



**THE CENTRE FOR INTERNATIONAL & PUBLIC LAW
THE AUSTRALIAN NATIONAL UNIVERSITY**

**ELEVENTH ANNUAL PUBLIC LAW WEEKEND
3 – 4 NOVEMBER 2006**

PERSPECTIVES ON ACCOUNTABILITY

**National Museum of Australia
Lawson Crescent
Acton Peninsula, Canberra**

This year's program has a slightly different emphasis than normal. It is aligned with the Centre's aim to link public and international law, and break down barriers between constitutional and administrative law. Those looking forward to what would have been an "administrative law" focus should still be happy with the emphasis of the second day. Those who have interests beyond administrative law should also be interested in the collection of presenters and topics under the theme *Perspectives on Accountability*

CONFERENCE PROGRAM

FRIDAY		3 November 2006
PERSPECTIVES ON ACCOUNTABILITY		
12.30pm	REGISTRATION AND TEA/COFFEE Visions Theatre Foyer, National Museum of Australia	
1.00pm	WELCOME: Professor Kim Rubenstein, Director, Centre for International and Public Law, ANU College of Law	
HOW MUCH CAN WE ASK OF OUR MINISTERS?		
1.05pm	Chair: Professor Kim Rubenstein, Director, Centre for International and Public Law, ANU College of Law Professor Richard Mulgan, Crawford School of Economics and Government, The Australian National University	
	Commentators: Senator George Brandis, Senator for Queensland Kelvin Thomson MP, Member for Wills, Shadow Minister for Public Accountability & for Human Services	
2.45pm	AFTERNOON TEA	
ACCOUNTABILITY AND THE PUBLIC SECTOR		
3.15pm	Chair: Ms Amelia Simpson, ANU College of Law	
	Delegating the public interest Mr Daniel Stewart, ANU College of Law	
	The Canadian experience in Accountability: Lessons from The Federal Accountability Act 2006 Mr Henry Molot QC, Department of Justice, Canada	
	Commentator: Professor Geoff Gallop, Director, Graduate School of Government, University of Sydney	
4.45pm	STRETCH BREAK	
PURSUING A SECURE SOCIETY		
5.00pm	Chair: Mr James Stellios, ANU College of Law	
to	Regulating Telecommunications Interception and Access in the 21st Century: Technological	
6.00pm	Evolution or Legal Revolution? Professor Simon Bronitt, ANU College of Law	
	Terrorism legislation and accountability issues Federal Magistrate Murray McInnis, Federal Magistrates Court of Australia	
CONFERENCE DINNER		
7.00pm	THE DECK AT REGATTA POINT Barrine Drive, PARKES, Canberra	
for		
7.30pm	Guest Speaker: Justice John Basten, Supreme Court of NSW	

* All conference sessions will take place at the Visions Theatre, NMA. Lunch, morning tea and afternoon tea will be at the Hall, NMA.

SATURDAY		4 November 2006
8.30am	REGISTRATION AND TEA/COFFEE Visions Theatre Foyer, National Museum of Australia	
JUDICIAL REVIEW – 2005 AND 2006		
9.00am	Chair: Mr Leighton McDonald, ANU College of Law	
	Commonwealth Professor Robin Creyke, Alumni Chair of Administrative Law, ANU College of Law	
	State Judicial Review Mr Mark Robinson, Barrister	
10.15am	MORNING TEA	
CITIZENSHIP: ROLES AND RESPONSIBILITIES		
10.45am	Chair: Ms Jennifer Clarke	
	Australian citizens in Australia Professor Kim Rubenstein, Director, Centre for International and Public Law, ANU College of Law	
	Australian citizens abroad Professor Donald Rothwell, ANU College of Law	
11.45pm	STRETCH BREAK	
WHISTLEBLOWING COMES OF AGE: NATIONAL AND INTER NATIONAL DEVELOPMENTS		
12.00pm	Chair: Mr Kevin Boreham, ANU College of Law	
	Whistleblowing: A Telling Perspective on Accountability Mr Guy Dehn, Director, Public Concern at Work, UK	
	Public Interest Disclosure Laws in Australia: Towards the Next Generation? Dr A J Brown, Griffith Law School and Visiting Fellow, ANU College of Law	
1.00pm	LUNCH	
ACCOUNTABILITY AND OVERSIGHT OF POLICING AND CORRUPTION		
2.00pm	Chair: Ms Miriam Gani	
	Professor John McMillan, Commonwealth Ombudsman	
	Mr Simon Cohen, Assistant NSW Ombudsman, Police NSW	
3.00pm	STRETCH BREAK	
MCKINNON: THE HIGH COURT ON FOI		
3.15pm	Chair: Professor Michael Coper, Dean, ANU College of Law	
	Mr Jack Waterford, Editor-at-Large, Canberra Times	
	Ms Madeline Campbell, Junior Counsel for the Commonwealth in McKinnon	
4.45 pm	CLOSE	

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SPEAKER BIOGRAPHIES

JUSTICE JOHN BASTEN

Justice Basten was appointed to the NSW Court of Appeal on 2 May 2005. Prior to that he was a Queens Counsel practising in Sydney with a mainly appellate practice in administrative and constitutional law and claims under the *Native Title Act 1993* (Cth) and under State and Territory Land Rights Acts. He has also been a part-time Commissioner of the New South Wales Law Reform Commission, a part-time Hearing Commissioner at the Human Rights and Equal Opportunity Commission, and an Acting Commissioner of the NSW Independent Commission Against Corruption.

MR KEVIN BOREHAM

Kevin Boreham has been teaching at the ANU College of Law since 2002. Kevin is convening International Law of Human Rights and lecturing in International Law in 2006-2007. Kevin's academic interests are international law, particularly human rights and the use of force, and Australian public law.

SENATOR GEORGE BRANDIS

Senator George Brandis graduated from the University of Queensland with First Class Honours in the Faculties of Arts and Law, and from the University of Oxford, where he took the BCL and won the Sir Rupert Cross Prize. After working with Minter Ellison in Brisbane, he commenced practice at the Bar in 1985, specializing in commercial law, company law, equity and competition law. He appeared in many leading trade practices cases in the Federal Court in Brisbane and Sydney during the 1990s. He has also been a lecturer in Jurisprudence at the University of Queensland Law School. In 2000, he was appointed by the Queensland Parliament to a casual Senate vacancy, and re-elected in 2004. He is the Chairman of the Senate Standing Committee on Economics and the Chairman of the Attorney-General's Policy Committee, and also serves on a number of other Government and Parliamentary Committees. He has published widely on both legal and political topics.

PROFESSOR SIMON BRONITT

Simon Bronitt is a Professor in the ANU College of Law, and Director of the National Europe Centre, Research School of Humanities, ANU. He has published widely in the field of criminal law and criminal justice, and is currently engaged in a large ARC funded research project examining Australia's legal responses to terrorism.

DR AJ BROWN

A J Brown is a Senior Lecturer and a Senior Research Fellow at the Socio-Legal Research Centre, Griffith University. He is currently a Visiting Fellow at the ANU College of Law, The Australian National University. A J Brown has worked or consulted in public law, policy and accountability issues for all levels and branches of government, as well as in the non-government sector. He is a former Senior Investigation Officer with the Commonwealth Ombudsman; Associate to Justice Tony Fitzgerald AC, President of the Queensland Court of Appeal; and ministerial policy advisor to the Hon Rod Welford MLA, then Queensland

Minister for Environment Heritage and Natural Resources. He was recently lead author of the report of the National Integrity System Assessment of Australia (2005), and is currently project leader for the Australian Research Council-funded research project 'Whistling While They Work: Enhancing the Theory and Practice of Internal Witness Management in the Australian Public Sector' (www.griffith.edu.au/whistleblowing).

MS MADELINE CAMPBELL

Until recently, Madeline was a senior executive lawyer and leader of the AGS FOI and Privacy Team. She appeared as counsel in most of the leading FOI litigation for the last 10 years. Madeline was junior counsel in the recent HCA McKinnon v Treasury case. Prior to that time she was a principal lawyer in the Attorney-General's Department developing FOI policy and worked on the ALRC/ARC review of the FOI Act. Madeline has provided FOI advice and training to several overseas governments.

MS JENNIFER CLARKE

Jennifer Clarke is a member of the ANU College of Law. Her main fields of research and teaching are race and the law, the law relating to indigenous people, constitutional law and property.

MR SIMON COHEN

Simon Cohen is the assistant Ombudsman (Police) at the NSW Ombudsman. He has been in this role since 2004 and with the Ombudsman since 2001. Simon has also worked at the Administrative Appeals Tribunals, National Competitions Council and NSW Health Care Complaints Commission. He completed his studies at the University of Queensland and has been admitted to the practice since 1995.

PROFESSOR MICHAEL COPER

Professor Michael Coper is the Robert Garran Professor and Dean of the ANU College of Law, as well as Chair of the Council of Australian Law Deans. He graduated BA LLB (Hons) from the University of Sydney, holds a PhD from the University of New South Wales, where he was a founding member of the law school, and has worked in government and private practice. His scholarship is mainly in the area of public law, though more recently in the area of legal education. Most relevantly for this conference, he is the author of the entry on 'Accountability' in *The Oxford Companion to the High Court of Australia* (OUP, 2001), of which he is co-editor.

PROFESSOR ROBIN CREYKE

Robin holds the Alumni Chair of Administrative Law, at the ANU College of Law, Australian National University. She teaches and researches principally in the area of administrative law. Robin is the Tax Integrity Adviser, a Member of the Administrative Review Council, and the President of the Australian Institute of Administrative Law. She is Director of the Postgraduate Coursework Program and Co-Director of the Military Law Program at the ANU College of Law. She is co-author, with Professor John McMillan, of *Control of*

Government Action: Text, Cases & Commentary (2005, LexisNexis), a leading text on administrative law.

MR GUY DEHN

Guy Dehn is the director of Public Concern at Work, the UK's whistleblowing charity. He leads the charity's three activities, which are:

- Free advice for individuals concerned about wrongdoing at work but who are unsure whether or how to raise the matter;
- Professional support on accountability to organisations; and
- Campaigns and public policy on the public interest.

Guy was closely involved in settling the scope and detail of the Public Interest Disclosure Act 1998 and advises on comparable legislative initiatives in the international sphere. Prior to setting up the charity in 1993, he worked for seven years in the consumer field. He is also a practising barrister and a trustee of the Allen Lane Foundation.

PROFESSOR GEOFF GALLOP

Professor Geoff Gallop is the Director of the Graduate School of Government at the University of Sydney. He was a member of the Western Australian Legislative Assembly from 1986 to 2006 and premier of the Western Australian from 2001 to 2006.

MS MIRIAM GANI

Miriam Gani is a senior lecturer in the ANU College of Law. Her principle research interests and teaching responsibilities are in the area of criminal law. Current research projects include Australia's legislative response to terrorism and the prosecution of terrorist offences (under an ARC Grant jointly held with colleagues from the ANU and other Australian universities). She has also written extensively on the implications of codification, particularly in the context of the Commonwealth Criminal Code.

MR LEIGHTON MCDONALD

Leighton McDonald is an academic member of CIPL and has taught at the ANU law school since 2002. His most recent publication is 'Federal Judicial Review Jurisdiction After Griffith University v Tang' (2006) 17 Public Law Review 22 (with Christos Mantziaris) and he is currently working on a book on Australian administrative law (with Peter Cane). He is co-editor of the Federal Law Review.

FEDERAL MAGISTRATE MURRAY McINNIS

His Honour commenced his appointment as a Federal Magistrate on 26 June 2000. He was admitted as a barrister and solicitor in Victoria in 1977. Mr McInnis signed the Victorian Bar Roll in 1980 and practised as a barrister for 20 years in civil, administrative and commercial jurisdictions and criminal law. His Honour sits in Melbourne. He is the Melbourne Convenor of the Commercial List of the Court, (Bankruptcy, Trade Practices, and Copyright). He is a member of the International Association of Refugee Law Judges, the Australian Institute of Administrative Law, and the Intellectual Property Society of

Australia and New Zealand. Since 2001 he has acted as a Judge for the United Nations Association Annual Media Peace Awards. This year he is an ambassador for the United Nations Development Fund for Women (UNIFEM) White Ribbon Day campaign for the elimination of violence against women.

PROFESSOR JOHN MCMILLAN

John McMillan was appointed Commonwealth Ombudsman in 2003 for a five year term. He is on leave from The Australian National University, where he was a Professor of Law, holding the Alumni Chair in Administrative Law. He was a founding member and later President of the Australian Institute of Administrative Law. John is co-author (with Professor Robin Creyke) of *Control of Government Action: Text, Cases & Commentary* (2005, LexisNexis).

MR HENRY MOLOT QC

Four years of teaching, first at the University of Ottawa Faculty of Law (1967-69), and then at the Faculty of Law of the University of Alberta (1969-71), were followed by what has become a career of more than 35-years in Canada's Department of Justice where Mr. Molot has specialized in areas of Public Law, particularly those of Administrative Law and classical Constitutional Law (Crown and Parliamentary law). At present, he is Senior General Counsel in the Department's Constitutional and Administrative Law Section.

PROFESSOR RICHARD MULGAN

Richard Mulgan is Program Director of the Policy and Governance Program, Crawford School of Economics and Government, ANU. He is a former of Professor of Classics (University of Otago) and Professor of Political Studies (Universities of Otago and Auckland). His books include *Aristotle's Political Theory* (OUP 1977), *Politics in New Zealand* (AUP) and, most recently, *Holding Power to Account, Accountability in Modern Democracies* (Palgrave Macmillan, 2003). He is a two-time recipient of the Sam Richardson prize for the most significant article in the Australian Journal of Public Administration for article on accountability.

MR MARK A ROBINSON

Mark is a Sydney barrister practising in administrative law, commercial/equity law and criminal law at Wentworth Chambers. He is the author of New South Wales Administrative Law, a two volume looseleaf service, published by the Lawbook Co, and he is the Title Editor of the Administrative Law volumes of Laws of Australia, also published by Lawbook Co. He was a part-time Judicial Member of the Administrative Decisions Tribunal of New South Wales in the General Division, having heard matters concerning privacy and freedom of information for about seven years (ending in 2005). He has also been a part-time lecturer in "Administrative Law" at the Law Faculties of the University of Sydney and the University of New South Wales over many years.

PROFESSOR DONALD R. ROTHWELL

Donald R. Rothwell has since July this year held the position of Professor of International Law at the ANU College of Law, The Australian National University. He previously was the Challis Professor of International Law at the University of Sydney, where he had taught for

18 years. Professor Rothwell holds degrees from the Universities of Queensland, Alberta, Calgary and the University of Sydney – where he completed his PhD. His major field of research in international law has focused on Antarctica, and the Law of the Sea. In recent years he has taken a particular interest in the cases of Australians detained by foreign governments, and advised Lex Lasry QC in the Van Nguyen case.

PROFESSOR KIM RUBENSTEIN

Kim Rubenstein took up her position as Professor and Director of the Centre for International and Public Law in the ANU College of Law in 2006. She is a Barrister and Solicitor of the Supreme Court of Victoria, and the High Court of Australia and a legal practitioner of the ACT Supreme Court. Before becoming an academic Kim practised as a solicitor and she has recently appeared in several High Court citizenship matters, the most recent being *Re MIMIA; Ex parte Ame* [2005]. Kim is the author of *Australian Citizenship Law in Context* (2002, Lawbook Company).

MS AMELIA SIMPSON

Amelia Simpson is a Lecturer at the ANU College of Law, where her teaching and research focus on Australian and comparative constitutional law. She has also taught law at Columbia University Law School and at Alabama Law School in the United States. Amelia was a Fulbright Scholar from 2001-2003 at Columbia, completing a Master of Laws degree. She is currently a doctoral student at Columbia and is writing a thesis exploring the High Court's constitutional discrimination jurisprudence. Amelia's publications span a range of constitutional doctrines and issues and include several contributions to the *Oxford Companion to the High Court of Australia*.

MR JAMES STELLIOS

James Stellios is a Senior Lecturer at the ANU College of Law. He is also a Consultant to Clayton Utz Lawyers. He holds a Master of Laws from Cornell University specialising in international and constitutional law, and has published widely in those fields. With Professor Simon Bronitt, he has published 'Telecommunications Interception in Australia: Recent Trends & Regulatory Prospects' (2005) 29 *Telecommunications Policy* 875 and 'Regulating Telecommunications Interception and Access in the 21st Century: Technological Evolution or Legal Revolution?' (2006) *Prometheus* (forthcoming). His current research focuses on federalism and constitutional rights. Prior to joining the ANU College of Law in 2001, he was Counsel Assisting the Solicitor General of Australia and a lawyer with the Australian Government Solicitor.

MR DANIEL STEWART

Daniel Stewart is a senior lecturer at the ANU College of Law. He has been with the ANU Law School since 1999 after periods in the private and public sectors and a year as the John M Olin Fellow in Law and Economics at the University of Virginia, US. He is currently completing an SJD conciliating the role of judicial review in public and private governance. He has published in various areas concentrating on public law.

Kelvin Thomson MP

Kelvin entered State Parliament as Member for Pascoe Vale in 1988 and Federal politics as member for Wills in March 1996. He was appointed Parliamentary Secretary to Shadow Treasurer and Shadow Minister for Employment, Training, Immigration and Population in 1997 and Shadow Assistant Treasurer in 1991 and Chaired Labor's Business Activity Inquiry 2001. Kelvin was promoted to the Shadow Cabinet as Shadow Minister for Sustainability, the Environment and Heritage following the 2001 election. He was appointed Shadow Minister for Regional Development and Roads, Housing and Urban Development following the 2004 election. In June 2005, Kelvin became Shadow Minister for Public Accountability and Shadow Minister for Human Services enabling him to carry on with his effective role in locating and exposing government waste, maladministration and malpractice, and campaigning for higher standards of accountability and performance.

MR JACK WATERFORD

Jack Waterford has been Editor of The Canberra Times for six years. He has a degree in law and was the Graham Perkin Australian Journalist of the Year in 1985 for his work with Freedom of Information Act legislation, as well as a Jefferson Fellow in the United States in 1987. He has written substantial chapters in a number of books on subjects as diverse as Aboriginal health, public administration, the High court and freedom of expression, and the Petrov Royal Commission of the 1950s. Jack Waterford is in demand as a speaker on public service, education and defence topics and is a monthly columnist in Eureka Street. He was made an Adjunct Professor of the University of Queensland in 1997.

PARTICIPANT LIST

(Total of 90 participants)

David	Adams	The Australian National University
Jonathan	Aleck	Civil Aviation Safety Authority
Ross	Andrews	DOTARS
Stewart	Ashe	The Australian National University - Student
Peter	Bailey	The Australian National University
David	Barakin	Queensland Ombudsman
Justice John	Basten	Supreme Court of Australia
Rosemary	Bell	Parliamentary Library
Sue	Berger	The Australian National University - Student
Kevin	Boreham	The Australian National University
Stephen	Bottomley	The Australian National University
Senator George	Brandis	Parliament of Australia
Robyn	Briese	Australian Government Solicitors
Simon	Bronitt	The Australian National University
AJ	Brown	Griffith Law School & ANU College of Law
Keith	Byles	Office of Parliamentary Counsel
Madeline	Campbell	Junior Counsel for the Commonwealth in McKinnon
Naomi	Carde	Office of Parliamentary Counsel
Phil	Chan	The Australian National University
Danielle	Chifley	Australian Government Solicitors
Fiona	Childs	Department of Parliamentary Services
Jennifer	Clarke	The Australian National University
Simon	Cohen	NSW Ombudsman
Andrew	Collins	Legislative Assembly
David	Connolly, AM	Administrative Appeals Tribunals
Michael	Coper	The Australian National University
Robin	Creyke	The Australian National University
Mary	Crock	The University of Sydney
Katrina	Curry	Department of Prime Minister & Cabinet
Jenni	Daniel-Yee	Department of Justice
Guy	Dehn	Public Concern at Work, UK
Lynn	DuMoulin	The Australian National University
Anna	Dziedzic	Department of Prime Minister & Cabinet
Kristen	English	Department of Health & Aging
James	Faulkner	Attorney-General's Department
Christopher	Finlayson	Member of Parliament, NZ National Party
Nicola	Franklin	University of Sydney
Ron	Fraser	Retired
Justice Robert	French	Federal Court of Australia
Geoff	Gallop	University of Sydney
Miriam	Gani	The Australian National University
Alex	Gardner	University of Western Australia
Shaun	Gath	Blake Dawson Waldron
Patricia	Georgee	DOTARS
Laura	Grenfell	University of Adelaide - Student
Matthew	Groves	Monash University
Marlene	Hall	Department of Health & Ageing
Nicolas	Horn	Office of Parliamentary Counsel
Justin	Hyland	Australian Government Solicitors
Farhana	Islam	Department of Health & Aging
Alison	John	Office of Parliamentary Counsel
Margaret	Kelly	Macquarie University
Peter	Kennedy	-
Petal	Kinder	High Court of Australia
Margaret	Leach	Department of Health & Aging
Anthony	Lean	The Cabinet Office, Sydney

Daniel	Lovric	Office of Parliamentary Counsel
Leighton	McDonald	The Australian National University
Dermot	McGuire	Department of Treasury
Magistrate Murray	McInnis	Federal Magistrates Court of Australia
John	McMillan	Commonwealth Ombudsman
Henry	Molot QC	Department of Justice, Canada
Richard	Mulgan	The Australian National University
Sky	Mykyta	Deakin University
Virginia	Newell	University of Newcastle - Student
Peter	Nicholas	Australian Government Solicitors
Rosemary	Nicholson	High Court of Australia
Jenny	Plumstead	APSC
Dilani	Ponniah	Department of Health & Aging
Stephen	Quinn	Department of Health & Aging
Charles	Reichman	Swinburne University of Technology
Farah	Reynolds	Department of Health & Aging
Mark	Robinson	Barrister
Donald R.	Rothwell	The Australian National University
Kim	Rubenstein	The Australian National University
Leigh	Sanderson	The Cabinet Office, Sydney
Raoul	Scalpete	Department of Health & Aging
Adam	Sharpe	High Court of Australia
Amelia	Simpson	The Australian National University
Tom	Smyth	The Australian National University - Student
James	Stellios	The Australian National University
Daniel	Stewart	The Australian National University
Jonathan	Thawaites	-
Kelvin	Thomson MP	Parliament of Australia
Tiru	Vallal	ACT Department of Justice and Community Safety
Kathryn	Warn	Department of Prime Minister & Cabinet
Jack	Waterford	Canberra Times
Ernst	Willheim	The Australia National University
Gloria	Wong	ACT Government Solicitor
