



Centre for  
Employment &  
Labour  
Relations  
Law

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MELBOURNE LAW SCHOOL

**Annual Report 2009**



THE UNIVERSITY OF  
MELBOURNE

Melbourne Law School  
The University of Melbourne  
Annual Report January – December 2009

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and Sean Cooney of the Centre for Employment and Labour  
Relations Law, and Judy Bennett of Judy Bennett Design.

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# CONTENTS

FOREWORD . . . . .	2
GOALS OF THE CENTRE FOR EMPLOYMENT AND LABOUR RELATIONS LAW . . . . .	4
THE CENTRE: PEOPLE AND RELATIONSHIPS . . . . .	5
RESEARCH. . . . .	11
TEACHING AND LEARNING . . . . .	21
KNOWLEDGE TRANSFER AND COMMUNITY ENGAGEMENT . . . . .	23
SUMMARY OF CENTRE ACCOUNTS . . . . .	29
CONFERENCE AND SEMINAR PAPERS . . . . .	30
PUBLICATIONS . . . . .	31



# FOREWORD

The Centre began 2009 with a flurry of activity similar to that experienced in late 2008, when the Centre was reviewed by a panel of experts. In January 2009, we welcomed Tessa Dermody as the new Centre Coordinator. Tessa comes from an education background and has several years experience working in various administration roles in New Zealand, the United Kingdom and Australia. Tessa was immediately busy helping to organise a Forum on the Proposed Building and Construction Division of Fair Work Australia, held at the Law School on Thursday 26 February 2009. This was to be the first of several major events and seminars held over another year of major legislative change in Australian labour and employment law, with the Fair Work Act 2009 (Cth) commencing operation on 1 July 2009.

## RESEARCH

In 2009 the Centre continued to enhance its already strong reputation for research, with three further Australian Research Council competitive grants being awarded to Centre members.

- ▶ John Howe and Sean Cooney were awarded an ARC Linkage Grant in collaboration with Centre sponsor the Fair Work Ombudsman. This project, entitled *New Initiatives in Enforcement of Employment Standards: Assessing the Effectiveness of Federal Government Compliance Strategies* will run for three years from the beginning of 2010. CELRL Research Fellow Stephen Sempill provided invaluable assistance in the development of this project;
- ▶ Sean Cooney is also a member of a team of researchers that were awarded an ARC Discovery Grant in the area of comparative labour law: *Legal Origins: The Impact of Different Legal Systems on the Regulation of the Business Enterprise in the Asia-Pacific Region*, which will also run for three years from 2010;
- ▶ Joo-Cheong Tham was another Centre member successful in this year's ARC Discovery Grant round, with he and his collaborators receiving three years funding for their project *Dollars and Democracy: The Dynamics of Australian Political Finance and its Regulation*. Joo-Cheong also received an internal University of Melbourne grant for his project *Temporary Migrant Work and Social Justice*.

These projects are in addition to existing ARC projects. Beth Gaze continued to work on her project *Improving the Effectiveness of Australia's Anti-Discrimination Laws*; John Howe worked with employment lawyers and intellectual property lawyers on the project *Nothing Can Be Created Out of Nothing: Workers, their 'Know-How' and the Employment Relationships that Support Them*, and Sean Cooney and Sarah Biddulph continued their research on wage enforcement in China.

Anna Chapman and Beth Gaze commenced development of a major research project in anti-discrimination law, holding a Workshop in late 2009, while Glenn Patmore published his book *Choosing the Republic*.

## LEARNING AND TEACHING

The Centre and its members have primary responsibility for developing and delivering the teaching programs in employment and labour relations law at Melbourne Law School.

In 2009, the implementation of the Melbourne Model, under which Melbourne Law School now only enrolls candidates for the JD degree, impacted on our undergraduate program, with the Faculty offering only one subject in 2009: Employment Law. However, the Centre was also invited to develop the first labour and employment law subject for the JD, to be offered in 2010.

Over the next few years the Faculty will be deciding what further optional subjects should be available for students in the JD, and the Centre and its members aim to ensure that the curriculum contains a wide range of offerings in labour law.

The Master of Labour Relations Law program experienced a slight decline in student numbers, likely attributable to some potential students feeling reluctant to study subjects at a time of more significant change with the commencement of the Fair Work Act. Numbers are again healthy in 2010. However, given the significant changes in the law, the Centre is reviewing our postgraduate subject offerings. Some changes are likely to be recommended for the 2011 program.

## PROFESSIONAL AND COMMUNITY ENGAGEMENT (KNOWLEDGE TRANSFER)

Once again, the Centre maintained a busy program of events with regular labour law seminars and sponsors seminars. In 2009, the Centre hosted several major events: an international workshop on Wage Arrears in China (17–19 February); the Forum on the Proposed Building and Construction Division of Fair Work Australia (26 February); a Book Launch and Panel Discussion: *Fair Work: The New Workplace Laws and the Work Choices Legacy* (6 May); and a further workshop on 'General Protections' in the Fair Work Act and Anti-discrimination (11 November). In addition, the Centre lent its support to two major international labour and employment law conferences – the inaugural Regulating for Decent Work Network Conference, held at the International Labour Organisation in July 2009; and the World Congress of Labour Law, hosted by the Australian Labour Law Association and held in Sydney in September 2009.

Joo-Cheong Tham successfully applied for a University 'Knowledge Transfer' Grant for a project in which he will work with two community organisations, Job Watch and Spectrum Migrant Resource Centre, to provide advice and assistance to international students concerning their employment rights. This project is distinctive in that it will provide law students with the opportunity to work on these issues with the two organisations.

## CONCLUSION

The publication of the Annual Report also provides an opportunity each year to make special acknowledgement of the important contributions made to the Centre and its work by the legal practices that are Centre Sponsors, as well as by its Academic Associates, Teaching and Research Associates, and members of the Advisory Board. We are pleased to report that all 18 firms and one government organisation that sponsored Centre in 2008 did so again in 2009, despite the impact of the Global Financial Crisis on many firms' revenue.

In addition to these organisations' financial contributions, members of the practices frequently participate in the Centre's research and teaching programs, as well as attending (and in some cases presenting at) our 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. I also want to thank the LLB and JD students who are increasingly involved in the Centre as Student Editorial Assistants for the Australian Journal of Labour Law (AJLL), 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 the 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.

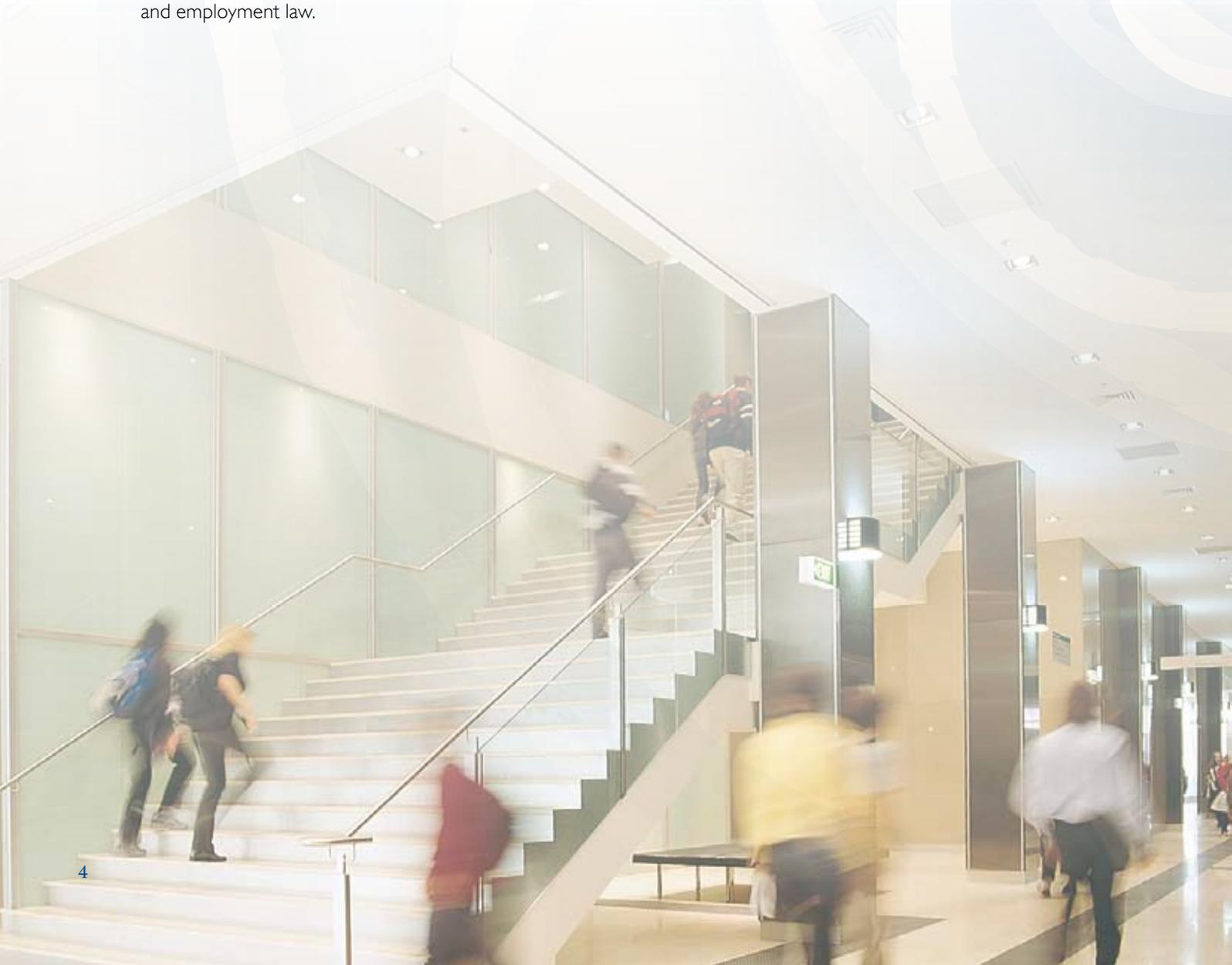
**John Howe**



# GOALS OF THE CENTRE FOR EMPLOYMENT AND LABOUR RELATIONS LAW

The Centre was established in the Melbourne Law School in 1994. It is Australia's first and only research centre devoted exclusively to developing an understanding of the role and function of labour law. Its goals 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 postgraduate 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

## CENTRE FACULTY MEMBERS

**Associate Professor John Howe** BA, LLB(Monash), LLM(Temple)(Summa Cum Laude), PhD(Melb)  
Director of the Centre (on study leave from June 2009)  
Room 0756, ph: (03) 8344 1094, j.howe@unimelb.edu.au

John took over as the Director of the Centre from Colin Fenwick in November 2008. John's research interests include regulatory theory, labour law and corporate accountability. He teaches labour law, corporations law and administrative law in both the undergraduate and postgraduate teaching programs offered by the Melbourne Law School. John is also a member of the Centre for Corporate Law and Securities Regulation in the Law School. Before starting his academic career, John worked in private legal practice and as a researcher for public policy and advocacy organisations in Washington DC. In 2009 he was the Secretary of the Australian Labour Law Association and editor of the reports section of the *Australian Journal of Labour Law*.



**Associate Professor Sean Cooney** BA, LLB(Hons), LLM(Melb), LLM, JSD (Columbia)  
Acting Director (from June 2009)  
Room 0703, ph: (03) 8344 8109, s.cooney@unimelb.edu.au

Sean's research interests are in international and comparative labour law, with a particular focus on East Asia. 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 is at present examining issues of comparative labour law, and labour law enforcement, with a particular emphasis on East Asia.



**Ms Anna Chapman** BCom, LLB(Hons), LLM(Melb)  
Room 0702, ph: (03) 8344 5625, a.chapman@unimelb.edu.au

Anna has been a faculty member at Melbourne Law School for more than ten years, having come to the University after legal practice with Mallesons Stephen Jaques. Anna's research focuses on law, gender, race and sexual preference in the paid labour market, and her current projects include an examination of the constitution of the worker and care responsibilities in Australian labour law. Anna has published in a range of Australian and international law journals and edited collections, and from 2008 has been one of the editors of the *Australian Journal of Labour Law*.



**Associate Professor Colin Fenwick** BA, LLB, LLM(Melb), LLM(Virginia),  
(Currently on leave of absence at the ILO, Geneva)  
c.fenwick@unimelb.edu.au

Colin has over fifteen years' experience in the field of labour relations law. He was the Director of the Centre from August 2004 until October 2008. Colin has worked in both legal practice and in the academy, in Australia, the United States and Switzerland. Colin's research interests are predominantly in comparative and international labour law, with a particular focus on Southern Africa. From 2006 until 2008 he was one of the editors of the *Australian Journal of Labour Law*.



**Associate Professor Beth Gaze** BSc, LLB(Hons)(Monash), LLM (Cal)(Berkeley)

Room 0830, ph: (03) 8344 6173, [egaze@unimelb.edu.au](mailto:egaze@unimelb.edu.au)

Beth's major interests are in anti-discrimination and equality law, feminist legal thought, and administrative law including tribunals. She has undertaken research into Australian anti-discrimination law including currently-funded research projects on the enforcement process under Australian federal anti-discrimination law, and the need for substantive updating of Australian anti-discrimination laws. Her particular area of interest in discrimination law is equality for women at work, with a focus on work/family conflict. Beth joined the Melbourne Law School from Monash University in 2006.



**Mr Glenn Patmore** BA, LLB(Hons)(Monash), LLM(Queens)

Room 0709, ph: (03) 8344 6191, [g.patmore@unimelb.edu.au](mailto:g.patmore@unimelb.edu.au)

Glenn has taught law at Monash University and currently is a Senior Lecturer at the Melbourne Law School. He is presently researching in the fields of democratic theory and practice, constitutional law, employment law, human rights and republicanism. His employment law research has focused on disability discrimination, joint consultative committees as well as employee happiness and labour law. His book, *Choosing the Republic* (UNSW Press), was published in 2009 and he continues to write on the topic of Australian republicanism and constitutional change. He is an editor of four books of collected essays, has written two books and published in a range of Australian and international journals.



**Dr Joo-Cheong Tham** LLB(Hons)(Melb), LLM(Melb), PhD(Melb)

Room 0710, ph: (03) 8344 7030, [j.tham@unimelb.edu.au](mailto:j.tham@unimelb.edu.au)

Joo-Cheong Tham is a Senior Lecturer at the Law Faculty and has taught at the law schools of Victoria University and La Trobe University. His key research areas are the regulation of non-standard work and political finance law. He has also undertaken considerable research into counter-terrorism laws. He is currently working on two separate areas. The first concerns the challenges of temporary migrant work to labour regulation, a project he is undertaking with Dr Iain Campbell, Centre for Applied Social Research, RMIT University. In the area of political finance, Joo-Cheong's book, *Money and Politics: The Democracy We Can't Afford* will be published by UNSW Press in 2010. He is also currently editing two books, both of which will be published in 2011: one to be published by Routledge is devoted to international perspectives on political finance while the other, which has the working title, *Electoral Regulation and Prospects for Australian Democracy*, will be published by Melbourne University Press. Together with Associate Professor Graeme Orr, University of Queensland and Professor Brian Costar, he is leading an Australian Research Council project, *Dollars and Democracy: The Dynamics of Australian Political Finance and its Regulation (2010–2013)*.



## PRINCIPAL RESEARCH STAFF

### **Ms Catherine Dow** BA, LLB (Hons) (Melb)

Catherine graduated from the University of Melbourne in June 2009 with a LLB (Hons), BA (Media & Communications), U2I Certificate in Global Issues (Understanding Globalisation) and a Diploma in Music (Practical). Catherine is a research assistant and enjoys working for a variety of academics in the Centre. In 2009 Catherine was associate editor of the Australian Journal of Labour Law and Administrator of the Australian Labour Law Association. Catherine is passionate about all aspects of labour law and is particularly interested in anti-discrimination law, collective bargaining, freedom of association, international labour law and the rights of precarious and informal workers.

### **Ms Emily Long** BA, LLB (Hons) (Melb)

Emily Long continued to work for the Centre for the first half of 2009 as a research assistant. Emily continued her work as Research Associate to the Social Inclusion Project, a cross-faculty project that aimed to critically assess the Australian Government's 'Social Inclusion Agenda'. Emily also began work under the supervision of Mr Colin Fenwick on the Southern Africa Project.

### **Mr Stephen Sempill** BA, LLB (Hons) (Melb)

Stephen was a Research Fellow at the Centre until June 2009. He holds degrees in Law (Hons) and Arts with majors in Criminology and Socio-Legal Studies from the University of Melbourne. Stephen was also associate editor of the Australian Journal of Labour Law and co-editor of the Centre's Working Paper Series.

## RESEARCH ASSISTANTS

Members of the Centre were assisted by the following research staff: Takele Bulto, Gus Lancaster, Joel Silver, Angela Stoler, Ben Strong, Natalie Webber, Sue Zhang, Sonja Zivak.

## COORDINATOR

### **Ms Tessa Dermody** BEd (Otago), Dip Tching (Dunedin)

Tessa joined the Centre as the new Coordinator in January 2009. She comes from an education background and has several years experience working in various administration roles in New Zealand, United Kingdom and Australia. Tessa is also the Coordinator for the Tax Group.



## CENTRE ASSOCIATES

### ACADEMIC ASSOCIATES

Professor Chris Arup  
Associate Professor Michelle Brown  
Associate Professor Christina Cregan  
Professor Keith Ewing  
Associate Professor Colin Fenwick  
Professor William Ford  
Associate Professor Anthony Forsyth  
Associate Professor Peter Gahan  
Professor Evance Kalula  
Professor Rosemary Hunter  
Professor Richard Johnstone  
Professor Tim Lindsey  
Professor Ronald McCallum AO  
Ms Shelley Marshall  
Associate Professor Gail Mason  
Professor Richard Mitchell  
Dr Jill Murray  
Professor Rosemary Owens  
Mr Anthony O'Donnell  
Professor Marilyn Pittard  
Professor Ian Ramsay  
Professor Andrew Stewart  
Associate Professor Martin Vranken  
Associate Professor Zhu Ying

### TEACHING ASSOCIATES

Ms Carol Andrades  
Mr Paul O'Grady  
Mr Peter Rozen  
Professor Andrew Stewart

### CURRENT AFFILIATION

Monash University  
The University of Melbourne  
The University of Melbourne  
Kings College, University of London  
International Labour Organisation  
University of Western Australia  
Monash University  
Monash University  
University of Cape Town  
Kent University  
Griffith University  
The University of Melbourne  
The University of Sydney  
Monash University  
The University of Sydney  
Monash University  
La Trobe University  
University of Adelaide  
La Trobe University  
Monash University  
The University of Melbourne  
The University of Adelaide  
The University of Melbourne  
The University of Melbourne

### CURRENT AFFILIATION

Ryan Carlisle Thomas  
Victorian Bar  
Victorian Bar  
University of Adelaide

## THE ADVISORY BOARD

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 2009 were:

<b>Justice Peter Gray (Chair)</b>	Federal Court of Australia
<b>Senior Deputy President Jennifer Acton</b>	Fair Work Australia
<b>Mr Steven Amendola</b>	Blake Dawson
<b>Ms Carol Andrades</b>	Ryan Carlisle Thomas
<b>Mr Josh Bornstein</b>	Maurice Blackburn
<b>Justice Alan Boulton</b>	Fair Work Australia
<b>Ms Cath Bowtell</b>	Australian Council of Trade Unions
<b>Mr Ben Burke</b>	Baker & McKenzie
<b>Mr Mark Diserio</b>	Lander & Rogers
<b>Ms Rachel Doyle SC</b>	Victorian Bar
<b>Mr Tim Frost</b>	Allens Arthur Robinson
<b>Mr Philip Gardner</b>	Ryan Carlisle Thomas
<b>Mr Val Gostencnik</b>	Corrs Chambers Westgarth
<b>Professor James Hathaway</b>	University of Melbourne
<b>Ms Mary-Jane Ierodiaconou</b>	Justitia
<b>Mr Ross Jackson</b>	Maddocks
<b>Mr Murray Kellock</b>	Mallesons Stephen Jaques
<b>Mr Ross Levin</b>	Rigby Cooke Lawyers
<b>Mr Adam Lunn</b>	Allens Arthur Robinson
<b>Mr Peter Lupson</b>	Middletons
<b>Professor Richard Mitchell</b>	Monash University
<b>Mr Stuart Pill</b>	Trindade Farr & Pill
<b>Mr Charles Power</b>	Holding Redlich
<b>Mr Julian Riekert</b>	Lander & Rogers
<b>Mr Nick Ruskin</b>	DLA Phillips Fox
<b>Mr Henry Skene</b>	Arnold Bloch Leibler
<b>Mr Graeme Smith</b>	Freehills
<b>Mr Michael Tehan</b>	Minter Ellison
<b>Mr Nicholas Wilson</b>	Fair Work Ombudsman

## CENTRE SPONSORS

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 2009 were:



# RESEARCH

The Centre is Australia's first and only research centre devoted exclusively to developing an understanding of the role and function of legal regulation of the labour market. 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 the regulation of individual work relationships, discrimination and inequality in employment and the labour market, the regulation of occupational health and safety, collective labour relations and bargaining, the functions of trade unions and alternative forms of worker representation, corporate governance and labour, enforcement of minimum employment standards, international labour rights and standards, and unemployment law and labour market policy. Centre members also have a strong interest in comparative labour and employment law and labour market regulation, including research into labour and employment regulation in the Asia-Pacific region, Southern Africa, North America and Europe.

During 2009 Centre members pursued a number of specific research projects:

- ▶ Corporate Governance and Workplace Partnerships
- ▶ Employee Share Ownership Plans: Current Practice and Regulatory Reform
- ▶ Employment Rights of International Students: Enhancing protection through a community-university collaboration
- ▶ Employee Happiness and Labour Law
- ▶ Improving the Effectiveness of Australia's Anti-Discrimination Laws
- ▶ Labour Law Enforcement in China
- ▶ Law and Labour Market Regulation
- ▶ Law and Labour Market Regulation in Southern Africa
- ▶ New Initiatives in Enforcing Employment Standards: Assessing the Effectiveness of Federal Government Compliance Strategies
- ▶ 'Nothing Can Be Created Out of Nothing': Workers, Their Know-How and the Employment Relationships that Support Them
- ▶ Reform of Australian Employment and Labour Law (formerly Work Choices Analysis)
- ▶ Security of Employment and Unfair Dismissal Law
- ▶ The Challenges of Regulating Temporary Migrant Labour in Australia
- ▶ What the Social Inclusion Agenda Means for the Integration of Labour Market Regulation and Social Policy
- ▶ Work, Care and Family: Revealing and Reconstituting Legal Norms

In addition, during 2009 a number of research projects were pursued outside the normal parameters of the Centre's research. These were:

- ▶ Choosing the Republic
- ▶ Coherent, Independent and User-Friendly? Participant Perceptions of Social Security Administrative Review Processes in Australia and Britain
- ▶ Electoral Regulation and its Prospects for Australian Democracy
- ▶ International Perspectives on the Regulation of Party Funding
- ▶ Non-discrimination and Freedom of religion
- ▶ Political Finance in Australia

Short descriptions of all these research projects follow. A list of research students under the supervision of Centre members concludes this section of the Annual Report on research.

Publications and other specific research outputs are listed in the last pages of this Annual Report.

## RESEARCH PROJECTS IN EMPLOYMENT AND LABOUR LAW

### CORPORATE GOVERNANCE AND WORKPLACE PARTNERSHIPS

**Centre Associates:** R. Mitchell, I. Ramsay, A. O'Donnell, S. Marshall.

Centre Associates Professor Richard Mitchell and Professor Ian Ramsay, of the Melbourne Law School's Centre for Corporate Law and Securities Regulation, received a Discovery Grant from the Australian Research Council of \$640,500 to undertake a five year research project commencing in 2003. The project examined the interaction between several key factors in the creation and sustainability of 'Partnerships at Work'. These factors include particular employment systems, forms of corporate governance and ownership structures. The project investigated how these various factors have interacted so as to give rise to – or fail to give rise to – 'high performance' partnership-style relations at work. In particular, the project focused on the interaction between these factors within a regulatory environment established by labour law and corporate law.

At the end of 2009, all major work on the project was completed. A book arising from the project was published in 2009. This book is an edited collection of essays, published by Melbourne University Press: Marshall, S., Mitchell, R., and Ramsay, I. (eds), *Varieties of Capitalism, Corporate Governance and Employees* (2008). It is expected that a second book will report on and analyse the major findings of the project and is likely to be published in late 2010.

### EMPLOYEE SHARE OWNERSHIP PLANS: CURRENT PRACTICE AND REGULATORY REFORM

**Centre Associates:** R. Mitchell and I. Ramsay

This project developed from the *Corporate Governance and Workplace Partnerships* project. It was seeking to produce the first comprehensive analysis of how current legal regulation structures and constrains the use of employee share ownership in Australian enterprises. Employee Share Ownership Plans (ESOPs) are important to the development of an economic culture of enterprise and innovation and the building of national wealth and savings in response to long-term demands of intergenerational equity. ESOPs require development through appropriate regulatory frameworks. This project subjected the existing regime of tax, corporate and labour law to technical and empirical scrutiny. The project was funded by a Discovery Grant from the Australian Research Council, for three years from 2006. The Chief Investigators were Professor Richard Mitchell, with Professor Ian Ramsay and Associate Professor Ann O'Connell of the Melbourne Law School's Centre for Corporate Law and Securities Regulation. Ms Ingrid Landau was engaged on the project as a Research Fellow.

### EMPLOYMENT RIGHTS OF INTERNATIONAL STUDENTS: ENHANCING PROTECTION THROUGH A COMMUNITY-UNIVERSITY COLLABORATION

**Centre Member:** J.C. Tham      **Research Assistant:** C. Dow

International students make a vital cultural and economic contribution to Australia. In the course of their studies, many of these students are engaged in employment. There is, however, increasing concern that international student workers are being exploited, with their employment rights violated. Through a collaboration between the Centre and the Spectrum Migrant Resource Centre, this project aims to enhance the protection of international student employment rights. Specifically, it will investigate the problems faced by international student workers and implement a pilot project directed at addressing these issues.

## EMPLOYEE HAPPINESS AND LABOUR LAW

**Centre Member:** G. Patmore

This project draws upon the literature showing how happiness can be promoted at work. Yet, the promotion through the regulation of the workplace remains elusive. While efficiency and power-balancing can be seen as twin objectives of labour market regulation, this project examines the introduction of a third objective: the promotion of workplace happiness. The project also examines how work councils in Europe might provide one manner in which this objective could be implemented in a concrete way.

## IMPROVING THE EFFECTIVENESS OF AUSTRALIA'S ANTI-DISCRIMINATION LAWS

**Centre Member:** B. Gaze

**Research Student:** D. Allen

This project, which was completed in 2009, involved a critical evaluation of the substance and operation of Australian anti-discrimination laws in order to develop recommendations for changes to the laws to improve their effectiveness in eliminating discrimination, and in stimulating community understanding of discrimination and human rights. It provided a PhD scholarship (held by Ms Dominique Allen, completed in 2009) to undertake legal and empirical research into the problems that exist within the system of anti-discrimination law and suggest future directions for reform. It was supported through a Linkage Grant from the Australian Research Council, and was conducted with the assistance of an industry partner, now known as the Victorian Equal Opportunity and Human Rights Commission.

## LABOUR REGULATION IN EAST ASIA: CHINA

**Centre Member:** S. Cooney

**Centre Associates:** Y. Zhu, S. Biddulph

This project is a development of earlier ARC-funded research conducted by Associate Professor Sean Cooney, Centre Associates Dr Jill Murray and Professor Richard Mitchell on *Rethinking International Labour Standards in the Asia-Pacific*. A major issue that emerged from the work was the enforcement of domestic and international labour law in developing countries such as China. Many developing countries have labour laws that on paper are comprehensive and reflect international standards (with exceptions in the area of freedom of association). However, it is notorious that these laws are widely ignored. This project investigates systematically the reasons for implementation failures. It examines the scope for greater coordination and systematisation of domestic enforcement measures. In 2006 Associate Professor Sean Cooney was awarded a Discovery Grant from the Australian Research Council for further work in this area, together with Associate Professor Sarah Biddulph of the Asian Law Centre (Melbourne Law School) and Centre Associate Dr Ying Zhu. Field work on the project was carried out in 2007, 2008 and 2009 with visits to officials, firms and academics in Beijing, Nanjing, Shenzhen and Shantou. A major international workshop was held on the issue in February 2009.

## LAW AND LABOUR MARKET REGULATION

**Centre Members:** A. Chapman, S. Cooney, C. Fenwick, B. Gaze, J. Howe, J.C. Tham

**Centre Associates:** C. Arup, P. Gahan, R. Johnstone, R. Mitchell, J. Murray,

This is an ongoing research program which seeks to broaden the study of labour law to include wide regulatory concerns embracing the labour market generally. The project is designed to apply a regulatory perspective to labour law, to broaden the subject matter of labour law, and to view the impact of this regulatory field on individual workers taken across a life course. The project had its origins in the Redefining Labour Law Conference which was convened by the Centre in 1995, and was further developed at a workshop of labour law scholars convened by Griffith University's Socio-Legal Research Centre in 2002. Since 1994, the Centre's research activities in this general area have focussed upon specific projects concerning labour market regulation beyond the boundaries of the employment relationship. Topics covered include job creation policies (Associate Professor John Howe), social security (Professor Chris Arup, Associate Professor Beth Gaze and Ms Anna Chapman), immigration (Mr Anthony O'Donnell and Professor Richard Mitchell), industrial policy (Associate Professor John Howe), employment agency and recruitment (Mr Anthony O'Donnell and Professor Richard Mitchell), enforcement (Associate Professors John Howe and Sean Cooney) and special labour markets (Associate Professor Colin Fenwick).

## LAW AND LABOUR MARKET REGULATION IN SOUTHERN AFRICA

**Centre Member:** C. Fenwick

**Centre Associate:** E. Kalula

The aim of the project is to explore the trajectory of, and influences on, labour law in selected countries in the Southern African Development Community. A workshop was held at the University of Cape Town in January 2006, at which collaborators from within Southern Africa presented case studies on a total of 11 countries of the 14 that are member states of the Southern African Development Community. During 2008 and 2009, work continued to revise the original papers, with a view to publication of an edited book.

## NEW INITIATIVES IN ENFORCING EMPLOYMENT STANDARDS: ASSESSING THE EFFECTIVENESS OF FEDERAL GOVERNMENT COMPLIANCE STRATEGIES

**Centre Members:** S. Cooney and J. Howe    **Research Staff:** S. Sempill, C. Dow

The well-being of more than eight million Australian employees is underpinned by statutory workplace entitlements. For the large majority of those employees, these are set by federal legislation. The statutory entitlements are meaningful only in so far as they are complied with, and improving the effectiveness of the federal enforcement agency, the Fair Work Ombudsman, is therefore of crucial public importance. This project provides the first comprehensive scholarly empirical evaluation of the Fair Work Ombudsman. Its findings will identify multiple ways in which enforcement practices can be improved, not only for the Fair Work Ombudsman, but also for comparable compliance agencies domestically and overseas. The project is supported by a three year ARC Linkage Grant, awarded in 2009.

## **‘NOTHING CAN BE CREATED OUT OF NOTHING’: WORKERS, THEIR KNOW-HOW AND THE EMPLOYMENT RELATIONSHIPS THAT SUPPORT THEM**

**Centre Members:** C. Fenwick, J. Howe      **Research Staff:** B. Strong

**Associates:** C. Arup, C. Dent, W. van Caenegem

Innovation is central to the Australian and global economy. Innovation policy, to date, has focused on high-technology industries and the commercialisation of new products – areas encouraged by current intellectual property laws. This neglects the key contribution of “know-how” to innovation, leaving it to regulation by contractual clauses and industry practice, which may not set appropriate incentives. This empirical project, through the collection of qualitative data, will establish how Australian employers and workers bargain over the fruits of know-how, and whether this promotes innovation. It will suggest, if necessary, reforms to the intellectual property and labour law systems to enhance legal incentives for this form of innovation. The project commenced in 2009 and is supported by an ARC Discovery Grant.

## **REFORM OF AUSTRALIAN EMPLOYMENT AND LABOUR LAW (FORMERLY WORK CHOICES ANALYSIS)**

**Centre Members:** A. Chapman, S. Cooney, C. Fenwick, B. Gaze, J. Howe, G. Patmore, J.C. Tham

A core area of research for Centre members over many years has been the monitoring and analysis of change in Australian labour and employment law. In recent years, the Centre has engaged in comprehensive analysis of the Work Choices legislation enacted by federal Parliament in late 2005, and the new federal labour legislation enacted by the Rudd Labor Government: the Fair Work Act 2009 (Cth). Centre members and associates actively contributed to the policy debates surrounding the introduction of the Fair Work Act. The Centre made submissions to the Government’s consultation process concerning the National Employment Standards, and the Senate Inquiry into the Fair Work Bill. Centre member Beth Gaze was also a consultant to the Victorian Government in relation to the review of the Equal Opportunity Act 1995 (Vic). The Centre will continue to be involved both in monitoring the legal and social changes brought about by the new legislative regime, and in exploring options for future policy development. During 2009 the Centre continued to update our online database of labour and employment law court decisions. You can access the database via the Centre’s homepage <http://celrl.law.unimelb.edu.au/>.

## SECURITY OF EMPLOYMENT AND UNFAIR DISMISSAL LAW

**Centre Member:** A. Chapman

Termination of employment law, and particularly unfair dismissal law, continues to attract much debate in Australian policy circles and more broadly. The purposes and rationales of legal regulation in this area remain incoherent. There is little consensus on what normative values ought to come into play, and how they should be weighted. Those values include the need for employers to treat workers with respect and dignity, concepts of balance and fairness, the special needs of small business, and economic factors.

Ms Anna Chapman has conducted a project over a number of years tracking the development of legal regulation in this area. In 2008 she was invited to present a paper on unfair dismissal law in an Academic Workshop titled *Australian Labour Law: From 'Work Choices' to 'Fair Work'*. That paper was subsequently revised for inclusion in Anthony Forsyth and Andrew Stewart (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy*, Federation Press, 2009. Further work on this project included a presentation in the Labour Law Seminar Series (in April 2009) and the subsequent publication of an article in the 2009 University of NSW Law Journal.

Some aspects of the chapter formed the basis of a submission to the Senate Inquiry into the Fair Work Bill (submission no 135). That submission was subsequently discussed in the majority report.

## THE CHALLENGES OF REGULATING TEMPORARY MIGRANT LABOUR IN AUSTRALIA

**Centre Member:** J.C. Tham

Schemes for temporary migrant workers have expanded in many countries in response to employer demands for more flexible labour. Such schemes present a major challenge for labour regulation in the receiving countries. Though it is widely accepted, if dangers of economic and social disruption are to be avoided, that such workers should be integrated into the mainstream of employee protection, debate often rages on how the regulatory system should institute such integration. Precisely what rights should such workers acquire? Precisely what labour standards should apply? Who should decide? These questions are particularly sharp in countries such as Australia, where there has been a dramatic growth of temporary workers, employment forms have multiplied and the labour regulation system increasingly resembles a patchwork marked by a complex overlapping of standards in some places and complete gaps in other places. These questions, however, have been largely neglected by Australian scholarship.

This interdisciplinary project undertaken with Dr Iain Campbell, RMIT University, will examine the challenges of regulating temporary migrant labour in Australia.

## WHAT THE SOCIAL INCLUSION AGENDA MEANS FOR THE INTEGRATION OF LABOUR MARKET REGULATION AND SOCIAL POLICY

**Centre member:** J. Howe

**Research Staff:** E. Long

A key element of the Labor Government's labour market and social policy platform has been the adoption of 'social inclusion' as an approach for addressing social disadvantage and alleviating poverty: the 'Australian Social Inclusion Agenda'. This research project examined the interaction between labour market regulation and social policy regimes under the Agenda from a social justice perspective. The focus was principally on the interaction between labour law, employment assistance and welfare policy, but the project also considered the operation and impact of other areas of legal and social policy, including taxation. The project was carried out in the Centre in 2008 and 2009 and was funded by the University of Melbourne's Social Justice Initiative (SJI). In addition to Associate Professor John Howe and Ms Emily Long, the project team also included Associate Professor Miranda Stewart from the Tax Group in the Melbourne Law School, researchers from the Faculty of Economics and the Centre for Public Policy at the University of Melbourne, and from the Brotherhood of St Laurence.

In June 2009, the project team organised a *Social Inclusion Research Forum* at the University of Melbourne. Fifty government policy-makers, community representatives and academic researchers attended the Research Forum. Two world leaders on social inclusion research and policy presented keynote addresses – Mr Eric Marlier from the CEPS/Instead Research Institute, Luxembourg, who spoke on social inclusion governance and indicators in the European Union; and Professor Hilary Silver from Brown University, USA. Other speakers from around Australia also contributed papers. A selection of papers from the Forum will be published in a Special Issue of the Australian Journal of Social Issues in 2010.

## WORK, CARE AND FAMILY: REVEALING AND RECONSTITUTING LEGAL NORMS

**Centre Members:** A. Chapman, B. Gaze

The intersections and dynamics of work, care, family, household and the labour market are now receiving considerable attention in Australia, and overseas, as concerns of public debate, policy and scholarly investigation. A central strand of scholarship reveals the ways in which market work in many Western countries is organised around a normative, or ideal, worker. Most accounts interpret this ideal worker as developing from a (male) breadwinner/ (female) housekeeper model of work and family, dominant in many Western societies for more than one hundred years. In Australia, close attention has not been paid to the role played by legal regulation in producing the normative or ideal subject of the labour market. Ms Anna Chapman is engaged in research examining the broad field of Australian labour law as constitutive of normative work, care and family forms. The work aims to reveal existing legal norms and then put forward an argument for reconstituting those norms in ways more likely to further equality and better work, care and family outcomes. This research is being undertaken by Anna Chapman as part of her doctoral studies at the University of Adelaide. Associate Professor Beth Gaze is also engaged in examining the intersections of work, care, family and legal regulation. Her main areas of focus are anti-discrimination law, and the impact of the Fair Work Act on women workers.

## OTHER RESEARCH PROJECTS OF CENTRE MEMBERS

### CHOOSING THE REPUBLIC

**Centre Member:** G. Patmore

The project considers how Australia can become a republic. The answer proffered is that the democratic process has and will continue to shape republican reform. The project's focus is on popular choice, the hallmark of democracy.

The project revisits the history of political republicanism and the failed '99 referendum; proposes a new way of describing the process of constitutional change; re-imagines the role of a future Australian Head of State; and emphasises the importance of the views of the leaders and the people.

The project has led to the publication of a book (Choosing the Republic, UNSW Press, 2009) that is both a straightforward guide for the general public to republican reform and a stimulus to political, legal and policy debates. The project also offers a fresh approach, by drawing upon a diverse range of interviews with key leaders and reflects upon some key survey data.

### COHERENT, INDEPENDENT AND USER-FRIENDLY? PARTICIPANT PERCEPTIONS OF SOCIAL SECURITY ADMINISTRATIVE REVIEW PROCESSES IN AUSTRALIA AND BRITAIN

**Centre Member:** B. Gaze

This project involves a critical examination of whether social security appeal processes are accessible, fair and understandable, as required by the Social Security Act 1991 (Cth). The project was funded by a Discovery Grant from the Australian Research Council, for the years 2005 to 2008. The project commenced in the School of Social Work at The University of Melbourne. Due to illness of the Chief Investigator, in late 2006 the project came under the direction of Associate Professor Beth Gaze, together with Professor Belinda Fehlberg of the Melbourne Law School and Dr Ruth Quibell, who is the Research Fellow working on the project. Interviews were conducted with a large sample of tribunal appellants and a survey questionnaire developed for tribunal members. Data collected by these means will be analysed for publication.

### ELECTORAL REGULATION AND ITS PROSPECTS FOR AUSTRALIAN DEMOCRACY

**Centre Member:** J.C. Tham

**Research Staff:** E. Long, J. Silver

Given that elections are the cornerstone of representative democracy, how electoral politics is regulated is of fundamental concern and interest. Yet electoral regulation is often viewed as a matter of administrative machinery. One consequence is that this rich field, blending law and politics, has been relatively neglected by scholars with discourse about the shape and reform of electoral processes tending to be played out at the low-level of arguments about partisan benefit or ephemeral and episodic responses to particular scandals. As a result, the key questions electoral regulation poses for Australia's democracy have yet to be fully examined, notably, how it advances or undermines political freedoms and fairness/equality and the extent to which it promotes integrity in government by preventing corruption.

In collaboration with Professor Brian Costar, Swinburne University, and Associate Professor Graeme Orr, Dr Tham is currently undertaking a project examining these questions. A workshop was held in late 2009 at the Melbourne Law School. Workshop papers will be published as an edited collection in Melbourne University Press' academic monograph series in 2010 with Professor Costar, Associate Professor Orr and Dr Tham as editors. An ARC Discovery Grant supporting this research was obtained in 2009.

## INTERNATIONAL PERSPECTIVES ON THE REGULATION OF PARTY FUNDING

**Centre Member:** J.C. Tham

Difficulties of controlling money in politics are currently being experienced in a number of countries. In the case of the UK, the recent scandals rocked both the Blair and Brown governments, while in the USA there is a great deal of interest in Obama's capacity to raise vast sums of money. In Australia recent controversy about funding parties and candidates by property developers has led the government to propose root and branch reform. This project examines the various issues through a comparative and inter-disciplinary approach.

Together with Professor Keith Ewing, King's College London and Mr Jacob Rowbottom, Cambridge University, Dr Tham organised a workshop for this project that was held in May 2008. Professor Ewing, Mr Rowbottom and Dr Tham are currently editing a book comprising the workshop papers. The book will be published by Routledge.

## NON-DISCRIMINATION AND FREEDOM OF RELIGION

**Centre Member:** B. Gaze

Achieving the right balance between adequately protecting religious freedom while staying true to principles of non-discrimination is far from easy. This project will advance understanding and analysis of religious freedom and equal treatment in Australia, in principle, in law and empirically. In the context of community tensions along ethno-religious lines, it will benefit Australia to have the issues at stake described and clarified. The project will identify the relevant interests at stake and develop policy recommendations for their protection. The aim is to contribute to inter-religious (and inter-cultural) harmony, as an element of safeguarding Australia.

## POLITICAL FINANCE IN AUSTRALIA

**Centre Member:** J.C. Tham

**Research Staff:** E. Long, S. Sempill, M. Trabsky

Money plays a controversial role in Australian politics. Political donations often spark claims of secret contributions leading to corruption. These claims are occasionally accompanied by allegations that corporations and trade unions have undue influence over political parties through the funds they provide. Public funding of political parties also attracts its share of criticism. Parliamentary entitlements have been condemned as rorts allowing politicians to feather their nests, while government advertising has been portrayed as wasteful and unfair. At the base of these concerns appears to be a common fear that Australian politics has the trappings of a democracy that mask an oligarchy where political power rests with only a few, richer and more powerful citizens. Joo-Cheong's book, *Money and Politics: The Democracy We Can't Afford* will be published by UNSW Press in 2010.

## RESEARCH STUDENTS UNDER THE SUPERVISION OF CENTRE MEMBERS

### STUDENT RESEARCH PROJECTS

**D. Allen** – *Improving the effectiveness of Australia's Anti-Discrimination Laws* (funded by Australian Research Council Linkage Grant APA(I)) (PhD). Supervisors: Associate Professor Beth Gaze and Professor Jenny Morgan.

**M. Bini** – *Public Sector Directors' Duties* (PhD). Supervisors: Associate Professor Beth Gaze and Professor Ian Ramsay.

**P. Darvas** (Monash Department of Business Law and Taxation) – *Public Procurement as an Instrument of Labour Market Regulation: a Comparative Survey* (PhD). Supervisors: Associate Professor John Howe and Professor Richard Mitchell of Monash University

**E. Goodwin** – *Industry specific legal regulation of workplace relations in the Australian building and construction industry: An examination and evaluation* (PhD). Supervisor: Associate Professor John Howe. Co-Supervisors: Associate Professor Sean Cooney and Associate Professor Christine Parker.

**T. Hardy** – *A Changing of the Guard: The Evolution of the Federal Enforcement Agency Since Work Choices* (LLM, Minor Thesis). Supervisor: Associate Professor John Howe.

**M. Irving** – *Equitable Remedies for Unfair Termination* (LLM, Minor Thesis). Supervisors: Associate Professor Sean Cooney and Dr Matthew Harding.

**I. Landau** – *Regulating labour standards in Vietnam: Law, socialism and the role of the Vietnamese state* (PhD). Supervisors: Associate Professor Pip Nicholson, Associate Professor Sean Cooney and Associate Professor John Howe.

**J. Mao** – *China's Pension System* (PhD). Supervisors: Associate Professor Sean Cooney and Professor Richard Mitchell.

**N. Men** – *Alternative Dispute Resolution in Cambodia* (PhD). Supervisors: Associate Professor Sean Cooney and Associate Professor Camille Cameron.

**T. Mihalopoulos** – *Recognition Space for indigenous and ethno-cultural groups in Australia* (PhD). Supervisors: Associate Professor Beth Gaze and Dr Lisa Sarmas.

**Y. Qingfan** – *New Forms of Worker Organisation in China* (PhD). Supervisors: Associate Professor Sean Cooney and Associate Professor Peter Gahan.

**D. Ruschena** – *Litigation and Liability as Regulation to Reduce Tobacco-Related Harm* (PhD). Supervisors: Associate Professor John Howe, Associate Professor Christine Parker and Associate Professor Camille Cameron.

# TEACHING AND LEARNING

Members of the Centre teach a number of undergraduate subjects and postgraduate programs in labour 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'). All labour law students are encouraged to take part in various activities within the Centre, including the Labour Law Seminar Series.

## SUBJECTS IN THE LLB PROGRAM

### **730-436 EMPLOYMENT LAW (J.C. THAM)**

This subject provides a detailed overview of the legal regulation of work relationships in Australia, in an industrial, social and political context. Historical and theoretical perspectives are used. The subject examines how work relationships are regulated through a contractual paradigm, and statutory regimes designed to ensure the fair and non-discriminatory treatment of workers, and reasonably safe work practices

### **730-396 DISCRIMINATION, LAW AND EQUALITY (B. GAZE)**

This subject examines the challenges of using law to counter discrimination and critically examines the contribution of anti-discrimination law to reducing inequality. We explore the concepts of equality and discrimination and the Australian social context. Turning to the legal response, we introduce international law on equality and discrimination and Australian human rights law, and constitutional protections in other countries for equality or non-discrimination rights. State and federal anti-discrimination laws and their interpretation and use are studied primarily through sex discrimination case law. Other grounds of discrimination including race, disability and sexuality are considered to a lesser extent.

During 2009 Centre members taught in a number of other subjects in the LLB degree, including Administrative Law; Constitutional Law; Contracts; Corporations Law; Ethics; Obligations; Principles of Public Law and Torts.



## THE MELBOURNE LAW MASTERS PROGRAMS

The Melbourne Law School offers a range of different teaching programs as part of the Melbourne Law Masters Program. Ms Anna Chapman and Associate Professor John Howe were the Directors of Studies for the Labour Relations Law Graduate Program in 2009.

### COURSEWORK PROGRAMS:

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

### RESEARCH PROGRAMS:

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

The subjects offered in 2009 were:

### COMPULSORY SUBJECTS:

- 730-760 Bargaining at Work and Industrial Action (A. Stewart)
- 730-831 Employment Law (S. Cooney)
- 730-828 Regulating Working Conditions (J. Howe and P. O'Grady)

### OPTIONAL SUBJECTS:

- 730-630 Anti-Discrimination Law at Work (A. Chapman and C. Andrades)
- 730-664 Workplace Health and Safety (P. Rozen)

Other accredited subjects offered during 2009 included: Alternative Dispute Resolution, Comparative Law, Corporate Governance and Directors' Duties, Corporate Social Responsibility and the Law, International Economic and Social Rights, International Human Rights Law, Law and Development, New Directions in Law and Economics, Regulation and the Law, Superannuation Law and Trade, Human Rights and Development.

Students in the Graduate Diploma of Labour Relations Law must complete the three compulsory subjects and one subject drawn from the list of optional subjects. Students in the Master of Labour Relations Law must complete the three compulsory subjects and a further five subjects from those offered in the Labour Relations Law Program. Two specialised preliminary subjects – Fundamentals of the Common Law and Australian Legal Process and Legal Institutions are provided for students who do not have a law degree, or do not have a law degree from a common law country.

The structure of the program will be revised in 2010.

Further information regarding the Graduate Diploma in Labour Relations Law and the Master of Labour Relations Law can be obtained from the Melbourne Law Masters website at: <http://www.masters.law.unimelb.edu.au/>.

# KNOWLEDGE TRANSFER AND COMMUNITY ENGAGEMENT

During 2009 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, its Working Paper Series and the involvement of Centre members in editorial roles with the Australian Journal of Labour Law, to name a few. Centre members also played active roles in various associations, were regular contributors to print and electronic media, and made submissions and gave evidence to parliamentary inquiries in 2009.

## SPONSORS' SEMINAR SERIES

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

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

## 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. Associate Professor Sean Cooney and Associate Professor John Howe co-ordinated the Labour Law Seminar Series during 2009.

Five seminars were held during the course of the year:

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



Ms Anna Chapman



Professor Judy Fudge



Ms Anna Chapman, Dr Andrew Frazer and Associate Professor Sean Cooney



Dr Joo-Cheong Tham, Professor Gordon Anderson and Associate Professor Beth Gaze

## MAJOR EVENTS

### WORKSHOP ON WAGE ARREARS IN CHINA 17-19 FEBRUARY

This workshop involved 18 international participants from China and the USA, and was designed to explore various options for enforcing employee entitlements to payment – a major problem in the PRC. Policy-makers, academics and NGO representatives engaged in discussions around these issues, informed by visits to key Australian institutions such as Fair Work Australia and Job Watch. Several CELRL sponsors provided great assistance in putting the program together, and participating. We particularly thank advisory board members Senior Deputy President Jenny Acton, Mr Leigh Johns and Mr Philip Gardner, as well as Ms Gabrielle Marchetti of Job Watch, Ms Linda Gale from the National Tertiary Education Union and Ms Alison Tate of the ACTU. Support for the workshop was obtained from the Australia-China Council, the International Labour Rights Fund and the Australian Research Council.

### FORUM ON THE PROPOSED BUILDING AND CONSTRUCTION DIVISION OF FAIR WORK AUSTRALIA 26 FEBRUARY

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

The Forum consisted of two sessions, with presentations by academics, legal practitioners and representatives of organisations with an interest in labour relations in the building industry, with time allowed for questions and debate by Forum attendees. Speakers at the Forum included Professor George Williams (University of NSW), Herman Borenstein SC and Craig Dowling (Victorian Bar), Mordy Bromberg (Australian Institute of Employment Rights), Joel Fetter (ACTU), Peter Nolan (Director Workplace Relations, AIG), and Tom Roberts (CFMEU).

### BOOK LAUNCH AND PANEL DISCUSSION: 'FAIR WORK: THE NEW WORKPLACE LAWS AND THE WORK CHOICES LEGACY' 6 MAY

On Wednesday 6 May 2009 the Centre was pleased to host the launch for the newly published book by Federation Press – *Fair Work: The New Workplace Laws and the Work Choices Legacy* edited by Anthony Forsyth and Andrew Stewart.

The book is a wide ranging, authoritative and accessible analysis of the profound changes to labour regulation under the Howard and Rudd Governments. The authors, leading scholars and practitioners, examine both the nature and legacy of the controversial Work Choices reforms and how workplace relations are set to change under the new Fair Work legislation.

The book was launched by Commissioner Greg Smith AM (Australian Industrial Relations Commission), and was followed by a panel presentation and an opportunity for questions from the audience. The panellists included Associate Professor Anthony Forsyth (Monash University), Professor Andrew Stewart (University of Adelaide), Chris Platt (AMMA) and Cath Bowtell (ACTU). This was an excellent opportunity to hear some of the country's leading experts talk about the Fair Work legislation and the Government's ongoing workplace reform agenda.



Associate Professor Anthony Forsyth and Professor Andrew Stewart

### **SOCIAL INCLUSION RESEARCH FORUM** 25-26 JUNE

Fifty government policy-makers, community representatives and academic researchers attended a Social Inclusion Research Forum hosted at the Sidney Myer Asia Centre. Centre Director Associate Professor John Howe was the convenor of the cross-disciplinary Social Inclusion Project team who organised this event, which also includes Melbourne University economics and philosophy experts. The Centre was one of the sponsors of the event.

The Social Inclusion Agenda is at the core of the Australian Labor Government's social policy strategy. The aim of the Forum was to enable invited policy-makers and experts to engage with the government's Social Inclusion Agenda and to participate in discussions that critically examined concepts of social inclusion and exclusion and new modes of governance to achieve social inclusion.

Two world leaders on social inclusion research and policy presented keynote addresses – Mr Eric Marlier from the CEPS/Instead Research Institute, Luxembourg, who spoke on social inclusion governance and indicators in the European Union; and Professor Hilary Silver from Brown University, USA. Other speakers from around Australia also contributed papers.

Emily Long, who was the Research Associate on this project, and Tessa Dermody assisted with the organisation of the event.



Social Inclusion Research Forum

### **INTERNATIONAL SOCIETY FOR LABOUR AND SOCIAL SECURITY LAW XIXTH WORLD CONGRESS** 1-4 SEPTEMBER

The Australian Labour Law Association hosted the 19th ISLSSL World Congress in Sydney from 1-4 September 2009. Over 300 practitioners, judges, tribunal members, administrators and academics from all over the world enjoyed presentations from esteemed academics and practitioners. In addition to an outstanding address by Wilma B. Liebman, Chairman of the United States National Labor Relations Board (NLRB), other distinguished presenters included Professor Carlos Hernández (Pontifical Catholic University Madre & Maestra (PCUMM) School of Law), Professor Antoine Jeammaud (Université de Lumière Lyon 2), Professor Gillian Lester (U.C. Berkeley School of Law) and Professor Rosemary Owens (The University of Adelaide).

The Centre sponsored this event, and contributed to its organisation. Associate Professor John Howe was a member of the organising committee for the Congress in his capacity as Secretary of the Australian Labour Law Association. Several Centre members presented papers at the Congress.

Further information about this conference can be found in the Australian Labour Law Association report on page 27.



### **GENERAL PROTECTIONS IN THE FAIR WORK ACT AND ANTI-DISCRIMINATION WORKSHOP: QUESTIONS, QUIRKS AND QUANDARIES** 11 NOVEMBER

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

Following an outline of some of the main issues by Carol Andrades, a number of representatives of the institutions and bodies engaged in the enforcement of the new Fair Work Act provisions provided short presentations:

- ▶ Ms Carol Andrades, Consultant, Ryan Carlisle Thomas, Senior Fellow, Melbourne Law School: Identifying the Questions, Quirks and Quandaries
- ▶ Ms Natalie James, Chief Counsel, Fair Work Ombudsman
- ▶ Commissioner Dominica Whelan, Fair Work Australia
- ▶ Federal Magistrate John O'Sullivan, Federal Magistrates Court of Australia



World Congress

## EDITORIAL ROLES

### 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, with each annual volume in the vicinity of 350 pages. It is a peer reviewed journal, and is currently ranked 'A' in the journal ranking process. The Centre is the Journal's administrative home.

During 2009 members and associates of the Centre continued to fill many of the roles in the editorial group. Ms Anna Chapman continued as a Co-Editor of the Journal, and Associate Professor John Howe as the Reports Editor. The work of the editorial team was ably supported in 2009 by Stephen Sempill who filled the position of Associate Editor, and a team of nine Student Editorial Assistants.

Centre associates who worked on the journal during 2009 include Professor Joellen Riley and Associate Professor Anthony Forsyth (Co-Editors) and Mr Anthony O'Donnell (Book Review Editor).

### OTHER ACADEMIC JOURNALS

Centre members hold positions on the editorial and advisory boards and committees of several other academic and professional journals, including the Australian Journal of Asian Law, Melbourne Journal of International Law, International Union Rights and the International Journal of Comparative Labour Law and Industrial Relations.

### CENTRE WORKING PAPER SERIES

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

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



## ASSOCIATIONS

### THE AUSTRALIAN LABOUR LAW ASSOCIATION

The Centre is the administrative home of the Australian Labour Law Association (ALLA). At ALLA's AGM held in November 2009, Centre Director Associate Professor John Howe stepped down after four years as Secretary. During John's term, the Organisation held two successful national conferences and the 2009 World Congress. It also increased its membership base and range of State Chapter activities. John will continue to be involved with ALLA as an ordinary member of the national committee. Dr Shae McCrystal (University of Sydney) was elected as ALLA's new Secretary.

ALLA's inaugural President Ron McCallum and Vice President Richard Mitchell also stepped down from their respective positions at the AGM. Both Ron and Richard will continue to be involved with ALLA, Ron as a member of the ordinary committee and Richard through his efforts in the Victorian State Chapter and in other ALLA events. They are succeeded by Professors Andrew Stewart and Marilyn Pittard as President and Vice President respectively.

In addition, ALLA said farewell to two long standing members of the national committee who did not stand for re-election. Professor Joellen Riley and Ron Baragry left after long terms of service and extensive involvement in the 2009 World Congress. Both Joellen and Ron will continue their involvement in the NSW State Chapter. ALLA welcomed Rob Durbridge, Arthur Moses, Cameron Roles and Natalie Van der Waarden to its national committee.

In 2009, ALLA has been able to further its aims to promote the study of labour law and social security law, providing a forum for discussion and debate for lawyers and others working in these fields through the Association's involvement in the ISLSSL World Congress and the ongoing activities of its State Chapters.

ALLA continues to be an active affiliate of the International Society for Labour and Social Security Law and hosted the 19th ISLSSL World Congress in Sydney from 1–4 September 2009.

ALLA commissioned the preparation of the Australian national reports for the World Congress of Labour Law 2009. Each report addressed the state of Australian labour law and its economic and social context in response to questionnaires issued on each theme of the Congress, as follows:

- ▶ **Theme 1:** Regulatory frameworks and law enforcement in new forms of employment
- ▶ **Theme 2:** Workers' Representation and social dialogue at the workplace level
- ▶ **Theme 3:** Emerging patterns of social protection in light of structural changes (ageing population, changing family structures, immigration, budgetary constraints, political and ideological realignments)

State Chapters of ALLA organised a number of forums throughout the course of the year. Topics addressed at the Victorian Chapter forums included: *Misleading and Deceptive Conduct in Employment: Issues and Remedies* (presented by Michael McDonald, SC and Michael Tamvakologos in April) and *The Fair Work Act: Changes in the legislation and dawn of the new era* (presented by the Honourable Justice Geoffrey Giudice, President of Fair Work Australia in August).

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



## MEMBERSHIP OF OTHER ASSOCIATIONS

Staff in the Centre are members of the following committees and organisations: Association of Industrial Relations Academics of Australia and New Zealand (AIRAANZ); Australasian Law Teachers' Association (ALTA); Australia Institute; Australian and New Zealand Society of International Law (ANZSIL); Australian Association of Constitutional Law; Australian Industrial Relations Society; Australian Institute of Administrative Law; Australian Labour Law Association; Australian Society of Legal Philosophy; Council of Australian Tribunals; Discrimination Law Association (UK); Industrial Relations Research Association (US); Industrial Relations Society of Victoria; International Centre for Trade Union Rights (ICTUR); International Commission for Labour Rights; International Industrial Relations Association; International Network of Transformative Employment and Labor Law (INTELL); International Society of Labour and Social Security Law (ISLSSL); JobWatch; Liberty Victoria; Regulating for Decent Work Network; Society for the Advancement of Socio-Economics; Socio-Legal Studies Association (UK).

## APPOINTMENTS TO ADVISORY COMMITTEES AND TRIBUNAL APPOINTMENTS

### B. GAZE

- ▶ Expert Consultant to Victorian Parliament's Scrutiny of Acts and Regulations Committee in its *Review of the Exceptions and Exemptions in the Equal Opportunity Act 1995*, which involves reviewing over 53 different legislative provisions.

### J. HOWE

- ▶ Advisory Committee, Social Justice Initiative, University of Melbourne
- ▶ Member of Organising Committee for the Regulating for Decent Work Networks' inaugural conference, held at the International Labour Organisation in Geneva in July 2009.
- ▶ As Secretary of ALLA, was a member of the Organising Committee for the *XIX World Congress of the International Society of Labour and Social Security Law*, held in Sydney in September 2009.

## MEDIA ENGAGEMENT

During 2009 Centre members and associates contributed widely as commentators on labour law issues, in the print and electronic media. Contributions included radio and television interviews, and publications in both print and online media.

Outputs included:

- ▶ J. Howe, TV interview for *The Union Show*, Channel 31, March 2009.
- ▶ G. Patmore, *The Incurable Republic 10 Years On*, The National Times, Fairfax Digital, 4 November 2009.
- ▶ J. Tham, *Fake or not, perception is all in politics*, The Age, 23 June 2009.
- ▶ J. Tham, *Public has a right to know who gives how much to whom*, The Age, 2 February 2009.

# SUMMARY OF CENTRE ACCOUNTS

## GENERAL ACCOUNT

### INCOME 2009

	\$
Brought forward from 2008	28,082
Sponsorship	53,000
Sale of Publications, Royalties, Donations, Submissions	3,283
Dept Journals	6,202
Faculty Allocation	5,000
<b>TOTAL</b>	<b>\$95,567</b>

### EXPENDITURE 2009

	\$
Salaries (research fellow, student fellow, research assistants)	28,583
Domestic & International Travel	1,434
Printing and Design Services	2,871
Conferences and CELRL Seminar Series	6,573
Books and Subscriptions	5,753
Stationery	1,126
Postage	1,740
General Expenses	1,626
Centre Meetings	567
Advisory Board Dinner	1,520
<b>TOTAL</b>	<b>\$51,793</b>

<b>UNCOMMITTED BALANCE</b>	<b>\$43,774</b>
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## GRANTS AND COMMISSIONS RECEIVED

CELRL Member	Years	Type of Grant	Title	Collaborator	Amount
Sean Cooney	3 years	ARC Discovery Grant	Legal Origins: The Impact of Different Legal Systems on the Regulation of the Business Enterprise in the Asia-Pacific Region	Professor Richard Mitchell, Associate Professor Peter Gahan and Professor Ian Ramsay	\$240,000
Sean Cooney and John Howe	3 years	ARC Linkage Grant	New Initiatives in Enforcing Employment Standards: Assessing the Effectiveness of Federal Government Compliance Strategies	Fair Work Ombudsman	\$180,000
Joo-Cheong Tham	3 years	ARC Discovery Grant	Dollars and Democracy: The Dynamics of Australian Political Finance and its Regulation	Professor Brian Costar and Dr Graeme Orr	\$129,000
Joo-Cheong Tham		UOM Knowledge Transfer Grant	Employment Rights of International Students	Job Watch and Spectrum Migrant Resource Centre	\$9,848
Joo-Cheong Tham		Social Justice Initiative Grant	Temporary Migrant Work and Social Justice		\$600

# CONFERENCE AND SEMINAR PAPERS

In 2009 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.

## MARCH

**J.C. Tham** *Reclaiming the Political Protection of Rights: A Defence of Australian Party Politics*, presented at the Rescuing Human Rights workshop held at the Law School, King's College London, 20–21 March 2009.

## MAY

**S. Cooney** *Regulatory Innovation in China: Responding to the Problem of Wage Arrears*, presented at University of British Columbia, Canada, 25 May 2009.

**S. Cooney** *Australia's changing approaches to regulating working time*, presented at Canadian Industrial Relations Association, Gatineau, Canada, 28 May 2009.

## JUNE

**B. Gaze** *Appellants Impressions and Experiences in the Social Security Appeals Tribunal: A Preliminary Report*, Social Security Appeals Tribunal project at the AIJA Tribunals Conference in Sydney, 4–5 June 2009.

**S. Cooney** *Standard Setting in Australia under the Fair Work Act*, presented at University of Victoria, Canada, 12 June 2009.

## JULY

**S. Cooney** *Regulating for Decent Work: Innovation and Stagnation in the PRC*, presented at Regulating for Decent Work Conference organised by the International Labour Organisation, Geneva, Switzerland, 8–10 July 2009.

**J. Howe** *Labour Law and Development: Creating an Enabling Regulatory Environment and Encouraging Formalisation*, presented at Regulating for Decent Work Conference organised by the International Labour Organisation, Geneva, Switzerland, 8–10 July 2009.

**J.C. Tham** *457 visa workers*, presented at the Regulating for Decent Work Conference organised by the International Labour Organisation held at Geneva, Switzerland, 8–10 July 2009.

## AUGUST

**G. Patmore** *The Legal Spectrum of Representative Consultation: Information and Consultation of Employees in Australia, the European Union and the United States*, paper presented at the International Industrial Relations Association 15th World Congress held in Sydney, 24–27 August 2009.

## SEPTEMBER

**J. Howe** *New Initiatives in Enforcement of Employment Standards: A Comparative Perspective*, Fourth Annual Colloquium on Current Scholarship in (US) Labor and Employment Law, Seton Hall University School of Law, Newark, New Jersey, 25–26 September 2009.

## OCTOBER

**B. Gaze** *A Critical Evaluation of the SDA after 25 years*, paper presented at the Sex Discrimination Act Silver Anniversary Conference 1–2 October 2009, Canberra.

## NOVEMBER

**B. Gaze** *The Sex Discrimination Act after twenty five years: what is its role in eliminating gender inequality and discrimination in Australia?*, seminar for the Social Justice Initiative (University wide), 4 November 2009.

## DECEMBER

**J. Howe** *Reframing Labour Market Regulation after the Financial Crisis: The Stimulus Packages and New Industrial Policy*, invited paper for the Re-Embedding the Market: Crisis and Reinvention Workshop, Harvard University, Boston, 3–4 December 2009.

# PUBLICATIONS

## BOOK

Patmore G., *Choosing the republic*, (1 ed, 2009).

## CHAPTERS IN EDITED COLLECTIONS

Chapman A., 'The decline and restoration of unfair dismissal rights' in A. Forsyth and A. Stewart (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy* (2009) pp. 207–228.

Fenwick C. and Howe J., 'Union security after Work Choices' in A. Forsyth and A. Stewart (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy* (2009) pp. 164–185.

Hardy T., 'A changing of the guard: Enforcement of workplace relations laws since work choices and beyond' in A. Forsyth and A. Stewart (eds), *Fair Work: The New Workplace Laws and the Work Choices Legacy* (2009) pp. 75–98.

## JOURNAL ARTICLES – REFEREED

Chapman A., 'Employment entitlements to carer's leave: Domesticating diverse subjectivities' (2009) 18 *Griffith Law Review* 453–474.

Chapman A., 'Protections in relation to dismissal: From the Workplace Relations Act to the Fair Work Act' (2009) 32 *University of New South Wales Law Journal* 746–771.

Gaze E. and Hunter R., 'Access to justice for discrimination complainants: Courts and legal representation' (2009) 32 *University of New South Wales Law Journal* 699–724.

Howe J. and Landau I., 'Using public procurement to promote better labour standards in Australia: A case study of responsive regulatory design' (2009) 51 *Journal of Industrial Relations* 575–589.

Howe J. and Landau I., 'Do incentive attraction schemes create decent jobs? A study of labour conditions in industry assistance schemes' (2009) 19 *Labour & Industry* 97–135.

Hardy T. and Howe J., 'Partners in enforcement? The new balance between government and trade union enforcement of employment standards in Australia' (2009) 22 *Australian Journal of Labour Law* 306–336.

Tham J.C. 'Democratic deliberation of labour law: A preliminary inquiry into the making of the Fair Work Act' (2009) 22 *Australian Journal of Labour Law* 232–257.

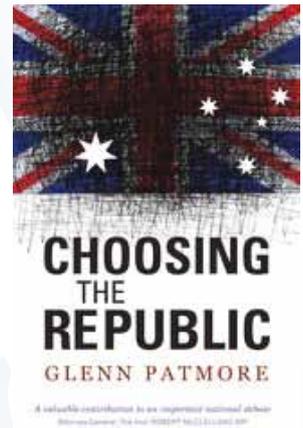
## JOURNAL ARTICLES – UNREFEREED

Gaze E., 'Fair work, fair law and fair process?' (2009) 16 *Australian Journal of Administrative Law* 135–137.

Tham J.C., 'Law-making and temporary migrant labour schemes: Accountability and the 457 visa scheme' (2009) 17 *Australian Journal of Administrative Law* 18–20.

## MAJOR REPORTS AND WORKING PAPERS

Gaze E., *Options Paper* (2009) Parliament of Victoria, Scrutiny of Acts and Regulations Committee, Exceptions and Exemptions to the Equal Opportunity Act 1995 (173 pages).



## CENTRE WORKING PAPERS SERIES

Fudge J. and MacPhail F., *The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labour*, Centre for Employment and Labour Relations Law, The University of Melbourne, Working Paper No. 45, August 2009.

Chapman A., *Employment Entitlements to Carer's Leave: Domesticating Diverse Subjectivities*, Centre for Employment and Labour Relations Law, The University of Melbourne, Working Paper No. 46, November 2009.

Andrades C., *Intersections between 'General Protections' under the Fair Work Act 2009 (Cth) and Anti-Discrimination Law: Questions, Quirks and Quandaries*, Centre for Employment and Labour Relations Law, The University of Melbourne, Working Paper No. 47, December 2009.





