

CCCS

Annual Report

2005

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DIRECTOR'S REPORT

I am delighted to present my first Annual Report as Director of the Centre for Comparative Constitutional Studies.

I succeeded Professor Cheryl Saunders as Director of the Centre at the beginning of 2005. Cheryl had been the Director of the Centre since it was first established. The remarkable successes of the Centre in research, teaching and public communication have built on Cheryl's initiative in establishing the Centre, her energy and vision. In 2005, she was on academic leave and took up a visiting position as Arthur Goodhart Professor of Legal Science, Faculty of Law, University of Cambridge, for the UK 2005-2006 academic year. We look forward to welcoming her back to the Centre in late 2006.

2005 saw other significant changes at the Centre. We learnt that Associate Professor Kim Rubenstein had been appointed to a Chair at the ANU College of Law and to the Directorship of the Centre for International and Public Law from early 2006. Kim has been a key member of the Centre for many years and will be much missed. However she will retain a link with the Centre and we look forward to opportunities to collaborate with her at ANU.

Centre Administrator Katy Prentice moved to New Zealand with her husband. We were fortunate to appoint Emma Brimfield as the new Administrator late in 2005.

We also welcomed new members of the Centre. Dr Michelle Foster joined us from the University of Michigan Law School in semester 1 and will return in 2006. She works on refugee law and teaches in Constitutional Law. Associate Professor Beth Gaze joined us from Monash. She works in discrimination law (dividing her time between the Centre and the Faculty's Labour Law Centre) and teaches Administrative Law, among other things. Joo Cheong-Tham (who has particular interests in terrorism law and election law) and Dr John Howe also are associated with both the Centre and the Labour Law Centre.

As Cheryl Saunders wrote last year, '[a]t the heart of the Centre for Comparative Constitutional Studies is a cohesive group of scholars who share an interest in all aspects of public law, while having specialist expertise of their own'. That remains the case, for all the changes in personnel that occurred during 2005.

As this Report demonstrates, the Centre remains extremely active in facilitating research, teaching, seminars, lectures and public engagement in all aspects of public law. We continue to attract high-profile domestic and international visiting scholars who contribute to the academic life of the Centre and the Faculty.

I particularly highlight the Centre's engagement in law reform and public debate about public law issues, particularly in connection with the Victorian human rights process. We have established an internship programme to extend this opportunity for engagement to students. The Centre's impact has been considerable and has also benefited the research activities of its members.

As a Centre, therefore, we provide focus, coordination and support for individual members' activities in public law that ensures that the whole is greater than the sum of the individual parts and that the Faculty and the Centre continues to enjoy a national and international reputation for its public law work, much of which is detailed in the following pages of this Report.

Simon Evans

ABOUT THE CENTRE

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

It is one of the Law School's specialist research Centres. It provides a unique Australian focal point for constitutional studies from a distinctively comparative perspective.

The Director of the Centre is Dr Simon Evans and its members are drawn from the Law School's faculty. Its advisory board consists of leading Australian and international public lawyers.

Objectives/goals

The objectives of the Centre for Comparative Constitutional Studies are:

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

The Centre pursues these objectives through its activities—research, teaching, information exchange, resource centre, consultancies and research collaboration.

Activities

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

PEOPLE

Directors and Administrator

Dr Simon Evans *Director CCCS*

Dr Simon Evans joined the Faculty and the Centre in 1999. Previously he had served as Associate to Sir Anthony Mason at the High Court of Australia and practised as a lawyer in a commercial firm in Sydney. He holds degrees in Science and Law from the University of Sydney and a doctorate in law from the University of Cambridge. His research interests focus on constitutional rights (especially property rights and socio-economic rights) and mechanisms for government accountability. During 2005 he was engaged with Carolyn Evans in a major ARC funded research project on Australian Parliaments and Human Rights. He teaches Constitutional and Administrative Law and Property at an undergraduate level, and Theories of Constitutional Interpretation and Protecting Rights in the graduate program. He became director of the Centre in 2005.

Professor Cheryl Saunders AO *Founding Director CCCS*

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

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

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

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

Associate Professor Kristen Walker *Deputy-Director CCCS*

Kristen Walker is an Associate Professor at the University of Melbourne. Prior to joining the Law Faculty, she completed her articles with Arthur Robinson and Hedderwicks in Melbourne and also served as Associate to Sir Anthony Mason, then Chief Justice of Australia. Kristen teaches Constitutional Law and Law and Sexuality in the LLB

program and, in the graduate program, Principles of Public and International Law. She has also taught international human rights law and legal ethics at Columbia Law School in New York. Kristen's research interests are in constitutional law, law and sexuality, and international law, particularly human rights and refugee law.

Dr Carolyn Evans
Deputy-Director CCCS

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

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

Associate Professor Kim Rubenstein
Deputy-Director CCCS

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

Ms Katy Le Roy
Assistant Director CCCS

Katy Le Roy is the Assistant Director of the CCCS, and has been closely associated with the Centre since 1996. Katy completed her undergraduate degrees in Law and Arts at the University of Melbourne, before completing Articles of Clerkship and practicing as a solicitor with Holding Redlich. She is a Barrister and Solicitor of the Supreme Court of Victoria. Katy has also worked in Germany in finance law, and as a Research Fellow in the Law School. She is currently co-ordinator with Cheryl Saunders of par of a comparative federalism project, 'Global Dialogue on Federalism in the 21st Century'.

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

Ms Katy Prentice
Administrator (to July 2005)

Katy Prentice joined the Centre in late 2003. Throughout her time with the Centre she provided invaluable assistance in organising our seminars and public lectures. She also continued the excellent work of Centre administrators in acting as the Secretariat for the Australian Association of Constitutional Law.

Ms Emma Brimfield
Administrator

Emma Brimfield joined the Centre in late 2005. She has worked for several years within the Higher Education sector, undertaking event management and web/graphic design duties for the University of Melbourne's Alumni Relations Program as well as for a private Higher Education provider. Emma holds a Bachelor of Commerce degree from the University of Tasmania with majors in Market Strategies and Business Economics.

In addition to her duties with CCCS, Emma is also the administrator for the Institute of International Law and the Humanities.

Centre Members

Associate Professor Beth Gaze

Beth Gaze has a BSc and LLB from Monash University and a LLM from the University of California, Berkley. Her interests are in anti-discrimination and equality law, feminist legal thought, and administrative law including tribunals. Current funded research projects include a study of the enforcement process under Australian federal anti-discrimination law, and the need for substantive updating of Australian anti-discrimination laws.

She is a member of the Victorian Mental Health Review Board, and has been a member of the Social Security Appeals Tribunal. She contributes to the teaching of law to medical students, and has experience in University equity and human research ethics areas.

She is also a member of the Faculty's Centre for Employment & Labour Relations Law.

Professor Geoffrey Lindell
Professorial Fellow

Geoff Lindell is a Professorial Fellow of the University of Melbourne and also holds appointments as an Adjunct Professor of Law at the Adelaide University and the

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

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

Dr Pip Nicholson
Senior Lecturer

Dr Pip Nicholson has been associated with the Faculty since 1998. She is a member of the Faculty's Asian Law Centre and is also associated with the Centre for Comparative Constitutional Studies. A graduate in Law and Arts from the University of Melbourne with a Masters in Public Policy from the Australian National University, Pip teaches on the Vietnamese legal system in both the undergraduate and graduate programs of the Melbourne Law School and teaches on Vietnamese law to a consortium of American law-schools. Pip also teaches Comparative Law, Law and Economic Reform in Asia, Fundamentals of the Common Law and History and Philosophy of Law. Pip's doctoral research focused on the Vietnamese court system between 1945 and 1976, in the course of an analysis of the extent to which the Vietnamese legal system mirrored or diverged from its Soviet parent. Pip is interested in the challenges of cross-cultural legal research and legal reform - particularly within Asia. She has recently completed research on corruption within the Vietnamese court system, the recent round of reforms to the Vietnamese court system and labour law reform in Vietnam. Current projects include a study of Vietnamese attitudes to dispute resolution and an analysis of comparative law theory's applicability to empirical legal studies in Asia generally and Vietnam in particular. Pip has worked as a consultant to the Faculty's International Programs, assisting to develop and run programs for overseas visiting groups. She currently consults on changes in transitional legal systems.

Mr Glenn Patmore
Senior Lecturer

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

His principal fields of interest are democratic theory and practice, workplace democracy and labour relations, constitutional and administrative law, and human

rights law. Glenn has published in a range of Australian and international journals. His current research projects are 'Employee Happiness and Labour Law', 'The Disability Discrimination Act Cth: Time for change' and 'Active Citizenship.'

He is also a member of the Faculty's Centre for Employment & Labour Relations Law.

Mr Joo-Cheong Tham
Lecturer

Joo-Cheong has an LLB (Hons) and an LLM from the University of Melbourne. Joo-Cheong joined the Melbourne Law School as a Lecturer in 2005. Prior to his appointment, he taught at the law schools of Victoria University and La Trobe University.

His principle fields of interest are labour law, anti-terrorism laws and political finance law. His writings in all three areas has been published in newspapers and international and Australian academic journals. He has also given evidence to parliamentary inquiries into terrorism laws and political finance law. His terrorism law research is presently devoted to an Australian Research Council-funded project on the financing of terrorism. Together with Dr Sally Young, he has recently completed a draft report on Australian political finance for the Democratic Audit of Australia. Joo-Cheong is also currently completing his doctoral thesis which examines the legal precariousness of casual employment

He is also a member of the Faculty's Centre for Employment & Labour Relations Law.

Mr John Waugh
Senior Lecturer

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

Advisory Board

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

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

Visitors to the Centre

- Dr Greg Carne, University of Tasmania, 11 April – 31 July 2005
- Professor Rajeev Dhavan, 8 – 15 June 2005 (while teaching in the Graduate Program)
- Justice Ellen France, High Court Wellington, 3 October – 25 November 2005
- Frank Herget, referender trainee, Germany, 1 July – 30 September 2005
- Dr Greg Taylor, Monash University, 1 January – 30 June 2006
- Professor Alan Trench, University College London, 23 February 2005
- Professor George Williams, University of New South Wales, 25 July – 3 September and 14 November – 23 December 2005
- Professor Diana Woodhouse, Oxford Brookes University, 15 January – 30 May 2005

Research Assistants

- James McComish
- Andrew Brookes
- Anna Hood
- Chris Thomas
- Jess Moir
- Howard Choo
- Leanne McKay
- Daniel McCluskey
- Tim Rogan

EVENTS

Public Lectures

Attorney General Rob Hulls on Human Rights at the Law Institute of Victoria 15 February 2005

Liberty Victoria, the Centre for Comparative Constitutional Studies, the Australian Association of Constitutional Law and the Law Institute of Victoria, proudly presented a talk by the Victorian Attorney-General. The Honourable Rob Hulls MP delivered his paper, entitled; *Putting the 'Fair Go' Back on the Agenda: The Future of Human Rights in Victoria*.

The Attorney General set out his plans for statewide consultations on a charter of human rights for Victoria.

The presentation was chaired by Brian Walters SC, President of Liberty Victoria.

A Bill of Rights for Victoria? A Public Forum Dr Simon Evans, Dr Carolyn Evans and Associate Professor Kristen Walker 13 July 2005

Following the Attorney-General's Lecture (above), the Victorian government established a Consultative Committee which considered how best to protect human rights in Victoria. The Committee was asked to consider whether Victoria should adopt a Bill of Rights, among other options.

This forum explored the options for protecting human rights in Victoria.

The forum considered options for protecting human rights, including who this has been done in other Commonwealth countries, what human rights might be included in a Bill of Rights, what the roles of the courts and parliament might be under a Victorian Bill of Rights, whether Victoria can 'go it alone' and have its own Bill of Rights, the consultation process and how all Victorians can have their say.

The forum did not directly support or oppose a Bill of Rights, but aimed to provide information and dispel myths and misconceptions about what a Bill of Rights might mean for Victoria.

Seminars and Roundtables

Common Law Constitutionalism and Australian Federal Judicial Review // Justification as Legality in Judicial Review of Administrative Action: Prospects under the Constitution **Emily Hammond, PhD – Work-in-Progress Seminar 25 January 2005**

Emily Hammond, a PhD student supervised by Cheryl Saunders and Simon Evans, gave this work in progress seminar. An increasingly influential idea in the theory and practice of judicial review elsewhere in the common law world maintains that the purpose of review is to ensure that the use of administrative authority is reasonably justified to affected individuals. It is said that the rule of law makes reasoned justification the basic criterion of legality, but also requires calibration of the standard of justification required according to the importance of the individual interests at

stake. In order to assess the relative importance of individual interests, the courts have to take into account the fundamental values of the jurisdiction.

Emily's thesis explores the influence of the Constitution on the prospects for re-configuring Australian judicial review around the concept of reasoned justification. In this seminar, she discussed the theory that supports a requirement of reasoned justification, with specific reference to work by David Dyzenhaus and T R S Allan; and considered whether the influence of the Constitution on the Australian prospects of that theory is in fact transmitted via the constitutional separation of powers.

Devolution in the United Kingdom: Intergovernmental Relations

Alan Trench, University College London

23 February 2005

Alan Trench, Senior Research Fellow at UCL, leads the Constitution Unit's work on devolution, and concentrates on intergovernmental relations both in the United Kingdom and comparatively. He also edits the Unit's devolution yearbook, *The State of the Nations*. He was specialist adviser to the House of Lords' Select Committee on the Constitution during its inquiry into *Devolution: inter-institutional relations in the United Kingdom* in 2002-03.

This seminar was a fascinating update on the state of devolution in the UK, and in particular on how the structures and processes of intergovernmental relations have developed, how they are characterised by consent and dominated by Westminster, and have managed to avoid many of the potential conflicts between the central and devolved governments.

Independence and Accountability: the Judges, Lord Chancellor and Attorney General in the developing UK Constitution

Professor Diana Woodhouse, Oxford Brookes University

12 April 2005

Recent years have seen substantial changes in the UK's constitutional arrangements. These include the Human Rights Act 1998; the Constitutional Reform Bill which provides for the establishment of a UK Supreme Court and, as introduced in Parliament, the abolition of the office of Lord Chancellor; and the continued use of judges to chair public inquiries, as incorporated in the Inquiries Bill. They have brought issues relating to the independence and accountability of the judges and Lord Chancellor to the fore.

Issues around the independence of the Attorney General have also been raised in relation to his advice on the legality of the Iraq War and his decision to halt a prosecution under the Official Secrets Act. These have been compounded by concerns about his accountability.

This seminar provided an update on these central issues, institutions and actors under the British constitution at a time when similar debates are underway about their Australian counterparts.

Diana Woodhouse is Professor of Law at Oxford Brookes University. She currently holds a Leverhulme Study Abroad Fellowship and is visiting the Centre for Comparative Constitutional Studies at Melbourne Law School from January to May this year. She is an acknowledged expert on UK constitutional law, particularly as it relates to constitutional relationships and accountability. She has written extensively on ministerial responsibility and political accountability, standards and codes of conduct,

judicial-executive relations, the office of Lord Chancellor, and judicial independence and accountability.

She has given evidence to parliamentary committees, most recently appearing before the House of Lords Committee on the Constitutional Reform Bill. In 2004 she was special adviser to the House of Commons Public Administration Committee's inquiry into 'Government by Inquiry' and in 2002-03 was independent adviser on standards to the National Assembly for Wales.

Religious Freedom and the Constitution in India

**Professor Rajeev Dhavan, Public Interest Legal Support and Research Centre, India
7 June 2005**

Professor Rajeev Dhavan, who visited the Law Faculty to teach in the graduate program, gave an informal presentation at a lunchtime seminar on Tuesday, 7 June 2005 on religious freedom in India.

Professor Dhavan is Director of the Indian public interest law firm, the Public Interest Legal Support and Research Centre (PILSARC). He has argued many cases on affirmative action, human rights, secularism and constitutional governance before the Supreme Court and other Indian courts. He is a member of the Executive Committee of the International Commission of Jurists and is a prolific author and regular commentator on law and public affairs.

Professor Dhavan drew on examples from India and elsewhere to argue that secularism should not be understood as the disengagement of the State and religion, but that a richer idea of secularization is one where the State engages with a range of religions. This conceptualization of religion allows for the notion that even a theocratic State might in some circumstances be considered secular.

Executive Power Roundtable

15 July 2005

This was the Centre's major research conference in 2005. Organised by Simon Evans and Cheryl Saunders, this roundtable was attended by more than 30 senior academics, practitioners and judges. Four leading scholars and practitioners were invited to prepare papers on the theme of inherent executive power – the powers of the executive government that derive directly from the Constitution or common law rather than from statute. These powers present particular difficulties in determining their scope and ensuring accountability for their exercise. The four papers and their authors were as follows:

- Professor Leslie Zines (ANU) on the scope of inherent executive power
- Professor Patrick Weller (Griffith) on accountability to the Parliament for the exercise of inherent executive power
- Mr Stephen Gageler SC on accountability to the courts for the exercise of inherent executive power
- Professor Cheryl Saunders (CCCS) on inherent executive powers in a federal system

The roundtable was intended to provide an opportunity for constructive discussion of work-in-progress with an informed and interested group. The format therefore aimed to maximise the opportunities for discussion by all participants:

- Drafts of the four papers were circulated to all participants in early June. All participants were expected to have read the papers before the roundtable.
- Accordingly, the papers were not presented by their authors at the roundtable. Rather, a commentator opened each session with a 15-20 minute comment on / critique of one of the papers; the author then had an opportunity briefly to respond to those comments. The majority of the session was then available for general discussion of the paper.

The format provided a distinctive opportunity to test and develop ideas about comparative / critical public law scholarship.

All of the available papers were refereed and published in a special issue of the *Public Law Review* in December 2005.

The Workplace Relations Reform Advertising Case : Constitutional and Policy Perspectives on Government Advertising
Dr Simon Evans, Mr Joo-Cheong Tham, Dr Sally Young
November 14 2005

This seminar, jointly presented with the Centre for Media and Communications Law, brought together leading constitutional lawyers, media lawyers and political scientists to examine the constitutional and policy implications of one of the year's most keenly awaited High Court decisions. Earlier in 2005, the ACTU and the Federal Opposition challenged the Commonwealth government's use of public funds to advertise and promote its new workplace relations laws. The High Court rejected their challenge and upheld the government's spending: *Combet & Roxon v Commonwealth* [2005] HCA 61 (21 October 2005). The decision has far-reaching implications for control of government spending and public accountability. It raises once again important policy questions about whether and how to regulate government advertising. This seminar canvassed these issues in an interdisciplinary framework.

Visiting Positions

Cheryl Saunders

- Enseignant invité, Université Pantheon-Assas Paris II, France (teaching a course on comparative constitutional law), February 2005
- George P. Smith II Distinguished Visiting Professor of Law, University of Indiana, Bloomington, USA, March-April 2005

Selected Presentations at International Conferences by Centre Members

Cheryl Saunders presented her paper, 'Intergovernmental Agreements between Federal Partners' to the *Third International Conference on Federalism* in Brussels, Belgium on 3 March 2005. On 22 March, at the University of Capetown's Faculty of Law, Cheryl presented the summary and conclusions to the *Comparative Administrative Justice Workshop*. Cheryl also gave a talk on the 'uses and Abuses of Comparative Constitutional Law' at both a public lecture for the Faculty of Law, University of Indiana, Bloomington on 12 April, and at a faculty seminar for the Faculty of Law, College of William and Mary, Williamsburg on 21 April.

Glenn Patmore presented a lecture entitled, 'How can we be happy at work? Re-

thinking the role of Labour Law and Works Councils in the 21st Century'. to the Faculty and Graduate Students of The Faculty of Law, Université Paris 1 Panthéon Sorbonne on 20 February 2005. On 30 September, Glenn presented his paper, 'Choosing the Republic' as part of the symposium in honour of John Whyte, 'Constitutionalism and Political Morality' Seminar at the Donald Gordon Centre, Queen's University, Kingston, Ontario. Earlier in the same month, Glenn presented a lecture to Queen's University's first year students entitled 'Can happiness be an objective of labour law?''.

Simon Evans and Cheryl Saunders presented a paper on 'Multiple Law Areas in Federations: Problems and Solutions' at the Annual Meeting of the International Association of Centres for Federal Studies at the Villa Vigoni, Menaggio, Italy in October 2005.

Carolyn Evans presented her paper, 'Church-State Relations and the European Court of Human Rights' at a conference on *Church State Relations* at Brigham Young University, Utah, USA.

Katy LeRoy gave a guest seminar at the Pacific Institute of Advanced Studies in Development and Governance (PIAS-DG) at the University of the South Pacific, Suva in July 2005. Her presentation was on constitutional reform in the Solomon Islands and the Australian position in relation to the reform, and was called 'Letting Solomon Islanders Speak for Themselves'.

Katy presented a paper at the *Constitutional Renewal in the Pacific Islands Conference* which was held at USP Emalus Campus, Port Vila, Vanuatu on 26 -28 August 2005. Katy's paper was entitled, 'Constitutional renewal in the Solomon Islands: public participation in theory and practice'.

On 3 -4 October Katy LeRoy presented a paper at the *International Conference on Federalism and Multiculturalism* held in Manila, Philippines. The conference was hosted by the Center for Local and Regional Governance of the University of the Philippines. Katy's paper was on 'The Constitution, the Rule of Law and Human Rights in Federal States' and covered issues that constitutional delegates might wish to consider in drafting a federal constitution for the Philippines. Katy was one of six international speakers invited to present at the conference. The conference was co-sponsored by the Institute of Federalism in Fribourg, Switzerland - one of the international partners of the CCCS.

Katy LeRoy presented her paper, 'Institutional Transfer and Indigenous Governance in the Solomon Islands' at the *Pacific Islands Political Studies Association (PIPSA) Conference* in November 2005. This conference was held at the University of the South Pacific, Suva, Fiji.

Selected Presentations at National Conferences by Centre Members

Beth Gaze presented her paper, 'Workchoices or No choices? Impact of the Industrial Relations Changes on Work and Family' at the *New Industrial Relations Legislation Workshop*, which was held at the Monash University Department of Management on 24-25 October 2005. Beth also participated in consultation at the Equal Opportunity Commission Victoria on Reform of the Equal Opportunity Act 1995 throughout September 2005.

Glenn Patmore chaired a session at the *Labour Law, Equity and Efficiency: Structuring and Regulating the Labour Market for the 21st Century Conference* which was held in the Melbourne University Law School between 8 -9 July 2005.

Katy LeRoy presented a paper at the *Peace Justice and Reconciliation in the Asia-Pacific Region Conference* which was held at the University of Queensland in April 2005. Katy's paper was entitled, 'Participatory Constitution Making as a Peace-Building Tool'.

Carolyn Evans presented a number of papers throughout 2005. In July she presented 'Veiling Over the Issues: Muslim Women in the European Court of Human Rights' at conference on *Culture and Human Rights* held at Melbourne University. In June Carolyn presented 'The Right to a Remedy: Administrative Law and the *Human Rights Act*' at a conference organised by the Gilbert + Tobin Centre (UNSW) and the Centre for International and Public Law (ANU): *Assessing the First Year of the ACT Human Rights Act*. In the same month, Carolyn also presented 'Mountains or Molehills: Problems in Evaluating Human Rights' at the *Fulbright Symposium on Peace and Human Rights Education*, held at Melbourne University.

Simon Evans gave presentations on "Writing Submissions for the Victorian Bills of Rights Consultation Process" (Law Students for A Just Community Conference, Mt Evelyn, 7 August 2005), 'Australian Bills of Rights – A Short History' (Liberty Victoria Symposium, 13 August 2005, Melbourne Law School), "The Victorian Charter of Rights Process: Background and Prospects" (Amnesty International Speakers Conference, 22 October 2005, Melbourne), 'APLA v The Commonwealth: The implied freedom of political communication' (Public Law Weekend, 11-12 November 2005, Centre for International and Public Law, Australian National University) and "The Workplace Relations Reform Advertising Case: Constitutional and Policy Perspectives on Government Advertising" (14 November 2005, CCCS and CMCL Seminar).

RESEARCH AND PUBLICATIONS

Publications edited in the Centre

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

2005 Publications¹

Book Chapters

- Evans, S., and Donaghue, S., 'Standing to Raise Constitutional Issues in Australia' in Richard S Kay (ed), *Standing to Raise Constitutional Issues* (Bruylant) (2005)
- Evans, S., 'Continuity and Flexibility: Executive Power in Australia' to appear in Paul Craig and Adam Tomkins (eds), *The Executive and Public Law: Power and Accountability in Comparative Perspective* (OUP) (2005)
- Saunders, C., 'Australia' in John Kincaid and G. Alan Tarr (eds) *Constitutional Origins, Structure and Change in Federal Countries*, McGill-Queen's University Press (2005), 13-47
- Saunders, C., and Blindenbacher, R., 'A Global Dialogue on Federalism: Conceptual Framework' in John Kincaid and G. Alan Tarr (eds) *Constitutional Origins, Structure and Change in Federal Countries*, McGill-Queen's University Press (2005), 3-7
- Saunders, C., 'Making Constitutions: Including Women' in Radhika Coomaraswamy and Dilrukshi Fonseka *Peace Work, Women Unlimited* (2004), 152-184
- Saunders, C., 'Common Sense' in *The Sydney Papers*, 17 (2005), 97-104

Journal Articles

- Evans, C and Evans, S, 'Parliaments and the Protection of Human Rights' (2005) 30 *Alternative Law Journal* 53
- Evans, C., 'The Double-Edged Sword: Religious Influences on International Humanitarian Law' (2005) 6 *The Melbourne Journal of International Law* 1-32
- Evans, C., 'The Human Rights Act and Administrative Law' (2005) 197 *Ethos* 13
- Evans, C, 'Book Review: Equal Before Man, Unequal Before Allah' (2005) 7 *The Australian Journal of Asian Law* 198-200
- Evans, C, 'The Human Rights Act and Administrative Law' (2005) 197 *Ethos* 13-14
- Evans, S, 'Symposium on Executive Power: Introduction' (2005) 16 *Public Law Review* 276-278
- Evans, S., 'Improving Human Rights Analysis in the Legislative and Policy Process' (2005) 29 *Melbourne University Law Review* 665-703
- Gaze, B., 'Has the Racial Discrimination Act Contributed to Eliminating Racial Discrimination? Analysing the Litigation Track Record 2000 -04' (2005) 11 *Australian Journal of Human Rights* 171-201, tables
- Patmore, G., 'The Disability Discrimination Act (Australia): Time for Change' (published December 28, 2004) 24 *The Comparative Labor Law and Policy*

¹ Some publications by Centre members on non-public law issues are not included here.

Journal 4, 533-562

- Saunders, C., 'Intergovernmental Agreements and the Executive Power' (2005) 16 *Public Law Review* 294-313
Waugh, J., 'Contempt of Parliament in Victoria' (2005) 26 *Adelaide Law Review* 29-53
- Waugh, J., 'Disqualification of Members of Parliament in Victoria' (2005) 31 *Monash University Law Review* 288-321

Working Papers

- Evans, C and Evans, S, Evaluating the Human Rights Performance of Australian Legislatures: A Research Agenda and Methodology, University of Melbourne Legal Studies Research Paper, Melbourne (2005)
- Evans, S, Improving Human Rights Analysis in the Legislative and Policy Processes, University of Melbourne Legal Studies Research Paper, Melbourne (2005)

Selected Media Commentary / Opinion Pieces

- Evans, S., and Evans, C., 'A Bill of Rights for Victoria?', Australian Policy Online, 6 May 2005,
http://www.apo.org.au/webboard/results.shtml?filename_num=01138
- Evans, C., and Evans, S., 'Parliaments and the Protection of Rights' (2005) 30:2 *Alternative Law Journal* 53
- Evans, S., 'Diversity Merited in [Judicial] Appointments', Sydney Morning Herald, 2 May 2005
- Evans, S., Albrechtsen wrong about rights (published as Learning from America), Australian Policy Online, 17 August 2005,
http://www.apo.org.au/webboard/results.shtml?filename_num=16512
- Gaze, B., 'Welcome to the Club', *The Age*, 5 November 2005.
- Gaze, B., 'Airlines Risk Claims for Ban Stereotyping Men' *The Age*, 30 November 2005, 3.
- Tham, J-C., 'Donor threshold plan over the top', *Sydney Morning Herald*, 30 May 2005

Grants

- In 2003 Simon Evans, Carolyn Evans and Kristen Walker were awarded a 3 year Australian Research Council Discovery Project grant, commencing in 2004. 'Australian parliaments and the protection of human rights' focuses on the role of parliament and the executive in the protection of human rights. The project will explore the current non-judicial mechanisms for the protection of rights in Australia and assess their strengths and weaknesses. It will also compare the Australian system with other Commonwealth countries to examine alternative ways in which the parliament and executive can become involved in human rights protection.
- Kim Rubenstein received a Law School Faculty small research grant for her project on 'Feminism and Federalism: the Australian experience' in which she is

developing a larger project examining the principles underlying Australia's constitutional system from the perspective of their impact on women.

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

Cheryl Saunders

- Fiona Hanlon (PhD): 'Role of the Attorney-General'
- Susi Harijanto (PhD): 'The Ombudsman in Indonesia'
- Max Howlett (LLM, minor thesis): 'Constitutional Separation of Powers in the Kingdom of Cambodia; Theory and Practice'
- Perry Herzfeld: 'What are the constitutional limitations on an Australian State that seeks to enact choice of law legislation?'
- Denny Indrayana (PhD): 'The Importance of the Democratic Legal System in Indonesia; a Legal Study of the Indonesian People's Consultative Assembly's meeting 1998-2000'
- Katy LeRoy (PhD): 'Constitution-making in the Asia-Pacific Region'
- Hashim Tewfik (PhD): 'Ethnic Federalism in Ethiopia: a Case Study'

Cheryl Saunders and Kim Rubenstein (co-supervision)

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

Cheryl Saunders and Simon Evans (co-supervision)

- Emily Hammond (PhD): 'Judicial Review and Courts created by Parliament'

Carolyn Evans, Ian Ramsey and Robin Sharwood (co-supervision)

- John Date (Masters): 'Implications of Canon Law for Church Organisations Operating in Australia'

Carolyn Evans

- Serryn O'Regan (PhD): 'Resolving complex environmental disputes'
- Kasia Lach (PhD): 'Sovereignty and Eastern Europe'
- James Irving (Masters): 'Free speech and anti-terrorism laws'
- Khaled M Abou-Elyous (PhD): 'The UN Security Council's Role After the Cold War and its Impact on the Palestinian-Israeli Conflict'
- Gideon Boas (PhD): 'Trying Former Heads of States and Senior Officials for War Crimes: Lessons in Complex Litigation from the Milosevic Trial'
- Clancy Kelly (PhD): 'How International Law Gives Effect to the Right to Essential Medicines'
- Peter Little (PhD): 'Universal Jurisdiction for Multinational Corporations'

- Penny Martin (Masters): 'The Impact of Human Rights in Scotland: Five Years After Devolution'

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

Simon Evans

- David Bloch: 'What substantive protection does the South African Constitution provide for single medium Afrikaans schools? Analysing s 29 and s 31 in light of the *Mikro* Case', LLB Legal Internship

Research Student Completions

Cheryl Saunders and Simon Evans (co-supervision)

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

Cheryl Saunders

- Rebecca French (PhD): 'Discrimination and Preference in the Australian Constitution: An analysis of section 51 (2) and section 99'
- Perry Herzfeld: 'What are the constitutional limitations on an Australian State that seeks to enact choice of law legislation?'

Beth Gaze

- Seung Baek: 'The Accountability Gap around Executive policy decisions'
- Alissa Fotiades: 'Ensuring Accountability in Accident Compensation Schemes: a comparison of the public and industry ombudsman models'

PUBLIC POLICY AND LAW REFORM

Internship

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

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

- submissions by CCCS members to parliamentary enquiries on e-democracy, the proposed restructuring of the AAT, copyright in the digital era and the proposed Victorian Charter of Rights
- opinion pieces on appointments to the High Court and electoral reform
- research briefs on immigration and citizenship and religious freedom
- pro bono litigation in the High Court
- revising the new edition of the Annotated Guide to the Constitution
- drafting a submission to the Senate Legal and the Constitutional Committee concerning Australia's proposed new citizenship legislation.

In 2006, the Centre has again offered Winter Internships in Law and Public Policy, which will be undertaken for 6 weeks full-time over the winter non-teaching break.

The focus for the winter internship will be to assist with the Centre's International Conference on Legislatures and the Protection of Human Rights (20 – 22 July, 2006) as well as similar activities carried out by previous interns.

Selected Submissions to Inquiries and other involvement in law reform

The following is a partial list of the submissions made by Centre members to law reform processes throughout Australia in 2005. Many of the submissions had a significant impact on these processes, as well as contributing to Centre members' own research. For example, Carolyn Evans and Simon Evans' various submissions to the Victorian Human Rights Consultation process affected the Consultation Committee's recommendations on human rights impact statements, property rights and religious freedom, and human rights scrutiny arrangements. These submissions drew on Carolyn and Simon's ARC funded project on Australian Parliaments and the Protection of Human Rights.

- Evans, C., Evans, S. and Hood, A., submission to the Commonwealth Senate Legal and Constitutional Committee's inquiry into the Administrative Appeals Tribunal Amendment Bill (2004).
- Evans, S., and Hood, A., submission to Victorian Scrutiny of Acts and Regulations Committee inquiry into e-governance.
- Evans, S., submission to Joint Standing Committee on Treaties regarding the federal implications of the United Nations Anti-corruption Treaty.
- Evans, S., Submission to the Commonwealth Parliament Joint Standing Committee on Treaties Inquiry into Treaties Tabled on 8 December 2004 (United Nations Convention Against Corruption (New York, 31 October 2003))
- Evans, S., Submission in response to the Commonwealth Attorney-General's Department Copyright Law Branch Issues Paper, Fair Use and Other Copyright Exceptions
- Evans, S., Submission to the Victorian Human Rights Consultation Committee (Property Rights, 1 August 2005)
- Evans, S., Submission to the Victorian Human Rights Consultation Committee (Supplementary Property Rights Submission, 25 August 2005)
- Evans, C., and Evans, S., Joint Submission to the Human Rights Consultation Committee
- Gaze, B., Submission to Human Rights Consultation Committee, Victoria, (2005)
- Patmore, G., written submission to the Victorian Human Rights Consultation Committee: Have your say about Human Rights in Victoria Human Rights Consultation Community Discussion Paper (31 August 2005).
- Cooney, S., Chapman, A., Fenwick, C., Howe, J., Marshall, M., O'Donnell, A., Patmore, G., and Tham, J., co-authored submission to the Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005 by the Centre for Employment and Labour Relations Law, Melbourne Law School, The University of Melbourne (10 November 2005).
- Patmore, G., appearance before the Public Hearing for the Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, Canberra (18 November 2005).
- Tham, J., and Emerton, P., submission to the Senate and Legal Constitutional Legislation Committee's Inquiry into the Anti-Terrorism Bill (No 2) 2005, (11 November 2005, 60 pp)
- Tham, J., submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Workchoices) Bill 2005 (9 November 2005, 25 pp)
- Tham, J., and Orr, G., Submission to Joint Standing Committee on Electoral Matters' Inquiry into the Conduct of the 2004 Election (5 May 2005, 1 pp) (note: invited to appear as witness before committee and appeared)
- Tham, J., submission to the Parliamentary Joint Committee on ASIO, ASIS and DSD's review of ASIO's special powers relating to terrorism offences as contained in Division 3 Part III of the Australian Security Intelligence Organisation Act 1979 (Cth) (23 March 2005, 31 pp) (note: invited to appear as witness before committee and appeared)

Academic Roundtable on Human Rights

Simon Evans, Cheryl Saunders and Carolyn Evans were invited to participate in a specialist working group meeting (roundtable) of academics to as part of the Human Rights Community Consultation on 24 August 2005. The purpose of the roundtable was 'to work through some of the complex legal questions arising out of the community consultation on a potential human rights charter for Victoria', including the definition of public services and the subsequent coverage of the Bill, the nature and scope of the interpretative provisions of the Bill, inter-relationships with administrative remedies, the relationships between the executive, parliament and

courts, institutional arrangements regarding pre bill scrutiny.

The Consultative Committee aimed to draw on the expertise of the CCCS members and the other academic experts to inform its deliberations and to develop workable solutions to the challenging questions arising from a human rights charter.

Involvement in pro bono litigation

Ruhani v Director of Police (Nauru)

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

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

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

Ultimately Mr Ruhani was successful and the Court upheld the validity of the Commonwealth legislation conferring jurisdiction on it.

TEACHING PROGRAMS

Centre members have teaching responsibilities in the Faculty's wide range of public law subjects across all Faculty programs. In 2005 these included:

Bachelor of Laws

Constitutional and Administrative Law
Comparative Constitutional Law

Postgraduate Courses

Graduate Diploma of Government Law
Master of Public and International Law

Postgraduate Subjects

Principles of Public Law
Protecting Rights
Refugee Law (with Michelle Foster and Richard Niall)

The Melbourne JD

Administrative Law
Constitutional Law
Principles of Public Law

OTHER ACTIVITIES

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

Australian Association of Constitutional Law

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

Forum of Federations, Canada

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

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

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

Institute of Federalism, Fribourg Switzerland

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

International Association of Constitutional Law

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

International Association of Centers for Federal Studies

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

Feminist Lawyers

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

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

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

Appendix 1 – Advisory Board

Ian Cunliffe

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

Dr Stephen Donaghue

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

Dr Gavan Griffith AO QC

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

Peter Hanks QC

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

Wendy Harris

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

Advisory Panel.

Chris Maxwell QC

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

Debbie Mortimer SC

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

Mark Moshinsky

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

Stephen McLeish

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

Brian Opeskin

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

Jason Pizer

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

Pamela Tate SC, Solicitor-General for Victoria

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

Richard R S Tracey QC

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