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FOREWORD

OBJECTIVES OF THE CENTRE FOR EMPLOYMENT AND LABOUR RELATIONS LAW

THE CENTRE: PEOPLE AND RELATIONSHIPS

VISITORS

RESEARCH

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KNOWLEDGE TRANSFER AND COMMUNITY ENGAGEMENT

CONFERENCE AND SEMINAR PAPERS

PUBLICATIONS

SUMMARY OF CENTRE GENERAL ACCOUNT 2016
FOREWORD

2016 saw another strong year for the Centre, in terms of research, teaching and engagement.

PERSONNEL

Helen Anderson was promoted to the level of Professor, effective from the beginning of 2016. This is a great recognition of Helen’s contribution to scholarship, at both the national and the international level, in addition to her leadership within the Law School. Tess Hardy went on parental leave during 2016, while Sean Cooney returned to the Centre at the end of 2016 after spending over two years as a Labour Law Specialist at the International Labour Organisation in Geneva.

Adriana Orifici commenced her PhD in the Centre in August 2016. Adriana’s PhD project examines the practice of workplace investigations, as they are conducted in Australia, and interactions with legal regulation. The thesis will undertake the first comprehensive study of the legal dimensions of workplace investigations, and will investigate whether changes to the Australian legal framework are desirable. The title of the PhD is ‘Workplace Investigations: Interactions with Regulation and Pathways for Reform’. The dissertation is being supervised by Beth Gaze and Anna Chapman.

In 2016 the Centre was again able to appoint a JD student as the CELRL Student Fellow. This Fellowship provides a law student with the opportunity to work as a research assistant with the Centre over the course of the academic year. Adrian Faelli was appointed to the position from a field of impressive applicants. Adrian worked on a number of projects over the course of the year, and he particularly assisted in the edited book that arose out of the workshop held in February 2016 to celebrate 21 years of the Centre.

PUBLIC LECTURE AND WORKSHOP TO CELEBRATE 21 YEARS OF THE CENTRE

A highlight of 2016 was the 21st birthday celebrations of the Centre, which comprised a Public Lecture entitled ‘Researching, Teaching and Practising Labour Law’, as well as an academic Workshop. At the public lecture the audience heard from a panel of speakers with a wide range of perspectives on the topic. The panel comprised Josh Bornstein; Anthony Forsyth (RMIT University); Natalie James; and, Sarah Rey. We are grateful to the panel for their engaged and thoughtful discussion of the intersections between the different activities of labour law. The academic Workshop was also very well received with over 20 scholars from around Australia taking part. An edited book of papers originally presented at the Workshop was published by Federation Press in April 2017.

RESEARCH

Good progress was made on all funded research projects over the course of 2016, with numerous papers written and presentations delivered to a wide range of audiences. In particular two major workshops were held as part of projects funded by the Australian Research Council – the ‘Reshaping Employment Discrimination Law’ project and the ‘Precariousness of Temporary Migrant Work’ project. Each workshop was attended by a range of interested participants, including academics, practitioners, and those from the community sector.

The Centre had a strong presence at the Biennial National Conference of the Australian Labour Law Association, which was held in Melbourne in November 2016. Papers were delivered by most members of the Centre, as well as by PhD students.

The year 2016 saw the publication of two books – a sole authored monograph by Alysia Blackham and co-edited collection by Sean Cooney and colleagues. The publication of a book is a major achievement in the career of an academic, and the Centre is proud to have three such outputs in 2016.

TEACHING AND LEARNING

The Centre continued to coordinate a strong teaching program in both the Juris Doctor degree, and the Melbourne Law Masters program.

In the Juris Doctor program students have a choice of a number of subjects relevant to the field. In addition to ‘Employment Law’ (which provides a thematic overview of the field), students are able to study ‘Equality and Discrimination Law’ (which focuses on anti-discrimination
law in Australia), in addition to the ability to undertake an internship with a range of organisations such as the Fair Work Commission and JobWatch (as part of the subject ‘Legal Internship’). In addition, students are able to undertake a supervised research paper in the field as part of their final year compulsory subject ‘Legal Research’.

The employment and labour relations law specialisation in the MLM program offers nine integrated subjects (as detailed in the pages of this annual report). These subjects can be taken by students towards the Graduate Diploma in Employment and Labour Relations Law or the Master of Employment and Labour Relations Law. Students come into the MLM program with a range of backgrounds, including in private legal practice as well as human resource management and industrial associations. The Centre also welcomes students undertaking a minor or major thesis as part of their LLM, in addition to PhD students.

Student feedback on our subjects remains very positive, and enrolment numbers are strong and growing, prompting two offerings in 2016 of the subject ‘Employment Law’ in the Juris Doctor degree, as well as two offerings of ‘Principles of Employment Law’ in the MLM program. Over the course of 2016 a new subject – ‘Conducting Workplace Investigations’ - was designed for the MLM program. This subject, to be taught by Jane Seymour of the NSW Bar, has proven to attract high student enrolments.

PROFESSIONAL AND COMMUNITY ENGAGEMENT

The Centre delivered another strong program of seminars and other forms of engagement in 2016. Over the course of the year six Labour Law Seminars were held, presented by Australian and overseas scholars. The topics ranged from regulating unpaid internships (Andrew Stewart); progressing equality at work (Beth Gaze, David Oppenheimer (Law, UC Berkley), Judy Fudge (University of Kent) and Colm O’Cinneide (UCL Faculty of Laws)); labour law in the African Union (Diamond Ashiagbor (SOAS, Uni of London)); the work of the ILO Committee of Experts (Rosemary Owens AO); and, Brexit (Amy Ludlow (Uni of Cambridge)). The Labour Law Seminar Series is open to members of the general public and is well attended by a diverse range of professionals in the field.

Three seminars were held as part of the Sponsors’ Seminar Series. These seminars are invitation-only events, conducted solely for the members of the Centre’s sponsoring firms and organisations. Generally a smaller group of participants attend these seminars, and this enables discussion and consideration of more complex matters suitable for the specialised interests of the attendees. In April, Melinda Richards SC together with John Howe and Tess Hardy examined recent cases in accessorial liability, and in July Justin Bourke QC, with commentary by Janine Webster, looked at important developments in the application of the sham contracting provisions. In November Herman Borenstein QC examined the Uniline decision on s 173 of the Act, with commentary by Karl Blake and Charles Power. The sponsors’ seminars were well attended in 2016, and generated lively discussion amongst participants from the sponsoring firms.

The Centre was again pleased to co-host the Melbourne lecture of the Fair Work Commission’s Workplace Relations Education Series. The 2016 lecture, on the Commission’s anti-bullying jurisdiction, was delivered by Commissioner Hampton, and was accompanied by a panel discussion (Anna Chapman, Josh Bornstein and Steven Amendola). This event was fully subscribed and well received by attendees.

ACKNOWLEDGEMENTS

The publication of the annual report provides an opportunity to make special acknowledgement of the important contributions made to the Centre and its work by the legal practices and organisations that are Centre Sponsors. Thanks is also extended to the Centre academic associates, teaching associates, and members of the Advisory Board. We are pleased to note that the Centre Sponsors renewed their sponsorship of the Centre in 2016. In addition to the Sponsors’ financial contributions, members of these practices frequently participate in the Centre’s research and teaching programs, as well as attending (and in some cases presenting at) the Sponsors’ Seminar Series. The many aspects of our relationships with our Sponsors are, we believe, mutually enriching.

The ongoing support and contributions of our sponsors, as well as our academic, teaching and research associates, and the members of the Advisory Board, are all essential to the Centre’s continuing success and vitality. We also wish to thank the JD students who are involved in the Centre as Student Editorial Assistants for the Australian Journal of Labour Law, or as research assistants for the various research projects in which Centre members are involved. Also important is the financial and administrative support provided by Melbourne Law School. Once again, we thank all those who continue to offer their support: without it the Centre could not do much of the work that it does.

John Howe and Anna Chapman
Centre Directors
May 2017
The Centre was established at Melbourne Law School in 1994. It is Australia’s first research centre devoted exclusively to developing an understanding of the role and function of labour law. Its objectives are:

- to undertake and encourage independent research on all aspects of labour and employment regulation in Australia and internationally;
- to undertake and encourage critical research on the development of labour and employment law as a discipline, including the exploration of future developments;
- to undertake and promote the teaching of labour and employment law, including by developing and promoting innovative teaching methods and teaching materials, and by fostering graduate research;
- to disseminate the results of research in labour and employment law through publication in the form of working papers, journal articles and books, and in the form of seminar programs and conferences, participation in public debate, information exchange, and consultancies; and
- to establish and foster links with similar bodies, internationally and nationally, and to facilitate engagement between scholars, students, policymakers, the legal profession, industrial relations practitioners and other individuals and organisations working in labour and employment law.
THE CENTRE: PEOPLE AND RELATIONSHIPS

CO-DIRECTORS

Professor John Howe

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Professor John Howe is Co-Director of the Centre for Employment and Labour Relations Law at the Law School. His research interests include labour law, regulatory theory, and corporate accountability, and he teaches in the areas of corporations law, corporate social responsibility and labour law. John is also a member of the Centre for Corporate Law and Securities Regulation. John has written extensively on the nature of various mechanisms of labour regulation, and the intersection between state-based regulation and corporate governance. He is presently engaged in research concerning regulatory enforcement of minimum employment standards in Australia and the Asia-Pacific region. He is also researching how large business organisations engage in self-regulation of labour practices through internal policy and rule-making processes, and the interaction between these policies and employment laws.

John is Chair of the Steering Committee of the Labour Law Research Network, and is a member of the Organising Committee of the Regulating for Decent Work Network. He is an Editor of the Australian Journal of Labour Law.

Prior to commencing an academic career, John worked in private legal practice, and also as a researcher for public policy and advocacy organisations in Washington DC. John was Secretary of the Australian Labour Law Association between 2005 and 2009. He was Deputy Dean of the Melbourne Law School from 2013–2016.

Associate Professor Anna Chapman

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Associate Professor Anna Chapman is a Director of the Centre for Employment and Labour Relations Law, and a Course Director of the MLM Employment and Labour Relations Law program.

Anna was an Editor of the Australian Journal of Labour Law from 2009 to January 2015. Anna holds Bachelor degrees in both Commerce and Law (with Hons) from the University of Melbourne, an LLM from the University of Melbourne and a PhD from the University of Adelaide (with a Dean’s Commendation for Doctoral Thesis Excellence). Her research focuses on employment law and gender, sexuality, and race. This work has engaged particularly with minimum standards, including leave entitlements and working hours, in addition to general protections (adverse action), unfair dismissal and discrimination law.

Anna’s recent work includes an ARC funded project (with Beth Gaze) examining the intersections between the General Protections in the Fair Work Act 2009 (Cth) and anti-discrimination law.
MEMBERS

Professor Helen Anderson

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Professor Helen Anderson joined the Centre for Employment and Labour Relations Law and Melbourne Law School in January 2010 after working for 21 years at Monash University. She practised briefly and worked for the Legal Aid Commission before becoming an academic in 1989. The fair treatment of vulnerable corporate stakeholders has been her abiding research interest: her Masters major thesis dealt with shareholders who rely on published audit opinions and her doctoral thesis was concerned with creditors in corporate insolvency. She continues this interest with her work on improving the recovery rights of employees in corporate insolvency. In 2014, she and a team of other academics were successful in obtaining an ARC Discovery Grant to examine fraudulent phoenix activity.

Her most recent book is The Protection of Employee Entitlements in Insolvency: An Australian Perspective. The phoenix activity project has also produced two major reports, Defining and Profiling Phoenix Activity and Quantifying Phoenix Activity: Incidence, Cost, Enforcement with its final output coming in early 2017.

Dr Alysia Blackham

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Dr Alysia Blackham is a Senior Lecturer and Discovery Early Career Research Fellow at Melbourne Law School. Alysia holds Bachelor degrees in both Arts and Law (with Hons) from the University of Melbourne, and a PhD in Law from Gonville and Caius College at the University of Cambridge.

Her research focuses on the intersection of employment law, equality law and public law, using empirical evidence to cast new light on legal problems. Alysia’s recent work concentrates on the consequences of demographic ageing for workplaces. A monograph based on Alysia’s PhD thesis, entitled Extending Working Life for Older Workers: Age Discrimination Law, Policy and Practice, was published by Hart in 2016.

Alysia has worked as a solicitor at Herbert Smith Freehills and taught at the University of Sydney and University of New South Wales. Prior to joining Melbourne Law School, Alysia was the Turpin-Lipstein Fellow and College Lecturer in Law at Clare College, Cambridge and an Affiliated Lecturer at the Faculty of Law, University of Cambridge.
Professor Beth Gaze

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Beth Gaze taught law at Monash Law School before joining Melbourne Law School in 2005, and has previously been a member of commonwealth and state tribunals including the Social Security Appeals Tribunal and the Mental Health Review Board. Her research interests lie in anti-discrimination and equality law, feminist legal thought, and administrative law including tribunals, and she has a particular interest in socio-legal research including empirical research. She has published extensively in these areas, and has been the recipient of several ARC Grants.

Beth has acted as an expert adviser to parliament and to the International Labour Organisation, and is a member of the Editorial Board of the International Journal of Discrimination and the Law. She has published many articles and book chapters on Australian anti-discrimination law. Her most recent book is *Equality and Discrimination Law in Australia: An Introduction* with Associate Professor Belinda Smith of the University of Sydney (2017, Cambridge University Press). With Anna Chapman, she is presently finalising a major research project investigating whether the adverse action provisions of the *Fair Work Act 2009* (Cth) have improved protection against employment discrimination in Australia. Beth is also a member of the Centre for Comparative Constitutional Studies.

Professor Sean Cooney

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During 2016, Sean was on leave from the University of Melbourne having taken up a position as a Labour Law Specialist at the International Labour Organisation in Geneva in 2014. During 2016, Sean worked on labour law reform in China, India, Malaysia, Myanmar and Pakistan. He also contributed to international projects concerning dispute resolution, recruitment of migrant labour and violence at work. Sean returns to the University in 2017.

Sean is a graduate of the University of Melbourne and, after several years in legal practice, obtained his doctoral degree at Columbia University. He has published in a range of international journals in English and in Chinese, and has examined issues of comparative labour law, and labour law enforcement, with a particular emphasis on East Asia. His recent research includes an ARC-funded study of the Fair Work Ombudsman, together with John Howe and Tess Hardy as well as a second ARC funded study on the development of labour and corporate law in the Asia Pacific (with Richard Mitchell, Petra Mahy, Peter Gahan and Ian Ramsay).

Sean’s most recent books are *Law and Fair Work in China*, (Routledge 2013) together with Sarah Biddulph and Zhu Ying and *Resolving Individual Labour Disputes: A Comparative Overview* (International Labour Organisation, 2016), which is co-edited with Minawa Ebisui and Colin Fenwick.
Tess Hardy graduated from Melbourne Law School with an honours degree in law and in arts in 2004. She also holds a Masters of Law degree from Melbourne Law School. As part of her Masters, Tess completed a minor thesis on the evolution of the regulatory agency responsible for enforcement of employment standards in Australia. In 2014, Tess was awarded her PhD which sought to deepen the empirical and theoretical understanding of collaborative compliance initiatives between the Fair Work Ombudsman and a range non-state actors, including unions, employer associations and franchisors.

From 2005 to 2009, Tess worked as a lawyer and senior associate at a number of national law firms in Melbourne, Tokyo and Hong Kong. Her practice was principally in the area of employment and labour law. From 2010 to 2013, Tess was employed as a Research Fellow at the Centre for Employment and Labour Relations Law. In this period, Tess was engaged in an ARC Linkage Project (with partner organisation, the Fair Work Ombudsman) which sought to examine the role and operation of the federal labour inspectorate in Australia. She was previously the Associate Editor of the Australian Journal of Labour Law and currently sits on the national committee of the Australian Labour Law Association.

Joo-Cheong Tham taught at the law schools of Victoria University and La Trobe University before joining Melbourne Law School.

His research spans the fields of labour law and public law with his key research areas, the regulation of precarious work and political finance law. He has also undertaken considerable research into counter-terrorism laws. He has published 39 book chapters and refereed articles, edited two collections and produced three monographs including *Money and Politics: The Democracy We Can’t Afford* (2010, UNSW Press). His research has also been published in print and online media with Joo-Cheong having written more than 50 opinion pieces. Joo-Cheong regularly speaks at public forums and has presented lectures at the Commonwealth, South Australian and Victorian Parliaments. He has also given evidence to parliamentary inquiries into labour migration, terrorism laws and political finance laws; and has written key reports for the New South Wales Electoral Commission on the regulation of political finance and lobbying.

His research on the regulation of precarious work is currently focussed on the challenges posed by temporary migrant work in Australia, particularly, the precariousness of such work. He is working with Dr Iain Campbell, Centre for Applied Social Research, RMIT University in an Australian Research Council project on this topic.
Ingrid Landau is a doctoral student within the Centre for Employment and Labour Relations Law and the Centre for International Law and the Humanities. She graduated with honours in Asian Studies and Law from the Australian National University in 2006. Since then, she has worked at Melbourne Law School, the Faculty of Business Law and Taxation at Monash University and at the Australian Council of Trade Unions. At the ACTU, she was responsible for researching and providing advice on a range of areas of Australian employment and labour law, as well as international labour standards, human rights and corporate accountability.

From 2010-2014, she also acted as an Australian Worker Delegate to the International Labour Organisation’s International Labour Conference in Geneva. Ingrid has published in Australian and international journals, and has worked as principal researcher on major research projects commissioned by the Fair Work Commission and the International Labour Organisation. Her research interests include Australian employment and labour law, international and comparative labour law (with a focus on the Asia-Pacific) and corporate accountability and labour rights.

Adriana Orifici is a PhD Candidate and Research Fellow at the Centre of Employment and Labour Relations Law. She is also the Associate Editor of the Australian Journal of Labour Law. Adriana researches in employment law, with a particular focus on workplace investigations, the general protections provisions of the Fair Work Act 2009 (Cth) and anti-discrimination law. Her PhD examines the interface between workplace investigations and public regulation.


Adriana completed articles in 2006 at Maddocks and has practiced in employment and labour relations law since that time. She has extensive experience in acting for public and private sector organisations in employment-related matters including strategic workplace relations and human resource management issues, anti-discrimination claims, occupational health and safety matters and industrial disputes.

In 2012, Adriana held the position of Intern-Collaborator with the International Training College of the International Labour Organisation in Turin, Italy under the auspices of a scholarship from the Italian Government.

Adriana graduated with Arts (Hons) and Law (Hons) from the University of Melbourne. In 2013, she completed a Master of Laws at the University of Melbourne.
Ms Maria Azzurra Tranfaglia

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Azzurra is undertaking a PhD in Comparative Labour Law at Melbourne Law School, focussing on the regulation of agency work and labour hire in Europe and in Australia. She is also a Research Fellow at the Centre for Employment and Labour Relations Law. She has been involved on several different research projects and the most recent one deals with temporary labour migration in Australia. She is an employment lawyer admitted to practice in Italy and has studied and worked in Italy and in Australia in this field both in private practice and academia.

The Hon Professor Geoffrey Giudice AO

BA, LLB (Melb)
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Geoff Giudice studied law and arts at the University of Melbourne, graduating in 1970. He spent nine years working in industry, before beginning to practise as a solicitor in 1979. He was admitted to the Bar in Victoria in 1984. As a barrister, he specialised in industrial relations and employment law. He was appointed a Judge of the Federal Court of Australia in 1997. At the same time, he became the President of the Australian Industrial Relations Commission. In 2009, when the Commission was replaced by the newly-established Fair Work Australia, he was appointed its first President. Geoff retired from this position in February 2012. Apart from his appointment with the Centre for Employment and Labour Relations law he has a number of other roles including consultant to Ashurst Australia and Chair of the Independent Review Panel under the Gambling Regulation Act (Vic). He has a special interest in legislative policy-making and is the author of an article entitled: Industrial relations law reform: What value should be given to stability?, published in the Journal of Industrial Relations in June 2014. In 2015 he assisted in the presentation of a workshop on independent dispute resolution institutions at the ITC-ILO in Turin, Italy. In the same year he delivered a paper on aspects of the right to strike in Australia at the ILERA Conference in Cape Town, South Africa.
Members of the Centre were assisted by the following research staff:

- Beixi Sun
- Aya Ono
- Eloise Williams
- Hannah Withers
- Elly Patira
- Jasper Hedges

In 2016 the CELRL Student fellow was Adrian Faelli.
The Centre’s work takes place under the guidance and assistance of an Advisory Board. Members of the Board are distinguished representatives of major institutions, bodies and law firms with an involvement in the labour law field. The members in 2016 were:

- The Honourable Anthony North (Chair), Federal Court of Australia
- Senior Deputy President Jennifer Acton, Fair Work Commission
- Mr Steven Amendola, Ashurst
- Ms Carol Andrades, Ryan Carlisle Thomas
- Mr Josh Bornstein, Maurice Blackburn
- The Honourable Alan Boulton, Fair Work Commission
- Mr Trevor Clarke, Australian Council of Trade Unions
- Mr Mark Diserio, Lander & Rogers
- The Honourable Peter Gray AM, formerly of the Federal Court of Australia
- The Honourable Associate Justice Mary-Jane Ierodiaconou, Supreme Court of Victoria
- Mr Ross Jackson, Maddocks
- Ms Natalie James, Fair Work Ombudsman
- Mr Murray Kellock, King Wood & Mallesons
- Mr Leon Levine, Minter Ellison
- Mr Peter Lupson, K&L Gates
- Ms Frances O’Brien QC, Victorian Bar
- Mr Charles Power, Holding Redlich
- Ms Sarah Rey, Justitia
- Ms Penny Savidis, Ryan Carlisle Thomas
- Mr James Simpson, Arnold Bloch Leibler
- Mr Michael Tamvakologos, Seyfarth Shaw
- Mr John Tuck, Corrs Chambers Westgarth
- Mr Tony Wood, Herbert Smith Freehills
The support of sponsors is essential to the continued operation of the Centre, both in terms of the financial contributions that sponsors make to the resources of the Centre, and in terms of the involvement of sponsoring firms in providing advice and counsel for the Centre. One representative from each of the Centre’s sponsors sits on the Centre’s Advisory Board. The Centre’s sponsors in 2016 were:
VISITORS

The Centre regularly welcomes academic colleagues from interstate and overseas. In 2016 we hosted 13 visitors:

- Diamond Ashiagbor (March)
- Iain Campbell (August–December)
- Craig Dowling (June)
- Keith Ewing (November–December)
- Judy Fudge (July)
- Amy Ludlow (September)
- Colm O’Cinneide (July)
- Paul O’Grady (May)
- David Oppenheimer (July)
- Mia Rönnmar (August)
- Peter Rozen (August)
- Andrew Stewart (April)
- Zheng Zisen (January–June)
RESEARCH

The Centre is Australia’s first research centre devoted exclusively to developing an understanding of the role and function of legal regulation of the labour market. Centre members are engaged in research in diverse aspects of the broad field of employment and labour law and labour market regulation. Areas of particular interest and expertise include corporate governance and labour law, the enforcement of minimum employment standards, international labour rights and standards, temporary migrant worker rights, and discrimination and inequality in employment and the labour market.

During 2016, Centre members pursued a number of specific research projects. Short descriptions of the Australian Research Council (ARC) funded projects follow. Further information on all of the research projects can be found on our website at: http://law.unimelb.edu.au/centres/celrl/research/current-research-projects

AUSTRALIAN RESEARCH COUNCIL (ARC) FUNDED RESEARCH PROJECTS

RESHAPING EMPLOYMENT DISCRIMINATION LAW: TOWARDS SUBSTANTIVE EQUALITY AT WORK?

Centre Members: Anna Chapman and Beth Gaze

Research Staff: Adriana Orifici

The 2009 reshaping of Australian industrial law through the Fair Work Act unexpectedly introduced a comprehensive prohibition on discrimination in employment. This novel prohibition operates alongside existing anti-discrimination laws. These have quite separate conceptual foundations, and their effectiveness in promoting equality at work has been limited. This project examines the effect of the 2009 provisions, and the interaction of the overall system of employment discrimination laws in both providing legal redress for discriminatory harms at work in Australia, and in contributing to systemic change towards equality in relations at work.

In addition to continuing to monitor case law developments, 2016 saw a focus on the empirical dimensions of the project. Over 50 interviews were completed and were analysed during 2015 and into 2016. A paper was presented at the 21st Birthday workshop of the Centre, and then subsequently developed as a book chapter in the Howe, Chapman and Landau edited collection, ‘The Evolving Project of Labour Law’. A paper was also prepared, partly drawing on the project, for presentation at the University of Leuven in 2015, and then as a chapter in R Blanpain & F Hendrickx (Eds), Reasonable Accommodation in the Modern Workplace: Potential and Limits of the Integrative Logics of Labour Law (2016, The Netherlands: Kluwer Law International).

PRECARIOUSNESS OF TEMPORARY MIGRANT WORK IN LAW AND LABOUR MARKETS

Centre Member: Joo-Cheong Tham

Associates: Iain Campbell and Judy Fudge

Research Staff: Maria Azzurra Tranfaglia
This project examines the situation of temporary migrant workers in Australia, focusing on the nature and extent of their precariousness both in law and in labour market practice. It offers a major contribution to current research and policy debates on the implications of temporary migrant labour.

The project centres on three industry case-studies: 1) nurses on 457 visas; 2) temporary migrant workers in Melbourne cafes, restaurants and take-away food services; and 3) temporary migrant workers in the Victorian horticulture industry. Case-study 1) was completed in 2013. The field-work for Case-study 2) was completed in 2015. Case-study 3) also commenced in 2015 was completed in 2016.

**PHOENIX ACTIVITY: REGULATING FRAUDULENT USE OF THE CORPORATE FORM**

Centre Member: Helen Anderson

Associates: Ann O'Connell, Ian Ramsay and Michelle Welsh

Research Staff: Hannah Withers and Jasper Hedges

Fraudulent phoenix activity is of great concern to Australian policymakers. It occurs where there is the deliberate liquidation of a company to avoid paying debts but the business continues through another company, and in corporate groups through the liquidation of undercapitalised subsidiaries and transfer of business to other companies in the group. This behaviour causes huge losses in taxation revenue and large financial losses for employees and unsecured creditors. To strengthen Australia’s economic fabric, this project aims to determine the optimal method of dealing with fraudulent phoenix activity through a thorough examination of all of its aspects in Australia and by a comparative analysis of international responses.

In 2016, the project reached its final stages, with work done on scholarly and professional articles, as well as many presentations given, prior to the release of the final project report in early 2017.

**NEW INITIATIVES IN ENFORCEMENT OF EMPLOYMENT STANDARDS: ASSESSING THE EFFECTIVENESS OF FEDERAL GOVERNMENT COMPLIANCE STRATEGIES**

Centre Members: John Howe, Tess Hardy and Sean Cooney

This ARC-funded Linkage project has been assessing the operation and impact of the Fair Work Ombudsman (FWO), the federal agency enforcing working conditions relating to pay, reasonable working hours and leave. The research is grounded in the literature on regulatory effectiveness and includes comparison with comparable agencies domestically and internationally, as well as empirical studies of the actions of the FWO’s staff and of the response of the target employers.

In 2016, John Howe and Tess Hardy reviewed and analysed the findings of the project’s survey of Australian business awareness of, and responses to, the FWO and enforcement activities it has undertaken in relation to employment standards regulation under the Fair Work Act. John and Tess delivered a research paper drawing on this work at the 2016 Australian Labour Law Association National Conference, and prepared a report of their findings published in early 2017: J Howe and T Hardy, *Business Responses to Fair Work Ombudsman Compliance Activities*, Research Report, Centre for Employment and Labour Relations Law, University of Melbourne, 2017.

**OTHER EMPLOYMENT AND LABOUR LAW RESEARCH PROJECTS**

- Anna Chapman, John Howe and Susan Ainsworth, ‘Codes of Conduct and Employment Law’ (funded by Melbourne Law School Research Grant Support Scheme)
- Alysia Blackham, ‘Managing without a retirement age in universities: a comparative picture’ (funded by the UK Society of Legal Scholars and the UK Socio-Legal Studies Association)
- Alysia Blackham, ‘Precarious Academic Work in Legal Education’ (funded by the UK Legal Education Research Fund)
- Martina Boese, Sean Cooney, John Howe, Petra Mahy and Joo-Cheong Tham, ‘How Are Low Protection Workers Regulated: A Pilot Study in Australia and Indonesia’ (funded by the University of Melbourne Interdisciplinary Seed Funding Scheme)
RESEARCH STUDENTS UNDER THE SUPERVISION OF CENTRE MEMBERS

The Centre and its members are active in encouraging and supervising the work of students working towards a research higher degree in employment and labour relations law. Candidates are supervised by a Centre member and have the opportunity to participate in Centre projects and activities while completing their research.

BERNICE CARRICK (PHD CANDIDATE)

Title: Migration Status Equality in the Midst of the Border

Supervisors: Beth Gaze and Jenny Beard

Description: The thesis explores the impact of the immigration jurisdiction on discrimination and equality law in Australia and Canada. Understanding state borders as detached from territorial boundaries, it focuses how the borders of these two states attach to individuals and alter the way that discrimination and equality law attaches to them.

HAI HA DO (THESIS PASSED 2016)

Title: The dynamics of legal transplantation: regulating industrial conflicts in post-Đổi mới Vietnam

Supervisor: Sean Cooney

Description: This thesis finds that despite its extensive reliance on imported legal concepts, the regulatory framework for industrial conflicts in post-Đổi mới Vietnam was a unique system, with mixed features of socialist, capitalist and international labour laws. Further, state actors regularly retranslated and disregarded capitalist and international legal concepts and their underlying ideas while remaining substantially loyal to Marxist-Leninist notions and traditional perspectives. This resulted in the marginalisation of legal mechanisms, which were transplanted from capitalist and international labour laws, and the emergence of alternative mechanisms, which essentially replicated Marxist-Leninist and traditional regulatory means and principles. Notwithstanding this, there was limited but growing reception of legal transplants from capitalist market economies and international labour laws.

INGRID LANDAU (PHD CANDIDATE)

Title: From Rights to Risks: Transnational Labour Regulation and the Emerging Business of Human Rights Due Diligence

Supervisors: John Howe and John Tobin

Description: Human rights due diligence is an increasingly ubiquitous concept in transnational labour regulation. Yet there is little scholarship evaluating human rights due diligence as a form of labour regulation or considering how it fits within an already crowded, complex and highly contested regulatory landscape. Located at the interstices of three broad but overlapping fields of scholarship – transnational labour regulation, business and human rights, and regulation and governance – this project engages in a conceptual and empirical socio-legal analysis of the implications of human rights due diligence for the promotion and protection of labour standards in the global economy.

ANDREW NEWMAN (PHD CANDIDATE)

Title: The Legal Precariousness of Temporary Migrant Agricultural Work: Case Studies from Canada and Australia

Supervisors: John Howe and Anna Chapman

Description: The thesis examines the legal precariousness of temporary migrant agricultural work in Canada and Australia through a consideration of two case studies: the Canadian Seasonal Agricultural Worker Program and the Australian Seasonal Worker Program. The thesis considers the relationship between migration and employment law in regulating two key aspects of legal precariousness, the level of wages and security of employment.

ADRIANA ORIFICI (PHD CANDIDATE)

Title: Workplace Investigations: Interactions with Regulation and Pathways for Reform

Supervisors: Beth Gaze and Anna Chapman
Description: Workplace investigations are commonly conducted by organisations, into a range of matters such as harassment and bullying, as well as work health and safety incidents. Although an increasing phenomenon in workplaces, little is known about the actual practices of workplace investigations and how they are regulated by law. This thesis will undertake the first comprehensive analysis of the empirical and legal dimensions of workplace investigations in Australia.

MARIA AZZURRA TRANFAGLIA (PHD CANDIDATE)

Title: Regulating Agency Work to Balance Employees’ Needs and Business’ Interests – a Comparative Study of Different Regulatory Approaches in Italy and Australia

Supervisors: John Howe and Sean Cooney

Description: The thesis draws on the international debate around the causes and effects of agency work as a form of non-standard work. It will assess and evaluate the different regulatory approaches to agency work taken in Italy and Australia using a new analytical framework developed from previous studies of agency work regulation and employing regulatory theory. The analysis will compare agency work regulation in the two countries, and will evaluate the extent to which each system balances employers’ interests and employees’ needs. Finally, in light of the comparative assessment, it will conclude by offering suggestions as to how specific regulatory issues relating to agency work in each country can be addressed in order to set these systems on the path towards balancing employees’ needs and business’ interests. In Australia there is a call for regulation to provide stronger protection for labour-hire employees, while in Italy, on the contrary, there is a call for deregulation aimed at ensuring a higher level of flexibility for businesses and encouraging hiring. Considering this divergent trend, this research generates regulatory proposals that can inform future policy making in the area of agency work in both countries and possibly in other jurisdictions.
TEACHING AND LEARNING

Members of the Centre teach a number of programs in labour and employment law in the Law School. In addition, the Centre has a sizeable cohort of research students under the supervision of Centre members. Information regarding the projects of these research students is contained in the earlier part of this annual report (under the heading ‘Research Students under the Supervision of Centre Members’). All labour and employment law students are encouraged to take part in various activities within the Centre, including the Labour Law Seminar Series.

SUBJECTS IN THE JD PROGRAM

The employment and labour relations law subjects offered in 2016 were:

- Employment Law (Anna Chapman and Joo-Cheong Tham)
- Equality and Discrimination Law (Beth Gaze)

THE MELBOURNE LAW MASTERS PROGRAM

Melbourne Law School offers a range of different teaching programs as part of the Melbourne Law Masters Program. Anna Chapman and Beth Gaze were the Co-Directors of Studies for the Employment and Labour Relations Law Graduate Program in 2016.

Coursework Programs:

- Master of Employment and Labour Relations Law
- Graduate Diploma in Employment and Labour Relations Law
- LLM by coursework

Research Programs:

- LLM by major thesis
- Doctorate of Juridical Science (SJD)
- PhD

The coursework subjects offered in 2016 were:

- Bargaining at Work (Andrew Stewart)
- Employment Contract Law (Tess Hardy and Paul O'Grady)
- Equality Law Internationally (Beth Gaze and Judy Fudge)
• Human Rights at Work (Keith Ewing)
• International Employment Law (Diamond Ashiagbor)
• Labour Standards under the *Fair Work Act* (John Howe, Anna Chapman and Craig Dowling)
• Principles of Employment Law (Anna Chapman)
• Workplace Health and Safety (Peter Rozen)

Further information regarding the program can be obtained from the Melbourne Law Masters website at: [http://law.unimelb.edu.au/study/masters/courses](http://law.unimelb.edu.au/study/masters/courses)
KNOWLEDGE TRANSFER AND COMMUNITY ENGAGEMENT

During 2016 the Centre was engaged in a range of knowledge transfer activities, between the University and other higher education institutions, legal practitioners, industry groups, trade unions, community groups, international institutions such as the International Labour Organisation, Australian government bodies and parliament, and the public.

These exchanges took place through a variety of mechanisms including its two Seminar Series, and the involvement of Centre members in editorial roles with the Australian Journal of Labour Law, to name a few. In addition, in 2016 the Centre continued to co-host the Melbourne lecture held as part of the Fair Work Commission’s Workplace Relations Education Series.

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. In 2016 the Labour Law Seminar series was coordinated by Anna Chapman and John Howe.

Nine seminars were held during the course of the year:

- **4 February:** Teaching, Researching and Practising Labour Law in Australia, Presented by Professor Anthony Forsyth, RMIT University; Ms Natalie James, Fair Work Ombudsman; Ms Sarah Rey, Justitia; Mr Josh Bornstein, Maurice Blackburn Lawyers; and Geoff Giudice, Melbourne Law School. *A Public Seminar to Celebrate 21 Years of the Centre for Employment and Labour Relations Law at the University of Melbourne*

- **22 March:** Social Rights and Markets: Sovereignty, Market Building and Labour Law in the African Union. Presented by Professor Diamond Ashiagbor, SOAS, University of London (Co-hosted with Institute for International Law and the Humanities)

- **14 April:** Regulating Unpaid Internships: Why it Matters and How Different Countries are Doing It. Presented by Professor Andrew Stewart, University of Adelaide

- **7 June:** A Game with Extra Innings: A Short History Of Industrial Relations In Major League Baseball. Presented by Mr Braham Dabscheck, Melbourne Law School

- **11 July:** Progressing Equality at Work: Beyond Non-Discrimination. Presented by Professor Judy Fudge, University of Kent; Professor Colm O’Cinneide, University College, London; Professor David Oppenheimer, University of California, Berkeley; and Beth Gaze, Melbourne Law School

- **16 August:** Labour is not a Commodity: Opportunities and Challenges for the ILO at the End of its First Century. Presented by Professor Emerita Rosemary Owens AO, University of Adelaide

- **29 September:** The Unravelling of Europe: Immigration, Benefits and Brexit. Presented by Dr Amy Ludlow, University of Cambridge

- **22 November:** Casual Work Arrangements in Six Countries: Preliminary Findings. Presented by Dr Iain Campbell,
Melbourne Law School

• 6 December: BREXIT, Free Trade Agreements and Labour Law. Presented by Professor Keith Ewing, King’s College London (Co-hosted with Global Economic Law Network)

SPONSORS’ SEMINAR SERIES

The Centre conducts a series of seminars for members of the Centre’s sponsoring firms and organisations. The seminar series is co-ordinated by Geoff Giudice. Two seminars were held in 2016:


• 20 July: Sham Contracting. Presented by Mr Justin Bourke QC with expert commentary by Ms Janine Webster, Chief Counsel, Fair Work Ombudsman

• 23 November: Notices of Employee Representational Rights under s. 173 of the Fair Work Act 2009 and the Uniline Decision [2016] FWCFB 4969. Presented by Mr Herman Borenstein QC with expert commentary by Mr Karl Blake, Partner, Minter Ellison; and Mr Charles Power, Partner, Holding Redlich

FAIR WORK COMMISSION’S WORKPLACE RELATIONS EDUCATION SERIES (CO-HOSTED LECTURE)

In 2016 the Centre was pleased to co-host the Melbourne lecture in the Commission’s Workplace Relations Education Series. The Series comprise a number of free public lectures, presented by leading researchers in the field of workplace relations in both Australia and other countries.
• 16 May: The Fair Work Commission and the Anti-Bullying Jurisdiction. The panel, chaired by Commission President Justice Iain Ross AO and comprised Commissioner Hampton; Anna Chapman; Mr Josh Bornstein, Head of the National Employment Relations Group at Maurice Blackburn lawyers; and Mr Steven Amendola, a partner at Ashurst lawyers

OTHER EVENTS

In addition to the regular seminar series, from time to time the Centre hosts conferences, roundtables and other events for members for the Australian and international labour law community. These events bring together scholars, practitioners of labour law, industrial relations and human resource management, and members of the public to focus on current issues in Australian, international and comparative labour law.

THE EVOLVING PROJECT OF LABOUR LAW: A WORKSHOP TO CELEBRATE 21 YEARS OF THE CENTRE FOR EMPLOYMENT AND LABOUR RELATIONS LAW

4–6 February, Melbourne

To celebrate the twenty-first anniversary of the Centre for Employment and Labour Relations Law, the Centre hosted a workshop on The Evolving Project of Labour Law at Melbourne Law School.

The one and a half day workshop explored how labour law scholarship in Australia has evolved and where it is going, including with respect to its focus and concerns, boundaries, methodologies and approaches. The workshop focused on areas of study in which the Centre and its members have focused their research efforts and made significant contributions to scholarship within Australia and internationally.

INTERNATIONAL WORKSHOP ON RESHAPING EMPLOYMENT DISCRIMINATION LAW: TOWARDS SUBSTANTIVE EQUALITY AT WORK?

11–12 July, Melbourne

The workshop was attended by around 20 invited Australian academics, government agency staff and practitioners. The workshop considered the preliminary results of the ARC grant of the same title. International contributors were Professor Judy Fudge, University of Kent; Professor Colm O’Cinneide, University College London; and Professor David Oppenheimer, University of California, Berkeley.

INTERNATIONAL AND COMPARATIVE PERSPECTIVES ON AUSTRALIAN LABOUR MIGRATION

21–22 July, Melbourne

This two-day workshop brought together leading experts on labour migration from across Australia working in various disciplines including law, criminology, sociology, geography and political science. The workshop included a wide range of speakers, including Centre members.
EDITORIAL ROLES

CENTRE WORKING PAPER SERIES

The Centre publishes two Working Paper Series: a General Series, and a Student Working Paper series for excellent papers written by students at Melbourne Law School. The General Series provides an opportunity for the publication of suitable work of Centre members, associates and others in the field of employment and labour relations law. Typically, these manuscripts are not suitable for submission to a peer reviewed journal, as they may contain preliminary analysis or findings, or be relatively short in length. In 2016, Tess Hardy edited the general series and Alysia Blackham edited the student series. All papers are available through the Centre’s website, at http://law.unimelb.edu.au/centres/celrl/research/publications

Two Student Working Papers were published during the year:

- The Public Policy Response to Workplace Bullying in Australia: Has Enough Been Done? Aras Mollison (June)
- Are Social Media Policies Necessary? Analysing Company Policy and its Importance in the Regulation and Dismissal of Employees, Adrian Faelli (October)

AUSTRALIAN JOURNAL OF LABOUR LAW

The Australian Journal of Labour Law is the leading Australian scholarly publication in its field, publishing three issues per year. It is a peer reviewed journal, and was ranked ‘A’ in the 2010 ERA journal ranking process. The Centre is the Journal's administrative home.

The work of the editorial team was ably supported in 2016 by a team of student editorial assistants drawn from the student body of Melbourne Law School. The journal was co-edited by John Howe and Professor Andrew Stewart (University of Adelaide) and Professor Richard Johnstone (Queensland University of Technology). Centre Members and Associates who worked on the Journal during 2016 included Adriana Orifici as Associate Editor, Associate Professor Andrew Frazer (Reports and Legislative Developments) and Associate Professor & Reader Jill Murray (Book Reviews). Centre members involved in the Journal’s editorial committee are Anna Chapman, Sean Cooney and Joo-Cheong Tham.

INTERNATIONAL JOURNAL OF DISCRIMINATION AND THE LAW

Beth Gaze is a member of the Editorial Board.

ANTHEM STUDIES IN AUSTRALIAN ECONOMICS AND SOCIETY

Joo-Cheong Tham is Series Editor.

ASSOCIATIONS

THE AUSTRALIAN LABOUR LAW ASSOCIATION

The Centre is the administrative home of the Australian Labour Law Association (ALLA).

ALLA held the Biennial Conference in Melbourne from 4-5 November 2016. ALLA’s AGM was held on Tuesday 5 November 2016. At the meeting Matt Kelleher was elected as a new member of the National Committee. Retiring members of the National Committee included Janey Kuzma. Shae McCrystal stepped down from her role as Secretary however still remains a member of the National Committee. Dominique Allen has taken on the role of Secretary.

ALLA puts on a diverse and vibrant array of state seminars, generally free to ALLA members. Topics addressed at the Victorian Chapter forums in 2016 included: “The Anti-Bullying Jurisdiction Two Years on: Sleeping Tiger or Y2 Bug of Workplace Relations- and Other Recent Developments”, “The Relational Employment Contract: Australian and UK Perspectives”, and a co-hosted event with RMIT University “Uber and Out? Regulating Work in the Gig Economy.”

For further information about ALLA, please visit: http://www.law.unimelb.edu.au/alla

REGULATING FOR DECENT WORK NETWORK

The Centre continued its involvement in the RDW Network in 2016. The Network is a collaboration between the International Labour Organisation, the CELRL, the Durham Law School, the Fairness at Work Research Group at the University of Manchester, the University of Amsterdam Institute for Advanced Labour Studies (AIAS) and the University of Duisburg-Essen.
Institut Arbeit Qualifikation (IAQ).

The objective of the RDW Network is to foster research and exchange of ideas concerning the role of labour and employment law protections in fostering economic development. The Network also aims to advance research and policy directions tailored towards making labour market regulation more effective.

For further information about RDW, please visit http://rdw.law.unimelb.edu.au/

LABOUR LAW RESEARCH NETWORK

The Centre is a founding member of the LLRN, which was formed in 2011.

The Network is based on cooperation between over 50 labour law research centres from all over the world. The goal of the LLRN is to advance research in labour law, and specifically to facilitate the dissemination of research work and encourage open discussion of scholarship and ideas in this field. All individual labour law scholars are welcome to join, whether affiliated with a research centre or not. John Howe is chair of the Steering Committee of the Network, which consists of six labour law scholars, each from a different region of the world.

The Administrator for the LLRN is Maria Azzurra Tranfaglia, and the LLRN’s web address is: http://www.labourlawresearch.net/

MEDIA ENGAGEMENT

HELEN ANDERSON

- Helen Anderson, ‘Illegal phoenix activity is costing us billions – here’s how it could be stemmed’, The Conversation, 26 September

ALYSIA BLACKHAM

- Alysia Blackham, ‘Mornings with Jon Faine’, Radio interview, 774 ABC Radio Melbourne, 10 June
- Alysia Blackham, ‘The Case for Removing Judges’ Retirement Age’, Pursuit, 9 June
- Alysia Blackham, ‘Sham Self-Employment in the High Court: Fair Work Ombudsman v Quest South Perth Holdings Pty Ltd’, Opinions on High: The Melbourne Law School High Court Blog, 7 March

BETH GAZE

- Beth Gaze, ‘Prof Beth Gaze discusses a new report showing it could take 170 yrs to close the gender pay gap’, Interview, ABC News 24, 26 October
- Beth Gaze, ‘Women-only math jobs offered by University of Melbourne’, Interview with Bianca Banchetti, The Wire, 3CR Community Radio, 20 May

TESS HARDY

- Tess Hardy, ‘Coalition and Labor moving on worker exploitation, but potential loopholes remain’, The Conversation, 20 May
- Tess Hardy, ‘Can 7-Eleven be trusted to clean up its own mess?’, The Conversation, 13 May
- Tess Hardy, ‘FactCheck Q&A: Can foreign seafarers be paid $2 an hour to work in Australian waters, under laws passed by Labor?’, Reviewer, The Conversation, 14 March
- Tess Hardy, ‘Is the Caltex franchise model worse for workers than 7-Eleven?’, Quoted by Adele Ferguson, 16 November

JOHN HOWE

- John Howe, ‘Safe Schools Founder Roz Ward Weighs Action Against La Trobe’, Quoted by Pia Ackerman, The Australian, 7 June
- John Howe, ‘New policy means Australians can “cash out” annual leave’, Interview, ABC RN Drive, 4 August
• John Howe, ‘Workplace dispute at Carlton & United Breweries’, Interview by Ann Arnold, *ABC RN Background Briefing*, 26 August

• John Howe, Interviewed, ‘Coles-SDA Enterprise Agreement failing to pass the Better Off Overall Test in the Fair Work Commission’, *ABC Illawarra*, 5 September

**INGRID LANDAU**

• Ingrid Landau, ‘UK Companies Poised to Act on Forced Labour but Australia Lags Behind’, *The Conversation*, 17 February 2016

**JOO-CHEONG THAM**

• Joo-Cheong Tham, ‘7-Eleven is the tip of the iceberg in worker exploitation. So who’s turning a blind eye?’, *The Guardian*, 12 May

• Joo-Cheong Tham, ‘Australia grows richer by exploiting foreign students’, *The Age*, 19 August


• Joo-Cheong Tham, ‘Horror stories reveal risk of exploitation for foreign workers’, Quoted by Madeline King, *SBS*, 25 July

• Joo-Cheong Tham, ‘Justice elusive for victims of forced labour’, Interviewed by Madeline King, *SBS*, 25 July


• Joo-Cheong Tham, ‘Fair Work, Fair Pay’, Interview, *SBS Insight*, 26 July

• Joo-Cheong Tham, ‘SBS Insight’, Interview, *ABC Perth Drive 720*, 27 July

• Joo-Cheong Tham, ‘Political donations by mining industry create undue influence over government’, Interview, *RN Breakfast*, 29 July

• Joo-Cheong Tham, Interviewed ‘Foreign political donations’, *ABC 7.30 report*, 1 September

**OTHER ENGAGEMENT**

**HELEN ANDERSON**

• Member, Australian Labour Law Association

• Academic member, Australian Restructuring Insolvency and Turnaround Association

• Member, Corporate Law Teachers Association (CLTA) Executive Committee

• Honorary General Treasurer and Executive member, Australasian Law Teachers Association

• Member, Insolvency and Reconstruction Committee, Business Law Section, Law Council of Australia

• Fellow, Australian Academy of Law

• Helen Anderson, Ian Ramsay, Michelle Welsh and Hannah Withers, Submission to Senate Economics References Committee, *Penalties for White Collar Crime*, March

• Helen Anderson, Ian Ramsay, Michelle Welsh, Submission to Productivity Commission, *Data Availability*, May

• Helen Anderson, Submission to Treasury, *Proposed Industry Funding Model for the Australian Securities and Investments Commission*, November

**ALYSIA BLACKHAM**

• Member, Association of Law Teachers (UK)

• Member, Australian Labour Law Association
• Member, Discrimination Law Experts Group
• Member, Discrimination Law Service Providers Group (Victoria)
• Member, Socio-Legal Studies Association (UK)
• Member, Society of Legal Scholars (UK)

**Alycia Blackham** and 16 Discrimination Law Academic Experts from around Australia, (Discrimination Law Experts Group), Submission to the Commonwealth Parliamentary Joint Committee on Human Rights, Inquiry into Freedom of Speech in Australia (s 18C of the Racial Discrimination Act 1975) (December)


**ANNA CHAPMAN**

• Member, Association of Industrial Relations Academics of Australia and NZ (AIRAANZ)
• Member, Australian Labour Law Association
• Member, Discrimination Law Experts Group

**Anna Chapman**, and 16 Discrimination Law Academic Experts from around Australia, (Discrimination Law Experts Group), Submission to the Commonwealth Parliamentary Joint Committee on Human Rights, Inquiry into Freedom of Speech in Australia (s 18C of the Racial Discrimination Act 1975) (December)

**SEAN COONEY**

• Member, Australian Labour Law Association

**BETH GAZE**

• Member, Australian Labour Law Association
• Member, Discrimination Law Experts Group
• Member, Discrimination Law Association (UK)
• Member, Socio-Legal Studies Association (UK)

**Beth Gaze** and 16 Discrimination Law Academic Experts from around Australia, (Discrimination Law Experts Group), Submission to the Commonwealth Parliamentary Joint Committee on Human Rights, Inquiry into Freedom of Speech in Australia (s 18C of the Racial Discrimination Act 1975) (December)

• Submission to the Senate Employment and Education Committee Inquiry into the Fair Work Amendment (Gender Pay Gap) Bill 2015 (March).
  - Appeared by invitation to give evidence at Committee’s Melbourne hearings 26 November
  - Supplementary Submission provided on Committee’s request, November

**TESS HARDY**

• Committee member, Australian Labour Law Association

• Member, Australian Labour Law Association

**JOHN HOWE**

• Member, Association of Industrial Relations Academics of Australia and NZ (AIRAANZ)
• Member, Australian Labour Law Association
• Member, The Australia Institute
• Member, US Labor and Employment Relations Association
• Panelist, *Working Hard for (No) Money: Young people and unpaid work*, Young Workers Centre at Victorian Trades Hall, 14 April

• **John Howe** and **Azzurra Tranfaglia** were invited participants in an Academic Workshop for the Victorian Government’s Inquiry into Labour Hire and Insecure Work, Wednesday 25 May 2016, Monash Conference Centre, Melbourne

### INGRID LANDAU

• Member, Australian Labour Law Association
• Member, Melbourne Social Equity Institute Doctoral Academy 2016

### ADRIANA ORIFICI

• Member, Australian Labour Law Association

### JOO-CHEONG THAM

• Convenor, Steering Group, Migrant Workers Campaign
• Member, Australian Labour Law Association
• Member, Advisory Board, Global Labor Migration Network (The University of Maryland)
• Submission to the inquiry of the Joint Standing Committee, *Electoral Matters into the conduct of the 2016 Federal Election and matters related thereto*, October

### MARIA AZZURRA TRANFAGLIA

• Member, Australian Labour Law Association

• **John Howe** and **Azzurra Tranfaglia** were invited participants in an Academic Workshop for the Victorian Government’s Inquiry into Labour Hire and Insecure Work, Wednesday 25 May 2016, Monash Conference Centre, Melbourne
CONFERENCE AND SEMINAR PAPERS

During 2016, members of the Centre delivered papers to a range of Australian and international conferences and workshops, and delivered seminars to industry, government bodies and community groups.

FEBRUARY

- **Helen Anderson**, Ian Ramsay and Michelle Welsh, ‘Illegal Phoenix Activity: Quantifying Its Incidence And Cost’, *Corporate Law Teachers Association*, University of New South Wales, Sydney

- **Helen Anderson**, ‘The Legacy of Corporate Personality for Employees’, *The Evolving Project of Labour Law Workshop*, Melbourne Law School, Melbourne


- **Tess Hardy**, ‘Fissured Employment and Regulatory Responses: An Australian Case Study’, *13th Tokyo Comparative Labor Law Seminar*, Japan Institute for Labor Policy and Training, Tokyo

- **Tess Hardy**, ‘Mapping the Existing and Emerging Regulatory Actors Involved in the Enforcement of Employment Standards in Australia’, *The Evolving Project of Labour Law Workshop*, Melbourne Law School, Melbourne

- **Ingrid Landau**, ‘Game Changer? The Emergence of Human Rights Due Diligence and Its Implications for Transnational Labour Rights and Regulation’, *The Evolving Project of Labour Law Workshop*, Melbourne Law School, Melbourne


- **Joo-Cheong Tham**, ‘The Trans-Pacific Partnership Agreement, Temporary Migrant Workers and the Conflicting Logics of Globalisation’, *The Evolving Project of Labour Law Workshop*, Melbourne Law School, Melbourne

- **Maria Azzurra Tranfaglia**, ‘Outsourcing the Employer’s Responsibility through Labour Hire – a Comparative Assessment of Different Approaches to the Regulation of Agency Work in Italy and in Australia’, *The Evolving Project of Labour Law Workshop*, Melbourne Law School, Melbourne

MARCH


- **Maria Azzurra Tranfaglia**, ‘Agency Work – A comparative study of different regulatory approaches in Italy and Australia’, *Marco Biagi Young Scholars’ Workshop in Labour Relations*, 5th edition, Modena and Reggio Emilia University, Emilia-Romagna
APRIL

- **Tess Hardy**, ‘To What Extent Should Lead Firms be Held Liable for Workplace Contraventions?’, presented at the National Law Reform Conference, Australian National University, Canberra

MAY

- Dominique Allen and **Alysia Blackham**, ‘Resolving Discrimination Claims beyond the Courts: Alternative Dispute Resolution in Australia and the UK’, Berkeley Comparative Equality and Anti-Discrimination Law Study Group Conference, KoGuan Law School of Shanghai Jiao Tong University, Shanghai
- **Beth Gaze**, ‘Anti-Discrimination Law as Human Rights and Workplace Law’, Berkeley Comparative Equality and Anti-Discrimination Law Study Group conference, KoGuan Law School of Shanghai Jiao Tong University, Shanghai
- **Beth Gaze**, ‘Comment on Tarunabh Khaitan A Theory of Discrimination Law’, Deakin University Law School, Melbourne

JUNE

- **Ingrid Landau**, ‘Human Rights Due Diligence, Its Implications for Transnational Labour Regulation and the Importance of Rule Intermediaries’, Law and Society Annual Meeting, New Orleans
- **Joo-Cheong Tham**, ‘Political Equality as a Constitutional Principle: Cautionary Lessons from McCloy v NSW’, Australian Constitutional Values Workshop, Gilbert + Tobin Centre for Public Law, Sydney

JULY

- **Helen Anderson**, ‘Sunlight As The Disinfectant For Illegal Phoenix Activity’, Australasian Law Teachers Association, Victoria University of Wellington, Wellington
- **Joo-Cheong Tham** and Judy Fudge, ‘Neoliberalism at Work: A Comparison of Low-Skill Temporary Labour Migration Programs in Australia and Canada’, International and Comparative Perspectives on Australian Labour Migration, Melbourne Law School, Melbourne
- Iain Campbell, **Joo-Cheong Tham** and Martina Boese, ‘Temporary Migrant Workers in Food Services: Mapping and Explaining High Levels of Precariousness in Employment’, International and Comparative Perspectives on Australian Labour Migration, Melbourne Law School, Melbourne
- Martina Boese, Iain Campbell and **Joo-Cheong Tham**, ‘Ethnicity at Work: A Comparative Study of Temporary Migrants’
Network, Agency and Exploitation’, International and Comparative Perspectives on Australian Labour Migration, Melbourne Law School, Melbourne

- **Maria Azzurra Tranfaglia**, ‘Temporary Migrant Workers from Italy: Expectations and Reality’, International and Comparative Perspectives on Australian Labour Migration, Melbourne Law School, Melbourne

**AUGUST**


**OCTOBER**

- **Helen Anderson**, ‘Ways to Curb Phoenix Activity’, Australian Institute of Credit Management National Conference, Gold Coast

**NOVEMBER**

- **Joo-Cheong Tham**, ‘What is the Problem of Precariousness for Temporary Migrant Workers?’, Beyond the Gig Economy, University of Melbourne, Melbourne
- **Joo-Cheong Tham**, ‘457 Visa Workers and Human Rights at Work’, Australia’s Migration Policies: A Consultative Workshop between the UN Special Rapporteur on the Human Rights of Migrants, Professor François Crépeau, and academia, Sydney University Law School, Sydney

**DECEMBER**

- **Helen Anderson**, ‘Ways to Curb Phoenix Activity’, Insolvency Academics Network, University of Sydney, Sydney
- **Anna Chapman**, ‘The Continuing Resonance of Breadwinner Norms in Australian Labour Law’, Theorising Labour Law in a Changing World, Faculty of Law, Maastricht University, Netherlands
**PUBLICATIONS**

During 2016, Centre members’ research appeared in a wide range of books, book chapters, journals and working papers, both Australian and international.

**BOOKS**


**BOOK CHAPTERS**

- Alysia Blackham, ‘Reforming Default Retirement Ages: Regulating Out Precariousness?’ in Céline Lageot and Nathalie Martin-Papineau (eds.), *Franco-British Approaches to Precariousness: Principle(s), right(s), practice(s) [Approches Franco-Britanniques de la Precarite: Principe(s), droits(s), pratiques(s)]*, Faculty of Law and Social Science of Poitiers, France (2016), 197–211

**JOURNAL ARTICLES – REFEREED**

- Helen Anderson, Ian Ramsay and Michelle Welsh, ‘ASIC, Phoenix Activity And The View From The Outside’ (2016) 34 *Company and Securities Law Journal* 625–630


• **Helen Anderson**, ‘Labor’s Policy To Deal With Phoenix Activity Affecting Employees’ (2016) 34(4) Company and Securities Law Journal 316–320

• **Helen Anderson**, ‘Sunlight As The Disinfectant For Phoenix Activity’ (2016) 34(4) Company and Securities Law Journal 257–275

• **Alysia Blackham**, ‘Organisational Responses to the Abolition of Mandatory Retirement: Case Studies of Australian University Practice’ (2016) 45(2) Industrial Law Journal 144–175


**JOURNAL ARTICLES – UNREFEREED**


• **Helen Anderson**, ‘FEG, Moral Hazard And The Innovation Agenda’ (2016) 28(2) Australian Restructuring Insolvency and Turnaround Association Journal 28–29

• **Beth Gaze**, ‘Countering Discrimination based on Age and Disability’ (2016) 23 Australian Journal of Administrative Law 184–188


• **Adriana Orifici**, ‘Construction Forestry Mining and Energy Union v Endeavour Coal Pty Ltd: When is it Permissible to Take Detrimental Action Against a Worker Who Exercises a Legal Right to Take Leave?’ (2016) 2 International Labour Rights Case Law 383–388

**WORKING PAPERS**

# SUMMARY OF CENTRE GENERAL ACCOUNT 2016

## Income 2016

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<th>Description</th>
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<td>Brought Forward from 2016</td>
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<td>2016 Sponsorship</td>
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<td>Faculty Allocation</td>
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<td><strong>Total Income</strong></td>
<td><strong>$132,130.63</strong></td>
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## Expenditure 2016

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<td>Salary expenditure</td>
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<tr>
<td>Consumable goods and services</td>
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<tr>
<td>Infrastructure related expenses</td>
<td>$635.42</td>
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<td>Travel, conferences and entertainment</td>
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<td><strong>Total Expenditure</strong></td>
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**BALANCE** $74,491.62