



THE AUSTRALIAN NATIONAL UNIVERSITY

The Centre for International & Public Law  
ANU College of Law

presents

# The Fourteenth Annual Public Law Week-end

## **CHANGE**

12 & 13 November 2009  
Finkel Theatre, JCSMR, Garran Road, ANU

**PROGRAM, AUDIO, PAPERS,  
BIOGRAPHIES & PARTICIPANT LIST**

This 14th annual Public Law Week-end introduced, for the first time, a Thursday afternoon and Friday schedule, to end off the week. The program, around the theme of *Change* in public and administrative law, included the twelfth Annual Geoffrey Saver lecture on the Thursday evening.

SESSION 1	THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES AND AUSTRALIAN LAW - <a href="#">AUDIO</a>
2.00 - 3.30	<p>Opening by Professor Kim Rubenstein</p> <p>CHAIR: Professor Kim Rubenstein – ANU College of Law, The Australian National University</p> <ul style="list-style-type: none"> <li>• Associate Professor Dr Irene Watson – University of South Australia <i>Indigenous Rights, Peoples/Human Rights and the Declaration</i></li> <li>• Dr Christopher Ward – ACT Bar <a href="#"><i>Australian Courts and the UN Declaration on the Rights of Indigenous Peoples</i></a></li> <li>• Dr Lisa Strelein – AIATSIS <i>Native Title and UNDRIP: failing to meet the benchmark</i></li> </ul>
SESSION 2	LEGISLATION AND CHANGE - <a href="#">AUDIO</a>
4.00 - 5.30	<p>CHAIR: Ms Sue Tongue – ANU College of Law, The Australian National University</p> <ul style="list-style-type: none"> <li>• Ms Dominique Dalla-Pozza – ANU College of Law <i>Why should lawyers be interested in legislative process? (Title to be confirmed)</i></li> <li>• Professor Kim Rubenstein – ANU College of Law <a href="#"><i>Legislative change and the Australian Citizenship Act</i></a></li> <li>• Ms Marina Farnan – Second Parliamentary Counsel, Commonwealth Office of Parliamentary Council <a href="#"><i>The Practice of Legislative Change - the Challenges of Legislative Drafting</i></a></li> </ul>
6.00 – 7.00	<p>2009 ANNUAL GEOFFREY SAWER LECTURE - <a href="#">AUDIO</a></p> <p>Professor Hugh Corder – University of Cape Town</p> <p><a href="#"><i>On Stormy Waters: South Africa's Judges (&amp; Politicians) Test the Limits of their Constitutional Authority</i></a></p>

SESSION 3	CHANGE IN THE PACIFIC AND SOUTH EAST ASIA – <a href="#">AUDIO UNAVAILABLE</a>
9.00- 10.30	<p>CHAIR: Mr Matthew Zagor, ANU College of Law, The Australian National University</p> <ul style="list-style-type: none"> <li>• Ms Kristen Walker - Victorian Bar and Associate Professor, Melbourne Law School <i>Constitutional Change in Nauru</i></li> <li>• Professor Graham Hassall – University of the South Pacific <a href="#">Constancy and Change: A Perspective on Constitutional Reform the 'Pacific Way'</a></li> <li>• Vedna Jivan (UTS) &amp; Dr Christine Forster – (UNSW) <i>The Emergence of Gender Equality Laws as a Response to CEDAW: Five Examples from Southeast Asia</i></li> </ul>
SESSION 4	PUBLIC LAW UPDATE – <a href="#">AUDIO</a>
11.00 – 12.30	<p>CHAIR: Mr Daniel Stewart, ANU College of Law, The Australian National University</p> <ul style="list-style-type: none"> <li>• Justice Emiliios Kyrou – Supreme Court of Victoria <a href="#">Victorian Administrative Law</a></li> <li>• Ms Joanna Davidson – Crown Solicitor's Office, NSW <i>NSW Administrative Law</i></li> <li>• Ms Kathryn Graham – Australian Government Solicitor <a href="#">Pape v Commissioner of Taxation [2009] HCA 23</a></li> </ul>
SESSION 5	COURTS AND CHANGE – <a href="#">AUDIO</a>
1.30 – 3.00	<p>CHAIR: Justice Susan Kenny, Federal Court of Australia</p> <ul style="list-style-type: none"> <li>• Chief Justice Black – Federal Court of Australia <i>Reflections on Changes in the Federal Court</i></li> <li>• Assoc Professor Simon Rice – ANU College of Law <i>Change Through Courts</i></li> <li>• Professor Fiona Wheeler &amp; Professor Michael Coper – ANU College of Law <i>The Multiple Opinions Project</i></li> </ul>
SESSION 6	LAW, CONSTITUTIONS AND CHANGES IN THE POPULATION – <a href="#">AUDIO</a>
3.30-4.30	<p>CHAIR: Mr Moeen Cheema – ANU College of Law, The Australian National University</p> <ul style="list-style-type: none"> <li>• Professor Brian Opeskin - Macquarie University <i>How do constitutions adapt to long-term demographic change: reflections on the past 100 years</i></li> <li>• Dr Mark Nolan – ANU College of Law <a href="#">Diversity and Citizenship</a></li> </ul>
4.30	CLOSE of Public Law Week-end

## SPEAKER BIOGRAPHIES

(in session order)

### SESSION 1 THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES & AUSTRALIAN LAW

#### ASSOCIATE PROFESSOR DR IRENE WATSON

Irene Watson belongs to the Tangane-kald and Meintangk peoples, the traditional owners of the Coorong and lower South East of South Australia. Irene has published extensively on Aboriginal law and colonialism, and as a legal practitioner has worked on a number of legal matters relating to questions of cultural genocide as well as working on Australia's only successful stolen generations claim. As an academic Irene's teaching between 1989 and the present has focused on Aboriginal perspectives and knowledge of law. Irene has worked collaboratively with other indigenous advocates in the argument for a space for Aboriginal law in international fora, including the UN. She has also participated in Aboriginal jurisdictions established by the Chiefs of Ontario, the *First Nations International Court of Justice*.

#### DR CHRISTOPHER WARD

Dr Ward is a barrister who specialises in Public and International Law. He has acted widely for governments and individuals in cases including human rights, maritime law and constitutional issues. He is the President of the International Law Association (Australian branch).

#### DR LISA STRELEIN

Dr Lisa Strelein is the Director of the Native Title Research Unit and the Director of Research programs at AIATSIS. Lisa's research and publications have focused on the relationship between Indigenous peoples and the state, and the role of the courts in defining Indigenous peoples' rights. Lisa has made a significant contribution to academic debate on native title in Australia, including her recent book *Compromised Jurisprudence: Native Title Cases since Mabo*, which was heralded by members of the judiciary and Indigenous community alike. She also writes for a wide variety of audiences and has worked with teams in creating a catalogue for a native title art exhibition and an award winning multi-media package on native title. Lisa maintains strong networks within the native title system, conducting research projects in partnership with or in response to the needs of native title representative bodies and claimants as well as government departments. Lisa is the convenor of the annual National Native Title Conference, which remains the leading annual Indigenous policy conference in Australia. Lisa has degrees in Commerce and Law and was awarded a PhD, for her thesis examining Indigenous sovereignty and the common law, from the ANU Research School of Social Sciences in 1998.

**SESSION 2: LEGISLATION & CHANGE****MS DOMINIQUE DALLA-POZZA**

Dominique Dalla-Pozza joined the ANU College of Law as an Associate Lecturer in June 2009. Her teaching and research interests revolve around Australian Public Law and Constitutional Law. She is also a PhD candidate with the Gilbert & Tobin Centre of Public Law at the Faculty of Law at the University of New South Wales. Her thesis is titled 'The Australian Approach to Enacting Counter-Terrorism Laws', and the paper she is presenting today is drawn from that research.

**PROFESSOR KIM RUBENSTEIN**

Kim Rubenstein is Professor and Director of the Centre for International and Public Law (CIPL) in the ANU College of Law, Australian National University and a graduate of the University of Melbourne and Harvard Law School. Kim is the author of *Australian Citizenship Law in Context* (2002, Law Book Co). As a practitioner on the roll of the High Court of Australia she has been Counsel in three High Court matters concerning Australian citizenship. She has also been a consultant to the Commonwealth of Australia, represented by the Department of Immigration and Multicultural and Indigenous Affairs, later the Department of Immigration and Citizenship in relation to its review and restructure of the Australian Citizenship Act 1948 which resulted in the Australian Citizenship Act 2007 which came into force on 1 July 2007. In 2008 she was appointed by the Minister for Immigration and Citizenship to be a member of the Independent Committee to review the operation and effectiveness of the Australian Citizenship Test which reported to the Minister the same year.

**MS MARINA FARNAN**

Marina Farnan is currently a Second Parliamentary Counsel in the Commonwealth Office of Parliamentary Counsel, which drafts Commonwealth Acts of Parliament. Before joining the Office of Parliamentary Counsel in 1993, Marina worked on both policy and legislation in the Departments of Prime Minister and Cabinet and Industrial Relations. Marina holds a BA/LLB (Hons) from The Australian National University.

**Session 3: CHANGE IN THE PACIFIC & SOUTH EAST ASIA****MS KRISTEN WALKER**

Kristen Walker is a Barrister at the Victorian Bar, specialising in Constitutional Law, Administrative Law and Human Rights Law. She has appeared in many constitutional cases in the High Court, as well as in several cases involving the Victorian Charter of Human Rights and Responsibilities. Kristen is also an Associate Professor of Law at the University of Melbourne, where she has researched and taught extensively in the fields of Constitutional Law and International Law. She has also taught Human Rights Law at Columbia University in New York and at the University of Arizona.

## PROFESSOR GRAHAM HASSALL

Graham Hassall is Professor of Governance at the Pacific Institute of Advanced Studies in Development and Governance, at the University of the South Pacific, Fiji Islands. He completed his undergraduate studies in history and in education at the University of Sydney and the University of New South Wales, and his PhD in Pacific history at The Australian National University. From 1990 to 2000 he was director of the Asia Pacific Program at the Centre for Comparative Constitutional Studies at the University of Melbourne. He has also taught in Papua New Guinea and Switzerland. He has been a consultant to the Commonwealth Secretariat, Papua New Guinea Constitutional Review Commission, United Nations Development Program, and the Pacific Islands Forum Secretariat.

## MS VEDNA JIVAN

Vedna Jivan is a senior lecturer in the Faculty of Law, UTS, having previously practised as a solicitor for eight years. Vedna has researched widely in the area of human rights law and discrimination against women in the Asia Pacific region, with a specific focus on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Vedna has worked as a consultant for various international organisations including UNDP, UNIFEM Pacific Centres and the Asia Pacific Forum on Women Law and Development (APWLD). Her expertise in gender complements the capacity of the Centre in the area of property rights and good governance, particularly in the Pacific.

## DR CHRISTINE FORSTER

Christine Forster is Senior Lecturer in the Law Faculty at UNSW with a major research focus on CEDAW and women's human rights. Author and co-author of a number of publications on the topic including 'Translating CEDAW into Law' in collaboration with UNDP and UNIFEM which has initiated law reform projects in the region.

## Session 4: PUBLIC LAW UPDATE

## JUSTICE EMILIOS KYROU

Justice Emilios Kyrou is a Judge of the Supreme Court of Victoria. He and Justice Anthony Cavanough are the Judges in charge of the Judicial Review and Appeals List and hear most of the cases in that list. Prior to his appointment to the Bench, His Honour was a partner of Mallesons Stephen Jaques. He was the original editor of the loose leaf service *Victorian Administrative Law*.

## MS JOANNA DAVIDSON

Joanna Davidson is an Acting Senior Solicitor in the Administrative Law Group at the NSW Crown Solicitor's Office. She also teaches administrative law in the law faculty at UNSW. Prior to returning to Australia in early 2009, she was an Associate at Debevoise & Plimpton LLP in New York. She served as Tipstaff and Research Director to Chief Justice Spigelman of the

Supreme Court of NSW in 2003–2004. Joanna holds an LLM from Harvard Law School and a BA/LLB from UNSW.

### **MS KATHRYN GRAHAM**

Kathryn Graham, Senior General Counsel, Australian Government Solicitor, joined the Office of General Counsel, AGS in 1995. She advises Commonwealth clients on constitutional and public law matters, particularly in relation to public finance. Before joining the AGS, Kathryn was associate to Black CJ (Federal Court) and Deane J (High Court).

## **Session 5: COURTS & CHANGE**

### **CHIEF JUSTICE BLACK**

Chief Justice Black was born in 1940. After attending schools in Australia, Egypt and England, he received his further education at Wesley College, Melbourne and the University of Melbourne where he studied law and then tutored in politics. From 1964 until his appointment as Chief Justice in January 1991 he practised as a barrister. He was appointed Queen's Counsel in 1980 and specialised in appellate work before the High Court of Australia and other appellate courts. The Chief Justice has had a keen interest in legal education and judicial studies. In 1981 he was appointed the Foundation Chairman of the Victorian Bar's Readers Course, the Bar's pioneering course of instruction for new barristers, he continued in this role until 1986. He also served as the representative of the Victorian Bar on the Board of the Leo Cussen Institute for Continuing Legal Education. As Chief Justice he has actively supported the Federal Court's work in the field of judicial education including pioneering work in the area of judicial studies in gender issues. On Australia Day 1998, Chief Justice Black was made a Companion in the Order of Australia for service to the law, to the legal profession and to the judiciary. The Chief Justice was the Chair of the Advisory Committee for introduction of the Juris Doctor Degree at Melbourne Law School. His interests outside the law include architecture, history and maritime matters. As Chief Justice of the Federal Court he has, as well as his judicial duties, statutory responsibility for the administration of the Court.

### **ASSOCIATE PROFESSOR SIMON RICE OAM**

Simon is an Associate Professor, and Director of Law Reform and Social Justice at the ANU College of Law. He is Chair of the ACT Law Reform Advisory Council, and a part-time judicial member of the NSW Administrative Decisions Tribunal in the Equal Opportunity Division. He has previously worked extensively in community legal centres, and has been Director of the NSW Law and Justice Foundation, President of Australian Lawyers for Human Rights, a Board member of the NSW Legal Aid Commission, and an honorary consultant to the NSW Law Reform Commission. Simon's teaching, research, publishing and advocacy is concerned principally with anti-discrimination law, human rights, access to justice, and lawyering in the public interest. In 2002 he was awarded a Medal in the Order of Australia for legal services to the economically and socially disadvantaged.

## PROFESSOR FIONA WHEELER

Fiona Wheeler is a Professor and Head of School in The Australian National University College of Law. She joined the College in November 1990 and has served as College Sub-Dean (2000–2003) and College Director of Research (2006–2008). Prior to her appointment to ANU Fiona was an Associate to Justice Mary Gaudron, High Court of Australia (1989–1990). Fiona's research is primarily in the area of constitutional law, with a particular interest in courts and the judicial system, including separation of powers. She has published numerous articles and book chapters in these areas, and with Brian Opeskin co-edited *The Australian Federal Judicial System* (2000) MUP, Melbourne. Fiona has served on the Executive of the Australian Association of Constitutional Law and was Comments Editor of the *Public Law Review* 2000–2007. She has also served on numerous College and University committees including as a member of the Review Committee, Review of Undergraduate Education, ANU (2002). Fiona is currently a Chief Investigator on an ARC Linkage Grant creating an oral history of the High Court of Australia. In 2009 she was also an Honorary Harold White Fellow at the National Library of Australia. Her present teaching responsibilities include the compulsory LLB course, Commonwealth Constitutional Law.

## PROFESSOR MICHAEL COPER

Michael Coper is Dean of Law and Robert Garran Professor of Law at The Australian National University College of Law. After graduating in Arts/Law from the University of Sydney, Michael spent a year in India in 1970 as the Myer Foundation Asian and Pacific Fellow in the Department of Law at the University of Rajasthan in Jaipur, India. He returned to Australia in 1971 to be one of the founding members of the new law school at the University of New South Wales, where he also completed a PhD on the controversial section 92 of the Australian Constitution (later published as the prize-winning *Freedom of Interstate Trade under the Australian Constitution* (Butterworths, 1983)). He spent 1978 as Fulbright Senior Scholar at the University of Virginia. From 1988–1990, Michael served as a Commissioner of the Inter-State Commission, a body established by section 101 of the Australian Constitution. He joined Sly & Weigall (later Deacons, Graham & James) in 1991 as Director of Government Advising, and worked in full-time private legal practice until 1995, when he was appointed as Professor of Constitutional Law at The Australian National University. Michael was appointed Dean of Law at the ANU in 1998, and as Robert Garran Professor of Law in 2001. Michael's scholarly interests are in constitutional law, judicial process, history and social role of Australian law schools. His books include *Encounters with the Australian Constitution* (CCH, 1987) and *The Oxford Companion to the High Court of Australia* (co-editor, OUP, 2001), and he has appeared as counsel in a number of High Court cases, including the landmark *Cole v Whitfield* (1988). He has held visiting positions in a number of United States law schools, and in 1999, was elected as a member of the American Law Institute. From 2005–2007 he served as Chair of the Council of Australian Law Deans. He is a member of the Governing Board of the International Association of Law Schools.

**SESSION 6: LAW, CONSTITUTIONS & CHANGES IN THE POPULATION****PROFESSOR BRIAN OPESKIN**

Brian Opeskin is Professor of Legal Governance at Macquarie Law School. Prior to joining Macquarie University, he held positions as Head of the Law School at the University of the South Pacific in Vanuatu; as Deputy President of the Australian Law Reform Commission and as an academic at Sydney Law School. He has researched and taught widely in the field of Public Law and has written extensively on Constitutional Law; courts, judges and jurisdiction; International Law, and conflict of laws. While at the Australian Law Reform Commission, he was the Commissioner in charge of five public inquiries, including one into federal judicial power. Brian's current research examines issues of governance relating to international migration, public health and court systems.

**DR MARK NOLAN**

Dr Mark Nolan is a Senior Lecturer at The Australian National University, College of Law. Mark is trained in both Law and Psychology and his research interests in Psychology include social identity, intergroup relations and social justice. Mark teaches Law and Psychology to law students at The Australian National University as well as Criminal Law and Military Discipline Law. His interdisciplinary research interests include perceptions of human rights law, counter-terrorism law, citizenship law and comparative jury research.

## PARTICIPANT LIST

NAME	ORGANISATION
Bailey, Peter	ANU College of Law
Birmingham, Helen	ANU College of Law
Black, Michael	Federal Court of Australia
Burn, Adrian	Dept of Immigration & Citizenship
Burnett, Jenny	Australian Government Solicitor
Cheema, Moeen	ANU College of Law
Coleman, Piria	University of Adelaide
Coper, Michael	ANU College of Law
Dalla-Pozza, Dominique	ANU College of Law
Davidson, Joanna	Crown Solicitor's Office NSW
Evans, Simon	Melbourne Law School
Farnan, Marina	Commonwealth Office of Parliamentary Council
Faulkner, James	Attorney-General's Department
Forrester, Danielle	Attorney-General's Department
Forster, Christine	University of New South Wales
Fraser, Ron	
George, Shan	Dept. of Immigration & Citizenship
Graham, Kathryn	Australian Government Solicitor
Hanlon, Fiona	Serenus Thinking
Hassall, Graham	University of the South Pacific
Jivan,Vedna	University of Technology, Sydney
Jones, Jilipa	
Kalokerinos, John	Dept of Finance & Deregulation
Kenny,Susan	Federal Court of Australia
Knight, Dean	Victoria University of Wellington
Kyrou, Emilios	Supreme Court of Victoria
Leijon, Nina	ANU RegNet
Lenagh-Maguire, Niamh	Australian Government Solicitor
Leydman, Veronica	Dept of Immigration & Citizenship
Mackay, Anita	Attorney-General's Department
Marks, Greg	
Moe, Tim	Australian Government Solicitor
Mowbray-D'Arbela, Marc	Dept of Finance & Deregulation
Murphy, Jeff	Attorney-General's Department
Nekvapil, Emrys	Barrister
Nolan, Mark	ANU College of Law
O'Brien, Molly	ANU College of Law
Opeskin, Brian	Macquarie University
Osborn, Jane	Dept of Immigration & Citizenship
Parrott, Louise	Attorney-General's Department
Prince, Peter	Australian Government Solicitor
Reichman, Charles	Swinburne University
Rice, Simon	ANU College of Law
Roos, Oscar	Deakin University School of Law
Rubenstein, Kim	ANU College of Law

NAME	ORGANISATION
Stewart, Daniel	ANU College of Law
Stokes, Michael	Law School, University of Tasmania
Strelein, Lisa	Australian Institute of Aboriginal & Torres Strait Islander Studies
Taylor, Greg	Law School, Monash University
Thomas, Eleanor	Dept of Premier & Cabinet
Tongue, Sue	ANU College of Law
Walker, Kristen	Victorian Bar & Assoc Prof, Melbourne Law School
Ward, Christopher	ACT Bar
Watson, Irene	University of South Australia
Welsh, Rebecca	University of New South Wales
Wenta, Joseph	University of Newcastle
Wheeler, Fiona	ANU College of Law
Williams, Anthea	New Zealand Office of Attorney-General
Williams, George	ANU College of Law
Williams, John	Law School, University of Adelaide
Williams, Kevin	University of Newcastle
Wojtaszak, Angela	Dept of Finance & Deregulation
Young, Katie	RegNet, The Australian National University
Zagor, Matthew	ANU College of Law
Zawisz, Marzena	Dept of Finance & Deregulation
Zines, Leslie	ANU College of Law