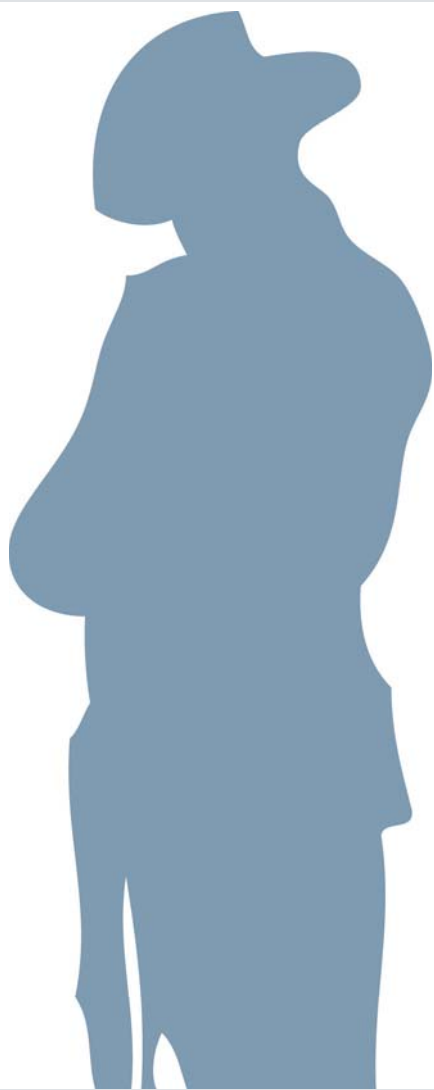


# AUSTRALIAN CENTRE FOR MILITARY LAW & JUSTICE NEWSLETTER

ISSUE 1 | JANUARY 2009



## FROM THE ACMLJ DIRECTOR

Welcome to the first Newsletter from the Australian Centre for Military Law and Justice (ACMLJ). Newsletters will be published twice a year to all those who are members or associate members of the Centre, and those who have expressed an interest in Centre activities. In addition, the Newsletter will be the vehicle for sharing information about the Centre with other like centres in Australia and elsewhere.

The ACMLJ was established in January 2008, and is Australia's first academic centre devoted to studying all aspects of Australian military law.

The Centre, part of the ANU College of Law, has been established at a time when there is greater focus on the military as Australian forces are increasingly being called on to contribute to peace and security – in Australia, internationally and in the Asia Pacific region.

The Centre will focus on how the Australian military's activities are affected by its legal rights and obligations. The principal aim of the Centre is the development of high quality focused research across the spectrum of military law. The research work of the Centre will complement the postgraduate teaching program for Defence lawyers run since 2006 by the ANU College of Law.

*Robin Creyke*

Robin Creyke  
Director, ACMLJ & Alumni Chair of Administrative Law  
at the ANU College of Law

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LAUNCH OF THE CENTRE – Professors Michael Coper (Dean ANU College of Law) & Robin Creyke (Director ACMLJ) with The Hon Warren Snowden MP

# LAUNCH OF THE CENTRE

The Australian Centre for Military Law and Justice was officially launched on Thursday 8 May 2008 by the Hon Warren Snowdon MP.

At the Launch, Professor Michael Coper, Dean of Law said:

'The Australian Centre for Military Law and Justice easily satisfied [the ANU College of Law's] criteria that the subject matter be of national significance, and that we should have a critical mass of colleagues with expertise in the area. Indeed, that expertise was manifest in the teaching program that preceded the establishment of the Centre ... We were delighted two years ago to win the tender to teach military law to defence lawyers. It is from that beginning that the idea of the Centre, with a serious research dimension, grew.

The more I realised that, and the more I connected it with our range of expertise in the College, the more excited I became about the idea of a Centre to draw all of these strands together. And that is what we have done, so may I congratulate Robin, the inaugural Director of the Centre, her three Associate Directors, Simon Bronitt, Don Rothwell, and Gary Tamsitt, and all of my other colleagues, especially the teachers of the military law program, who contributed to the Centre's establishment.'

Professor Robin Creyke, Director of the ACMLJ commented that:

'The establishment of a new Centre to harness research capability and give focus to its work in the area of military justice is a significant



milestone in the history of the College. It has come as a surprise to discover that this will be the first Centre in Australia within an academic institution which is devoted to all aspects of law as it applies in the military. There is a wealth of material on military history ... Surprisingly, however, there is no academic Centre with a comprehensive focus on military law. The community is the poorer for it.

The experience defence has to offer the civilian populace, both in terms of its institutional structures and its understanding of the practice of law within a military context is valuable to the general community. Defence capability and discipline is to be envied. Its operations are steeped in traditions and history. Exposing some of that rich heritage to the community through academic analysis and critique will,

I believe, have mutual benefits, not least because it will help rectify the current deficit of knowledge of defence within the civilian community.

Those involved with the Centre, particularly the ANU College of Law teachers in the military law program – some 20 percent of those in the College – are an enthusiastic team. Their enthusiasm and their growing knowledge of the military has been encouraged by the considerable assistance provided to them by the Directors, Deputy Directors and staff of the Defence Military Law Centre at Randwick who manage the military law teaching program ... They have sharpened our understanding and have made a considerable contribution to that sense of collegiality which has enabled realisation of the ANU College of Law Centre. I am proud to be part of that team and also, as Director, to be in a position to shepherd their efforts.'

In his official launch of the Centre, the Hon Minister Warren Snowdon, had this to say:

'While still incorporating research into operational law, the Australian Centre for Military Law and Justice will also delve more comprehensively into all facets of legal endeavour related to the ADF, especially in the fields of military administrative and discipline law. The future work of the Australian Centre for Military Law and Justice offers intriguing and exciting possibilities for reform, based upon the conclusions of its research.

It is the natural complement to the postgraduate teaching program for Defence lawyers that has been running here at the ANU since 2006. And I see other synergies to be to be achieved by Defence working in concert with the Centre and scholars to develop research into issues of mutual interest. Clearly, academic study of military issues undertaken in isolation, and without an understanding of the unique



Dr Mark Nolan (ANU College of Law) & Brigadier Lynette McDade (Director of Military Prosecutions)

environment of the military, will be of limited value.

I therefore welcome the Centre's willingness to consider opportunities for interaction with the Australian Defence Force Military Law Centre and, more generally, with Defence legal officers and other military specialists.

As I said at the start of this address, it is truly an exciting development

in the field of military law to see the establishment of this Centre and to contemplate the potential for sustained scholarly consideration of a broad range of military law issues.'

For full text of the speeches please see our website at:

[www.law.anu.edu.au/ACMLJ](http://www.law.anu.edu.au/ACMLJ)



Professor Michael Coper (Dean ANU College of Law), Professor Simon Bronitt (Director National Europe Centre ANU), Professor Robin Creyke (Director, ACMLJ), Professor John McMillan (Commonwealth & Defence Ombudsman) & Associate Professor Gary Tamsitt (Director Legal Workshop ANU)

# RESEARCH PROJECTS & STAFF

The ACMLJ will provide a focal point for research into Military Law.

Proposed projects include:

- The first comprehensive text on Australian military law.
- Australian/NZ Maritime Security
- Australian/NZ Military Operations Law and Policy in the Asia Pacific
- Australian Private Military Contractors
- Use of the Military in Aid of the Civil Power.

The Centre is also host to a number of PhD and SJD/LLM students undertaking research into areas as diverse as Defence and the source of its authority under executive power, and judicial review of administrative action in a command environment.

## RESEARCH INTERESTS & RELATED RESEARCH ACTIVITIES OF MEMBERS OF THE CENTRE & TEACHERS IN THE MILITARY LAW PROGRAM

The following are all people who teach in the Military Law Program conducted, since 2006, by the ANU College of Law. All are members or associate members of the Centre. In addition to their research interests and listed output, most will be contributing to the text on *Australian Military Law* (to be published by Federation Press) which is a major research project of the Centre for 2009.

### GRAEME BLANK

Graeme is one of the teachers in the Military Advocacy Law course of the Military Law Program. His general research interests are in the fields of insolvency and advocacy

related topics. He is presenting a paper on 'Standing for Claims in Insolvency' in March 2009 at the Law Council of Australia's Insolvency Law Committee Conference and further papers at the RSM Bird Cameron Annual Conferences (one for senior accountants and one for partners) in early April 2009.

#### Publications

*Winning Advocacy* (with Hugh Selby), OUP, 2004.

*Appellate Practice* (ed with Hugh Selby) (co-author of 2 chapters), Federation Press, 2008.

### PROFESSOR SIMON BRONITT

Simon is Director of the National Europe Centre, ANU College of Arts & Social Sciences, Professor in the ANU College of Law and a teacher in the Discipline Law courses in the Military Law Program.

In 2008, Professor Bronitt spent part of his sabbatical at the Military Law Centre in Randwick, working with Captain Dale Stephens on an article, "Flying Under the Radar"—The Use of Lethal Force Against Hijacked Aircraft: Recent Australian Developments' (2007) 7(2) Oxford University *Commonwealth Law Review* 265-277. This research was based on presentations delivered at the Navy Legal Conference at HMAS Cairns (September 2007) and at the Senior Staff College (Legal Module) held at the Centre for Defence Strategic Studies, Australian Defence College, Canberra (February 2008).

Simon is also involved in hosting a conference, *Crossing Borders: Promoting Regional Law Enforcement*

*Cooperation*, at the ANU in April 2009 (for more details see link in Upcoming Events on p.8).

Simon is also hosting an international workshop on the use of force, *Shooting to Kill: The Law Governing the Use of Lethal Force in Context*, in June 2009 at the Onati Institute for the Sociology of Law (Spain). The program includes leading international scholars, senior military lawyers and practitioners from the Australia, UK and US, including Captain Dale Stephens RAN, former Director of the Military Law Centre, who has recently embarked on doctoral studies at Harvard.

### PROFESSOR ROBIN CREYKE

Robin teaches in the Military Administrative Law courses for the Military Law Program.

#### Publications

*Veterans' Entitlements Law in Australia* (2nd edn, Federation Press, 2008) (with Peter Sutherland).

'Military Administrative Inquiries', paper presented at the Defence Watchdogs conference, 26 November 2008.

### MIRIAM GANI

Miriam teaches in the Military Discipline Law course in the Military Law Program. Her research interests in the codification of Australian criminal law, the interpretation of codes, federal criminal law and terrorism offence prosecutions are pertinent to the military, particularly, the *Defence Force Discipline Act 1982* (Cth).

#### **WENDY KUKULIES-SMITH**

Wendy teaches in the Discipline Law component of the Military Law Program.

#### **DR HITOSHI NASU**

Hitoshi teaches in the Military Operations Law courses for the Military Law Program.

##### *Publications*

*International Law on Peacekeeping: A Study of Article 40 of the UN Charter*, (Martinus Nijhoff, forthcoming 2009).

'The Responsibility to React? Lessons from the Security Council's Response to the Southern Lebanon Crisis of 2006' (2007) 14(3) *International Peacekeeping* 339-352.

'Towards a True Incarnation of the Rule of Law in War-Torn Territories: Centring Peacebuilding in the Will of the People' (2007) 54 *Netherlands International Law Review* 81-114 (co-authored with Kristen Daghish).

#### **DR MARK NOLAN**

Mark teaches in the Military Discipline Law courses for the Military Law Program. He is currently conducting empirical research on lay attitudes to terrorism threats and the appropriateness of specific counter-terrorism suspects and the prosecution of those charged

with terrorism offences in Australia and elsewhere. He also has specific interest in research into juries, including military jury procedure.

#### **PROFESSOR DON ROTHWELL**

Don is one of the teachers in the Military Operations Law courses in the Military Law Program. He is a well-known commentator on topics within his broad fields of expertise in international, including operations, law. He has current research interests in: Australia/New Zealand Maritime Security; Australia/New Zealand Military Operations Law and Policy in the Asia Pacific; and Australian Private Military Contractors: International and Australian Law Dimensions.

#### **A/PROFESSOR HUGH SELBY**

Hugh is a teacher in the Military Advocacy Law course of the Military Law Program.

##### *Publications*

*Winning Advocacy* (with Graeme Blank) (OUP, 2004).

*Appellate Practice* (ed with Graeme Blank) (co-author of 2 chapters), Federation Press, 2008).

#### **DANIEL STEWART**

Daniel teaches in the Military Administrative Law courses for the

Military Law Program. His research interests span administrative, corporations and regulatory law. He is on leave for much of 2009 but hopes to be involved in research in the area of use of the military in aid of the civil power on his return.

#### **A/PROFESSOR GARY TAMSITT**

Gary is Director of the ANU Legal Workshop, and also chairs meetings of the Management Committee for the Military Law Program. He is a member of the Army Reserves.

#### **DR GREGOR URBAS**

Gregor teaches in the Military Discipline Law courses for the Military Law Program. His current research areas include federal criminal law, criminal appeals, cybercrime and transnational crime. He has published widely on the topics of cybercrime and intellectual property infringement.

#### **KYLIE WESTON-SCHEUBER**

Kylie teaches in the Discipline Law component of the Military Law Program. Kylie's academic expertise, and the practical skills she brings from her work with the Commonwealth Director of Public Prosecutions, inform her research interests in military law.

## SUMMER RESEARCH SCHOLARS

The members of the ACMLJ were successful in attracting three summer research scholars to assist with projects for the Centre. The Summer Scholar program is a longstanding national program hosted by the ANU. It brings top honours students from around the country to work with ANU researchers for two months over the summer.

Mr **Arn Duncan** from the University of South Australia has been working with the Director on devising a template for the chapters of the Centre's major 2009 project, the book on Australian Military Law. The prototype chapter on which Arn has been testing the template was his research for the chapter on executive power and defence.

Mr **Toby Collis**, a recent graduate from Macquarie University, worked on an international criminal law project under the supervision of Professor Simon Bronitt. His project examined the transposition of the Rome Statute provisions into the Criminal Code (Cth). The research is being developed into an article for publication in the Criminal Law Journal.

Ms **Grace Keesing**, a student from ANU, also worked with Simon on a project examining the use of force in the counter-terrorism context.

# REFLECTIONS FROM THE MILITARY LAW PROGRAM

## Military Lawyer Wins Scholarship to Study European Law in Germany

by Captain Gerard O'Shea

For two weeks in December last year I was lucky enough to swap the sun-scorched hills of the Puckapunyal Military Area for the snowflakes of a German winter, when the second annual DAAD-ASKO European Winter Academy was held in Otzenhausen. The course introduced students to the European Union with an emphasis on the regulation of the common market, expansion of the EU, common foreign and security policy, and the environment.

Twenty nine students from tertiary institutions throughout Australian and New Zealand participated – the majority studying law, but with a scattering of students from other disciplines. The course was delivered through a series of seminars and included visits to institutions of the EU, such as the European Court of Justice, the European Parliament and the European Court of Human Rights. This combination of presentations by European academics with cultural visits to cities in Germany, France and Luxembourg was a unique and fantastic opportunity.

The course teased out many issues that are becoming increasingly relevant for ADF legal officers as they work on deployment with coalition

forces of EU/NATO countries. This included the recent attention drawn to the interaction of the European Convention of Human Rights and its application to detainee management by member countries, but also addressed other topics of military interest; NATO preparedness for conflicts arising from global warming and population movements, energy security, EU-China and EU-Russia relations, supranational and inter-governmental regulation of strategic policy, and attempts to reinvigorate the philosophical and practical debate over the establishment of a Single European Army (SEA) in the context of EU expansion to include member States who were formerly aligned with the eastern bloc and are not signatories to NATO.

The course is sponsored by the German Academic Exchange Service (DAAD) and delivered jointly by the European Academy Otzenhausen and Saarland University. The scholarship to cover my travel expenses was provided by the ANU National Europe Centre.

ADF Legal Officers have the opportunity to apply for a DAAD scholarship grant as students of ANU, and I wholeheartedly endorse

the experience. Programs like the Winter Academy demonstrate yet again the benefit of the ongoing partnership between ADfLS and tertiary institutions in the delivery of post-graduate legal training.

Legal officers undertaking LTM 2 or 3 at ANU can contact Professor Simon Bronitt, Director of the National Europe Centre, who will be able to provide details on similar DAAD opportunities in the future. For those with a particular interest in undertaking further study in Germany, the DAAD website is:

<http://www.daad.de/en/index.html>

# INAUGURAL ACMLJ CONFERENCE

## Defence Watchdogs: The Administrative Oversight of Military Justice

26 November 2008 at the Australian War Memorial

The inaugural ACMLJ event was a conference held at the end of 2008, which was undertaken jointly with the Commonwealth and Defence Force Ombudsman's Office and the Office of the Inspector-General of Defence. The conference marked the 25th anniversary of the establishment of the Office of the Commonwealth and Defence Force Ombudsman in 1983, the tenth anniversary of the Office of the Inspector-General of Defence, and the first year of the ACMLJ. The conference attracted over 90 people, largely drawn from the Defence departments, including people from the office of Inspector General ADF, the Commonwealth Ombudsman, and academia.

Speakers included: The Minister for Defence Science and Personnel, the Hon Warren Snowden MP; Senator Mark Bishop, who as chair of the Senate Committee on Foreign Affairs, Defence and Trade was involved in the Military Justice Inquiry; Professor John McMillan, Commonwealth and Defence Force Ombudsman; Mr Geoff Earley, Inspector General of the Australian Defence Force; Mr Peter Leahy, former Chief of Army, and now Director, National Securities Institute, University of Canberra; Dr Matthew Groves, Monash University Law Faculty; and Mr Neil James, Executive Director, Australia Defence Association. The Director of the ACMLJ, Professor Robin Creyke, also



Professor John McMillan (Ombudsman), The Hon Warren Snowden MP, Professor Robin Creyke (ACMLJ) & Mr Geoff Earley (Inspector General Australian Defence Force)

gave a paper on the history, the findings and the implementation of recommendations from formal inquiries into military administrative action.

An amusing speech about the role of watchdogs was given by Emeritus Professor Dennis Pearce, former Commonwealth and Defence Force Ombudsman and newly appointed Chair of the Defence Honours and Awards Tribunal, at the conference dinner at the Anzac Memorial Hall, Australian War Memorial.

Some papers from the conference are available at the ACMLJ website: <http://law.anu.edu.au/ACMLJ/>



Presenter Group Captain Paul Cronan (Director Military Discipline Law)



#### DEFENCE WATCHDOGS CONFERENCE

Top L: Dr Vivienne Thom (Deputy Commonwealth Ombudsman)  
M: Hon Warren Snowden & dinner speaker Professor Dennis Pearce  
R: Ms Lynley Ducker (Director, Defence Force Ombudsman)  
Bottom L: Mr Neil James (Australia Defence Association) & Dr Gregor Urbas (ANU College of Law)

## UPCOMING EVENTS OF INTEREST

### JUDICIAL REASONING: ART OR SCIENCE? Conference 7 & 8 February 2009

The conference will explore how judges' reasoning is influenced by a range of factors, including: social, neurological, biological and psychological aspects.

More info at: [http://law.anu.edu.au/nissl/JudReas\\_09.htm](http://law.anu.edu.au/nissl/JudReas_09.htm)

### SWIMMING TO CAMBODIA: JUSTICE & RITUAL IN HUMAN RIGHTS AFTER CONFLICT Seminar 19 March 2009, 6pm

by Prof Hilary Charlesworth

More info at: <http://law.anu.edu.au/cipl/Lectures&Seminars/2009/Charlesworth.pdf>

### CROSSING BORDERS: PROMOTING REGIONAL LAW ENFORCEMENT COOPERATION – EUROPEAN, AUSTRALIAN AND ASIA-PACIFIC PERSPECTIVES Conference 8 & 9 April 2009

The Conference will bring together academics, public policy and legal practitioners, and law enforcement officials from Europe, Australia and the Asian-Pacific region to review and discuss the pressing problems impeding cross-border policing and law enforcement. The Conference includes a presentation by Wing Commander Ian Henderson, Director, Military Law Centre on the topic 'Jurisdiction under the Defence Force Discipline Act 1982'.

More info at: <http://www.anu.edu.au/NEC>