

CENTRE FOR  
COMPARATIVE  
CONSTITUTIONAL STUDIES



## ANNUAL REPORT 2004

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## DIRECTOR'S REPORT

At the heart of the Centre for Comparative Constitutional Studies is a cohesive group of scholars at Melbourne Law School who share an interest in all aspects of public law, while having specialist expertise of their own. The work of the Centre also depends in important ways on a wider range of people, however. The Centre's Administrator provides support for all Centre programs; research assistants drawn from the Faculty's teaching programs collaborate on publications and research projects; constitutional specialists in legal practice and other tertiary institutions advise on the strategic development of the Centre; doctoral students work closely with Centre members as supervisors and substantially augment its research capacity. Individually and collectively, members of the Centre have links with constitutionalists throughout the world, many of whom visit the Centre from time to time, using it as a base for their own work and contributing further to the range of Centre activities.

2004 was a typically productive and satisfying year for the Centre on all fronts: research, teaching, conferences and other public events, consultancy and practice. Details of all major activities can be found in the body of the report. Highlights include the following:

- The first year of research on a major ARC funded project on Australian Parliaments and the Protection of Human Rights
- A conference to mark the contribution to Australian law of former High Court Justice Mary Gaudron
- Nomination of the Centre as international theme co-ordinator for the Global Dialogue volume on Federations and Institutions of Government
- Engagement of CCCS members in key constitutional litigation in the High Court
- A wide range of international visitors, including Professor Hugh Corder, (Cape Town), Sir Anthony Mason, Professor Judith Resnik (Yale), Professor Joseph Weiler (NYU), and a delegation from the National Judges College of China
- Introduction of a new graduate subject on constitution-making
- Development and introduction of innovative new subjects on public law in all three of the Faculty's main degree programs, in a form that combines domestic and international public law
- Publication of a book by Charles Parkinson, former CCCS researcher, on Sir William Stawell's contribution to the making of the Victorian Constitution

This is my last year as Director of the Centre. It has been a pleasure and a privilege to hold the position for as long as I have done. The new Director, from 2005, is Dr Simon Evans. I am delighted that he has agreed to accept this responsibility, in addition to his many other activities in the Faculty. I have no doubt that, under his leadership, the Centre will not only continue to flourish, but will take important new directions, with renewed vigour.

Cheryl Saunders

## **ABOUT THE CENTRE**

The Centre for Comparative Constitutional Studies is a focal point for research, scholarship, teaching and information about Australian constitutional law and the constitutional law of other countries.

It is one of the Law School's nine specialist research centres and operates in close association with the Institute for Comparative and International Law.

The Centre provides a unique Australian focal point for constitutional studies from a distinctive comparative perspective.

The Director of the Centre is Professor Cheryl Saunders AO and its members are drawn from the Law School's faculty.

Its advisory board consists of leading Australian and international public lawyers.

Its purpose is to focus greater attention on Australian constitutional law and government and that of other countries whose systems are most relevant to Australia. This is reflected in the Centre's current objectives which it pursues through its many activities —teaching, research, exchange of information, resource centre, consultancies and collaboration.

## Objectives/goals

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 theory and practical operation
- to introduce comparative constitutional concepts and knowledge about 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 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
- 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.

## Activities

- conducting research, both independently and in collaboration with others
- providing research training, at graduate and undergraduate levels
- developing and conducting courses
- hosting and contributing to public seminars and conferences
- responding to inquiries from the Australian public and media and from individuals and organisations in other countries
- collecting and disseminating constitutional materials and information, making full use of information technology
- maintaining an active visitors' program
- fostering and participating in networks within Australia and overseas
- publishing books, articles, journals and newsletters, and having research results published
- making submissions to public inquiries
- carrying out consultancies

## PEOPLE

Directors and Administrator

### **Professor Cheryl Saunders AO** *Director*

Professor Saunders is the founding and present Director of the Centre. She has specialist interests in constitutional law and comparative constitutional law, including federalism and intergovernmental relations, constitutional design and change and constitutional theory.

In addition to teaching constitutional law and comparative constitutional law at both undergraduate and graduate level, Professor Saunders is also President of the International Association of Constitutional Law; First Vice President of the International Association of Centres for Federal Studies and Vice President of the Australian Association of Constitutional Law. She has taught comparative constitutional law at Université Pantheon-Assas Paris II for the past six years, is an Honorary Professor at the University of Cape Town, South Africa and is an external examiner in Constitutional and Administrative Law at the University of Hong.

Professor Saunders is an editor of the *Public Law Review* of the Government Title 19 of the *Laws of Australia* and a member of the editorial boards of a range of Australian and international journals, including *I.Con*, *Publius* and *Australasian Parliamentary Review*. She is a member of the International Advisory Board, *Review of Constitutional Studies (Alberta)*; the Advisory Board, Australian section, *Asian Law Journal*; and Co-Chair of the Editorial Board, *Global Dialogue on Federalism in the 21<sup>st</sup> century: Practices, Perspectives and Prospects*.

In 1994 Professor Saunders was appointed an Officer in the Order of Australia, for services to the law and to public administration.

### **Ms Kristen Walker** *Associate Professor* *Deputy-Director CCCS*

Kristen Walker is an Associate Professor at the University of Melbourne. Prior to joining the Law Faculty, she completed her articles with Arthur Robison and Hedderwicks in Melbourne and also served as Associate to Sir Anthony Mason, then Chief Justice of Australia. Kristen teaches Constitutional Law and Law and Sexuality in the LLB program and, in the graduate program, Principles of Public and International Law. She has also taught international human rights law and legal ethics at Columbia Law School in New York. Kristen's research interests are in constitutional law, law and sexuality, and international law, particularly human rights and refugee law.

### **Dr Simon Evans** *Senior Lecturer* *Deputy-Director CCCS*

Dr Simon Evans joined the Faculty and the Centre in 1999. Previously he had served as Associate to Sir Anthony Mason at the High Court of Australia and practised as a lawyer in a commercial firm in Sydney. He holds degrees in Science and Law from the University of Sydney and a doctorate in law from the University of Cambridge. His research interests focus on constitutional rights (especially property rights and socio-

economic rights) and mechanisms for government accountability. During 2004 he was engaged with Carolyn Evans and Kristen Walker in a major ARC funded research project on Australian Parliaments and Human Rights. He teaches Constitutional and Administrative Law and Property at an undergraduate level, and Theories of Constitutional Interpretation and Protecting Rights in the graduate program.

**Dr Carolyn Evans**  
*Senior Lecturer*  
*Deputy-Director CCCS*

Dr Carolyn Evans is a graduate of the Universities of Melbourne and Oxford. After completing her undergraduate degrees in Arts and Law at Melbourne University, Carolyn completed Articles of Clerkship and practiced as a solicitor with Blake Dawson Waldron. She is a Barrister and Solicitor of the Supreme Court of Victoria. In 1995 Carolyn was awarded the Victorian Rhodes Scholarship which allowed her to undertake a doctorate at Oxford University. The topic of Carolyn's thesis (published as a monograph by Oxford University Press in 2001) was Religious Freedom under the European Convention on Human Rights. While at Oxford, Carolyn also co-edited Religion and International Law with Professor Mark Janis. Carolyn was appointed to a lectureship at Exeter College, Oxford for two years where she taught International Law, Jurisprudence, Introduction to Law and Contract Law.

Carolyn returned to a Senior Fellowship and then a Senior Lectureship at the University of Melbourne. She now teaches Constitutional and Administrative Law, International Law, and Protecting Rights. She publishes in the areas of religious freedom/Church-State relations, the relationship between international and domestic law, national human rights institutions, and on international and constitutional law topics generally. She is currently co-editing a book on Women, Religion and Law in the Asia-Pacific Region with Amanda Whiting of the Asian Law Centre.

**Ms Kim Rubenstein**  
*Associate Professor*  
*Deputy-Director CCS*

Kim Rubenstein is an Associate Professor in Law at the University of Melbourne, lecturing in Constitutional and Administrative Law, Migration Law and Advanced Administrative Law. Kim was awarded both a Fulbright Scholarship and the Sir Robert Menzies Scholarship, completing her Masters in Law at Harvard University. Kim is also a Barrister and Solicitor of the Supreme Court of Victoria and the High Court of Australia and, prior to taking up her position with the University of Melbourne in 1993, Kim practised as a solicitor at Corrs Chambers Westgarth. Kim has a special interest in citizenship law and in 1999 organised the University of Melbourne conference *Individual, Community, Nation: 50 Years of Australian Citizenship*. The following year Rubenstein (ed): *Individual, Community, Nation: 50 years of Australian Citizenship* (Australian Scholarly Press, 2000) was launched by the Centre. Kim is also the author of *Australian Citizenship Law in Context* (Lawbook Co, 2002).

**Ms Katy Le Roy**  
*Assistant Director CCCS*

Katy Le Roy is the Assistant Director of the CCCS, and has been closely associated with the Centre since 1996. Katy completed her undergraduate degrees in Law and Arts at the University of Melbourne, before completing Articles of Clerkship and practicing as a solicitor with Holding Redlich. She is a Barrister and Solicitor of the Supreme Court of Victoria. Katy has also worked in Germany in finance law, and as a

Research Fellow in the Law School. She is currently co-ordinator with Cheryl Saunders of par of a comparative federalism project, 'Global Dialogue on Federalism in the 21<sup>st</sup> Century'.

Together with Cheryl Saunders, Katy is co-editor of *The Rule of Law*, published in 2003 by the Federation Press. Katy teaches Fundamentals of the Common Law in the Graduate Program at the Melbourne Law School, and is also a PhD Candidate at the Centre. She is doing her doctoral research on constitution making in the Asia Pacific, looking specifically at constitution making processes in Fiji and the Solomon Islands, and democratic participating in constitution making. Her main academic interests are constitution making, comparative federalism, constitution theory and political theory.

**Ms Katy Prentice**  
*Administrator*

Katy Prentice, joined the Centre in late 2003. During 2004 she provided indispensable assistance in organising the conference in honour of Mary Gaudron, the two major Forum of Federation events and the Constitutional Law Teachers Workshop, as well as the everyday business of the Centre.

**Professor Geoffrey Lindell**  
*Professorial Fellow*

Geoff Lindell is a Professorial Fellow of the University of Melbourne and also holds appointments as an Adjunct Professor of Law at the Adelaide University and the Australian National University. He joined the Melbourne University Law School in 1994 and retired from full-time teaching in early 2002. Since that time he has continued to research and write, in addition to being available to undertake some sessional teaching and consulting. Throughout his long career he has taught and published widely in the field of Australian constitutional and public law, including the publication, as editor, *Future Directions in Australian Constitutional Law* (1994), senior co - editor of *Parliament: The Vision in Hindsight* (2001 with R Bennett) and also as co - author of Sawer's *Australian Constitutional Cases* (4th ed., 1982 with Professor L Zines).

Geoff served as a member of the Distribution of Powers Advisory Committee to the Constitutional Commission (1986 - 1987), and was a consultant to the Australian Constitutional Convention (1975 - 1985). Before joining the Australian National University Law School in 1975, where he taught until the end of 1993, he held a senior position in the Commonwealth Attorney - General's Department and has frequently since acted as a consultant to the same Department. He appeared as counsel in two major High Court constitutional cases (*Fencott v Muller* (1983) and *McGinty v Western Australia* (1995)).

**Dr Pip Nicholson**  
*Senior Lecturer*

Dr Pip Nicholson was a Senior Fellow of the Faculty from 1998. She joined the Faculty permanently as a lecturer in 2002 becoming a senior lecturer in 2004. A graduate in Law and Arts from the University of Melbourne with a Masters in Public Policy from the Australian National University, Pip teaches on the Vietnamese legal system in both the undergraduate and graduate programs of the Melbourne Law School and teaches on Vietnamese law to a consortium of American law-schools. Pip also teaches Comparative Law, Law and Economic Reform in Asia, Fundamentals of the Common Law and History and Philosophy of Law. Pip's doctoral research focused on the Vietnamese court system between 1945 and 1976, in the course of an analysis of the extent to which the Vietnamese legal system mirrored or diverged from its Soviet



parent. Pip is interested in the challenges of cross-cultural legal research and legal reform - particularly within Asia. She has recently completed research on corruption within the Vietnamese court system, the recent round of reforms to the Vietnamese court system and labour law reform in Vietnam. Current projects include a study of Vietnamese attitudes to dispute resolution and an analysis of comparative law theory's applicability to empirical legal studies in Asia generally and Vietnam in particular. Pip has worked as a consultant to the Faculty's International Programs, assisting to develop and run programs for overseas visiting groups. She currently consults on changes in transitional legal systems.

**Mr Glenn Patmore**  
*Senior Lecturer*

Glenn studied law at Monash University, Australia and Queens University, Canada. He was admitted to practice as a Barrister and Solicitor of the Supreme Court of Victoria. Glenn was a senior Tutor in Law at Monash University and currently works as a Lecturer in Law at the University of Melbourne. He has taught Torts, Constitutional and Administrative Law and an optional course on Australian democracy and the law entitled: Rethinking Australian Democracy, History, Politics and the Law.

He is presently researching and writing in the fields of democratic theory and practice, constitutional law, republicanism, industrial law and human rights law. He is also currently editing *Labor Essays*, an annual volume concerned with law in context, government law, public policy, social justice, democracy and equality.

**Mr John Waugh**  
*Senior Lecturer*

John holds degrees in Arts and Law from the University of Melbourne and the University of Cambridge. He researches and teaches in Australian constitutional law and history.

Advisory Board

- Ian Cunliffe
- Dr Stephen Donaghue
- Dr Gavan Griffith AO QC
- Peter Hanks QC
- Wendy Harris
- Chris Maxwell QC
- Debbie Mortimer SC
- Mark Moshinsky
- Stephen McLeish
- Brian Opeskin
- Jason Pizer
- Pamela Tate SC, Solicitor-General for Victoria
- Richard Tracey QC

Biographical information on the members of the advisory Board is set out in the Appendix to this Report

## Visitors to the Centre

- Professor David Gwynn Morgan, University College Cork, 9 Feb—30 April
- Peter Johnston, University of WA, 9-20 Feb, 1—19 April, 4—17 June
- Andrew Lynch, UTS, 14—30 April
- Dr James Renwick, NSW Bar, 17—21 May
- Isabelle Petit, Université Panthéon-Assas (Paris II), 17 May—31 July
- Dr Deborah Cass, London School of Economics, 2004
- Dr Thomas Poole, University of Nottingham, 9—16 June
- Professor Judith Resnik, Yale, 9—14 June
- Professor Bev Baines, Queen's University at Kingston, 11 June
- Katharine G Young, Harvard University, July
- Professor Joseph Weiler, NYU School of Law, 27 July—3 August
- Hashim Tewfik Mohammed, Ethiopia, 15 August —15 November
- Professor Jim Pfander, University of Illinois, 22—24 August
- Prof. Elizabeth Zoller, Université Panthéon-Assas (Paris II), 29 Sep—5 Oct
- Professor Adeno Addis, Tulane Law School, 29 Sep—29 Nov
- David Erdos, Princeton University, 8—22 October
- Professor Hugh Corder, University of Cape Town, 25 Oct—3 Nov
- Sir Anthony Mason, 16—17 November

## Research Assistants

### **Heidi Asten**

Heidi Asten was the Editorial Assistant for the Public Law Review in 2004. Her role involved work of an administrative, research and editorial nature. As Editorial Assistant, Heidi worked under the guidance of Cheryl Saunders and the other editors of the Review: Mike Taggart, Janet McLean and Fiona Wheeler, taking principal responsibility for dealing with authors, referees and publishers. She researched and wrote the New Developments section of the Review which covers recent public law developments in Australia, New Zealand and the Pacific region. Heidi's interests include constitutional law, international and humanitarian law.

### **Leanne McKay**

Leanne McKay was a research fellow assisting Dr Simon Evans, Dr Carolyn Evans and Associate Professor Kris Walker with their ARC funded project 'Australian Parliaments and the Protection of Human Rights.' Her role involved conducting a literature review

of current materials relating to parliaments and human rights; conducting a comprehensive audit of the legislative work of all Australian parliaments to determine the extent to which human rights are addressed in the legislative process; and conducting an exhaustive and detailed human rights-based audit of all legislative bills introduced into three Australian parliaments, including the Commonwealth, from 2001-2003. Leanne completed a Master of Public and International Law at Melbourne law School in late 2003 and has a particular interest in international human rights law, international refugee law and international humanitarian law.

## EVENTS

### Conferences

#### **Honouring Mary Gaudron's Contribution to Australian Law 5 March**

Kim Rubenstein organised a one-day conference analysing the Hon Justice Mary Gaudron QC's contribution to Australian Law, held at the University of Melbourne in March 2004. The Centre for Comparative Constitutional Studies invited women scholars, judges and practitioners to join together to recognise the distinctive contribution of the first and only woman High Court Justice of Australia. The conference began with a Welcome to Country by Joy Murphy, an elder of the Wurundjuri people, and a further welcome to the University of Melbourne by its Chancellor Fay Marles.

Federal Court Justice Susan Kenny directly addressed Justice Gaudron's contribution to an understanding of the judicial role, and in particular her concept of equal justice as fundamental to the judicial process.

Professor Saunders' paper followed in reviewing Justice Gaudron's judicial role in interpreting the *Constitution*. Saunders claimed that Justice Gaudron judgments were concerned with an inclusive Australian polity and the provision of effective political institutions. These themes were developed further in Dr Adrienne Stone's paper on Justice Gaudron and constitutional rights. Associate Professor Rubenstein's paper specifically examined Justice Gaudron's contributions to the jurisprudence of Australian citizenship, developing ideas touched on by Saunders and Stone.

The notion of "context" was also relevant to the next two papers by Professor Jenny Morgan and Maureen Tehan. Both papers highlighted Justice Gaudron's attention to context in judgments addressing equality and indigenous Australians.

Chief Justice of Victoria Marilyn Warren's paper examined Justice Gaudron's concerns with fairness in the area of criminal law. Nicola Roxon MP, a former Associate to Justice Gaudron and Federal Shadow Attorney General, followed with a review of the basic democratic structures in the Australian political system.

Finally, Jennifer Batrouney SC argued that women can be inspired by the views of Justice Gaudron in her speeches touching upon women in the law.

#### **Feminism and Federalism Workshop 11 June**

Kim Rubenstein organised a workshop on Feminism and Federalism and Constitutional Law that was held at the Law School in June 2004. The purpose of the workshop was to generate further research in comparative studies of feminism and federalism in the context of constitutional law.

The workshop was held in the Law School's Moot Court Room, enabling Professor Vicki Jackson (Georgetown University Law Centre) to participate via video link from her office in Washington DC. Discussion centred on three presentations made on federalism and feminism:

Kim Rubenstein's presentation, developed from earlier work with Deborah Cass, started with Australian women's involvement in the federation process and their

experience of Australian federation. It aimed to identify potential research questions and jumping off points for the other participants. Vicki Jackson compared the Australian experience with the U.S. experience and identified the contingency of women's experience with federalism: as a system of government, federalism may produce advantages and disadvantages for women.

Bev Baines' (Queen's University) discussion identified how federalism, at least in Canada because of the allocation of powers between the provincial and central legislatures, preserves the division between the public and the private spheres of life. The public/private division is immensely problematic for feminists. She asked what the impact of collapsing the public/private divide would be for federalism and for women. Katy Le Roy (Assistant Director, CCCS) related the discussion back to Australian federalism, and noted how some of the Canadian concerns play out differently in Australia because of a different allocation of competences between the national and subnational governments.

Judith Resnik (Yale Law School) identified the relative novelty of 'federalism' as a constitutional concern (it emerges in the decisions of the Supreme Court only in the last 60 years) and the multiple senses in which it is used in United States constitutional discourse. Federalism, she argued, was a word made by politics for political made law and which is used in essentially political contexts within States and between States and the Federal Government for control over policy areas, in particular access to equality. Margaret Thornton (La Trobe) argued that the technocratic approach required by federalism and constitutional judicial review produces a male positivist adjudication of legal issues. Constitutional law pressures one to deal with power as partiality and not realities concerning people. Fundamentally, she concluded, feminists cannot allow themselves to be limited by the formalities of federalism.

The workshop concluded with a general discussion involving the nearly 20 participants of the presentation and the research agenda that emerged from them. The workshop and the notes from them, and the video recording of it now hosted on the Centre website, were valuable in progressing the feminism and federalism research network and positioning those involved for applications for competitive research funding in the future.

### **Global Dialogue on Federalism in the 21<sup>st</sup> Century: Theme 3 12 June and 21-22 August**

In 2004, the Centre continued its involvement in the Global Dialogue on Federalism in the 21<sup>st</sup> Century. The Global Dialogue is an international comparative project on federalism conducted jointly by the International Forum of Federations, based in Canada and the International Association of Centers for Federal Studies (IACFS), of which the CCCS is a member. This Global Dialogue involves a comparative study of key themes relevant to federalism in the contemporary world, leading to publication of a Handbook on each. Cheryl Saunders and Katy Le Roy were appointed international coordinators for the third theme, which is of particular relevance in Australia: 'Legislative and Executive Governance in Federal Democracies'. In that capacity, they drafted the theme template and selected 10 other federal countries and country coordinators for the study. They are also the country co-ordinators for Australia (and were country coordinators for theme 1 – Constitutional Origins, Structure and Change, in 2002).

On 12 June 2004, the Centre hosted the **Global Dialogue Australian Roundtable**, which was the key event in the development of the Australian position on these issues. It was designed to develop a multi-faceted understanding of the institutional

structure of federalism in Australia, drawing on the views and ideas of practitioners of government and leading scholars. The roundtable involved 18 participants, with different specialist, practical and theoretical perspectives on aspects of the theme. Similar country roundtables were held in the other ten countries selected to participate in theme 3.

On 21-22 August 2004, the Centre hosted the **International Roundtable**, which was attended by the country coordinators of all 11 countries, and other selected participants from those 11 countries. The goals of the Roundtable were to encourage a process of learning from the experience of others about legislative and executive governance in federal democracies, and to prompt ideas that may be useful in finalizing the chapters for the published volume on this theme. The Roundtable was broken up into sessions structured around important questions and issues that came out of the various country roundtables. Very short papers were presented and there was ample time for lively discussion in each session. Each country coordinator has written a chapter structured around the theme template and drawing on insights from the country and international roundtables, and the complete handbook will be published in 2005.

### **Constitutional Law Teachers' Workshop 26 November**

Simon Evans organised a highly successful one day Constitutional Law Teachers Workshop which was held in November 2004 at the Faculty of Law at UTS. The Workshop took place immediately before the Australian Association of Constitutional Law's Annual Conference and was attended by 20 constitutional law teachers from around Australia. The aim of the Workshop was to share experiences and information within the community of Australasian constitutional law teachers. The format was informal and flexible and allowed for wide-ranging discussion by all participants. The Workshop opened with a presentation by Simon Evans of the results of an Australia-wide stocktake of the state of constitutional law teaching. The stocktake revealed the range of approaches to teaching constitutional law and contributed to discussion about curriculum, effective teaching practices and other issues.

Other presentations addressed issues such as:

- motivating students to study constitutional law, including using contemporary events to teach public law
- the American Socratic style in Australian law schools
- specific curriculum issues, in particular characterisation and constitutional interpretation
- teaching generic legal skills through constitutional law – is there a distinctive constitutional law contribution to skills education?

The Centre hopes to make the Workshop an ongoing event held in conjunction with the Australian Association of Constitutional Law's annual conference. We are grateful to Associate Professor Patrick Keyzer and Professor David Barker for making the workshop possible at UTS in 2004.

## Public Lectures

### **Public Lecture at the Federal Court of Australia by Professor Judith Resnik (Yale) 10 June**

The CCCS and the Federal Court coordinated an evening lecture by Professor Judith Resnik. Professor Resnik was a visitor to the CCCS from 9-14 June. She is the Arthur Liman Professor of Law at Yale University and also participated in the CCCS workshop on Feminism and Federalism. The subject of her evening lecture was *Representing Justice: From Renaissance Iconography to the 21st Century Courtrooms of the United States*.

### **Public Lecture and Roundtables: Joseph Weiler on The Enlarged European Union under its New Constitution**

**27 July**

Professor Joseph Weiler is University Professor at NYU and the Joseph Strauss Professor of Law and European Union Jean Monnet Chair at NYU School of Law. In 2004 he visited the Law School as a Miegunyah Fellow and also held roundtables for the CCCS and the Institute for Comparative and International Law. The roundtables offered the opportunity to meet Professor Weiler and to explore other aspects of his work in depth, in a smaller group and in a more interactive format.

## Book Launch

### **Charles Parkinson's *Sir William Stawell and the Victorian Constitution* 3 August**

Charles Parkinson is a former CCCS research assistant, now undertaking a D Phil at Oxford. His book was launched by Sir Ninian Stephen.

## Visits by International Delegations

### **China-Australia Human Rights Technical Cooperation Program (HRTC) Visit by officials from the National Judges' College of China**

**4 August**

In August, the CCCS co-ordinated a meeting between delegates from the National Judges College of China and members of the faculty under the auspices of the China/Australia Human Rights Technical Cooperation Program. The purpose of the visit was to discuss the Judicial Protection of Human Rights as part of the delegates' training research. The meeting was chaired by Professor Anne Orford, Director of the Faculty's Human Rights specialisation in the graduate program. Cheryl Saunders, Sarah Biddulph and other Law Faculty members, provided a comprehensive and structured series of presentations on the Law School's courses and programs in human rights related areas.

### **Sir Anthony Mason on 'The Hong Kong Court of Appeal' 16 November**

The CCCS coordinated this talk to the Postgraduate Law Students Association by Sir Anthony Mason. Sir Anthony spoke about his time as a member of the Hong Kong Court of Final Appeal and in particular the relations between the Court, the Hong Kong government and the mainland Chinese institutions that also have the capacity to interpret Hong Kong's Constitution and Basic Law.

## **Citizenship-related problems in Nigeria**

**25 November**

Simon Evans organised a meeting with delegates from the Institute for Peace and Conflict Resolution (from the offices of the Nigerian presidency), regarding their research on a constitutional approach to the resolution of citizenship-related problems in Nigeria.

Seminars and Roundtables

## **Dr Adrienne Stone (ANU) on 'The New ACT Bill of Rights'**

**8 April**

Adrienne Stone explained the scope of the new ACT Human Rights Act and put it in the context of the theoretical disagreements over formal constitutional or statutory Bills of Rights.

## **Peter Johnston (UWA) on 'The High Court's Decision in Marquet'**

**15 April**

Peter Johnston gave an overview of the impact of the recent High Court decision in Marquet for the 'manner and form' debates in Australia and, in particular, some consequences that the case may have given the changes to the Victorian constitution.

## **Jo Ford (ANU) on 'Comparative Reflections on Constitution Making in Iraq, Afghanistan and the EU'**

**21 May**

Jo Ford explored how constitution making experiences in countries such as South Africa and Australia might prove useful in countries that are now involved in constitutional development.

## **Dr Deborah Cass (LSE) on 'The Constitutionalization of the WTO'**

**3 June**

Deborah Cass examined meanings ascribed to the term 'constitutionalization' in international trade law literature and argued that three ways of conceiving of WTO constitutionalization dominate the field: institutional managerialism, rights based-constitutionalization and judicial norm-generation.

## **Dr Tom Poole (Nottingham) on 'The Use (and Abuse) of History in Constitutional Argument'**

**9 June**

Dr Poole developed a thesis about the various uses to which history could be put in constitutional argument and discussed the ways in which history could be appropriately used.

## **Justice Zac Yacoob (Constitutional Court of South Africa) on socio-economic rights**

**10 June**

Zac Yacoob provided an often personal account of the process by which socio-economic rights were included in the post-apartheid South African Constitution and the challenges that they present for the Constitutional Court when litigants seek to enforce them against government.

## **Professor Beverly Baines (Queen's) on 'Do Constitutional Equality Rights Make a Difference for Women?'**

**11 June**



**Katie Young (Harvard) on 'International Law and Constitutional Rights Advocacy'**  
14 July

Katie Young spoke on courts and rights activists in the comparative constitutional law field, with reference to South Africa and Canada and, Ghana where she worked during a law school human rights clinical placement.

**Professor Adeno Addis (Tulane University) on 'Federalism and International Law'**  
11 November

Adeno Addis argued that the judiciary in the United States needed to give states more scope to engage in international issues whether the federal government has not moved to prevent such engagement. He compared the approach taken in Australia and the US.

Presentations at International Conferences by Centre Members

**Carolyn Evans** presented a paper on "Regulating Religion and the Rule of Law" at a conference on *Religion and the Rule of Law: Comparative Approaches to Regulating Religion*. The conference was held jointly by the Chinese Academy of Social Science and the Institute of World Religions and took place in Beijing on 18 and 19 October.

**Kim Rubenstein** was invited by Dr. Argulló i Murgadas (Administrative Law Professor at Universitat Pompeu Fabra, Barcelona) to participate in a project on immigration involving experts from the USA, Germany and Spain. Kim prepared the written report for the research and Jennifer Burn (Law, UTS) went to the conference in Barcelona where Jennifer presented a paper on their behalf.

**Cheryl Saunders** gave commentaries on two papers at the 12<sup>th</sup> Annual Conference on the *Individual versus the State, Third Party Effect: What happens when the State promotes rights?* at the Central European University in Budapest on 18 June. The two papers were: "Third Party Effect and Discrimination: Introducing Equality into the Private Sphere by Legislation" and "Third Party Effect in Hungarian Constitutional Adjudication". She also gave the key-note address on "Constitution-making in Divided Societies" to a conference on *Constitutionalism as a Mechanism for Social and Political Change* held by Mada, The Arab Centre for Applied Social Research, Nazareth, Israel, on 25 and 26 June.

On 1 October, Cheryl presented a paper, "Recognition of Local Government in State Constitutions" to a conference on *The Place and Role of Local Government in Federal Systems*, Capetown, South Africa. On 11<sup>th</sup> October she presented "Comparative Constitutional Law: Possibilities and Pitfalls" to a seminar at the University of Oslo.

Other international conferences that Cheryl Saunders attended, at which she gave addresses of various kinds, include a closing address as new President at the World Congress of the International Association of Constitutional Law (Santiago, Chile, 28 January); an address to the Venice Commission on the work of the International Association of Constitutional Law (13 March); and an address to a ceremony to mark the release of a volume of essays honouring the work of Professor Georgios Kassimatis (Athens, 18 March). She was also honoured to present an address in honour of the memory of Professor Louis Favoreu to a Round Table of the International Association of Constitutional Law in Bordeaux, France in October.

**Katy Le Roy** attended the International Association of Constitutional Law World Congress in Santiago, Chile in January 2004. She was invited to give and, gave a paper at the Pacific Institute of Advanced Studies in Development and Governance,

University of South Pacific, Suva on 15 November 2004. The paper was called 'Comparative Constitutionalism: Establishing Legitimacy and Understanding the Options of Federalism'. Katy also co-hosted the International Roundtable and spoke on 'to what extent do new constituent units have autonomy in choice of institutions?'

#### Selected Presentations at National Conferences by Centre Members

**Carolyn Evans** presented a paper to the Annual General Meeting of the World Conference of Religions for Peace (Australian Branch) in May 2004. The paper was called 'One Step Forward, Two Steps Back: The United Nations and Religious Freedom'. Carolyn presented another paper at the University of Adelaide on International Law in a Time of Conflict in February 2004. The paper was called 'Religious Conflict and the Role of Human Rights Commissions'.

**Simon Evans** presented a paper to an invited international workshop on Speech and Liberty organised by Dr Adrienne Stone at the Law and Philosophy Programme, Research School of Social Sciences, ANU, in December 2004. His paper dealt with the often problematic relationship between private property rights and free speech rights.

**Kim Rubenstein** presented a paper to The Challenge of Conflict: International Law Responds in Adelaide on 26-29 February 2004. The paper was called 'Shifting Membership: Rethinking Nationality in Humanitarian Law'. She presented another paper to the Conference Honouring Mary Gaudron's contribution to Australian Law on Friday 5 March 2004 at the Melbourne Law School. The paper was called 'Meanings of Membership: Mary Gaudron's contributions to Australian citizenship'.

**Cheryl Saunders** gave a presentation to the Administrative Law Seminar hosted by the Federal Court and the Law Council of Australia, Sydney, 4 April 2004, on "Ousting the jurisdiction of courts in constitutional context". She also gave a presentation on "Common Sense" to the Sydney Institute in December 2004.

**Kristen Walker (with Andrew Mitchell)** presented at an Expert Workshop on International Challenges to the Australian Legal System, organised by the Centre for International and Public Law and the Gilbert & Tobin Centre of Constitutional Law on 12 & 13 August 2004. The paper was called 'New Perspectives on customary International Law and Australian Law'.

## RESEARCH AND PUBLICATIONS

Publications edited in the Centre

**Public Law Review.** A refereed journal dealing with public law in Australia and New Zealand

2004 Publications

### Edited Books

Patmore, G., *The Vocal Citizen: Labor Essays 2004*, Arena Printing and Publications Pty Ltd, Melbourne (2004)

### Book Chapters

Evans, C., "The special rapporteur on freedom of religion or belief" in Ghana N (ed) *The Challenge of Religious Discrimination at the Dawn of the New Millennium*, Martinus Nijhoff Publishers, The Netherlands (2004), 33-56

Evans, S., "The High Court's equity jurisprudence" in Cane P (ed) *Centenary essays for the High Court of Australia*, LexisNexis, Sydney (2004), 390-408

Rubenstein, K., "As a woman I want no country: Citizenship, nationality, international law and globalization - Lessons for and from women?" in Hiscox D and Levasseur J (eds) *The Measure of International Law: Effectiveness, Fairness and Validity*, Kluwer Law International, The Netherlands (2004), 11-20

Rubenstein, K., "The influence of Chinese immigration on Australian citizenship" in Couchman S, Fitzgerald JJ and MacGregor PC (eds) *After the Rush: Regulation, participation, and Chinese communities in Australia 1860-1940*, Special edition of *Otherland* Vol. 9, Melbourne (2004) 21-34

Saunders, C., "Constitutional structure and Australian Federalism" in Cane P (ed) *Centenary essays for the High Court of Australia*, Butterworths, New South Wales (2004), 174-196

Saunders, C., "A case study in Common Law Constitutionalism" in Hammer S, Somek A, Steltzer M & Weichelsbaum B (eds) *Demokratie und Sozialer Rechtsstaat in Europa 2004*, Austria (2004), 210-226

Saunders, C., "The Constitutional Framework for a Regional Australia, in Brown, A. J. and Hudson, W. (eds) *Restructuring Australia*, Federation Press, Sydney 2004

### Journal Articles

Evans, C., "Human rights commissions and religious conflict in the Asia-Pacific region" (2004) 53 *International and Comparative Law Quarterly*

Evans, C., "Responsibility for rights: The ACT Human Rights Act" (2004) 32:2 *Federal Law Review* 291-309

Evans, S., "Why is the constitution binding? Authority, obligation and the role of the people" (2004) 25:1 *Adelaide Law Review* 103-134

Rubenstein, K., "Meanings of membership: Mary Gaudron's contributions to Australian citizenship" (2004) 15 *Public Law Review* 305-313

Saunders, C. & Yam, KKF., "Government regulation by contract: Implications for the rule of law" (2004) 15 *Public Law Review* 51-70

Saunders, C., "Protecting rights in the Australian Federation" (2004) 25 *Adelaide Law Review*, 177-210

Saunders, C., "Interpreting the constitution" (2004) 15 *Public Law Review*, 289-296

#### **Unrefereed Letters / Notes**

Evans, C., "Human rights commissions and religious conflict" (2004) 13:1 in *Human Rights Defender* 2-3

Evans, C., "Review of Bryan Horrigan, Adventures in law and justice" (2004) 112:1 n *Australian Law Librarian*

Evans, C., "Review of Javaid Rehman, The weakness of international protection of minority rights" (2004) 6:1 in *The Australian Journal of Asian Law*

Evans, S., "Book review; Australian constitutional landmarks" (2004) *Public Law* 909-913

Waugh, J., "Book review: Parliamentary Privilege" (2004) 9:2 *Media and Arts Law Review* 165-167

#### **Grants**

In 2003 Simon Evans, Carolyn Evans and Kristen Walker were awarded a 3 year Australian Research Council Discovery Project grant, commencing in 2004. "Australian parliaments and the protection of human rights" focuses on the role of parliament and the executive in the protection of human rights. The project will explore the current non-judicial mechanisms for the protection of rights in Australia and assess their strengths and weaknesses. It will also compare the Australian system with other Commonwealth countries to examine alternative ways in which the parliament and executive can become involved in human rights protection. Ms Leanne McKay is a research fellow on the project.

Kim Rubenstein received a Law School Faculty small research grant for her project on 'Feminism and Federalism: the Australian experience' in which she is developing a larger project examining the principles underlying Australia's constitutional system from the perspective of their impact on women.

Research Supervision - Research Higher Degree Students (listed by supervisor)

#### **Cheryl Saunders**

- Sarah Biddulph (PhD): "The legal field of policing in China: administrative detention and legal reform"
- Rebecca French (PhD): "Discrimination and Preference in the Australian Constitution: An analysis of section 51 (2) and section 99"
- Emily Hammond (PhD): "Judicial Review and Courts created by Parliament"

- Fiona Hanlon (PhD): "Role of the Attorney-General"
- Susi Harijanto (PhD): "The Ombudsman in Indonesia"
- Max Howlett (LLM, minor thesis): "Constitutional Separation of Powers in the Kingdom of Cambodia; Theory and Practice"
- Denny Indrayana (PhD): "The Importance of the Democratic Legal System in Indonesia; a Legal Study of the Indonesian People's Consultative Assembly's meeting 1998-2000"
- Katy LeRoy (PhD): "Constitution-making in the Asia-Pacific Region"
- Hashim Tewfik (PhD): "Ethnic Federalism in Ethiopia: a Case Study"

**Cheryl Saunders and Simon Evans (co-supervision)**

- Vishaal Kishore (LLM, minor thesis): "The Need for Reorientation: Australian Public Law, Formalism and the Control of Executive Discretion" and "Clinging to Dicey's Wreckage"

**Cheryl Saunders and Kim Rubenstein (co-supervision)**

- Nicole Schwalb (SJD): "Identifying Identity in Constitutional Discourse: Towards and Beyond the Nation-State"

**Carolyn Evans**

- John Date (LLM): "The Compatibility of Canon Law and Corporate Law in Australian Law"

Research Supervision – Advanced Legal Research & Legal Internship Projects (LLB)

**Simon Evans**

- Laura Crommelin: "Redistricting, Reapportioning and Redistributing: What can we learn from the 'Three Rs' in Australia and the USA?"
- Alice Muhlebach: "NEAT Holdings – Reconciling Administrative Law and Corporate Law Controls"
- Jane Stewart: "Campaign Finance Reform in the United States"

**Cheryl Saunders**

- Perry Herzfeld: "What are the constitutional limitations on an Australian State that seeks to enact choice of law legislation?"

## PUBLIC POLICY AND LAW REFORM

### Internship

Simon Evans and Carolyn Evans led a successful Centre initiative to establish two Law Reform and Public Policy Internship positions for Melbourne LLB students, supported and funded by the Faculty. The full-time Summer Internship in Law Reform and Public Policy will be undertaken for 6 weeks full-time over the summer break. The first intern to take up this position will be Anna Hood in January 2005. The part-time Academic Year Internship in Law Reform and Public Policy will involve the intern working 30 days over the course of the 2005 academic year. The first intern to take up this position will be Andrew Brookes. Anna and Andrew were chosen after the two positions were advertised widely within the Faculty. The Centre received a large number of highly competitive applications, indicating the extent of interest among LLB students in the public law, law reform and public policy work of the Centre.

Both interns will work with members of the Centre to assist it in increasing its impact on national public policy debate and to raise the Centre's public profile. The interns will:

- monitor calls for submissions by State and Commonwealth government to see if any of them deal with public law issues in which the Centre has an interest;
- assist in undertaking background research and (where appropriate) producing a first draft of the Centre's response to relevant government inquiries;
- assist Centre members with research and (where appropriate) co-writing of articles for newspapers on public law issues;
- assist in the organisation of conferences run by the Centre; and
- work on a longer term public policy paper in an area of joint interest for the intern and the Centre.

### Selected Submissions to Inquiries

#### **Senate Constitutional and Legal Committee Inquiry Into an Australian Republic**

Centre members, Kim Rubenstein and Glenn Patmore, made submissions, to this Inquiry, both of which are referred to in the report of the Committee, which is available at <[http://www.aph.gov.au/senate/committee/legcon\\_ctte/republic03/report/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/republic03/report/index.htm)>.

#### **Prime Minister's Consultative Group on Constitutional Change: Resolving Deadlocks**

In late 2003, Centre members, Cheryl Saunders, Kris Walker, Carolyn Evans and Simon Evans, made a joint submission to, and met with the Prime Minister's consultative group in relation to its consideration of proposals for the reform of s 57 of the *Constitution*. The submission is referred to in the report of the Consultative Group, which is available at < <http://www.pmc.gov.au/conschange/>>.

### Involvement in pro bono litigation

#### **Singh v Commonwealth of Australia**

This landmark case examines the legislative power of the Parliament with respect to naturalization and aliens, s 51(xix) of the Constitution. In particular it examines the meaning of the word "aliens".

Tania Singh was born in Australia but she was not a citizen due to s 10 of the Australian Citizenship Act 1948 (Cth) which requires that one of the parents be an Australian citizen or permanent resident. Her parents were citizens of India and did not hold permanent resident visas. The Court determined 5-2 that Tania Singh was an

alien under s 51(xix) of the Constitution. McHugh and Callinan JJ were in dissent. The case is important because it contains analysis of constitutional law interpretive theories, including examining the significance of historical context. It also reviews the use of the Convention Debates in interpreting constitutional terms. The Centre's Professor Cheryl Saunders and Associate Professor Kim Rubenstein's research is quoted in the Court's judgment. Associate Professor Kim Rubenstein acted as Junior Counsel to the Solicitor General in the matter.

#### **Ruhani v Director of Police (Nauru)**

Kristen Walker, together with other barristers, acted for Mr Ruhani in this case, which concerned the constitutionality of appeals from the Supreme Court of Nauru to the High Court of Australia. Such appeals are provided for by Commonwealth and Nauruan legislation, giving effect to a treaty between Australia and Nauru. Mr Ruhani, an asylum-seeker detained in Nauru, had lodged an appeal in the High Court against a judgment of the Supreme Court of Nauru. The respondent, the Director of Police for Nauru, challenged the validity of the Commonwealth legislation providing for such appeals.

The case raised questions concerning the interpretation of Chapter III of the Commonwealth Constitution. These included whether section 73 of the Constitution is an exhaustive statement of the the appellate jurisdiction of the High Court; whether the jurisdiction conferred by the Commonwealth legislation was original jurisdiction under section 76(ii) of the Constitution (concerning matters arising under a law of the Commonwealth); and whether the jurisdiction conferred was original jurisdiction under section 75(i) of the Constitution (concerning matters arising under treaties).

As well as participating in the drafting of written submissions, Associate Professor Walker presented oral argument to the High Court on the third issue, concerning section 75(i).

Ultimately Mr Ruhani was successful and the Court upheld the validity of the Commonwealth legislation conferring jurisdiction on it. The Court has not yet provided reasons for its decision.

#### **Re Battersby; ex parte Ame**

Kim Rubenstein acted *pro bono* for Mr Ame in the HC application *Re Battersby; ex parte Ame* (now known as *Re MIMIA; ex parte Ame*).

Mr Ame was in detention in Villawood (he is now on a bridging visa) and he is seeking writs of Mandamus, Prohibition, Declaration and Injunction. The case revolves around whether his birth in Papua entitles him to continue to be recognised as an Australian citizen.

The case raises questions about the constitutional validity of the legislative regime that was introduced on the Independence of PNG that sought to strip Papuans of their Australian citizenship. Kim Rubenstein appeared before Hayne J on 24 August 2004 and the matter was adjourned until 21 September in order that the parties reach an agreed statement of facts. An agreed statement of facts was concluded and the case has been referred to the Full Court of the High Court as a case stated. The matter, *Ame v MIMIA* (M146 of 2004) will be heard on 3 March 2005 in Canberra. See <http://www.austlii.edu.au/au/other/HCATrans/2005/66.html>

## TEACHING PROGRAMS

Centre members have principal teaching responsibilities in the Faculty's wide range of public law subjects across all Faculty programs. In 2004 these included:

### **Bachelor of Laws**

Advanced Constitutional Law  
Constitutional and Administrative Law  
Migration Law

### **Postgraduate Courses**

Graduate Diploma of Government Law  
Master of Public and International Law

### **Postgraduate Subjects**

Administrative Law in Commonwealth Countries (Professor Hugh Corder)  
Comparative Constitutional Law (with Elizabeth Zoller)  
Constitution Making (with Michele Law)  
Principles of Public Law  
Protecting Rights  
Refugee Law (with Debbie Mortimer)

### **The Melbourne JD**

Administrative Law  
Constitutional Law  
Principles of Public Law



## OTHER ACTIVITIES

The **Centre for Comparative Constitutional Studies** has links to and participates in networks with other centres, institutes and associations with interests in constitutional law within the University, across Australia and throughout the world, including:

### **Australian Association of Constitutional Law**

The Australian Association of Constitutional Law is a forum for scholars and practitioners of constitutional law throughout Australia. It is affiliated with the International Association of Constitutional Law. It aims to develop and promote the discipline of constitutional law in Australia; to support teaching, research and the practise of the law which relates to the discipline; to provide a forum for the exchange of knowledge and information between practitioners, teachers and other interested persons regarding the discipline; to increase public awareness and understanding of the discipline; and to liaise with other bodies in the promotion of any of the above objects.

### **Forum of Federations, Canada**

The Forum of Federations is a non-profit, international organization based in Ottawa, Canada. It undertakes a wide range of programs designed to bring tangible improvements to the practise of federal governance around the world. Since its creation in 1998, the Forum has engaged in two major areas of activity, namely the establishment of an international network on federalism, and a program of consultation for governments at the federal and constituent-unit levels, both in Canada and abroad. The Forum's international board of directors includes members from Australia, Nigeria, India, Germany, Switzerland, Brazil, and Canada.

### **LAWASIA, The Law Association for Asia and the Pacific International Association of Constitutional Law**

LAWASIA is a professional association of representatives of bar councils, law associations, individual lawyers, law firms and corporations principally from the Asia Pacific region. LAWASIA's main objective is to foster professional and business relations between lawyers, businesses and government representatives in the Asia Pacific region and also to promote the rule of law in a diverse range of political, cultural, social and economic contexts throughout the region.

### **Institute of Federalism, Fribourg Switzerland**

The Institute of Federalism of the University of Fribourg is an international centre engaged in research, teaching, consulting and documentation. The Institute's activities focus on the understanding of various and diverse issues of federalism, decentralization, human rights, minority protection and good governance. Through its activities, the Institute aims at contributing to the development of multicultural communities within federal/decentralized States, under the rule of law and committed to domestic and international peace.

### **International Association of Constitutional Law**

The Association provides a forum for the exchange of knowledge and information and the development of understanding of constitutional systems. Drawing its members from as wide a variety of countries as possible, the Association fosters a network of constitutionalists from countries throughout the world allowing for the examination and comparison of common constitutional issues and phenomena.

### **International Association of Centers for Federal Studies**

The International Association of Centers for Federal Studies (IACFS) is an association of Centers and Institutes throughout the world with interests in independent research and publication about political, constitutional, legal, administrative, fiscal, economic, historical and philosophical issues relevant to political systems which have federal features. The Association was established to further the study and understanding of federal principles and patterns in all their variety.

### **Feminist Lawyers**

Feminist Lawyers is one of two groups that represent women lawyers in Victoria. Feminist Lawyers receives no corporate sponsorship of any kind. Its funds come from memberships, and fundraising events. This allows the group to be free of any potential influence of corporate agendas, and places it in an independent position to present uncompromised views.

Feminist Lawyers has a long and proud history. It was formed in the early 70's by a group of women law students. The membership is broad and diverse - from judges, law firm partners, academics, community/legal aid lawyers, policy officers and students. Membership is not restricted to practising lawyers.

The group's activities have included submissions to government on proposed legal issues affecting women e.g. sexual harassment law reform, writing and launching reports such as the Women Asylum Seeker report, media statements on legal issues relating to women e.g. provision of paid maternity leave as well as social/mentoring events, petitioning on certain causes, supporting grassroots projects and representing Feminist Lawyers on inter-group committees etc.

## APPENDIX 1 – ADVISORY BOARD

### Ian Cunliffe

Ian Cunliffe is a solicitor in private practice with his own firm. For the past 10 years he was a member of a large Australian legal partnerships. Prior to that Ian was successively head of the Legal Section of the Department of Prime Minister and Cabinet, Secretary and Director of Research of the Australian Law Reform Commission and chief executive of the Australian Constitutional Commission. At the beginning of his career, Ian was Associate to Sir Cyril Walsh at the High Court of Australia. He holds degrees in Arts and Law from the Australian National University. His constitutional interests focus on the role of the Constitution as a brake on government and as a guarantor of freedom of interference by government. He was the unsuccessful litigant (3:4) in the implied rights case *Cunliffe v. The Commonwealth* (1994) 182 CLR 272.

### Dr Stephen Donaghue

Stephen is a Victorian barrister whose practice areas include constitutional and administrative law. In addition to winning the Supreme Court Prize as a law student at the University of Melbourne, Stephen also holds a doctorate from Oxford, where he studied after receiving a Menzies Memorial Scholarship in Law and a Commonwealth Scholarship. He practised with Minter Ellison in both Melbourne and London offices, and was Associate to Justice Hayne of the High Court of Australia. He is the author of *Royal Commissions and Permanent Commissions of Inquiry* (Butterworths 2001) and of numerous articles in leading journals in the public and commercial law fields.

### Dr Gavan Griffith AO QC

Gavan Griffith is a leading domestic and international public lawyer. He was Commonwealth Solicitor-General from 1984 to 1997. He has appeared in the International Court of Justice on four occasions. He is a member of Matrix Chambers in London, the leading public law chambers, and is also a Chartered Arbitrator and International Commercial Arbitrator. In those capacities he has acted as chairman of member of tribunals or as sole arbitrator for ICSID, the Permanent Court of Arbitration, the ICC and other UNCITRAL rule international arbitrations.

### Peter Hanks QC

Peter Hanks practises predominantly in public law - administrative law and constitutional law. He appears regularly for Commonwealth and State government agencies, and against those agencies, in the Federal Court, High Court, Supreme Court, Commonwealth AAT and VCAT. He has published several books on constitutional law and administrative law. He is a principal contributor to Butterworths' "High Court and Federal Court Practice" and "Administrative Law Service".

### Wendy Harris

Wendy Harris is a Melbourne barrister, specialising in constitutional and commercial law, with a particular interest in free expression. She has been involved in a number of leading constitutional cases, including *Theophanous v Herald & Weekly Times; Kruger v Commonwealth; Kartinyeri v Commonwealth* and *Grain Pool of WA v Commonwealth*. She has an active public law practice, and has spoken and written in national and international fora on free expression and other constitutional issues. She is a member of the London-based Interights Freedom of Expression Project Advisory Panel.

### **Chris Maxwell QC**

Chris Maxwell's particular interests lie in the field of public law - administrative law, constitutional law, FOI and related areas such as taxation and customs. He has appeared in a number of constitutional and other cases in the High Court, dealing with issues ranging from environmental law and copyright to taxation and industrial law. Chris has had a range of experience with boards and Commissions of Inquiry as: Counsel assisting the Mental Health Review Board in the Garry David case (1990); Junior Counsel for the State Bank of Victoria in the Tricontinental Royal Commission (1990-92); Counsel assisting the Judicial Inquiry into the Australian Secret Intelligence Service (1994-5). He has also had a variety of commercial experience, including as junior counsel for the State of Victoria in its negligence action against the former auditors of Tricontinental.

### **Debbie Mortimer SC**

Debbie Mortimer practises mostly in Public Law, Administrative Law, Migration, Anti-Discrimination, Native Title/Aboriginal issues, FOI Jurisdictions: Tribunals, Supreme, Federal and High Courts, including appellate work. She has experience as an academic and in practice in Medical Law and Ethics, especially IVF and related issues. She is a former Associate to Sir Gerard Brennan.

### **Mark Moshinsky**

Mark Moshinsky practices mainly in Commercial Law, Conflict of Laws, Constitutional Law, Administrative Law and Taxation. Mark studied law at the University of Melbourne 1984-1988 and was awarded the Supreme Court Prize 1988. He completed a Bachelor of Civil Law with First Class Honours at Oxford University as a Rhodes Scholar.

### **Stephen McLeish**

Stephen McLeish is a Victorian barrister practicing mainly in the areas of Administrative Law (including Immigration and Freedom of Information), Constitutional and Corporate/Commercial Law. He was formerly Associate to Chief Justice Sir Anthony Mason (High Court of Australia) and a Solicitor with Arthur Robinson & Hedderwicks. He completed a Master of Laws Degree at Harvard in 1991 concentrating on Constitutional Law and Jurisprudence and has published articles on Public and Corporate Law.

### **Brian Opeskin**

Brian Opeskin has been a full-time Commissioner at the Australian Law Reform Commission since 31 July 2000. He led the Commission's inquiry on the *Judiciary Act 1903 (Cth)* (*The Judicial Power of the Commonwealth*, ALRC 92, 2001), and jointly led the inquiry into the protection of human genetic information (*Essentially Yours*, ALRC 96, 2003), and into gene patenting and human health (*Genes and Ingenuity*, ALRC 99, 2004). He is now leading the inquiry into the sentencing of federal offenders. He has taught in the fields of constitutional law, federal courts, international law, and conflict of laws at Sydney University Law School, where he was an Associate Professor until July 2003. He has published many articles in these fields and has co-authored several books. He holds degrees in Economics and Law from the University of New South Wales, and a Bachelor of Civil Law degree from the University of Oxford. He was admitted as a barrister of the Supreme Court of New South Wales in 1989.

### **Jason Pizer**

Admitted to the Victorian Bar in 1999, Jason's areas of practise include Administrative Law (Judicial Review) and Administrative Law (Merits Review). From May 1994 until April 1995, prior to completing his articles at Mallesons Stephen Jaques, Jason worked as an associate to Sir Anthony Mason, the then Chief Justice of the High Court. Jason is currently the co-editor of Kyrou and Pizer, *Victorian Administrative Law*, the author of the chapter entitled "Applications to the Victorian Civil and Administrative Tribunal" in the *Lawyers Practice Manual*, and has published articles in numerous journals on various areas of the law, including the Victorian Civil and Administrative Tribunal, freedom of information, company law, intellectual property law, torts law and equity.

### **Pamela Tate SC, Solicitor-General for Victoria**

Pamela Tate was appointed Solicitor-General in July 2003. She is the first female Solicitor-General appointed for the state of Victoria. Prior to her appointment, she practised at the Bar principally in the field of public law. She had graduated from Monash University in 1987 with a first-class honours degree in law and was awarded the Butterworth's research prize for her honours thesis. Before being called to the Bar in 1991, she had worked as an associate to High Court justice Sir Daryl Dawson for two years. She also has a first-class honours degree in philosophy from Otago University, and spent three years doing postgraduate studies in philosophy at Oxford University after obtaining a Commonwealth Scholarship.

### **Richard R S Tracey QC**

A former student and senior lecturer at the University of Melbourne, Richard Tracey is Queen's Counsel in both Victoria, Tasmania and New South Wales. His civil practice concentrates on administrative law and industrial law. He also has a long and distinguished military practise including as Judge Advocate and Reviewing Judge Advocate (Defence Force Magistrate). He has been a member of various Commonwealth tribunals and was senior counsel assisting the Royal Commission into the Building and Construction Industry. He is Editor of the Australian Journal of Administrative Law.