

# Newsletter

Issue No. 3 of 2001

edited by Cathy Hutton

September 2001

## For Your Diary

### 6<sup>th</sup> Public Law Weekend

2 & 3 November 2001

This will be the sixth Public Law Weekend organised by the Centre for International and Public Law and the third devoted to constitutional law. The Friday theme seminar will consider the intersections of constitutional law with other branches of law (administrative law, common law and international law). The Saturday sessions will focus on recent developments in four specific areas of Australian public law including the judicial system, contemporary federalism, elections and parliamentarians, and state constitutional law.

Speakers include **Tony Cavanaugh QC, Michael Sexton SC, Dr Kristen Walker, Jeremy Kirk, Ian Govey, Associate Professor Gerard Carney** and **Janine Pritchard**.

The Friday night dinner at Old Parliament House commemorates the 50<sup>th</sup> Anniversary of the *Communist Party Case*.

The conference brochure has been sent out to all those registered with the Centre as having an interest in public law, which includes those who have attended previous Public Law Weekends. The conference **brochure** is at website:  
<http://law.anu.edu.au/CIPL>

*If you no longer wish to receive this newsletter and would like your name removed from our database, please send a brief email to [cipl.law@anu.edu.au](mailto:cipl.law@anu.edu.au)*

## Geoffrey Sawer Lecture 2002

**Judge Navanethem Pillay**, President of the International Criminal Tribunal for Rwanda, will present the 2002 Geoffrey Sawer Lecture on a date yet to be advised. The lecture will review the progress of the work of the Tribunal.

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## Centre Events

### Geoffrey Sawer Lecture 2001

The fourth lecture in this series was given by **The Hon Sir Gerard Brennan AC KBE** on 18 July. In his lecture **One Hundred Years On: Strengths and Strains in the Constitution** Sir Gerard, former Chief Justice of the High Court of Australia, proposed the amendment of some provisions in the Constitution that have failed in their purpose, the deletion of obsolete provisions and additions to federal power to cope with changes in science and technology. He suggested some implications of a move to a Republic for the system of responsible government. Around 150 people attended the lecture, including Mrs Nancy Sawer and other members of the Sawer family.

The text of the lecture has just been published by the Centre and Federation Press as *Law and Policy Paper 18*. Please see page 2 of this newsletter for further information.



Sir Gerard Brennan, Hilary Charlesworth,  
Mrs Nancy Sawer and Michael Coper

## Current research projects in the Centre

Three members of CIPL, **Robin Creyke**, **John McMillan** and **Dennis Pearce**, have been conducting a large research project since 1995 on the impact of administrative law on government administration. The project has been funded by two grants from the Australian Research Council. The results are now being prepared for publication in 2001-2002.

The research has looked at three aspects of the impact of administrative law. The first phase of the project looked at the subsequent administrative action taken by government agencies in response to decisions that were declared by a court to be invalid. The interim results of this phase were published in an article by the three authors, 'Success at Court: Does the Client Win?' in J McMillan (ed), *Administrative Law under the Coalition Government* (AIAL, 1997).

The second phase of the project was an attitudinal survey of Commonwealth government agencies and officers, completed by 360 officers across 42 agencies. The survey questions looked at how information about administrative law developments was distributed throughout agencies, and at the attitudes of officers to external review by courts and tribunals. Interim results of the surveys have been presented at seminars in Canberra, and are to be the subject of a paper by Robin Creyke to the annual conference of the Australian Institute of Judicial Administration in Hobart in September.

The projected third phase of the project is an analysis of the relationship between courts and tribunals, focusing on appeals from the Administrative Appeals Tribunal to the Federal Court. Some pilot studies for this phase of the project have already been undertaken.



**Dennis Pearce, Robin Creyke and John McMillan**

## Centre publications

### Law and Policy Paper Series

Subscription enquiries for the Law and Policy Papers series:  
The Federation Press  
tel: 02 9552 2200  
fax: 02 9552 1681  
email: sales@federationpress.com.au

### Published 2001

#### Paper 17

**Administrative Review: Observations and Reflections**  
by **Bettie McNee**

*This paper was first presented at the Sir Richard Blackburn Lecture of the Law Society of the ACT on 15 May 2001. Ms Bettie McNee is the President of the Administrative Review Council*

#### Paper 18

**One Hundred Years On: Strengths and Strains in the Constitution** by **Sir Gerard Brennan** former Chief Justice of Australia

*Sir Gerard Brennan presented this paper at the Fourth Geoffrey Sawer Lecture held at the Australian National University on 18 July 2001.*

#### Soon to be published:

#### Paper 19

**Group Identity and American Constitutionalism** by **Professor Kathleen M Sullivan**, Dean and Richard E Lang Professor of Law and Stanley Morrison Professor of Law, Stanford Law School, USA.

*Professor Sullivan gave this paper at the Third Geoffrey Sawer Lecture held at the Australian National University on 9 August 2000.*

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### Occasional Papers

**The National Road Transport Commission: An Experiment in Cooperative Federalism** by **Kirsty McIntyre and Barry Moore**. This paper was presented to the Public Law Discussion Group at the Faculty of Law, ANU on 5 July 2001. (Available on web: <<http://law.anu.edu.au/CIPL/Publications/>>).



## Discussion groups

### Public Law and Public Administration Discussion Group evening seminars

*The PLDG seminars are convened as a small discussion group by Pam O'Neil. Papers are usually published later on the CIPL website*

Two more seminars have taken place following the theme of **Federalism** to reflect 100 years of Federation of Australia.

The fourth seminar for 2001 was held on 17 July. Barry Moore and Kirsty McIntyre of the National Road Transport Commission spoke on **The NRTC: An Experiment in Cooperative Federalism**.



**Kirsty McIntyre, Barry Moore and John McMillan**

The fifth seminar was held on 22 August. Sydney barrister and former Registrar of the National Native Title Tribunal, Patricia Lane, spoke on **The Cost of Walking away from the Table: Native Title and the States**.

Both these presentations will shortly be published as Centre Occasional Papers and are available from the Centre or on the web at <http://law.anu.edu.au/CIPL/index.htm> (click on publications).

The next seminar will be held on 13 September. Mark Cunliffe, of the Australian Electoral Commission will speak on **Electoral laws**.

### International Law Discussion Group evening seminars

*Please contact the Centre if you would like to be placed on the ILDG mailing list to receive invitations*

A seminar was held on 31 July on **Self Determination and Autonomy for Bougainville**, presented by Tony Regan, Department of Political and Social Change, Research School of Pacific and Asian Studies, ANU. Tony Regan is a constitutional

adviser to the Bougainville parties in the Bougainville peace process and has been involved in the 21 rounds of talks on the political future of Bougainville held between Bougainville representatives and the Papua New Guinea government since June 1999.



**Tony Regan**

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## Visitors to the Centre

Hilary Charlesworth, Pene Mathew and Ann Kent met with **Ms Zainah Anwar**, Executive Director of Sisters in Islam and a member of the Malaysian Human Rights Commission on 12 July.

The Centre was honoured to have the Faculty's inaugural Distinguished Visiting Fellow **Sir Anthony Mason** in our midst from 20-24 August. During his visit to the Faculty Sir Anthony gave several lectures to students and a public lecture *The Rule of Law in China and the Special Administrative Region of Hong Kong*. The text of this lecture will be published by the Centre in due course.



**Sir Anthony Mason**

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## News of Centre members

**Hilary Charlesworth** is on leave from CIPL as Manley Hudson Visiting Professor of Law at Harvard Law School. She is teaching two courses: Democracy and International Law; and Sex, Gender and Human Rights.

**Dennis Pearce** has been appointed to head the Independent Review of Government Guidelines for Breaching Unemployment Beneficiaries. He will be joined in the review by former Centre Director **Julian Disney** who is currently director of the Social Justice Project at the University of NSW.

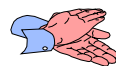
**Amelia Simpson** is on leave undertaking graduate studies at Columbia Law School in New York.

*Distant former CIPL members **Deborah Cass, Robert McCorquodale** and **Gerry Simpson** have sent in their news.*

Robin Hood was arguably one of the first human rights activists in England. His base was Nottingham and it is at the University of Nottingham that **Robert McCorquodale**, a former CIPL member, has been Professor of International Law and Human Rights since September 2000. While not having yet met the Sheriff, Robert has had to deal with rogues and oppressors (when purchasing property, particularly in the light of the negligible value of the Aussie dollar). Fortunately, there have been helpful townspeople (the School of Law is excellent and wealthy, and there are at least 10 people researching in international law/human rights), supportive villagers (about 150 LLM students all studying aspects of international law) and a beautiful location. Robert's happy little tribe (Kate, Rory, Ella and Flora) have settled in now with good schools and activities for all (and a black labrador puppy) but do miss Australia, ANU and CIPL.

**Gerry Simpson, Deborah Cass, Hannah and Rosa Simpson** will be in Australia for a month in April next year (Gerry will be teaching at Melbourne University during their stay).

Deborah is teaching International Economic Law, European Union Law and Public Law at the London School of Economics. She is editing a collection of essays on China's accession to the World Trade Organization, and continuing work on the constitutionalisation of international trade law. Gerry is teaching international law at the LSE. Deborah and Gerry recently bought a house in Muswell Hill in north London.



## Congratulations

**Robin Creyke** has been appointed as the Academic Staff Member (for 2 years) on the ANU's Quality Assurance Advisory Group. The QAAG is to prepare for the forthcoming audit of the University's quality assurance processes and outcomes conducted by the Australian Universities Quality Agency.

**Helen Watchirs** submitted her PhD thesis 'Measuring Legal Implementation of Human Rights Laws in the context of HIV/AIDS' in early September.

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## Breaking News

### The Oxford Companion to the High Court of Australia



Edited by Tony Blackshield, Michael Coper and George Williams.

The massive High Court project initiated by ANU Law Dean Professor Michael Coper in 1994 is nearing completion with the imminent publication of *The Oxford Companion to the High Court of Australia*. This pioneering work is a comprehensive analysis and critique of the role and record of the High Court as an institution of Australian government. In 435 entries, by 225 authors, the book tells the story of the High Court from A to Z, covering not only the Court's contribution to the development of Australian law and biographies of all of the Justices but also topics as diverse as appointments that might have been, the Dixon diaries, the Court as a political institution, notable counsel, personal relations between the Justices, how procedures can affect outcomes, and the Court and sex.

Although there are many authors outside the ANU (including most of the current and former Justices), the project has been very much an ANU venture, with the editors, research assistants and the project all located in the ANU Law Faculty and the supporting grants, totalling over \$275,000, won by the Faculty. The ANU contributors include many CIPL members. Those ANU contributors (including authors connected with ANU at the relevant time) include Peter Bailey, Peter Bayne, Larissa Behrendt, Juliet Behrens, Tony Blackshield, Stephen Bottomley, Simon Bronitt, Alex Bruce, Fiona Burns, Peter Cane, Hilary Charlesworth, Michael Coper, Robin Creyke, Jim Davis,

Annemarie Devereux, Francesca Dominello, Doug Hassall, Ian Holloway, Judith Jones, Michael Kobetsky, Henry Mares, Pene Mathew, Robert McCorquodale, Leighton McDonald, John McMillan, Dennis Pearce, James Popple, Susan Priest, Richard Refshauge, Pauline Ridge, Declan Roche, Hugh Selby, John Seymour, Amelia Simpson, Troy Simpson, Peta Spender, Daniel Stewart, Adrienne Stone, Bruce Topperwein, Phillipa Weeks, Fiona Wheeler, Ernst Wilhelm, George Williams, and Leslie Zines. Many others are graduates of the ANU law school.

The book is expected to be launched in December 2001 and generally available early in 2002.

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## Staff and members' conference papers, addresses, media

Recent media contributions by CIPL members are available at the CIPL website <<http://law.anu.edu.au/CIPL>>

### Andrew Byrnes

Spoke at the opening plenary panel on the topic 'Equality for Women: What does it mean in the 21<sup>st</sup> Century?' at the Inaugural National Women's Conference: Australian Women Speak, 27 August 2001, organised by the Office of the Status of Women. Andrew spoke about international developments in women's human rights and their relevance to Australia and the role of men in advancing women's human rights.

'The International Criminal Court: Implications for Australia': as part of the Vital Issues seminar series organised by the Parliamentary Library, 29 August 2001.

Read what Andrew says about the advantages to Australia of the proposed International Court of Criminal Justice in Andrew Fraser's article: 'Australia stands to benefit from international court', *The Canberra Times*, 29 August, 2001,

<[http://canberra.yourguide.com.au/detail.asp?class=news&subclass=national&category=general%20news&story\\_id=82305&y=2001&m=8](http://canberra.yourguide.com.au/detail.asp?class=news&subclass=national&category=general%20news&story_id=82305&y=2001&m=8)>

### Hilary Charlesworth

'Compelling case for global court of justice' article published in *The Australian*, 6 July 2001 <[http://www.theaustralian.news.com.au/common/story\\_page/0,5744,2274626%25E7583,00.html](http://www.theaustralian.news.com.au/common/story_page/0,5744,2274626%25E7583,00.html)>.

'Taking a stand'. Speech as Patron at the Australian Law Students' Association (ALSA) Conference dinner 7 July, Canberra.

Participation (with Christine Chinkin) in the International Law panel at the Art and Human Rights Workshop, Humanities Research Centre, ANU, 23 July.

Participation in the 'Women, Gender and Feminism' panel in the 25 Years of Women's Studies at the ANU conference, 3 August, ANU.

### Jennifer Clarke

'Stolen Generations' Litigation, Moving Forward: Achieving Reparations for the Stolen Generations'. Paper given at a workshop at the UNSW on 15 August 2001. The workshop was organised by HREOC, PIAC and ATSIC.

### Robin Creyke

Legal Edge Seminar entitled 'The State of the ART', 31 May 2001.

Attended Canadian Council on Tribunals Second International Conference on Administrative Justice in Quebec from 17 June - 20 June, partly as representative of the Administrative Review Council. In the latter capacity, with Justice Deirdre O'Connor, President of the Administrative Appeals Tribunal, represented Australia at meetings with Lord Leggatt, whose report on UK Tribunals has just been published. Also met with Nancy Goodman, Deputy Chair, Canadian Immigration Appeal Division and Paul Aterman, Assistant Deputy Chair for discussions about migration matters.

Host for presentations by Sir Anthony Mason AC KBE CBE, Mr Tom Sherman, Ms Sue Tongue and Mr Peter Sutherland, during Tribunals and Government intensive, Graduate Program, 24 August, 2001.

'Recent Developments in Veterans' Law', Temporary and Permanently Incapacitated Association, Annual Conference, Canberra, (with Peter Sutherland), 20 September, 2001.

'Courts, Tribunals and Public Administration in Australia: Scepticism Unjustified?', Annual Conference, Australian Institute of Judicial Administration, Hobart, 22 September, 2001.

### Robin Creyke and John McMillan

'Globalisation, Rights and Australian Administrative Law: A Dialectic', a joint presentation to the Australian Law Students' Association annual conference, Canberra, 3 July 2001.

Conference Directors for the National Administrative Law Forum, conducted by the Australian Institute of Administrative Law in Canberra on 5-6 July 2001. The 2001 Forum was the eleventh national forum and the seventh in Canberra. It was

attended by 230 participants. Under the theme 'Administrative Law – The Essentials' the Conference took up the challenge of identifying the essential principles underpinning each major area of administrative law: judicial review, tribunals, Ombudsman, freedom of information, and administrative law in a federal system. The conference was opened by the Dr Peter Patmore, the Attorney-General for Tasmania. The papers from the conference will be published later this year, in hard copy, and on the Institute's website <<http://law.anu.edu.au/aial>>.

'Departmental Representation in Tribunal Membership: A Viable Option?', joint presentation to the National Administrative Law Forum conducted by the Australian Institute of Administrative Law, Canberra, 6 July 2001.

### **Jean-Pierre Fonteyne**

CIPL member, JP Fonteyne, an international law of the sea and refugee law expert, has given a number of interviews and written for *The Canberra Times* on the issues arising from the rescue of asylum seekers in the waters between Australia and Indonesia by the Norwegian freighter the Tampa. His article of 30 August, 'Asylum-seekers afloat in uncertainty', is available at <[http://canberra.yourguide.com.au/detail.asp?class=Your say&subclass=General&category=Columnists Analysis&story\\_id=82299](http://canberra.yourguide.com.au/detail.asp?class=Your%20say&subclass=General&category=Columnists%20Analysis&story_id=82299)> and his article of 31 August, 'Australia's obligations quite clear' <[http://canberra.yourguide.com.au/detail.asp?class=your say&subclass=general&category=columists analysis&story\\_id=83063&y=2001&m=8](http://canberra.yourguide.com.au/detail.asp?class=your%20say&subclass=general&category=columists%20analysis&story_id=83063&y=2001&m=8)>

### **Ann Kent**

'Having the UN and undermining it too', *Australian Financial Review* Friday 7 September 2001. Ann writes on Australia's challenge to UN authority – and its consequences.

### **Pene Mathew**

Pene criticised the proposed changes to Australia's refugee laws in Kerry Taylor's article, 'Warning against getting tough on refugees', *The Age*, 14 August 2001. You can read this article <<http://www.theage.com.au/news/national/2001/08/14/FFXDVW25BQC.html>>

### **John McMillan**

'The Academic Contribution to Australian Administrative Law', after dinner address to the conference 'Towards a History of the Australian Administrative Law System', conducted by the Law Program, Research School of Social Sciences, Canberra, 31 March-1 April 2001.

John attended the 2<sup>nd</sup> International Conference on Administrative Justice, staged by the Council of Canadian Administrative Tribunals, in Quebec, Canada, 17-20 June 2001.

Address on natural justice to the Integrity Investigations Program conducted by the Australian Federal Police and the Commonwealth Ombudsman, Canberra, 17 July 2001.

Address on administrative law trends to Federal Court Judges' Conference, Melbourne, 30 August 2001.

Paul Kelly, International Editor, *The Australian*, 5 September 2001, writes that John McMillan (Acting Director, CIPL) has written '[t]he most authoritative analysis of the sorry story of the Federal Court's handling of refugee issues'. Kelly's article, 'Defiant court provoking political wrath' is available at <<http://www.theaustralian.news.com.au/printpage/0,5942,2767605,00.html>>.

John has been co-organiser of the National Lecture Series on administrative law being organised by the Australian Institute of Administrative Law. The lectures are to be delivered by Sir Anthony Mason, in Perth on 19 September, Canberra on 3 October, and Sydney on 21 November 2001.

### **Adrienne Stone**

Adrienne's article 'Rushing to define the rules would be the wrong of rights', *The Sydney Morning Herald*, 24 July 2001, says that: 'A bill of rights will not provide instant solutions for problems of justice'. Read this article <<http://www.smh.com.au/news/0107/24/opinion/opinion4.html>>

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## Staff and members' publications

*Please contact CIPL members directly for further information on their publications*

### **Hilary Charlesworth**

The text of the New College Lectures given in October 2000 will be published shortly by UNSW Press under the title of *Writing in Rights: Australia and Human Rights*

### **Ann Kent**

'States monitoring states: the United States, Australia and China's Human Rights, 1990-2001', (2001) 23 (3) *Human Rights Quarterly* 583-624.



**John McMillan**

'The Academic Contribution to Australian Administrative Law'  
(2001) 8 *Australian Journal of Administrative Law* 256-263.

**Pene Mathew**

Cases Report on *Islam v Secretary of State for the Home Department, Regina v Immigration Appeal Tribunal and another; Ex parte Shah, American Journal of International Law* (forthcoming, 2001).

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## Members' consultations with government

**Robin Creyke**

Administrative Review Council meetings: Melbourne 20 April 2001, followed by a visit to the Victorian Civil and Administrative Tribunal as a guest of the President, Justice Kellam; 15 June 2001, Canberra; 3 August 2001, Canberra. Each meeting has been followed by a meeting of an ARC sub-committee on judicial review (with Stephen Gageler, SC; and Wayne Martin, President of the West Australian Law Reform Commission).

Meetings of the Independent Competition and Regulatory Commission, Canberra, to finalise, *inter alia*, the report on petrol prices. Meetings have been held on 29 June, 12 July, 9 August, and 3 September, 2001.

Conducted a training session in Canberra on 18 July 2001, for the newly appointed members of the Essential Services Community Council.

Conducted a half-day training session in Sydney (with Professor Mark Aronson, UNSW) on 27 July 2001, for members of the NSW Independent Pricing Competition and Regulatory Commission (IPART). The session was followed by a second half-day session for staff of IPART on 10 August 2001.

Meeting on 29 August 2001, with Department of Veterans' Affairs to discuss development of a training package for officers of the Department.

Administrative law training for members of Office of Gene Technology Regulator, on 14 and 24 September, 2001.

## ANU Law School Graduate Reports for Duty before Justice North in the *Tampa Case*

Ms Claire Mahon, freshly equipped with her ANU LLB and the experience of having taken part in the inaugural run of ANU's innovative Geneva International Organisations Summer Program, volunteered her services to assist in the Tampa litigation in Melbourne before Justice North. Claire is currently doing articles at Corrs Chambers Westgarth, and was able, with her firm's support, to participate in a private capacity in assisting with the case, including instructing counsel and attending the mediation session ordered by the Judge.

None of the lawyers involved in bringing the case against the Commonwealth were being paid and they were all giving freely of their time. The spirit of public service is obviously alive and well within the legal profession, and at all levels: from recent graduates to eminent barristers such as Dr Gavan Griffith QC. Enthusiasm and dedication are clearly not a thing of the past.

**JP Fonteyne**

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## 2001 staff and members of the Centre

### Staff

Hilary Charlesworth, *Professor and Director (on leave)*

Cathy Hutton, *Administrator*

Jenny Braid, *Publications*

### Academic Members: Public Law

Peter Bailey, *Adjunct Professor*

Peter Bayne, *Reader*

Tony Blackshield, *Adjunct Professor*

Jennifer Clarke, *Lecturer*

Michael Coper, *Professor and Dean*

Robin Creyke, *Reader*

Judith Jones, *Lecturer*

John McMillan, *Professor (Acting Director, CIPL)*

John Seymour, *Adjunct Professor*

Amelia Simpson, *Lecturer (on leave)*

Daniel Stewart, *Lecturer*

Adrienne Stone, *Senior Lecturer*

Phillipa Weeks, *Professor*

Fiona Wheeler, *Senior Lecturer*

### Academic Members: International Law

Peter Bailey, *Adjunct Professor*

Andrew Byrnes, *Professor*

J-P Fonteyne, *Senior Lecturer*

Penelope Mathew, *Senior Lecturer*

Wayne Morgan, *Senior Lecturer*

### Visiting Fellows and Scholars

Don Greig, *Emeritus Professor*

Pam O'Neil

Dennis Pearce, *Emeritus Professor*

Tom Sherman

### Australian Research Fellow

Ann Kent

### PhD Candidates

Annemarie Devereux

Zoe Pearson

Helen Watchirs

### Research Fellow

Fleur Just

### Research Assistants

Jill Caldwell

Belinda Hollway

Esther James

Dai Lee

Alex Owens

Dorothy Pawlukowski



CIPL Members

## 2001 Advisory Board

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