundation in a forthcoming edited book.

International Tax and Treaties

Dr Mike Kobetsky spent time visiting at the ANU College of Law during 2009 writing his book on the attribution of profits to branches of international enterprises under the OECD Model Tax Convention. Sunita Jogarajan commenced her doctoral research looking at the history of tax and trade treaties.

Grants

In 2009, members of the Tax Group were successful in obtaining a number of externally funded research grants which will lead to significant research work over the next 3 years.

ARC Discovery Project: *'Defining, Regulating and Taxing the Not-for-Profit Sector in Australia: Law and Policy for the 21st Century'*.

Ann O'Connell and Miranda Stewart together with colleague Dr Matthew Harding are undertaking research in relation to the not-for-profit sector. This project will consider the legal definition, regulation and taxation of the sector in Australia, drawing on consultation with the community and experience in comparable countries. This builds especially on previous work that Ann O'Connell has done on taxation of charities.

ARC Linkage Project: *'Indigenous Economic Development; Poverty in the midst of Plenty'*

Miranda Stewart was one of a collaborative and interdisciplinary team that won a large Linkage grant with industry partners including Rio Tinto, Santos and Woodside and the federal government department of Family and Community, Housing and Indigenous Affairs. The project will further develop work on native title and Indigenous economic development under the leadership of Professor Marcia Langton. Miranda Stewart will be working in particular on issues of tax and business for Indigenous communities including incentives to stimulate investment; local government finances and fiscal federalism; the link between resource taxation and community development; and budgeting in remote communities.

Melbourne-Oxford Collaborative Research Grant: *'Sham Transactions, Judicial and Statutory Anti-avoidance Rules and the Doctrine of Abuse of Rights in Australian and UK Tax Law'*

Miranda Stewart and Edwin Simpson of Oxford University Faculty of Law received the inaugural collaborative grant to research this topic over the next 2 years.

Selected Significant Publications in 2009

A full list of publications is detailed in the 'Published Research' section of this report. Selected publications by Tax Group members in 2009 include:

O'Connell, A, 'Employee Share Ownership in Unlisted Entities: Objectives, Current Practices and Regulatory Reform' (2009) 37 *Australian Business Law Review* 211-238

Landau, I, Mitchell, R, **O'Connell, A,** Ramsay, I and Marshall, S, 'Broad-based Employee Share Ownership in Australian Listed Companies: An Empirical Analysis' (2009) 37 *Australian Business Law Review* 412-433

Flynn, M and **Stewart, M,** *Death and Taxes: Tax-effective Estate Planning*, (3 ed), Thomson Reuters, Australia, 2009

Stewart, M, 'Tax' in I Freckleton SC and H Selby (eds), *Appealing to the Future: Justice Kirby and his Legacy* (2009) 797-815

Philipps, L and **Stewart, M,** 'Fiscal Transparency: Global Norms, Domestic Laws, and the Politics of Budgets' (2009) 34 *Brooklyn Journal of International Law* 797-859

Seminars/Workshops/Conferences

The Tax Group held a number of events in 2009 including the Annual Tax Lecture, conferences, seminars and a discussion group. In addition, Associate Professor Ann O'Connell organised, with Justice Tony Pagone, the inaugural Supreme Court Commercial Law conference. The conference was held in Banco Court and the topic was *'Current Issues in Commercial Law'*. Speakers included Allan Myers AO QC, Mark Moshinsky SC, Professor Ian Ramsay and Jon Webster.

Melbourne Law School Annual Tax Lecture

The Annual Tax Lecture series was launched by the Tax Group in 2005 with the purpose of placing the development of the tax law in its historical context, and to inform public debate on current tax issues.

In 2009, the Hon. Justice Tony Pagone, of the Supreme Court of Australia, presented a Lecture entitled "Tax Uncertainty". This Lecture is to be published at (2009) 33(3) *Melbourne University Law Review* (forthcoming). Previous Lecturers have included the Hon. Justice Michael Kirby of the High Court of Australia, Professor John Tiley of the University of Cambridge, Justice Young of the Federal Court of Australia and Mr Alan Myers QC.

Symposium on Housing and Tax Policy

In February, Associate Professor Miranda Stewart organised, in conjunction with the Australian Tax Research Foundation, a one day symposium on Housing and Taxation. The Symposium included leading international and Australian speakers, including taxation and housing industry practitioners and policy makers from law, economics, policy, and the private sector. Speakers discussed the timely issues of the impact of housing market volatility, the need for tax reform in the current fiscal climate and the effect of reform on house prices, the interaction of federal and state tax systems, and regulatory regimes on housing affordability and sustainable housing models.

IFA Seminars

The Tax Group also hosted four Melbourne branch meetings of the International Fiscal Association in 2009. Presenters were Mr Jock McCormack (Philips Fox), who presented on the topic of permanent establishments as the Australian Reporter to the IFA Congress in Vancouver, 2009; Mr Tony Frost of Greenwoods and Freehills, who spoke on the topic 'Foreign Exchange Issues in International Taxation'; the Hon. Justice Michelle Gordon of the Federal Court of Australia on the inaugural IFA Tax Jurists Conference which she attended in May 2009; and Professor Brian Arnold of Goodmans LLP, Canada, on the topic 'Treaty Interpretation'.

Tax Discussion Group

The Tax Group hosts a monthly Discussion Group, chaired by Justice Tony Pagone, a Professorial Fellow of the Law School. The Discussion Group provides a

forum for our nearly 30 adjunct and permanent faculty to engage with the Law School and discuss topical tax law developments in a collegial environment.

Knowledge Transfer, Presentations, Visiting Teaching, Consultancies, Seminars and

Members of the Tax Group participate in peak professional bodies, as Fellows of the Taxation Institute of Australia and members of the International Fiscal Association, in which they play a role in the development of tax law and policy. Ann O'Connell is Special Counsel to Allens Arthur Robinson; and a member of the Advisory Panel to the Board of Taxation. Miranda Stewart sits on the Law Council Tax Committee (Victoria) and was a consultant to the Henry Tax Review in 2009.

Members of the Tax Group were invited to present seminars to a range of institutions and organisations during 2009. Highlights include:

- **Mike Kobetsky** presented on 'Advanced Transfer Pricing' to the State Administration of Taxation officials at the Yangzhou Taxation Institute, Yangzhou, China (September 2009)
- **Mike Kobetsky** presented on 'Transfer Pricing: Principles and Practice' and 'Taxation of Business Profits of Permanent Establishment under Tax Treaties' at the Asian Development Bank Institute, Regional Tax Forum, Tokyo, Japan (November 2009)

- **Mike Kobetsky** presented on 'The OECD Transfer Pricing Guidelines and the OECD Model Tax Convention' to officials at the Chinese Taipei Ministry of Finance, Taipei, Chinese Taipei (December 2009)
- **Ann O'Connell** delivered a 5 day course to the ATO on Taxation of Superannuation in Brisbane (July 2009)
- **Sunita Jogarajan** presented on 'Tax Administration' to senior tax officials from the Tianjin and Guangdong Finance Bureaus (September 2009)
- **Sunita Jogarajan** presented on 'Tax and ASEAN Integration' at the 'Tax in ASEAN and China: Regional challenges and integration' conference held at the University of New South Wales (July 2009)
- **Miranda Stewart** was appointed the Australian Reporter by the International Fiscal Association (Australian Branch) on the subject of Death as a Taxable Event and its International Ramifications. She attended a meeting of all National Branch Reporters at the 2009 IFA Congress in Vancouver, Canada (September 2009)
- **Miranda Stewart** presented on gender and tax policy at an Onati Law and Society Workshop, Spain (May 2009).

Visitors to the Tax Group

The Law School hosted eminent tax scholars from around the world to teach in the Melbourne Law Masters program and carry out collaborative research. Visitors included:

- **Professor Brian Arnold**
Goodmans LLP, Canada
- **Professor David Rosenbloom**
New York University, United States
- **Professor Joel Slemrod**
University of Michigan
- **Professor John Tiley CBE**
Professor of Tax and a Fellow of Queens' College
University of Cambridge
- **Professor Alvin Warren**
Harvard Law School

Management and Staff

In 2009 the Director of the Tax Group was Associate Professor Miranda Stewart. Ms Tessa Dermody was the Coordinator. Ann O'Connell and Miranda Stewart are currently Co-Directors of the Tax Group.

The Tax Group's website can be accessed at:
www.tax.law.unimelb.edu.au

The Tax Group can be contacted by email at:
law-tax@unimelb.edu.au



A stack of books is shown, with a prominent red book in the foreground. The text 'JOURNALS, MAGAZINES & NEWSLETTERS' is overlaid on a white rectangular box at the bottom of the image. The background is a blurred stack of books in various colors like blue, yellow, and red. The text on the red book is partially visible, showing 'STRA' and 'A WORLD'.

JOURNALS, MAGAZINES & NEWSLETTERS

Faculty Edited Journals, Magazines & Newsletters in 2009

Refereed Journals

Australian Journal of Asian Law

The Australian Journal of Asian Law (Asian Law) is a forum of debate for scholars and professionals concerned with the laws and legal cultures of Asia. It aims for recognition as a leading medium for legal ideas in a region characterised by rapid growth and social change.

Asian Law publishes multi-disciplinary, historical and contemporary research and fieldwork in English, in the original language or in translation. In the Law School, it is edited by Professor Tim Lindsey, Director of the Asian Law Centre and Dr Amanda Whiting, Associate Director (Malaysia).

All contributions are peer-reviewed by two referees. The journal's advisory board includes leading Asian law scholars in a range of disciplines from Asia, Australia, Europe and America. *Asian Law* publishes one special thematic edition every year, the most recent being devoted to Islamic law (syariah).

Email: law-asianlawjournal@unimelb.edu.au

Company and Securities Law Journal

Company and Securities Law Journal, whose editor is Professor Geof Stapledon and general editor is Professor Robert Baxt (Professorial Associate of the University of Melbourne and a Partner at Freehills), commenced publication by the Law Book Company in 1983. Published eight times a year, it is the leading company law journal in Australasia. Professor Ian Ramsay is a member of the Editorial Board of the Journal.

Each issue of the Journal typically contains 2 or 3 articles, together with several casenotes and short 'comments' in specialist sections (including company law, directors' duties and corporate governance, takeovers and public securities, corporate insolvency, corporate finance, securities industry and managed investments, accounting, current developments (legal and administrative), and overseas notes for six jurisdictions). Students are encouraged to submit casenotes and comments for the specialist sections. Article-length pieces from students will also be published if they are of particularly high quality.

Media & Arts Law Review

The *Media & Arts Law Review* is a quarterly, refereed journal examining all areas of media and arts law, including: Communications, Contempt, Copyright, Cultural Heritage, Defamation, Digitisation, Entertainment, Free Speech, IP, Journalism, Privacy, and the Public Interest.

The Review has a distinguished Editorial Board and publishes independently refereed articles, from Australian and international authors, as well as conference reports and book reviews. It also includes regular update reports about media and arts law developments from a team of International Contributing Editors. The updates offer a snapshot of matters such as case law, legislation, law reform, international conventions, and changes in industry self-regulation. Reports include the US, Canada, the UK, Africa, Hong Kong, the European Union, New Zealand and Australia.

The *Media & Arts Law Review* is published by Lexis Nexis.

Website: <http://www.law.unimelb.edu.au/malr>



Melbourne Journal of International Law



Melbourne Journal of International Law (MJIL) covers issues of public and private international law. It is a biannual publication that seeks to address issues of academic and commercial interest to Australia and the Asia-Pacific area. *MJIL* is a fully peer-reviewed/refereed, student-edited international law journal.

Editions are distributed to a wide range of readers and organisations, including commercial enterprises, international organisations, law libraries and law students. *MJIL* is distributed both online and in hardcopy, with a readership spanning locations as diverse as Hong Kong, the United States, Sri Lanka, Brazil and South Africa.

Articles, case notes, commentaries, practice notes, book reviews and summaries of recent legal developments are all encouraged by the Editors.

Editors of the *MJIL* 2009 editions are Laura Bellamy, Sara Dehm and Jeremy Leung.

Website: <http://mjil.law.unimelb.edu.au>

Melbourne University Law Review

The Melbourne University Law Review (*Review*) is Australia's leading generalist law journal and is also one of the few entirely student-run journals in Australia. Modelled after the prestigious *Harvard Law Review*, it is edited by students of the Melbourne Law School on a completely voluntary basis. The *Review* publishes articles on all areas of law as well as case notes, book reviews, feature essays, and shorter comment-style pieces. The *Review* is published three times a year and submissions to the *Review* are subject to an independent, double blind, peer review and the *Review's* own rigorous editorial process before publication.

Due to its long history of excellence and quality, the *Review* is one of only eight Australian law journals to have received an A* rating from the Australian Research Council as part of the Council's ERA initiative in 2008. According to Washington and Lee University School of Law, the *Review* was also the Australian journal most cited in American courts and law journals and the sixth most cited international journal in 2008.

The *Review* also publishes and distributes the Australian Guide to Legal Citation (*AGLC*). The *AGLC* standardises established Australian citation practices and indicates preferred approaches where no particular approach has been widely adopted. It is designed for academics, legal practitioners, law students and the judiciary, and is a valuable tool for legal writing and research. The *AGLC* has become the best recognised legal citation guide in Australia. It has been officially adopted by more than 30 of Australia's leading law journals and has been prescribed for use in student essays by 15 Australian universities. Moreover, it has been relied upon by government

and educational institutions in Australia as a basis for uniform legal citation. The *Review* is currently in the process of publishing a third edition of the *AGLC* in collaboration with the *Melbourne Journal of International Law*.



Editors of the *MULR* 2009 editions are David Heaton, Luke Pallara and Anna Zhang.

Website: <http://mulr.law.unimelb.edu.au>

Melbourne Legal Studies



Melbourne Legal Studies is a digital journal distributed through the United States based Legal Scholarship Network (LSN). The

journal publishes research by Melbourne Law School academics, including working papers, articles accepted for publication, and book chapters. It helps bring Melbourne Law School research to the attention of an international academic audience.

The journal is coordinated/edited by Associate Professor Andrew Kenyon, a.kenyon@unimelb.edu.au.

Website:

<http://www.ssrn.com/link/melbourne-public-law.html>

Public Law Review

The quarterly journal *Public Law Review* is edited by Professor Cheryl Saunders of the University of Melbourne and Professor Michael Taggart of the University of Auckland New Zealand. Associate editors are Fiona Wheeler from the Australian National University and Janet Maclean from the University of Auckland. *The Review* is a refereed journal, with an international advisory board. It is produced under the auspices of the Centre for Comparative Constitutional Studies (CCCS), and published by Thompson, Australia. A unique feature of *the Review* is its comprehensive coverage of public law developments in all Australian and New Zealand jurisdictions. An undergraduate law student is employed each year at CCCS to assist with *the Review*, including the compilation of recent developments.

Email: law-cccs@law.unimelb.edu.au

Torts Law Journal

Professor Harold Luntz is the General Editor of the *Torts Law Journal*, which is published by LexisNexis Butterworths. The Journal commenced publication in 1993, and three issues are published each year. The Journal includes casenotes, articles, comments on legislation and law reform proposals, and book reviews on topics related to torts and alternative compensation schemes. The Journal aims to be of interest to both academics and practitioners; students may also find it useful. Contributions of sufficient scholarly quality from students are welcomed and have been published in the past.

Magazines

Right Now – Human Rights Law in Australia



Right Now aims to promote and strengthen human rights law discourse in Australia. By taking an innovative and creative approach to the communication of legal ideas and issues, *Right Now* will appeal to a wide audience and stimulate active and inclusive discussion of human

rights in the broader, non-legal community. Publishing articles by persons of all different backgrounds and experiences, *Right Now* offers Melbourne Law School students unique opportunities to be involved in editing a publication and to have their research published in a refereed publication.

Right Now magazine can be downloaded from:
www.rightnow.org.au

Newsletters

Corporate Law Bulletin

The Centre for Corporate Law and Securities Regulation (CCLSR) publishes, in association with the publisher LAWLEX, the monthly *Corporate Law Bulletin*. The editor is Professor Ian Ramsay. *The Bulletin* is distributed by email, and outlines recent Australian and international corporate law and corporate governance developments, including statutory amendments, court judgements, and new Policy Statements made by the Australian Securities and Investments Commission. Some previous issues are published on the website of the Centre for Corporate Law and Securities Regulation:

Website: <http://cclsr.law.unimelb.edu.au>



JOURNAL AFFILIATIONS

Journal Affiliations in 2009

<i>Journal</i> Member , Editorial Position	<i>Journal</i> Member , Editorial Position	<i>Journal</i> Member , Editorial Position
<i>Across the Board</i> Ian Ramsay , Member of the Editorial Board	<i>Australian Accounting Review</i> Ian Ramsay , Member of the Editorial Board	<i>Australian International Law Journal</i> Stuart Kaye , Member of the Editorial Board
<i>Antartic and Southern Ocean Occasional Papers</i> Stuart Kaye , Member of the Editorial Board	<i>Australian and New Zealand Journal of Law and Education</i> Ian Ramsay , Member of the Editorial Board	<i>Australian Journal of Asian Law</i> Tim Lindsey and Amanda Whiting , Co-Editors Sarah Biddulph , Sean Cooney , Pip Nicholson and Cheryl Saunders , Members of the Advisory Committee
<i>Art, Antiquity and Law</i> Andrew Kenyon , Assistant Editor, Aboriginal Culture and Indigenous Peoples	<i>Australian Corporations & Securities Law Reporter</i> Ian Ramsay , Consultant Editor	<i>Australian Journal of Family Law</i> Belinda Fehlberg , Member of the Editorial Board
<i>Asian Studies Association of Australia, Southeast Asia Publications Series</i> Tim Lindsey , Member of the Editorial Board	<i>Australian Feminist Law Journal</i> Jenny Morgan , Member of the Advisory Board	<i>Australian Journal of Labour Law</i> Anna Chapman , Co-Editor and Section Editor (Legislative Developments) Colin Fenwick , Senior Associate Editor Anna Chapman and Breen Creighton , Members of the Editorial Committee
<i>Australian Business Law Review</i> Paul Ali , Section Editor (Banking and Finance)	<i>Australian Feminist Studies</i> Ann Genovese , Member of the Editorial Board	
<i>Australasian Parliamentary Review</i> Cheryl Saunders , Member of the Editorial Board	<i>Australian Intellectual Property Journal</i> David Brennan , Editor	

Journal

Member, Editorial Position

Australian Yearbook of International Law

Dianne Otto, Member of the Editorial Board

Kristen Walker, Member of the Editorial Board

Canadian Journal of Women and the Law

Jenny Morgan, Australian Correspondent

Capital Markets Law Journal

Paul Ali, Member of the Editorial Board

China Law Yearbook

Sarah Biddulph, International Editor

Company and Securities Law Journal

Paul Ali, Editor; Section Editor (Corporate Finance)

Ann O'Connell, Section Editor (Securities Regulation)

Ian Ramsay, Member of the Editorial Board

Geof Stapledon, Section Editor (Directors' Duties and Corporate Finance)

Journal

Member, Editorial Position

Constitutional Court Review

Cheryl Saunders, Member of the Editorial Board

Construction Law International

Matthew Bell, Co-Editor

Doug Jones AM, Member of the Editorial Board

Corporate Law Bulletin

Ian Ramsay, Editor

Corporate Ownership and Control

Geof Stapledon, Member of the Editorial Board

Deakin Law Review

Peter Rush, Member of the Editorial Board

Doing Business in Asia

Tim Lindsey, Contributing Editor; Member of the Editorial Advisory Board

Journal

Member, Editorial Position

Employment Law in Asia

Tim Lindsey, Member of the Editorial Advisory Board

Federal Law Review

Adrienne Stone, Editor

Feminist Review

Ann Genovese, Australian Correspondent

Fibreculture Journal

Andrew Kenyon, Member of the Editorial Board

Genetics Law Monitor

Loane Skene, Joint Editor

Global Change, Peace and Security

Tim McCormack, Member of the Editorial Committee

Journal

Member, Editorial Position

Global Dialogue on Federalism in the 21st Century: Practices, Perspectives and Prospects

Cheryl Saunders, Member of the Editorial Board

Governance

Geof Stapledon, Asia Pacific Consulting Editor; Member of the Editorial Board

Griffith Law Review

Sir Zelman Cowen, Member of the Editorial Board

Peter Rush, Member of the International Editorial Board

Immigration and Nationality Law Reports

James Hathaway, Consulting Editor

Indian Journal of International Economic Law

Tania Voon, Member of the Editorial Board

In-Spire: Journal of Law, Politics and Societies

Anne Orford, Member of the International Advisory Board

Journal

Member, Editorial Position

Intellectual Property Forum

Sam Ricketson, Member of the Editorial Board

International Construction Law Review

Doug Jones AM, Co-Editor in Chief

International Criminal Law Review

Tim McCormack, Member of the Editorial Board

International Feminist Journal of Politics

Anne Orford, Member of the Editorial Board

International Journal of Comparative Labour Law and Industrial Relations

Colin Fenwick, Member of the Editorial Board

International Journal of Constitutional Law (I.CON)

Simon Evans, Australasian Recent Developments Correspondent

Cheryl Saunders, Symposium Editor; Member of the Editorial Board

Journal

Member, Editorial Position

International Journal of Information Policy and Law

Andrew Christie, Member of the Editorial and Advisory Board

International Securities Regulation: Pacific Rim

Ian Ramsay, Consultant Editor

International Union Rights

Colin Fenwick, Member of the Editorial Board

Journal of Australasian Tax Teachers Association

Miranda Stewart, Member of the Editorial Board

Journal of Conflict and Security Law

Tim McCormack, Member of the Editorial Board

Journal of Corporate Law Studies

Geof Stapledon, Member of the Editorial Board

Journal

Member, Editorial Position

Journal of Energy & Natural Resources Law

Lee Godden, Member of the Editorial Board

Journal of Indonesian Islam

Tim Lindsey, Member of the Editorial Board

Journal of Intervention and State-Building

Anne Orford, Member of the International Advisory Board

Journal of Law and Financial Management

Ian Ramsay, Member of the Editorial Board

Journal of Law, Information and Science

Andrew Christie, Member of the Information Technology Board

Megan Richardson, Member of the Advisory Board

Journal of Medical Ethics

Loane Skene, Member of the Editorial Board

Journal

Member, Editorial Position

Journal of Refugee Studies

James Hathaway, Member of the International Editorial Advisory Board

Jurnal Hukum Humaniter

(Journal of Humanitarian Law)

Tim McCormack, Honorary Editor

Jus Politicum

Cheryl Saunders, Member of the Scientific Council

Law and Critique

Shaun McVeigh, Member of the Editorial Board

Peter Rush, Member of the Editorial Board

Law and Policy

Christine Parker, Member of the Editorial Board

Laws of Australia

Cheryl Saunders, Editor (Constitutional Title)

Journal

Member, Editorial Position

Legal Education Review

Lee Godden, Member of the Editorial Board

Legal Ethics

Christine Parker, General Editor

Macquarie Journal of Business Law

Ian Ramsay, Member of the Editorial Board

Media and Arts Law Review

Andrew Kenyon, Editor

Megan Richardson, Member of the Editorial Board

Sam Ricketson, Member of the Editorial Board

Melbourne Journal of International Law

(Student members of the Journal are responsible for all editorial work)

David Brennan, Martin Davies, Alison Duxbury,

Michelle Foster, Jim Hathaway, Stuart Kaye,

Andrew Kenyon, Tim McCormack,

Andrew Mitchell, Anne Orford, Bruce Oswald,

Dianne Otto, Jacqueline Peel, Gerry Simpson,

John Tobin and **Tania Voon**, Members of the

Advisory Board

Journal

Member, Editorial Position

Melbourne Legal Studies

Andrew Kenyon, Editor

Melbourne University Law Review

(Student members of the Journal are responsible for all editorial work)

David Brennan, Belinda Fehlberg and **Richard Garnett**, Faculty Advisors

New Zealand Journal of Tax Law and Policy

Miranda Stewart, Member of the Editorial Advisory Board

Ocean Development and International Law

Stuart Kaye, Member of the Editorial Board

Public Law Review

Michael Crommelin, Member of the Advisory Board
Cheryl Saunders, Editor

Publius

Cheryl Saunders, Member of the Editorial Board

Journal

Member, Editorial Position

Refuge

James Hathaway, Member of the Editorial Board

Regional and Federal Studies

Cheryl Saunders, Member of the Editorial Board

Regulation & Governance

Christine Parker, Member of the Editorial Board

Religion and Human Rights: An International Journal

Carolyn Evans, Member of the Advisory Board

Revenue Law Journal

Michael Kobetsky, Member of the Advisory Board

Review of Constitutional Studies

Cheryl Saunders, Member of the International Advisory Board

Revista Catalana de Dret Public

Cheryl Saunders, Member of the Scientific Council

Journal

Member, Editorial Position

Revista General de Derecho Canónico y Derecho Eclesiástico del Estado

Carolyn Evans, Member of the International Advisory Committee

Revue Québécoise de Droit International (Quebec Journal of International Law)

James Hathaway, Member of the Reading Panel

Singapore Academy of Law Journal

Ian Ramsay, Member of the International Editorial Board

The Journal of Law and Social Justice

Shaun McVeigh, Editor (Public Space)

The New Zealand Armed Forces Law Review

Tim McCormack, Consultant Editor

The Pearson Papers

Bruce Oswald, Member of the Editorial Board

Journal

Member, Editorial Position

The Third World and International Law

Dianne Otto, Member of the International Advisory Board

Third World Legal Studies

Dianne Otto, Member of the Advisory Board

Tort Law Review

Michael Tilbury, Member of the Editorial Board

Torts Law Journal

Harold Luntz, Editor

Ian Malkin, Member of the Editorial Board

Hayden Opie, Case Note Editor; Member of the Editorial Board

Trade Practices Law Journal

Tim Lindesy, Contributing Editor (Report from Asia)

Transnational Legal Theory

Anne Orford, Member of the Editorial Board

Journal

Member, Editorial Position

Victoria University Law Review

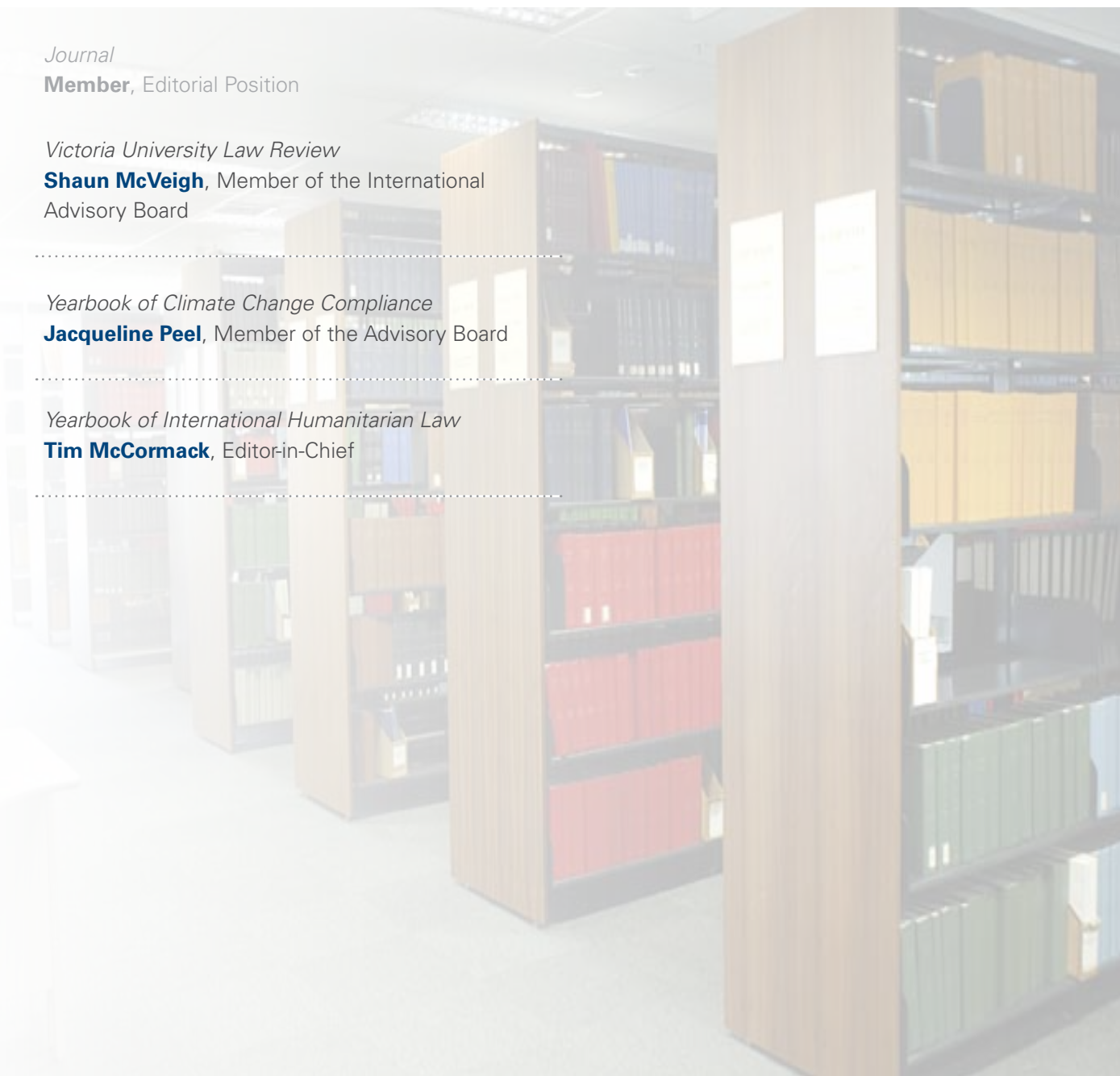
Shaun McVeigh, Member of the International Advisory Board

Yearbook of Climate Change Compliance

Jacqueline Peel, Member of the Advisory Board

Yearbook of International Humanitarian Law

Tim McCormack, Editor-in-Chief





FACULTY RESEARCH WORKSHOP SERIES

2009 Faculty Research Workshop Series

2 March 2009

Dr Margaret Young (Melbourne Law School)

'Fragmentation and Regime Interaction in International Law: Lessons from Trade, Environment and Fisheries Regimes'

9 March 2009

Associate Professor Carolyn Evans (Melbourne Law School)

'Constitutional Narrative: Australia and Malaysia Compared'

16 March 2009

Matthew Bell (Melbourne Law School)

'Defective Work Damages after Tabcorp v Bowen Investments: A Construction Law cul de sac or Contract Law Broadway?'

23 March 2009

Dr Shaunnagh Dorsett (Victoria University of Wellington, New Zealand)

'To Barter Sovereignty for a Blanket': Judicial Perspectives on Sovereignty and the Treaty of Waitangi in the Early New Zealand Crown Colony Period'

30 March 2009

Dr Kirsty Gover (Melbourne Law School)

'Comparative Tribal Constitutionalism: States, Tribes and Membership Governance in the Western Settler States'

6 April 2009

Meredith Lewis (Victoria University of Wellington, New Zealand) and **Associate Professor Andrew Mitchell** (Melbourne Law School)

'Food Miles – Protecting the Environment or International Trade Protectionism?'

20 April 2009

Professor Michael Crommelin AO (Melbourne Law School)

'Oil and Gas Management and Revenues in Federations, Australia'

27 April 2009

Professor Lee Godden (Melbourne Law School)

'Interdisciplinary Research: A Case Study of 'Water Theme' Research and the Melbourne Sustainable Society Institute'

4 May 2009

Father Peter Norden AO (Vice Chancellor's Fellow, Melbourne Law School)
'Just Ways: Australian Social Advocacy Stories'

11 May 2009

Professor Jenny Morgan (Melbourne Law School)
'Sexual Harrassment: The Early Development of a Legal Claim'

18 May 2009

Associate Professor David Brennan (Melbourne Law School)
'Lord Hoffmann and the Dane Particle: Gene Patent Scope'

25 May 2009

Andrew Godwin (Melbourne Law School)
'Plain Language Risk Disclosure: The Lehman Minibonds Crisis in Asia'

27 July 2009

Bernard Lyons, Robin Gardiner and Natalie Wieland (Melbourne Law School, Law Library)
'AustLII and the Free Legal Web - Tips, Traps and New Features'

3 August 2009

Associate Professor Peter Rush (Melbourne Law School)
'HIV Transmission and the Jurisdiction of Criminial Law'

10 August 2009

Lisa Sarmas (Melbourne Law School)
'Cummins and its Progeny: 'Equality' and its Discontents''

17 August 2009

Professor Belinda Fehlberg, Christine Millward and Monica Campo (Melbourne Law School)
'Post-separation Parenting, Financial Settlements and Children's Best Interest'

24 August 2009

Stacey Steele (Melbourne Law School)
'Legal Education Reform in Japan: Lessons for Melbourne?'

31 August 2009

Associate Professor Elise Bant (Melbourne Law School)
'Trusts, Powers and Liens: An Exercise in Ground-Clearing'

7 September 2009

Associate Professor Carolyn Evans (Melbourne Law School)
'A Hitchhikers Guide to the Grants System'

5 October 2009

Professor David Studdert (Melbourne Law School)
'Using Mortality Data to Understand the Effect of Laws and Legal Processes'

12 October 2009

Dr Joo-Cheong Tham (Melbourne Law School)
'Reclaiming the Political Protection of Rights: A Defence of Australian Party Politics'

19 October 2009

Associate Professor Miranda Stewart (Melbourne Law School)
'A Capabilities Approach to Gender Equity in Tax'

2 November 2009

Professor Michael Bryan and **Professor Megan Richardson** (Melbourne Law School)
'Breach of Confidence: A Social History of an Equitable Doctrine'



ACADEMIC STAFF

2009 Academic Staff

Dean and William Hearn Professor of Law

James Hathaway

LLB York. LLM Col. JSD Col.

Barrister and Solicitor, Law Society of Upper Canada and New Brunswick

Professors

Michael Bryan

MA Oxf. BCL Oxf. PhD Lond.

Camille Cameron

BA Saint Mary's LLB New Br. LLM Camb.

Belinda Fehlberg

BA Melb. LLB Melb. DPhil Oxf.

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Richard Garnett

BA NSW LLB NSW LLM Harv.

Solicitor New South Wales, Barrister and Solicitor Victoria, Solicitor of the Supreme Court of England and Wales

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Solicitor of the Supreme Court of Queensland and the Supreme Court of England and Wales

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Adrienne Stone

BA NSW LLB NSW LLM Col. JSD Col.

Australian Red Cross Professor of International Humanitarian Law

Timothy McCormack

LLB Tas. PhD Monash

Davies Collison Cave Professor of Intellectual Property

Andrew Christie

BSc Melb. LLB Melb. LLM Lond. PhD Camb.

Barrister and Solicitor of the Supreme Court of Victoria and Solicitor of the Supreme Court of England and Wales, Registered Trade Marks Attorney Australia

Harold Ford Professor of Commercial Law

Ian Ramsay

BA Macq. LLB Macq. LLM Harv.

Solicitor of the Supreme Court New South Wales and the High Court of Australia and Member of the New York Bar

Laureate Professor

Cheryl Saunders AO

BA Melb. LLB Melb. PhD Melb.

Barrister Queensland (Personal Chair in Faculty of Law)

Zelman Cowen Professor of Law

Michael Crommelin

BA Qld. LLB Qld. LLM Br.Col. PhD Br.Col.

Barrister-at-Law Queensland and the High Court of Australia, Barrister and Solicitor Victoria and Papua New Guinea

ARC Professorial Fellow

Anne Orford

BA Qld. LLB Qld. LLM Lond. PhD Adel.

Solicitor of the Supreme Court of Queensland

Federation Fellows

Timothy Lindsey

BA Melb. BLitt Melb. LLB Melb. PhD Melb.

Professor of Asian Law, Barrister and Solicitor Victoria

David Studdert

BA Melb. LLB Melb. ScD Harvard MPH Harvard

Associate Professors and Readers

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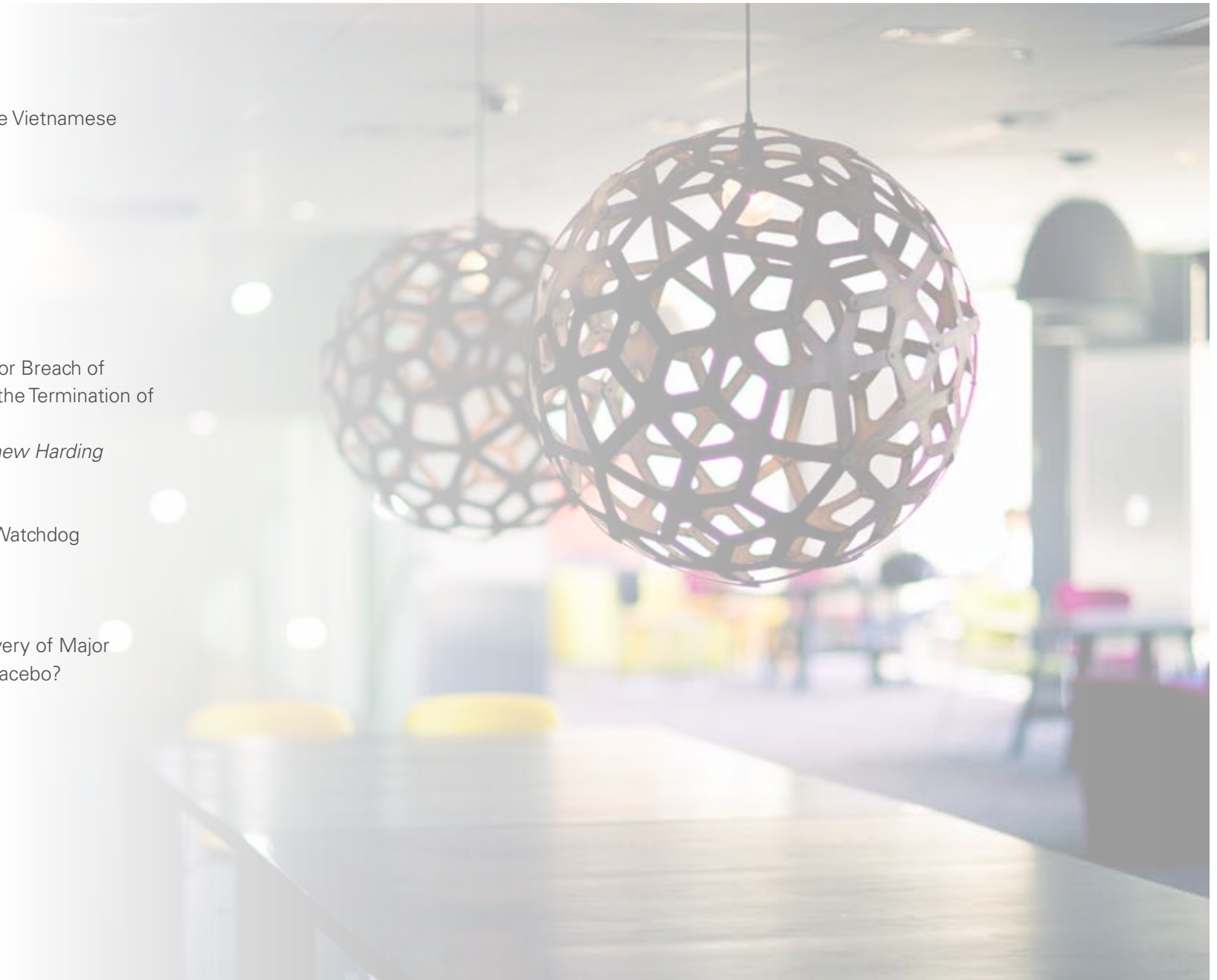
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