

Asian Law Centre

Law School
The University of Melbourne

ANNUAL REPORT

JANUARY - DECEMBER 1997

DIRECTOR'S REPORT - Professor Malcolm Smith

The Centre's strategic focus moved increasingly in 1997 towards research. In the first ten years we were heavily involved in curriculum development and the recruitment and training of a strong teaching and research team. This has now been accomplished. Indeed, 1997 has been a remarkable year in that the entire team has been in Melbourne together-a rare state of affairs!

Three particular events during the year indicate the strengthening emphasis on research. Veronica Taylor's edited volume *Asian Laws Through Australian Eyes* was published. This is a landmark work in defining the current state and future directions of Australian scholarship on Asian law. All the Centre's staff contributed to the volume, which grew out of a highly successful conference in 1996.

As a logical outgrowth of Veronica's book, in April 1997, at the initiative of our Associate Directors, the foundation meeting of the Advisory Board of a new *Australian Journal of Asian Law* was held at the Centre. Veronica Taylor and Tim Lindsey have played the leading roles in this initiative which will provide an Australian avenue for publication of Australian research on Asian legal systems and laws. This is very much the 'baby' of the new leadership in the Centre and all credit belongs to them.

Third, a research colloquium was held at the Centre in August to bring together research by members of the Centre and invited international experts on the increasingly important area of contract governance and commercial cultures in Asia. Eleven specialists presented research findings on seven Asian countries. The immediate relevance of our work was to become apparent as the Asian Financial Crisis unfolded around us in the latter part of the year. I counted myself fortunate that my graduate subject "Legal Aspects of Finance in Asia" had concluded in June. If it had been scheduled in Second Semester I would have been changing the materials every week! We plan to make similar research meetings a regular part of our program.

Our teaching program continued unabated and the list of research students under supervision is a testament to the commitment of the Centre to training new specialists. The program of occasional seminars has expanded and is becoming a regular feature, while we continue to attract short and long-term visitors.

My continuing involvement with the International Legal Services Advisory Council has not only contributed to a strong working relationship with our original founding partner, the Commonwealth Attorney-General's Department, but has brought distinguished visitors to the Centre. We were honoured to host a visit by the Minister of Justice of China and his delegation in April, with ILSAC, which marked the Centre's strong interest in China and links to China. We continue to be the repository of Chinese legal materials under an exchange agreement between the Ministry of Justice of China and our Attorney General's Department.

In 1997, I became Associate Dean (Undergraduate Studies) in the Law School for a two year term. This meant the day to day management of the Centre devolved even further on the Associate Directors and our Administrative Officer, Jennifer Qi. I thank them very much for their support. We all look forward to 1998.

GOALS OF THE ASIAN LAW CENTRE

- To promote the teaching of Asian law in Australia at both graduate and undergraduate levels, and the teaching of Australian law in Asia.
- To improve Australia's knowledge of the commercial laws of our trading partners in the region and to research the legal framework for trade and investment.
- To develop specialised legal training programmes for Australians and Asians.
- To promote the development of Asian studies and Asian languages in other disciplines and to encourage a linkage with law studies.
- To promote exchanges of staff and students between the Law School and Asian universities and institutions.

ASIAN LAW CENTRE ADVISORY BOARD

The current Advisory Board of the Centre reflects the range of government, private and academic interest and involvement in the activities of the Centre.

- **Professor Michael Crommelin**
Dean, Law School, The University of Melbourne
- **Mr Peter Kelly**
Partner, Mallesons Stephen Jaques, representing The University of Melbourne Law School Foundation
- **Mr David Laidlaw**
Chairman of Partners, Maddock Lonie & Chisholm
- **Mr Stephen Skehill**
Secretary, Commonwealth Attorney-General's Department
- **Mr Stephen Spargo**
Partner, Arthur Robinson & Hedderwicks
- **Professor Alice Tay**
Centre for Asian and Pacific Law in the University of Sydney

ASIAN LAW CENTRE MEMBERS

Members of the Law School associated with the Centre:

- **Professor Malcolm Smith** – Director
- **Ms Sarah Biddulph** – Associate Director, China (On leave at Blake Dawson Waldron, Shanghai)
- **Mr Sean Cooney** – Associate Director, Taiwan
- **Dr Tim Lindsey** – Associate Director, South East Asia
- **Ms Veronica Taylor** – Associate Director, Japan

Associated Members:

- **Ms Pip Nicholson** – Vietnam

Administrative Officer

- Ms Jennifer Qi

Research Assistants:

- Ms Eliza Bergin
- Ms Kerry Liu
- Ms Susan McKeag
- Ms Stacey Steele

ASIAN LAW CENTRE FINANCES

The Asian Law Centre's research activities in 1997 were funded from grants. The Centre continues to receive administrative support from the Faculty, made up of a part-time administrative assistant and a small sum for office expenses. The Centre did not request any contributions from its traditional sponsors in 1997.

The main income generating activities of the Centre have been channelled into general Faculty income streams, through degree programmes, research funding, and income from training programmes in which members of the Centre participate.

MAJOR ACTIVITIES AND EVENTS

- **Visit by the Chinese Minister of Justice, Mr Xiao Yang**

On 8 April 1997, the Chinese Minister of Justice, His Excellency Mr Xiao Yang and a Chinese delegation visited the Law School. Mr Yang was a guest of the Prime Minister's Department and Cabinet and the Attorney-General's Department. The Asian Law Centre hosted a luncheon meeting at the University of Melbourne with approximately 20 guests from the Melbourne legal community. Following the lunch, there was a discussion about reform in the Chinese legal system.

- ***Asian Law Journal*, 17 April 1997**

The first meeting of the Advisory Board of *Asian Law Journal* was held on 17 April 1997. Twelve members attended.

- **Colloquium: "Contract Governance, Commercial Cultures and Change in Asia"**

A Colloquium was held at the University of Melbourne on Friday 29 August to discuss the findings of empirical research in seven Asian countries. The Colloquium featured sixteen experts from eleven countries. Issues addressed included the possible convergence of the style and substance of contracts within Asia toward 'global standards'; the implementation of new, harmonised law in Asian jurisdictions to attract investment; the new environment for commercial contracting in Asia; the effect of economic restructuring and political change on the making and breaking of contracts in individual countries; the relevance of culture; and the displaced role of the state in Asia by comparison to multinational corporations.

VISITORS TO THE CENTRE

Delegation from the *Bureau of Legislative Affairs of the State Council of China*, People's Republic of China

Delegation of Chinese Academics, *China University of Politics and Law*, People's Republic of China

Dr Etty Agoes, *Australia Indonesia Legal Fellow, Head of the Centre for Maritime Law, Padjadjaran University*, Indonesia.

Mr Satya Arinanto, *University of Melbourne Young Asian Scholar, Lecturer in Constitutional Law, University of Indonesia*, Indonesia

Mr Rafael Edy Bosko, *Australia Indonesia Legal Fellow, Law School, Gadjah Mada University*, Indonesia

Dr Bui, *Research Manager, Toyota Foundation, Toyota City*, Japan, who conducted research on immigration and citizenship

Dr Masahisa Deguchi, *Faculty of Law, Ritsumeikan University*, Japan

Professor Makitaro Hotta, *Faculty of Law, Ritsumeikan University, Japan*

Judge Hiroshi Ishii, *Tokyo District Court, Japan*

Professor Kozo Kagawa, *Professor of Asian Labour Law, Graduate School of International Cooperation Studies, Kobe University, Japan*

Associate Professor Naoko Kano, *Faculty of Law, Ritsumeikan University, Japan*

Professor Mitsuo Nagafuchi, *Konan University, Japan*

Professor Jisuke Nagao, *Faculty of Law, Ritsumeikan University, Japan*

Professor Yasuda Nobuyuki, *Professor of Law, Graduate School of International Management, Nagoya University, Japan*

Professor Makoto Okuyama, *Otemon Gakuin University, Japan*

Justice Siahaan, *Administrative Court of Indonesia, Indonesia*

Professor Xu Zhang Run, *China University of Politics and Law, People's Republic of China*

TEACHING & EDUCATION

The following subjects were taught in 1997:

Undergraduate Programmes

- Law and Civil Society in Asia
- Law and Society in China
- Law and Society in Japan
- Law and Society in Korea
- Law and Society in South East Asia

Postgraduate Programmes

- Alternative Commercial Dispute Resolution in Asia
- Commercial Law in South East Asia
- Harmonisation of Commercial Laws in the APEC Region
- International Marketing: Franchising, Distribution and Licensing
- Legal Aspects of Finance in Asia
- Resources Law and Policy in Indonesia
- Rethinking Citizenship, Rights and Gender
- Tax and Investment Law in Asia

RESEARCH STUDENTS UNDER SUPERVISION OF CENTRE MEMBERS

Members of the Centre continued to offer supervision to Australian students interested in Asian law and international students studying at the Law School.

Research students under the supervision of Centre members included:

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| <ul style="list-style-type: none"> • Ms Sari Baird
LL.M. (completed) | <p>Supervisor: Tim Lindsey
“The Influence of Foreign Lawyers and APEC on the Development of Law Affecting Commercial Transactions in Indonesia”</p> |
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| <ul style="list-style-type: none"> • Ms Sarah Biddulph
Ph.D. | <p>Supervisor: Malcolm Smith
“Controlling Detention for Investigation: Legal Accountability of the Chinese Public Security Organs”</p> |
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| <ul style="list-style-type: none"> • Mr Harold Bolitho
LL.M. | <p>Supervisor: Malcolm Smith
“Cross-Border Insolvency: Japan and Australia”</p> |
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| <ul style="list-style-type: none"> • Ms Alexandra Brooks
LL.M. (completed) | <p>Supervisor: Sarah Biddulph
“Reconciling and Adapting Imported and Indigenous Laws: The Case of Malaysian Land Law”</p> |
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| <ul style="list-style-type: none"> • Mr John Chellew
LL.M. | <p>Supervisor: Malcolm Smith
“Derivatives: Clearly Dividing the Retail / Wholesale Markets in a Merged Futures / Securities Regime”</p> |
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| <ul style="list-style-type: none"> • Ms Julie Greenall

LL.M. | <p>Supervisors: Malcolm Smith
Veronica Taylor
“Freedom of Information in Japan”</p> |
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| <ul style="list-style-type: none"> • Mr Ken Hashimoto
LL.M. | <p>Supervisor: Malcolm Smith
“Towards the International Harmonization and Unification of the Arbitration Law”</p> |
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| <ul style="list-style-type: none"> • Mr Peter Holland
SJD | <p>Supervisor: Tim Lindsey
“Constitutional Justice in Indonesia”</p> |
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| <ul style="list-style-type: none"> • Mr Peter Neustepny
LL.M. | <p>Supervisor: Veronica Taylor
“Refugees and Refugee Law in Japan”</p> |
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| <ul style="list-style-type: none"> • Ms Pip Nicholson
Ph.D. | <p>Supervisor: Tim Lindsey
“The Development of Vietnamese Legal Institutions”</p> |
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| <ul style="list-style-type: none"> • Mr Andrew Phang
LL.M. | <p>Supervisor: Malcolm Smith
“The Problems of Financing Infrastructure Development Through the Equity Market in Malaysia”</p> |
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- Ms Mary Studdert
LL.M. Supervisor: Sean Cooney
“The Effectiveness of the Labour Dispute Resolution Procedures in the People’s Republic of China”
- Mr Benny Tabalujan
Ph.D. Supervisors: Malcolm Smith
Tim Lindsey
“Legal Aspects of the Indonesian Stock Market Problems and Prescription”
- Mr Edwin Tanner
Ph.D. Supervisor: Malcolm Smith
“The Comprehensibility of Legal Language: Is Plain English the Solution?”
- Mr Khemchand Thadani
LL.M. Supervisor: Malcolm Smith
“Liability for Latent Defects in Malaysia’s Evolving Common Law”
- Lisa Ting
LL.M. Supervisor: Malcolm Smith
“Indonesian Perspectives and Approaches to Negotiation and Dispute Resolution”
- Ms Rika Winarto
LL.M. (completed) Supervisor: Tim Lindsey
“The Reform of Indonesian Law on Limited Liability Companies”
- Mr Xu Zhangrun
Ph.D. Supervisor: Malcolm Smith
“The Confucian Misgivings: Liang Shuming’s Narrative About Law”
- Ms Se Se Zhang
Ph.D. Supervisor: Malcolm Smith
Sarah Biddulph
“Tensions and Implications: Contractual Aspects of Technology Transfer to China”

GRADUATE DIPLOMA IN ASIAN LAW ADVISORY BOARD

The Asian Law Graduate Diploma programme continued to benefit from the professional input of its Advisory Board, comprising:

- **Mr Jim Armstrong**
Partner, Mallesons Stephen Jaques
- **Mr David Laidlaw**
Chairman of Partners, Maddock Lonie & Chisholm
- **Mr Stephen Spargo**
Partner, Arthur Robinson & Hedderwicks

RESEARCH SCHOLARS

Ms Anne Vouzellaud

The Asian Law Centre welcomed Ms Anne Vouzellaud, who worked at the Centre until June 1998 under a work experience programme. Anne was on sabbatical from the French branch of multinational publishers Reed-Elsevier, where she edits an encyclopedic journal on European law. Anne's work at the Centre focussed on Australian perspectives on Asian law. She also assisted with the preparation of the new *Australian Journal of Asian Law*.

Chris Basile

Chris Basile, a well-regarded Indonesianist, conducted a major library research project on Australian and international holdings of Asian Law materials in the English language.

Mr Sebastian Heine

Mr Sebastian Heine, a law graduate from the law firm Malte Burwitz in Germany, spent time at the Asian Law Centre from 12 June to 23 July on a work experience program to build up his English legal vocabulary. During his period with us he worked on locating legal internet sources, assisted with the preparation of materials for graduate subjects in the Law programme at the University of Melbourne, and acted as the general research assistant of Professor Malcolm Smith.

THE CENTRE'S OCCASIONAL SEMINAR SERIES

Frances Seow: "Politics and Legal Institutions in Singapore"

The Asian Law Centre presented a seminar on Wednesday 26 March by Frances Seow, Former Solicitor-General of Singapore. The title of the seminar was "Politics and Legal Institutions in Singapore".

From the mid 1950s to the early '70s Francis Seow built a reputation in Singapore as a successful public prosecutor. He was then appointed Singapore's Solicitor General, but resigned to pursue his legal career. He was outspoken on the need to preserve judicial independence in Singapore, and became involved in politics.

In 1998, Seow was detained and interrogated for 72 days by Singapore's Internal Security Department (ISD). He was accused of having collaborated with American Embassy officials in trying to subvert the government. After his release he was served with tax evasion charges, and fled to the United States. He has written critically about his experiences in Singapore in 'To Catch A Tartar'.

Mr Satya Arinanto: “The Right to Organise Under the Indonesian Constitution”

The Asian Law Centre and the Centre for Comparative Constitutional Studies presented a seminar on Friday 4 April by Mr Satya Arinanto, Lecturer in Constitutional Law at the University of Indonesia. The title of the seminar was “The Right to Organise Under the Indonesian Constitution.

Mr Arinanto is a prominent commentator on the Indonesian Constitution, and was visiting the Asian Law Centre at the University of Melbourne under the University's "Young Asian Scholars" scheme.

Professor Malcolm Smith: “Banking in the Shadow of the Law in Japan”

The Asian Law Centre presented a seminar on Wednesday 30 April by Professor Malcolm Smith, Director, Asian Law Centre. Professor Smith talked about the topic “Banking in the Shadow of the Law in Japan”.

Mr G.K. Kwatra: “Commercial Mediation and ADR in India”

The International Legal Services Advisory Council organised a visit to the Asian Law Centre by Mr G.K. Kwatra on Tuesday 13 May. Mr Kwatra, the Executive Director of the Indian Council of Arbitration, is a senior Indian expert in commercial dispute resolution. Mr Kwatra was visiting Australia for two weeks to familiarise himself with the Australian mediation and ADR scene. While in Melbourne, he presented a seminar on commercial mediation and alternative dispute resolution in India.

Dr Etty Agoes: “Indonesian Fishing in Australian Waters: An Indonesian Perspective”

The Asian Law Centre presented a seminar by Dr Etty Agoes on Monday 15 September on “Indonesian Fishing in Australian Waters: An Indonesian Perspective”. Dr Agoes is the Executive Secretary of the Indonesian Centre for the Law of the Sea at Padjadjaran University at Bandung, Indonesia. She was visiting Australia as an Australia Indonesia Legal Fellow, a programme funded by DETYA and administered by the Centre with the Law School at ANU.

Professor Jesse Wu: ”Judicial Corruption in Malaysia – A Crisis in Judicial Confidence”

The Asian Law Centre presented a seminar by Professor Jesse Wu on Thursday 9 October. Professor Wu, Director of the Centre for Southeast Asian Law at Northern Territory University, spoke on “Judicial Corruption in Malaysia - A Crisis in Judicial Confidence”. His talk reflected his recent research with judges and others in Malaysia and touched on some politically sensitive areas.

PUBLICATIONS

BOOKS

- Lindsey, T. (1997), *The Romance of K'Tut Tantri and Indonesia*, Oxford University Press, Oxford, Kuala Lumpur & Singapore.
- Taylor V. (ed.) (1997), *Asian Laws through Australian Eyes*, Law Book Company, Sydney.
- Taylor, V. & Laster, K. et al. (1997), *Law as Culture*, Federation Press, Leichhardt.

CHAPTERS IN BOOKS AND MONOGRAPHS

- Biddulph, S., “The Legal Structure of Decision-Making in Chinese Police Enforcement Powers: Some Preliminary Issues” in Taylor, V. (ed.) (1997), *Asian Laws Through Australian Eyes*, Law Book Company, Sydney, 207-238.
- Cooney, S. & Mitchell, R., “Examining Labour Law Policy in the Countries of the Asian Region: Some Suggestions for an Approach” in Mitchell, R. & Wu, J.M.A. (eds.) (1997), *Facing the Challenge in the Asia Pacific Region: Contemporary Themes and Issues in Labour Law*, Occasional Monograph No. 5, Centre for Employment and Labour Relations Law, 193-215.
- Cooney, S., “Taiwan’s Emerging Liberal Democracy and the New Constitutional Review”, in Taylor, V. (ed.) (1997), *Asian Laws Through Australian Eyes*, Law Book Company, 141-160.
- Lindsey, T., “Paradigms, Paradoxes and Possibilities: Towards Understandings of Indonesia’s Legal System”, in Taylor, V. (ed.) (1997), *Asian Laws Through Australian Eyes: Australian Perspectives on Asian Legal Systems*, Law Book Company, Sydney, 90-112.
- Nicholson, P. & Phan, N.T., “Vietnam”, in Hassall, G. & Saunders, C. (eds.) (1997), *Asia-Pacific Constitutional Yearbook 1995*, University of Melbourne, Melbourne, pp. 335-344.
- Smith, M., “Australian Perspectives on Asian Law: Directions for the Next Decade” in Taylor, V. (ed.) (1997), *Asian Laws Through Australian Eyes*, Law Book Company, Sydney, 3-16.
- Smith, M., “Private Law and Public Control of Commercial Activity in Japan – the Role of the Codes” in Gillespie, J. (ed.) (1997), *Commercial Legal Development in Vietnam: Vietnamese and Foreign Commentaries*, Butterworths Asia, Singapore, 261-276.
- Taylor, V., “Beyond Legal Orientalism” in Taylor, V. (ed.) (1997), *Asian Laws Through Australian Eyes*, Law Book Company, Sydney, 47-62.
- Taylor, V., “Lawyer’s Culture” in Laster, K. (ed.) (1997), *Law as Culture*, Federation Press, Sydney, 321-343.
- Taylor, V., “Regional Trade Arrangements: Recognising the Legal Dimensions of APEC” in Scott, S. and Bergin, A. (eds.) (1997), *International Law and Australian Security*, Australian Defence Studies Centre, Canberra, 39-58.
- Taylor, V., & Pryles, M., “The Cultures of Dispute Resolution in Asia” in Pryles, M. (ed.) (1997), *Dispute Resolution in Asia*, Kluwer Law International, The Hague, The Netherlands, 1-23.

JOURNAL ARTICLES

- Biddulph, S. (1997), "Law Reform in China", *Alternative Law Journal*, 21(4), 178-184, 190.
- Biddulph, S. (1997), "Legal Reforms in China's Foreign Trade Law", *Biz Insight*, 2(2), 36-37.
- Cooney, S. (1997), "Why Taiwan is not Hong Kong: A Review of the PRC's 'One Country Two Systems' Model for Reunification with Taiwan", *Pacific Rim Law and Policy Journal*, 6(3), 497-548.
- Lindsey, T. (1997), "Unifying a Plural System or Remaking the Rule of Law: A Question of Priorities for Indonesia", *Archiv fuer Rechts-und Sozialphilosophie*, 72, 121-129.
- Taylor, V. (1997), "Consumer Contract Governance in a Deregulating Japan", *Victoria University of Wellington Law Review*, 27(1), 99-120.
- Taylor, V. (1997), "Contracts with the Lot: Franchises, Good Faith and Contract Regulation", *New Zealand Law Review*, 459-481.
- Taylor, V. (1997), "Encountering the Social Divide: Status Discrimination in Japan", *Asia Pacific Magazine*, 6/7, 39-40.
- Taylor, V. (1997), "Foreign Law Through the Internet: Australia", *Hogaku Seminaa [Law Seminar]*, 42(5), 128-131.

NEWSPAPER ARTICLES

- Lindsey, T. (1997), "A Charismatic but Difficult Life" (on K'tut Tantri), *The Age*, 1 September.
- Lindsey, T. (1997), "A Voice of the People that Survives a World of Tyranny" (on Aung San Su Kyi), *Sunday Age*, 26 October.
- Lindsey, T. (1997), "White Rose of Java's Revolt" (on K'tut Tantri), *The Australian*, 12 August.

WORK IN PROGRESS

- Lindsey, T., "Indonesia: Rebuilding a Legal System - Too Much, Too Little, Too Late", in Alice Tay & Conita Leung (eds.), *Nation Building, Trade and Human Rights in East Asia* (Law Book Company, Sydney), in press.

CONFERENCE PAPERS AND SEMINARS DELIVERED BY MEMBERS OF THE CENTRE

- Lindsey, T., “Culture as Law: Law as Memory - Legalism & Legitimacy in the Twilight of the New Order”, *Centre for Southeast Asian Studies*, Clayton, 1997.
- Lindsey, T., “Indonesia Update”, *Including Asia in the Secondary Curriculum*, Asia Education Foundation, Melbourne, May 1997.
- Lindsey, T., “Insolvency Law in Australia”, *An Insolvency System for Asia*, International Civil and Commercial Law Centre Foundation & Ministry of Justice of Japan, Osaka, Japan, November 1997.
- Lindsey, T., “Judicial Corruption in Indonesia”, *Centre for Southeast Asian Studies Seminar Series*, Monash University, Melbourne, July 1997.
- Lindsey, T., “Reformasi Hukum: Too Much, Too Little, Too Late”, Indonesia in the Post Soeharto Era, *The University of Melbourne Student’s Conference*, Melbourne, August 1998.
- Lindsey, T., “Square Pegs & Round Holes: Land Law in Indonesia”, *Pacific Rim Land Use Symposium*, University of Washington, Seattle, U.S.A., October 1997.
- Lindsey, T., “The Transformation of Indonesian Transactions: ‘Legal Practice - What Legal Practice?’”, *Contract Governance, Commercial Cultures & Change in Asia*, Asian Law Centre, The University of Melbourne, August 1997.
- Nicholson, P., “Commercial Disputes and Arbitration Reforms in Vietnam”, *Contract Governance, Commercial Cultures and Change in Asia Colloquium*, Asian Law Centre, University of Melbourne, August 1997.
- Nicholson, P., “Perceptions of the Democratic Republic of Vietnam’s Court System between 1945 and 1959”, *Postgraduate Seminar Series*, Centre for Comparative Constitutional Studies.

GRANTS RECEIVED

- 1997 ARC Small Grant – “Asian Laws in Transition: Library Resources” – Tim Lindsey
- 1997 ARC Small Grant – “Educating Cultured Lawyers” – Veronica Taylor & Kathy Laster
- Chiang Ching-kuo Foundation Conference Grant for conference on the Laws of the Chinese Outside China – Sean Cooney
- Collaborative Research Program: International Exchange Agreements – “Fundamentals of Australian Law” – Veronica Taylor