

# LAW Matters

NEWS FROM THE MONASH LAW SCHOOL COMMUNITY

ISSUE 1/08

## Indigenous law



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The 'Stolen Wages' issue

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take a new approach?

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The term stolen wages refers primarily to allegations of earnings withheld from Aboriginal workers throughout the twentieth century.

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**Cover image:**  
Walter Tjampitjinpa  
Pintupi c. 1912–1981  
*Water Dreaming at Kalipinyapa* 1971  
enamel paint on composition board  
61.6 x 73.2 cm  
National Gallery of Victoria, Melbourne. Purchased through The Art Foundation of Victoria with the assistance of Alcoa of Australia Limited, Governor, 1993

This artwork is reproduced with the permission of the Aboriginal Artists Agency (AAA). AAA is a non-profit organisation established in 1976 by Allen Allen & Hensley (now Allens Arthur Robinson) to collect royalty and copyright income for Indigenous artists. To date it has distributed over \$1 million directly to individual artists, in most cases working closely with Papunya Tula Artists, Alice Springs.



## Dean's message

In late March of this year the Faculty decided to move to a new law building that will be constructed on the Caulfield campus and which will be ready for occupation in about mid 2011.

More than 10,000 students have graduated from the law school at Clayton and most have fond memories of the building and the campus. The library, the Ming Wing, the barbeque area, the basement and the various nooks and crannies where legal and other matters were discussed are part of the collective memory and culture of a significant part of the Victorian legal profession.

The Clayton building is no longer able to provide for the needs of a modern law school. Designed in the early 1960s when academic and administrative staff numbers were much smaller and the student body a fraction of what it is now, the law building is now only marginally fit for purpose. More than three quarters of our teaching is carried out in other buildings such as the Rotunda and the Menzies building.

In 2007 planning for a new building at Caulfield took place with award winning architectural firm Bligh Voller Neild. With input from staff and students, a concept design has been developed for a 10-level building which will offer state of the art teaching and research facilities and congenial facilities for students and staff. A multi-level library will be at the heart of the building, which will also contain lecture theatres, seminar rooms, tutorial rooms and a new moot court room. The spaces will be flexible, adaptable and designed to encourage informal learning in a range of public and semi-private spaces. The latest teaching and information technologies will be incorporated in the design of the building.

The move to Caulfield is part of a major redevelopment of the Caulfield campus. With the introduction of a new architecture degree in the Faculty of Art and Design, the Graduate School of Business, and the Faculties of Arts, Business and Economics and Information Technology all increasing their offerings, the campus will become a major centre for professional, humanities and social science degrees. The Monash Museum of Art will also be relocating there. The main Caulfield library will soon be upgraded.

In addition, new student housing, shops, offices and other educational facilities will be developed as part of a \$300 million Monash Village project at the western end of the campus.

(See concept design picture on page 7).

The faculty was not given the option of a new building at Clayton because of the university's priorities for that campus, which lie mainly in the science and technology fields. The option of renovating the current building was also rejected because of the disruption it would cause, the high cost and limited benefit and because the limitations of its configuration would not enable us to provide sufficient teaching space within the building.

The Faculty's commitment to its undergraduate combined courses will continue. Sixty per cent of our undergraduate students are enrolled in combined degrees, the majority in Arts and Commerce. Over the next two years, the Faculty will work with students and staff to ensure that combined course students will be able to undertake their studies with the minimum of disruption and travel between campuses. The 40 per cent of students who are enrolled in single degrees will be able to study solely at the Caulfield campus.

For the foreseeable future, our highly successful graduate courses, the JD and the Masters programs, will continue to be taught at the Monash Law Chambers in Bourke Street, ensuring that part-time students in particular have ready access to our courses.

Over the next six months the planning process will move from broad concept to detailed design. It will involve consultations with academic staff, general staff, library staff and students and I welcome input from our alumni as to the form and uses of the building. For updates see the dedicated web pages at [www.law.monash.edu.au/caulfield/index.html](http://www.law.monash.edu.au/caulfield/index.html).

In this edition of *Law Matters* we focus on Indigenous Law with alumnus Peter Seidel writing an article for us on Land Justice. In addition, Stephen Gray who worked in the Northern Territory for 14 years and joined the faculty in 2007 has written our feature article on the 'stolen wages' issue.

We also provide an update on the many recent activities of the Law School and our alumni as well as extend an invitation to the Monash Great Law Week debate on Wednesday 14 May and the Costello Lecture on Thursday 19 June.

**Professor Arie Freiberg**  
Dean, Monash Law School

## DIARY DATES: 2008

### 12–18 May

Law Week  
[www.victorialaw.org.au/lawweek/](http://www.victorialaw.org.au/lawweek/)

### 14 May Great Law Week Debate

What do you mean you don't know Bradman's test average?  
**Migrants need to assimilate into Australian culture.**  
[marketing@law.monash.law.edu.au](mailto:marketing@law.monash.law.edu.au)

### 14 May

Restorative Justice Conference: Bringing Justice and Community Together  
[www.varj.asn.au/news/Conference 2008.htm](http://www.varj.asn.au/news/Conference%2008.htm)

### 20 May & 8 October

Monash Law Postgraduate Information Evening  
[www.law.monash.edu.au/postgraduate/info-sessions.html](http://www.law.monash.edu.au/postgraduate/info-sessions.html)

### 29 & 30 May

Best Practices for Refuges Status Determination: Principals and Standards for State Responsibility  
Monash University Prato Centre, Italy  
[info@conorg.com.au](mailto:info@conorg.com.au)

### 19 June

Costello Lecture – Social Justice and Climate Change  
[marketing@law.monash.law.edu.au](mailto:marketing@law.monash.law.edu.au)

### 25 June

Seminar – Law and Regulation of Virtual Worlds  
[www.law.monash.edu.au/regstudies/](http://www.law.monash.edu.au/regstudies/)

### 20 August & 1 October

Monash Law JD (Juris Doctor) Information Session  
[www.law.monash.edu.au/jd/information-sessions.html](http://www.law.monash.edu.au/jd/information-sessions.html)

# Tinkering around the edges no solution to land rights



By Peter Seidel, Partner, Arnold Bloch Liebler

In turning the sentiment of Australia's long awaited 'sorry day' into action, Victoria still has much to do to restore land justice to Victoria's Indigenous people.

The final report from Victorian Environmental Assessment Council (VEAC) into the River Red Gum Forests Investigation due for release at the end of July may just be the turning point for true land rights in Victoria.

But it will need real legislative change and not just tinkering around the edges. Legislation must be designed around Indigenous interests, and shared management frameworks, rather than treating Indigenous peoples as mere stakeholders and inserting mechanisms into legislation that is not purpose built for such frameworks. The essence of traditional owner interests – the ability to continue to enjoy and protect the natural and cultural resources of their country as an interest – needs to be secured in specific legislation.

The River Red Gum Investigation began in April 2005. Its purpose is to provide advice to the Victorian Government about the conservation, protection and ecologically sustainable use of the public lands from Lake Hume to the South Australian border, and includes the lower reaches of the Avoca, Loddon, Campaspe, Goulburn, King, Ovens and Kiewa Rivers.

This is land that takes in much of Yorta Yorta Country and the country of other Indigenous neighbours. Over time, there have been a variety of attempts and methods of including the Yorta Yorta peoples in the joint management of these lands and waters – for example, through the Yorta Yorta Cooperative Management Agreement (YYCMA).

The VEAC investigation is an opportunity for the Victorian Government to create the world's largest River Red Gum national park (or parks) while also protecting significant Victorian indigenous connections to country, enhancing water quality and creating new tourism opportunities for regional Victoria, through shared management.

Public land is currently managed under a number of different statutes in Victoria, including (but not limited to) the *Land Act*, the *Crown Land (Reserves) Act*, the *Conservation, Forests and Lands Act*, the *Forests Act* and the *Wildlife Act*.

There is little coherence and consistency in the scope allowed under these statutes for substantive traditional owner involvement in public land and water management. Attempting to provide for Indigenous participation in public land management by amending each of these Acts would create a mélange of regulations instead of a consistent, efficient and streamlined legislative framework.

The 1996 amendments to the *Parks and Wildlife Act 1978* (NSW) is an example of a relatively cumbersome means of inserting an Indigenous land rights regime into an already existing Act. By the 1996 amendments, provision was made for national parks to come under joint-management arrangements.

The current level of protection afforded to Indigenous cultural heritage interests in NSW under that regime remains inadequate.

Closer to home, Part IIA of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) is another example. In 1987 the Commonwealth inserted into this Commonwealth legislation Part IIA, which applies only to Victoria. The purpose then was to bring seminal cultural heritage cum quasi land rights legislation into Victoria through the back door.

Twenty years on, and the regime has now been dismantled. The Victorian government recently introduced the *Aboriginal Heritage Act* to replace Part



**William Barak**  
Wurundjeri c.1824–1903  
*Untitled (Ceremony)* 1900  
earth pigments,  
watercolour and pencil  
on paper  
50.5 x 63.0 cm  
National Gallery of  
Victoria, Melbourne  
Warren Clark Bequest,  
2001

IIA – largely, it claims, to relieve some of the difficulties inherent in tinkering with 30 year old legislation. On the State's reckoning then, 'tinkering' can only lead to confusion and inconsistent application of the provisions – both new and old. The only way around this is to start from scratch – with new, purpose built legislation.

Specific legislation, complemented by serious long term resourcing at a policy level of government, would provide the ideal means for securing the spectrum of rights and interests created by the shared management of national parks.

Specific legislation could and should also integrate and, if necessary, streamline processes under the *Native Title Act 1993* (Cth) future acts regime, *Environment Effects Act 1978* (and guidelines), the *Aboriginal Heritage Act 2006*, the *Planning and Environment Act 1987* and other natural resource legislation.

Purpose built legislation would, ideally, include provisions that promote flexibility and creativity in land and water management outcomes. New legislation may also include the processes for identifying the relevant group of traditional owners, but only if such processes are based on and intimately respect the principle of Indigenous informed consent.

Of the Yorta Yorta peoples and their country, the legislative and policy regime ought to extend current arrangements with the YYCMA, by a government commitment to long term funding of a new jointly managed national park, following handback to the Yorta Yorta peoples and subsequent leaseback of such lands and waters to the State.

The Yorta Yorta nation of peoples, and other nation groups like them, must be recognised as self determining autonomous governing bodies of peoples, making decisions based on traditional affiliations to family groups, united through language and kinship ties and governed by distinct laws and customs.

Because of the work of VEAC in this investigation and its ultimate report, Victoria is well poised to take a giant step towards substantive reconciliation with Victorian traditional owners and the achievement of a measure of land justice in Victoria. Like the apology on 13 February this year, it's been a long time coming, but it's a social and moral justice imperative.

The new reconciliation journey starts now.

*Arnold Bloch Liebler became the first Australian law firm to launch a Reconciliation Action Plan (RAP) at a ceremony at the firm's Melbourne office on 28 March. RAPs are an initiative of Reconciliation Australia, designed to build positive relationships between Indigenous and non-Indigenous people. Key features of the plan include: sharing the firm's reconciliation experience with other professional services organisations; acting as a match-maker between the firm's Indigenous and non-Indigenous clients; offering a tertiary student mentoring program and a tertiary student scholarship; and providing extensive support of Tarwiri, the Indigenous Law Students' and Lawyers' Association. More information available at [www.abl.com.au](http://www.abl.com.au)*

# Australia Day Honours

### Grahame Leonard

Monash University congratulates Mr **Grahame Leonard** (LLB 1995, BA(Hons) 1996) who was awarded a Member of the Order of Australia on Australia Day for service to the community as an executive member of a range of peak Jewish organisations.

Grahame is a Board Member of Monash University's Foundation for Jewish Studies, and lectures part time at the Monash Faculty of Law.

# Judicial appointments

### Supreme Court of Victoria

The Honourable **Justice Mark Weinberg** (BA 1970/LLB 1971), will join the Court of Appeal after nearly 10 years as a Federal Court Judge.

Justice Weinberg, who graduated from Monash Law School (LLB) in 1971 after completing a Bachelor of Arts in 1970, served as the Chief Justice of the Supreme Court of Norfolk Island and is the former Dean of the University of Melbourne Law School. He is widely respected as one of Australia's best judges.

### Supreme Court of Victoria

The Honourable **Justice James Judd** (BJuris 1972/LLB 1978) was appointed to the bench of the Supreme Court of Victoria.

Justice Judd was senior legal counsel assisting the Longford Royal Commission into the gas explosion in 1998. In the early 1990s he appeared for state government agencies in the WA Inc Royal Commission and in 2006 represented the Australian Wheat Board before Commissioner Terence Cole. He joined the Bar in 1981 and was appointed a Queen's Counsel in 1996.

# Justice Maxwell visits Faculty

**Justice Chris Maxwell**, President of the Court of Appeal, visited Monash Law Faculty on Thursday 6 March to launch the 2008 Law Faculty Seminars Program and spoke on the topic of *Statutory Interpretation Matters: How should it be taught?* Pictured from L-R are Professor H P Lee (Deputy Dean), Associate Professor Moira Patterson, the Hon. Justice Maxwell and Professor Marilyn Pittard (Associate Dean – Research).

# Water water everywhere

Fifth year Arts/Law student Anna Landau recently travelled to the Middle East to look at an issue close to home – water management. Her visit was made possible through the Monash Law Faculty internship program which has developed arrangements with 11 organisations – mostly international – to offer unique opportunities for law students at Monash. The Ecopeace/Friends of the Earth Middle East Internship is offered to one student each year who has the chance to work with the largest grassroots environmental organisation in the world.

Joining forces with Friends of the Earth Middle East (FoEME) – a non-government organisation dedicated to environmental cross-border issues between Israel, Jordan and the Palestinian Territories – Anna helped on a new water management initiative for the region.

Despite being one of the most water scarce areas on earth, the Middle East is home to the world's most sacred river, the Jordan River. Described as a thriving water source in the Bible, in reality it is closer to a polluted, raw sewage canal. The Dead Sea, the world's saltiest water body and an important tourist attraction for the area, is also facing dire implications and is dropping one metre each year, affecting the important tourism industry of the surrounding area.

Anna's role included writing a letter requesting a look at the possible breaches posed by the World Bank's plans alongside the Israeli and Jordanian governments to build a 200km water conduit bringing sea water from the Red Sea to the Dead Sea.

The move, which means dredging the coral reefs and changing the composition of the waters of the Dead Sea itself, is believed to overlook vital alternatives, such as rejuvenating the Jordan River, the Dead Sea's natural fresh water source.

Anna also joined FoEME's international delegation from Kenya, Italy, Germany, England, the United States and Israel on a week-long tour through Jordan, Israel and the West Bank.



According to Anna, "Israel and the Middle East have been dealing with water scarcity issues for a long time now, and I believe there is much Australia can learn from this region's experiences – both good and bad. Water is precious, as we are well aware here in Australia. It is a resource everyone needs. The beauty of FoEME's work is that it is able to advance sustainable regional development and create peaceful dialogue and cooperation within the turbulent region."



# Prize ceremony recognises high achievers

Held in the ANZ Pavilion at the Victorian Arts Centre, the Monash Law School Prize Ceremony acknowledged the hard work and dedication of the Faculty's students in the 2007 academic year.

Distinguished Monash Law alumna Her Honour Judge Jennifer Coate, State Coroner addressed the 300 guests, outlining the career path that led to her studying law and her initial career through to her recent appointment as State Coroner.

Hosted by the Dean, Professor Arie Freiberg, on Wednesday 19 March, the ceremony saw the presentation of three inaugural postgraduate awards supported by The Hon. Justice Pagone in the field of tax law. These new prizes extended the recognition of outstanding academic achievement to postgraduate units.

Monash Law School would like to thank the following sponsors for their generous support of this year's Prize Ceremony:

- > Allens Arthur Robinson
- > Arnold Bloch Leibler
- > Australian Advocacy Institute
- > Australian Finance Conference
- > Blake Dawson
- > Clayton Utz
- > Corrs Chambers Westgarth
- > County Court of Victoria
- > Davies Collison Cave
- > Freehills
- > Grice and Grice
- > Hall & Wilcox
- > Herbert Geer & Rundle
- > Holding Redlich
- > Hunt & Hunt
- > International Commission of Jurists
- > Kumar Amarasekara Bequest
- > LexisNexis
- > Mallesons Stephen Jaques
- > Mason Sier Turnbull
- > Monahan + Rowell
- > National Australia Bank
- > Office of Public Prosecutions
- > Phillips Fox
- > Sir Charles Lowe Trust
- > Supreme Court of Victoria
- > Taxpayers Australia
- > The family of Dr Brian Donovan
- > The family of Ms Louise Crockett
- > The Hon. Justice Pagone
- > Thomson Legal & Regulatory
- > Transport Accident Commission



Monash Law Faculty welcomes interest from alumni, law firms and justice organisations to sponsor prizes and reward the hard work of students at the Faculty. For further information contact Ph: +61 3 9905 3389 or [marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)



# The ‘Stolen Wages’ issue: why does it still matter today?



By Mr Stephen Gray  
Lecturer

In February 2008, the new Government offered its historic Apology to the Stolen Generations. However, the Prime Minister was silent on the question of compensation for the Stolen Generations, while all major parties (including the Democrats, with the exception of Andrew Bartlett) opposed a proposal from Greens leader Bob Brown to include a promise to pay compensation within the Apology.

Should the government offer compensation as well as an apology to Indigenous victims of past government policies? Perhaps we can be guided by another issue on which the question of compensation for Aboriginal people has been examined. My research project has been to establish whether a factual and legal case exists for compensation – not for the Stolen Generation, but for Indigenous victims of the so-called ‘stolen wages’ policies.

The term ‘stolen wages’ refers primarily to allegations of earnings withheld from Aboriginal workers throughout the twentieth century. In various jurisdictions around Australia, money earned by Aboriginal workers was withheld and kept in government-controlled trust accounts. These trust accounts were established under ‘protective’ legislation. Their ostensible purpose was benevolent and paternalistic, being to ensure that unsophisticated or ‘uncivilised’ Aboriginal workers saved a portion of their wages. These workers and their descendants allege that governments abused their position as trustee of these accounts.

In addition, it refers to the question of under- or non-payment of wages. Often, the under or non-payment of wages was authorised by legislation. For example, in the Northern Territory, regulations under the *Aboriginals Ordinance* 1933 (NT) exempted country employers from paying wages to their Aboriginal employees where they could prove to the Chief Protector that they were maintaining those employees’ ‘relatives and dependants’. Former Aboriginal employees have also alleged that Government failed to ensure that employers of Aboriginal people fulfilled their legislative obligations, for example by allowing pastoral stations to provide rations rather than wages. Cattle stations and missions also allegedly failed to pass on social security money, which was paid to them *en masse* and with little or no concern to ensure that the moneys reached their intended beneficiaries.

The term ‘stolen wages’ also encompasses other practices which were not authorised under the laws of the time, but which government authorities allegedly allowed to prevail. Such practices include violence, the sexual exploitation of Aboriginal women and children, and exploitative and oppressive conditions including sub-standard or non-existent accommodation, clothes, food and sanitation.

The term ‘stolen wages’ refers primarily to allegations of earnings withheld from Aboriginal workers throughout the twentieth century.

In December 2006, the Senate Standing Committee on Legal and Constitutional Affairs into Indigenous stolen wages released *Unfinished Business: Indigenous Stolen Wages* (‘the Stolen Wages report’).<sup>(1)</sup> Shortly after the Report was released, a group of workers from Daguragu (Wave Hill) cattle station in the Northern Territory expressed interest in a test case to recover their stolen wages.<sup>(2)</sup> In Queensland, where the government has established a much-criticised compensation scheme,<sup>(3)</sup> workers are reported to be contemplating recourse to the courts. The Stolen Wages report found that the issue of stolen wages was likely to exist around Australia, but recommended that further research be conducted on the extent to which it exists outside Queensland and NSW.

My project has concentrated on the Northern Territory. This is because, firstly, in proportion to total population, the largest number of Indigenous people were employed there. Secondly, the Territory has been relatively little researched in comparison to Queensland and NSW. Finally, the Territory has been the focus of major recent debate including the *Little Children are Sacred* report into child sexual abuse, and the Commonwealth’s Emergency Intervention.

The project begins in 1863, the year in which South Australia theoretically assumed control of the Territory. Initially it passed no laws to regulate Aboriginal employment, and frontier conditions prevailed. In 1911 the Commonwealth took over the Territory, instituting a period of ‘protection and control’. Influenced by prevailing ideas of eugenics, officials such as Chief Protector Cecil Cook pursued policies designed to absorb the ‘half-caste’ into the European community, while allowing the ‘full-blood’ to disappear. Employers of Aboriginal workers were supposed to obtain permits, and to pay their workers, albeit at a rate less than that for Europeans. In practice workers particularly in remote areas were rarely paid.

In 1953 these racist categories were officially abolished. Most Aboriginal people – although not ‘half-castes’ – were designated with the racially neutral term ‘ward’, under the supervision of a Welfare Branch whose Director, Harry Giese, devised work programs designed to teach ‘habits of industry’. The practical operation of such programs bears an uncanny similarity to the contemporary ‘work for the dole’. Wards were not paid a full wage because they were regarded as ‘in training’ for full participation in the economy.

A feature of many of the practices of underpayment in the Northern Territory was that they were specifically sanctioned under Northern Territory law. One possible argument is that these laws were constitutionally invalid – for example, because they were in breach of implied constitutional freedoms such as those argued in one of the two major ‘stolen generation’ cases in the High Court, *Kruger and Bray*.<sup>4</sup> Alternatively, it might be contended that the laws were invalid to the extent that they were repugnant to British anti-slavery legislation applicable in Australia.<sup>5</sup>

Another argument is that governments were negligent in failing to prevent the practice of grossly underpaying Aboriginal workers, or paying them in the form of rations and ‘upkeep’, rather than in cash. Alternatively, government breached statutory duties found in the ‘protective’ legislation governing Aboriginal people to prevent such practices from occurring; or, again, the government may be liable in tort for its negligent administration of the trust fund moneys themselves.

The legal argument most frequently mentioned in connection with potential ‘stolen wages’ litigation is an argument in equity, based on breach of fiduciary duty or trust. At its narrowest, this argument is simply that government breached trust and/or fiduciary duties towards Aboriginal people whose wages it held in ‘trust’ funds under relevant ‘protective’ legislation. More broadly, and perhaps speculatively, it has been suggested that government breached fiduciary obligations when it failed to ensure that Aboriginal employees, particularly on cattle stations, were paid and treated properly.

Legal arguments for the recovery of ‘stolen wages’ – particularly those held in trust funds – have the great advantage of sitting relatively comfortably within established legal principle. Unlike the ‘stolen generation’ and land rights cases, arguments such as breach of trust or fiduciary duty do not require difficult moral and philosophical forays into the murky and often unwritten depths of Australian history. Nor do they necessarily raise cross-cultural problems of weighing Aboriginal oral evidence against written European sources. If money was placed in Aboriginal trust funds and has disappeared, it should be repaid with interest.

At the same time, the broader ‘stolen wages’ issue does raise the more difficult moral question of how Australia is to judge its past. Was ‘protective’ legislation a well-intentioned if misguided attempt to protect Aboriginal people from the worst excesses of the frontier? Or was it motivated by racist considerations such as the desire to prevent miscegenation and the belief that the Aboriginal race was soon to disappear? In the context of stolen wages, were ‘protective’ employment provisions really a means of maintaining a cheap labour force on the pastoral frontier?

Such questions are not easy to answer. The difference between the Prime Minister’s speech and that of the Opposition Leader on the day of the Apology are an illustration of this. While the Prime Minister’s speech gave dignity and weight to the suffering of Aboriginal people, the Opposition Leader emphasised the ‘good intentions’ of ‘decent Australians’ who had carried out government policies in ignorance of their long-term consequences.

Only a fuller historical – and legal – investigation of frontier policies and practices than has so far taken place can shed light on which of these approaches is closer to the truth.

#### Endnotes

<sup>1</sup> Senate Standing Committee on Legal and Constitutional Affairs, *Unfinished business: Indigenous stolen wages*, (‘Stolen Wages report’) Commonwealth of Australia, Canberra, 2006.

<sup>2</sup> They said they were “willing to testify that they were denied wages and provided with the poorest quality rations:” ABC Radio Alice Springs, ‘Indigenous Stolen Wages with Maurie Ryan’, *Barry Nicholls*, 11 December 2006, quoted in Thalia Anthony, “Unmapped Territory: Wage Compensation for Indigenous Cattle Station Workers”, (2007) 11(1) *Australian Indigenous Law Review* 4 at p.4.

<sup>3</sup> In May 2002, the Beattie Government made an offer of \$2000 for people under fifty and \$4000 for those older, with a total projected payout of \$55.4 million. Individuals accepting the offer were required to sign a letter of acceptance giving up their rights to sue the government on this issue. The offer was widely rejected by Aboriginal people, and was condemned by HREOC social justice commissioner Dr William Jonas as insultingly low. By late 2006 half of the estimated 16,400 claimants had applied for payment, and \$20 million of the \$55.4 million had been allocated: see Stuart Rintoul, “Lawsuit on Stolen Wages”, *The Australian*, 14 October 2006, and Rosalind Kidd, *Trustees on Trial: Recovering the Stolen Wages*, Aboriginal Studies Press, Canberra, 2006, p.20.

<sup>4</sup> *Kruger v The Commonwealth; Bray v The Commonwealth (Kruger and Bray)* (1997) 190 CLR 1.

<sup>5</sup> In particular, the *Abolition of Slavery Act 1833* (UK).

## Aurora Project

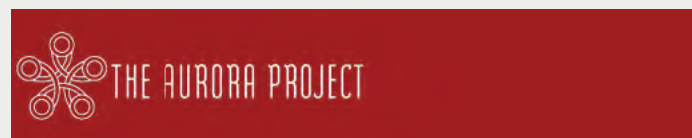
Monash Law School continues to support the Aurora Project since it was established in 2005 following the launch of the “*Report into the Professional Development Needs of Native Title Representative Body Lawyers*”, written by current Aurora Project Director Richard Potok, with Melissa Castan (Senior Lecturer, Monash Law School and Deputy Director, Castan Centre for Human Rights Law) and former Monash students Monique Sweetland and Edwina Howell, which highlighted a need for greater support for NTRB lawyers.

The Aurora Project consists of a number of programs that work with Australia’s Indigenous communities and organisations to increase prosperity through capacity building in the area of Native Title law and practice.

The principal focus of the Aurora Project is assisting the seventeen independent Native Title Representative Bodies (NTRBs) across Australia through legal and non-legal training for its staff, providing student internships in the organisations, and through training programs, resource enhancement and provision of additional important services.

In response to the original Report, the Aurora Project, in association with the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs and Rio Tinto, has been working to address issues identified by the report.

[www.auroraproject.com.au](http://www.auroraproject.com.au)



## Monash Law Prato Program, Italy

Nearly 150 law students from around the world will meet at the Monash University Prato Centre near Florence in the beautiful Tuscan region of Italy for a semester of law studies. The Prato Program, now in its seventh year, is one of the flagship programs of the Monash Law School. Taught at the University’s Prato Centre in an 18th century palazzo, the focus of the Program is International and Comparative law.

This year sees a record 98 Monash students attending, joined by more than 50 students from Osgoode Hall Law School, York University (Canada), Washington College of Law, American University, Arizona State University (United States), Université’ di Fribourg (Switzerland), Université’ Paris XI (France) and Georgian American University (Republic of Georgia).

Bringing together academics from partner universities, together with international experts, Monash offers a truly international program, with students able to enrol in any of the units on offer.

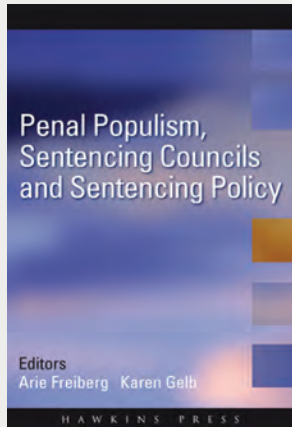
In 2008, these include Comparative Criminal Law, Comparative European Legal Systems, International Commercial Arbitration and The Law of Financial Transactions. For the first time this year, the Faculty has provided equity funding to assist students facing financial hardship to take part in this wonderful experience.

The Prato Program has been so successful that the Faculty is currently exploring the possibility of developing a similar program at the Monash Malaysia Sunway Campus in Kuala Lumpur, with a particular focus on Asian comparative law.

[www.law.monash.edu.au/internships/prato/index.html](http://www.law.monash.edu.au/internships/prato/index.html)

# New Books

<http://www.law.monash.edu.au/research/book-releases.html>



## Penal Populism, Sentencing Councils and Sentencing Policy

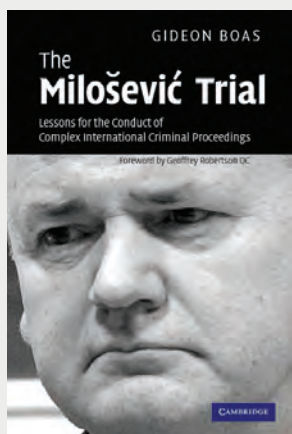
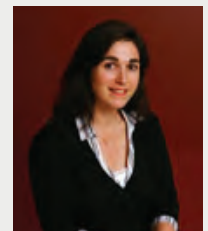
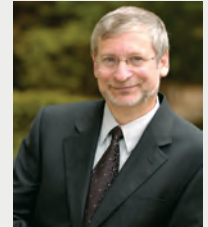
– Professor Arie Freiberg & Dr Karen Gelb

Should ‘public opinion’ be relevant to court and institutional decision-making and the political process? And what role should the public play in the development of sentencing policy?

These are some of the questions addressed in Freiberg and Gelb’s new book *Penal Populism, Sentencing Councils and Sentencing Policy*. Set against the emerging role of sentencing commissions, advisory councils and panels, the book expands and develops the idea of public attitudes to justice and the role that the ‘public’ can play in influencing policy.

Bringing together information about the new and proposed sentencing advisory bodies in many English speaking countries, Freiberg and Gelb take a practical look at real-life examples of the ways the public has a role in sentencing. They also consider recommendations made to improve public knowledge about the criminal justice system in order to counter political platforms and public outcries that are based on misinformation and misconceptions about the criminal justice system and in particular, about the nature of current sentencing practice.

Available through The Federation Press



## The Milošević Trial

### Lessons for the Conduct of Complex International Criminal Proceedings

– Dr Gideon Boas

When Slobodan Milošević died in the United Nations Detention Unit in The Hague over four years after his trial had begun, many feared – and some hoped – that international criminal justice was experiencing some sort of death itself. Yet the Milošević case, the first trial of a former head of state by a truly international criminal tribunal and one of the most complex and lengthy war crimes trials in history, stands for much in the development and the future of international criminal justice, both politically and legally.

This book, written by the senior legal advisor working for the Trial Chamber, analyses the trial to determine what lessons can be learnt that will improve the fair and expeditious conduct of complex international criminal proceedings brought against former heads of state and senior political and military officials, and develops reforms for the future achievement of best practice in international criminal law.

Available through Cambridge University Press, Australia



## Australian Administrative Law – Fundamentals, Principles and Doctrines

– Dr Matthew Groves & Professor H P Lee

Since the introduction of innovative reforms during the mid-1970s, administrative law in Australia has sustained continual growth and development. The springboard of these reforms was the establishment of the Administrative Appeals Tribunal, followed on by reforms to Ombudsman, judicial review and freedom of information legislation.

Undoubtedly these reforms have been vast and significant in Australia; impacts which form the basis of Groves and Lee’s latest book *Australian Administrative Law – Fundamentals, Principles and Doctrines*.

Focusing on the growth and development of administrative law principles, the authors take a look at the foundation of these principles through important cases and key doctrines. A useful read for students and practitioners, the book pulls together relevant case law, principles and doctrines, providing an insightful, clear guide on administrative law.

Available through Cambridge University Press, Australia



# New law school building update

The new Law School building will be part of the \$300 million Monash Village development at the western end of the Caulfield campus. Developers Equiset, part of the Grollo Group, is planning a precinct that will incorporate shops,

offices and student apartments, as well as educational facilities, learning areas to complement the more traditional classrooms and lecture theatres.

This picture is a concept drawing of the view of the new building from Dandenong Road.



## Hong Kong students fly in for IP intensive

A contingent of about 50 law students from City University of Hong Kong ('CUHK') will arrive in June for an intensive one month program of Intellectual Property Law.

In a first for the Faculty of Law, the group will spend two weeks at the Clayton campus and two weeks at the Monash Law Chambers in Bourke Street.

During their stay, Monash will coordinate additional events including social activities and visits to key sites in Melbourne's legal precinct.

The visit forms part of CUHK's Global Legal Education and Awareness Programme, and is the result of an agreement signed by the Dean during his visit to Hong Kong in October last year. It is hoped that this visit will strengthen the relationship between the two universities, with the potential for future visits and collaboration.

Inquiries: [Jonathan.Clough@law.monash.edu.au](mailto:Jonathan.Clough@law.monash.edu.au)

## International internship in Malaysia

A brand new internship opportunity for Monash Law students has been negotiated with Malaysia's largest law firm, Zaid Ibrahim and Co.

Beginning in June, the internship will be for between one and three months in Kuala Lumpur. The selected student will assist lawyers on all types of legal matters, attend in-house training and participate in due diligence/reviews of legal documentation. The University will help support the student through the Law Faculty's Student Mobility Fund.

Zaid Ibrahim and Co employs more than 130 lawyers across Malaysia with offices in Singapore, Indonesia and Thailand.

## Mooting competition

The recent Red Cross International Humanitarian Law (IHL) Moot held in Hong Kong provides an important opportunity for law students across the Asia Pacific region to participate in and raise awareness of international humanitarian law and the wider social issues.

The IHL is the body of rules which, in wartime, protects people who are not or no longer participating in the armed conflict. The annual moot provides a unique experience for lawyers of the future to grasp international humanitarian law issues in a practical sense – rather than just black letter law.

In its sixth year and with a growing number of participating universities, students come from across the Asia Pacific region, including Australia, Hong Kong, China, Singapore, Taiwan, Japan, Malaysia, Indonesia, India, Thailand, South Korea and the Philippines.

Following a win at the national Red Cross IHL Moot at the Australian Law Students' Association Conference in Canberra, Australia and Monash University were represented by students Katie O'Byrne, who completed Bachelor of Arts/ Bachelor of Laws in 2007, and Matthew Eglezos, fourth year Bachelor of Commerce/Bachelor of Laws.

The event took place on 7–8 March at Hong Kong University and the High Court of Hong Kong, and involved the 16 teams taking part in a series of simulated appeals – either from the perspective of the prosecution or defence.

Adjudicated by some of the region's most eminent legal professionals, including judges of the Hong Kong High Court, university lecturers, partners from prominent law firms, and senior diplomats, participants were queried and questioned by the judges to see how well they knew the facts and arguments surrounding their cases.

A hypothetical case, Katie and Matthew had to prepare a prosecution case based upon a fictitious armed conflict between two nations, focusing on the actions committed by a conjured guerrilla commander and the potential violation of the laws of war that may have taken place.



With Katie moving to London to work at the Law Commission for England and Wales and Matthew continuing his studies in Melbourne, the pair had to juggle extensive research and a detailed submission over many phone calls, emails and late nights (or early mornings in Katie's case). Thankfully, their prosecution case and structure was fine-tuned with the help of Dr Gideon Boas, an international criminal law expert currently working as an academic in the Law Faculty.

Although they were beaten out by the National University of Singapore and Hong Kong University, witnessing the future's great lawyers in action and being judged by some of the world's top legal professionals were invaluable experiences for both Katie and Matthew.

According to Katie; 'the moots were very dynamic and enjoyable with much rigorous questioning from the judging panels. Matthew and I were extremely impressed by the standard of advocacy skills displayed by all competitors we saw, especially as most were mooting in their second or third language.'

# Intellectual property: new postgraduate units and academic talent

A number of new units have been introduced to the postgraduate studies program, with a particular focus on intellectual property law and the intersection of other areas of law across this area.

The program in 2008 has also attracted four internationally recognised academics from overseas enhancing this specialisation with the inclusion of units that deal with international developments and advances in intellectual property law.

### Professor Rochelle Dreyfuss

Professor Rochelle Dreyfuss is the Pauline Newman Professor of Law at New York University School of Law and the Director of its Engelberg Center on Innovation Law and Policy. Among other things, Rochelle is a member of the American Law Institute, where she was co-reporter for its Project on Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes. She will teach a new unit on Current Issues in Intellectual Property. In 2008, this unit will focus upon the changes in the traditional, territorial approach to intellectual property law, with an emphasis upon private disputes.

### Professor Bernt Hugenholtz

Professor Bernt Hugenholtz is Professor of Law and Director of the Institute for Information Law at the University of Amsterdam. Bernt is a member of the Dutch Copyright Committee that advises the Minister of Justice of the Netherlands, and has acted as a consultant to the World Intellectual Property Organisation (WIPO), the European Commission, and several national governments. He will teach the new unit International Copyright Law.

### Dr Noel Byrne

Dr Noel Byrne advises several major companies and research organisations on intellectual property law, competition law and contract law and contracts management. He retired in September 2001 from Queen Mary College, University of London, where he was Senior Fellow in Intellectual Property Law at the Queen Mary Centre for Commercial Law Studies. He is the principal author of *Licensing Technology* (3rd ed, Jordans, 2005). He will teach Technology Contracts and Licensing Law.

### Professor Jenny Hamilton

Professor Jenny Hamilton is a Professor of Law at Strathclyde University, Glasgow, Scotland, specialising in financial services regulation and commercial law, including international trade. She will teach International Trade Law.

These units complement the remaining intellectual property units to be offered in 2008: Design law and practice (Warwick A Rothnie/Raymond Hind), Law of virtual worlds (Melissa De Zwart), Overview of intellectual property (Ian Horak), Patents for inventions (Ann Monotti/Raymond Hind), and Trade Mark Practice (Ian Horak).

For details about the program:  
[www.law.monash.edu.au/postgraduate](http://www.law.monash.edu.au/postgraduate)  
or email [graduate@law.monash.edu.au](mailto:graduate@law.monash.edu.au)



## Foreign investment for postgraduates

A new unit tailored to meet the increasing demand for lawyers to be tuned in to global trends and the issues around foreign investment has been introduced thanks to the arrival of visiting Assistant Professor Romesh Weeramantry from the City University of Hong Kong.

He will teach the unit *International aspects of foreign investment* (LAW 7427), which will cover traditional approaches and modern developments in foreign investment



law. The unit will look at the international legal framework of investment protection treaties and associated expropriation norms and specific international legal issues related to them.

Inquiries: [graduate@law.monash.edu.au](mailto:graduate@law.monash.edu.au)

## Azadeh Dastyari 2008 Fulbright Postgraduate Alumni (WG Walker) Scholarship



Assistant lecturer Azadeh Dastyari, who completed a LLB with First Class Honours at the University of Sydney and is currently completing a PhD at Monash Law School, has won the Fulbright Postgraduate Alumni (WG Walker) Scholarship to undertake research at Georgetown University. She is one of 24 Australians selected this year.

Aimed at promoting mutual understanding through educational exchange, the prestigious Fulbright program was created by U.S. Senator J. William Fulbright and the U.S. Government in 1946. Azadeh, who has an extensive list of honours to her name, will conduct a comparative study of U.S. and Australian immigration and refugee law and will begin with the University's Institute for the Study of International Migration from September 2008.

Azadeh's research, *Offshore Processing of Refugees: A Comparative Study of United States and Australian Law and Practice*, will study interception, detention and offshore processing of asylum seekers by Australia in Christmas Island, Nauru and Papua New Guinea and the U.S. in Guantanamo Bay, Cuba.

"This will be a comparative study of Australian and U.S. legal systems and refugee policies and their impact on the international protection regime. The research will also examine the implications of the recently signed MOU between Australia and the U.S. that means each country now has a vested interest in the other's offshore processing regime," explains Azadeh.

Applications for Fulbright Scholarships open on 1 June 2008, visit [www.fulbright.com.au](http://www.fulbright.com.au)

# Comparative Indigenous Peoples and the law

## – global perspective

Monash University's Faculty of Law now offers students a look at international indigenous laws through its unit, *Current Issues in Indigenous Rights: International, Comparative and Regional Perspectives*. The course is a unique opportunity for students to draw upon other countries' experiences from a comparative perspective.

The interactive lecture and tutorial environment allows students to see how Australia's indigenous laws compare to the rest of the world, what some countries are doing differently and learn from international indigenous laws and conducts.

What was an idea between two professors in the United States and Canada in 1999, has grown into a new, innovative way of teaching – and learning on a global scale about issues that matter locally and internationally. Students are given the opportunity to 'attend' weekly classes, compare Australia's indigenous legal issues with other countries, hear what professors of law from some of the world's top universities know and think, be at the forefront of breaking developments on global indigenous law.

All classes are run in real time from the Monash videoconferencing theatre in Clayton providing the ability for participants to interact via the internet videoconferencing facility.

With a growing list of contributing academics, including Monash University's Senior lecturer Melissa Castan and barrister David Yarrow, and a website that is updated with all the latest international news, students participate in virtual lectures and tutorials through video conference.

Anyone interested in this (LAW 4197) subject (including postgraduate inquiries) should be directed to Melissa Castan on 03 99055303 or [Melissa.Castan@law.monash.edu.au](mailto:Melissa.Castan@law.monash.edu.au). The unit will run again in February – March 2009.

## 2008 Postgraduate Law Units: June to October

Contemplating further study in 2008 or 2009? Then start with a single unit enrolment and choose from the following subjects available from June 2008. Subjects are listed alphabetically.

LAW7339	<b>Advanced international commercial arbitration</b> Professor Jeff Waincymer	1 – 8 October <i>(Intensive)</i>	LAW7025	<b>International trade finance: law and practice</b> Dr Emmanuel Laryea	28 July – 15 September <i>(Semi-intensive)</i>
LAW7263	<b>Australian corporate law</b> Mr Scott Wotherspoon	17 July – 9 October <i>(Semester long)</i>	LAW7028	<b>International trade law</b> Professor Jenny Hamilton	13 – 17 October <i>(Intensive)</i>
LAW7212	<b>Australian legal system</b> Associate Professor Gaye Lansdell	11 July – 2 August <i>(Semi-intensive)</i>	LAW7417	<b>Law of virtual worlds</b> Dr Melissa De Zwart	17 July – 9 October <i>(Semester long)</i>
LAW7212	<b>Australian legal system (International)</b> Mr Leighton Morris	8 July – 13 August <i>(Semi-intensive)</i>	LAW7285	<b>Legal research and communication</b> Mr Leighton Morris	10 July – 7 October <i>(Semi-intensive)</i>
LAW7312	<b>Advanced negotiation and mediation skills</b> Mr Shawn Whelan	6 – 17 November <i>(Intensive)</i>	LAW7220	<b>Money laundering</b> Dr Vicky Priskich	21 – 25 July <i>(Intensive)</i>
LAW7071	<b>Commercial alternative dispute resolution</b> Associate Professor Judd Epstein	1 – 24 September <i>(Semi-intensive)</i>	LAW7037	<b>Occupational health and safety</b> Ms Joanna Betteridge	26 September – 1 October <i>(Intensive)</i>
LAW7430	<b>Corporate finance law</b> Dr Oren Bigos	3 – 8 July <i>(Intensive)</i>	LAW7223	<b>Overview of intellectual property</b> Mr Ian Horak	28 August – 2 September <i>(Intensive)</i>
LAW7031	<b>Corporate insolvency</b> Dr Oren Bigos	15 July – 7 October <i>(Semester long)</i>	LAW7026	<b>Overview of International Human Rights Law</b> Ms Kate Eastman	18 July – 8 August <i>(Semi-intensive)</i>
LAW7309	<b>Current issues in intellectual property</b> Professor Rochelle Dreyfuss	4 – 10 June <i>(Intensive)</i>	LAW7119	<b>Patents for inventions</b> Professor Ann Monotti/Mr Raymond Hind	25 – 29 August <i>(Intensive)</i>
LAW7280	<b>Cybercrime</b> Dr Jonathan Clough	15 July – 7 October <i>(Semester long)</i>	LAW7092	<b>Payment systems and banking law</b> Mr Rhys Bollen	25 – 30 September <i>(Intensive)</i>
LAW7254	<b>Design law and practice</b> Mr Warwick A Rothnie/Mr Raymond Hind	23 – 28 October <i>(Intensive)</i>	LAW7059	<b>Planning law</b> Dr Yet Bryant/Ms Jenny Moles/Mr John Rantino	18 – 23 September <i>(Intensive)</i>
LAW7019	<b>European Union law and policy</b> Professor Harri Kalimo	20 – 24 October <i>(Intensive)</i>	LAW 7338	<b>Post Work Choices Law</b> Professor Marilyn Pittard	4 – 12 September <i>(Intensive)</i>
LAW7317	<b>Evaluating what works in regulation</b> Professor Graeme Hodge	18 – 23 September <i>(Intensive)</i>	LAW7332	<b>Principles of construction law</b> Mr Greg Campbell/Mr Paul Woods	6 – 11 November <i>(Intensive)</i>
LAW7022	<b>Forensic family law</b> Dr Renata Alexander	17 July – 9 October <i>(Semester long)</i>	LAW7420	<b>Principles of Environmental law</b> Dr Yet Bryant	16 – 21 October <i>(Intensive)</i>
LAW7253	<b>Human rights in the global economy</b> Professor Sarah Joseph	7 – 16 October <i>(Intensive)</i>	LAW7207	<b>Psychiatry, psychology and law</b> Professor Bernadette McSherry	22 July – 9 September <i>(Intensive)</i>
LAW7260	<b>Indigenous rights and international law</b> Ms Melissa Castan	18 – 26 August <i>(Intensive)</i>	LAW7315	<b>Regulatory Methods</b> Professor Arie Freiberg	16 – 22 July <i>(Intensive)</i>
LAW7427	<b>International aspects of foreign investment</b> Assistant Professor J Romesh Weeramantry	14 August <i>(Intensive)</i>	LAW7122	<b>Superannuation law and practice</b> Professor Stephen Barkoczy	27 November – 4 December <i>(Intensive)</i>
LAW7426	<b>International copyright law</b> Professor Bernt Hugenholtz	24 November – 5 December <i>(Intensive)</i>	LAW7221	<b>Technology contracts and licensing law</b> Dr Noel Byrne	31 July – 6 August <i>(Intensive)</i>
LAW7068	<b>International environmental law</b> Ms Rowena Cantley-Smith	5 – 10 June <i>(Intensive)</i>	LAW7329	<b>The privatising state: reform, regulation and reinvention</b> Professor Graeme Hodge	5 August – 10 October <i>(Intensive)</i>
LAW7218	<b>International humanitarian law</b> Dr Gideon Boas	16 July – 8 October <i>(Semester long)</i>	LAW7224	<b>Trade mark practice</b> Mr Ian Horak	3 – 7 November <i>(Intensive)</i>
LAW7425	<b>International refugee law and human rights</b> Professor Susan Kneebone	14 July – 6 October <i>(Semester long)</i>			

“What do you mean you don't know Bradman's test average?”  
Immigrants need to assimilate into Australian culture.



## 2008 Great Law Week Debate

**Date:**  
Wednesday  
14 May 2008

**Time:**  
5.30 pm for 6 pm start

**Where:**  
Melbourne Exhibition and  
Convention Centre  
Auditorium (Level 2)  
2 Clarendon Street, Southbank

**RSVP:** Monday 12th May 2008

**Email:** [marketing@law.monash.edu.au](mailto:marketing@law.monash.edu.au)

**Phone:** + 61 3 9905 2630

## Monash Law School Costello Lecture Social Justice and Climate Change

Professor The Hon. John Thwaites

The Monash Law School Costello Lecture is an annual address devoted to issues of ethics and social justice.

In 2008, Professor The Hon. John Thwaites, former Victorian Deputy Premier and Minister for Environment, Water and Climate Change and Chairman of the Monash Sustainability Institute presents a public lecture on Social Justice and Climate Change

The Costello Lecture will be introduced by patron, Tim Costello, AO, CEO of World Vision Australia



**Date:** Thursday 19 June 2008

**Venue:** BMW The Edge Theatre, Federation Square  
Cnr Flinders and Swanston St, Melbourne

**Time:** 6.00 pm – 7.15 pm

**RSVP:** By Monday 16 June 2008

**Email:** [www.monash.edu.au/50years/registration](http://www.monash.edu.au/50years/registration)

**Phone:** + 61 3 9903 4802

[www.monash.edu.au/50years/](http://www.monash.edu.au/50years/)

## LAW Matters

*Law Matters* is published bi-annually and is the official newsletter for the Monash University Law School.

If you have an interesting story of something you wish to say, please contact Kate Daley on + 61 3 9905 2630 or email [Kate.Daley@law.monash.edu.au](mailto:Kate.Daley@law.monash.edu.au)

Every effort will be made to include contributions however space is limited. Please understand that items may be edited or not included.

### For additional copies

Contact Kate Daley on + 61 3 9905 2630  
or email [Kate.Daley@law.monash.edu.au](mailto:Kate.Daley@law.monash.edu.au)

### Update your contact details

Online: [www.monash.edu.au/alumni/faq/address.html](http://www.monash.edu.au/alumni/faq/address.html)

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