



UNIVERSITY OF
CANBERRA

AUSTRALIA'S CAPITAL UNIVERSITY

JUSTICE

A ONE DAY SYMPOSIUM

CONNECTIONS II

30 NOV 2012 • ANN HARDING CONFERENCE CENTRE, UNIVERSITY OF CANBERRA • 9:00AM-5:30PM





JUSTICE CONNECTIONS II SYMPOSIUM PROGRAM

There are four sessions (four themes) with three speakers and one discussant in each. The last part of each session will bring the intellectual 'threads' of session papers into a connected theme. (Note that co-authored papers may have only one presenter.)

FRIDAY 30 NOVEMBER 2012 – ANN HARDING CONFERENCE CENTRE, BUILDING 24

9.00–9.30 AM - COFFEE/TEA AND A BITE TO EAT

9.30–9.50 AM - WELCOME

- **Chief Magistrate Lorraine Walker**
(Subject to her schedule, the Chief Magistrate will also be the day-long Rapporteur)

10.00–11.15 AM - JUSTICE BEHIND THE SCENES

- **[10:00–10:15] Jess Kennedy & Prof Patricia Eastaerl AM**
- View from the Inside: *The Sexual and Violent Offences Legislation Amendment Act 2008*.

This paper is interested in how the indeterminate parts of the *Sexual and Violent Offences Legislation Amendment Act 2008* (ACT) have been interpreted and applied. Has the legislation better assisted rape victims reducing their trauma and producing better evidence? We report here on the views of a sample of judges, lawyers, victims and victim support workers in the ACT.

- **[10:20–10:35] Anthony Hopkins** - The relevance of Aboriginality in sentencing: The power and potential of pre-sentence reports.

This paper explores the way in which Aboriginality is taken into account in the sentencing process to shed light on an offender's background, reasons for offending and prospects for rehabilitation. It examines the approach taken by courts in the ACT and the impact of pre-sentence reports and pre-sentence report writers. The paper concludes that pre-sentence report writers are in a unique position to explore and illuminate the relevance of post-colonial Aboriginal Identity to the sentencing process. And, that this exploration and illumination should be undertaken in the interests of ensuring equal justice.

- **[10:40–10:55] Lorana Bartels** - *Sentencing in the ACT*.

This paper examines the operation of the *Crimes (Sentencing) Act 2005* (ACT) and the collection and dissemination of sentencing data in the ACT. It considers the Government's response to the recent review of suspended sentences, as well as the Greens' failed attempt to promote collection

and dissemination of information on how well sentences are meeting the purposes of the Act.

- **[10:55–11:15] DISCUSSANT:** Prof Rosalind Croucher, President of ALRC.

11.15 AM–11.25 AM - SHORT BREAK

11.25 AM–1.00 PM - DISCRIMINATION, WORKPLACES AND JUSTICE

- **[11:25–11:40] Keziah Judd & Prof Patricia Eastaerl AM**
- Sexual Harassment and the Public Eye – the Media Spotlight on High Profile Cases.

We look at trial by media and the relationship between the media, lawyers and the courts. The paper focuses on five high profile 2011 cases: David Jones, Clayton Utz, Rivers, IBM and Patrick Stevedores. We analyse the reporting to see how lawyers have tried to use the media and whether the coverage challenged or supported the gendered mythology surrounding sexual harassment.

- **[11:45–12:00] Skye Saunders & Prof Patricia Eastaerl AM** - 'I just think that It all Comes Down to how the Girl Behaves as to how She is Treated.' The Day-to-Day Survival of Rural Women in the Workplace.

In this paper we report on the day to day survival of sexual harassment targets in the Australian rural workplace. We explore the way that rural women perceive and react to harassing behaviour in their isolated workplaces including: their thoughts on the reactions/ responses of other women in the workplace to harassing behaviours; 'their feelings of responsibility; their minimising; and their denial. We investigate whether there are differences in 'survival' behaviours and thinking depending upon the occupation, degree of rurality, gender ratios, the age, seniority and/or education of the respondents.

- **[12:05–12:20] Amanda Alford, Legal Officer, ALRC** - Workplaces as the New Communities: Family Violence and Age Discrimination-Related Developments in a Workplace Context.



This paper examines two key emerging areas of law reform in a workplace context in light of recent work done by the Australian Law Reform Commission. First, the paper discusses family violence as a possible workplace issue, the capacity of the employment law system to identify and respond to family violence and ultimately outlines a recommended approach to reform in this area. Secondly, the paper outlines Commonwealth legal barriers to mature age people participating in the workforce with a particular focus on discrimination and employment law and discusses the policy tensions arising in the search for law reform solutions

- **[12:25–12:40] Wendy Bonython, Bruce Arnold & Tom Green** - 'Discrimination, Disclosure, and Voluntary Genetic Testing'.

The paper examines direct-to-consumer (DTC) genetic testing, privacy and anti-discrimination regimes. Cross-border marketing of low-cost genetic testing poses questions for Australian regulators, health service practitioners and consumers regarding consumer protection (eg do the tests meet expectations of quality, is there effective recourse if there are disputes), privacy (are consumers unknowingly gifting offshore entities with fundamental information about themselves and relatives) and discrimination (the 'GATTACA Problem'). The authors identify issues, discuss current/future industry practice, and critique developments such as the 2012 EU Genetic Privacy Protocol.

- **[12:40–1:00] DISCUSSANT:** Dr Helen Watchirs, OAM, ACT Human Rights Commissioner.

1.05 PM–1.40 PM - LUNCH

1.40 PM - 3.30 PM - JUSTICE, THE INDIVIDUAL AND POLICY

- **[1:40–1:55] Wendy Bonython & Sarah Ailwood** - Breastfeeding, Policy, and Discrimination.

Our paper will examine recent law reform in federal, state and territory jurisdictions prohibiting discrimination on the grounds of breastfeeding. We will particularly explore the impact of various interest groups on the development of law and policy in this field, and the legal, medical and cultural contexts of this law reform.

- **[2:00–2:15] Bruce Arnold** - 'Touch and Go: The Privacy Tort in Perspective'.

This paper critiques debate about development of an Australian 'privacy tort', recommended in a succession of law reform commission reports, resisted by the mass media as unnecessary and dangerous. The paper argues that a tort regarding serious breach of privacy is feasible and desirable. It also argues that the debate offers insights into how Australians conceptualise privacy.

- **[2:20–2:35] Wendy Kukulies-Smith & Susan Priest** - The Mount Rennie Rape Case of 1888.

This paper discusses key aspects of the much written about

Mount Rennie rape case particularly those emerging from a study of NSW archival sources. It also follows up on the paper we presented at last year's symposium about the curious case of Louisa Collins by referring once again to the jurisprudence of Justice Windeyer and the role of the NSW Governor Lord Carrington in this notorious crime.

- **[2:35–3:00] DISCUSSANT:** Prof Margaret Thornton, Professor of Law ANU.

3.00 PM–3.30 PM - AFTERNOON TEA

3.30 PM–5.30 PM - JUSTICE IN A COMPARATIVE CONTEXT

- **[3:30–3:45] Tony Krone** - Corruption and challenges to the rule of law in the Pacific.

This paper examines the connection between national economic development and the emergence of corruption as a common impediment to improving rule of law outcomes in Pacific nations. It will address the role that cultural narratives play in shaping our understanding of threats to the rule of law in the Pacific and argue for a fresh approach to justice sector assistance.

- **[3:50–4:05] Dalma Dalmeter & Thilini Perera** - Religious influences over arbitral proceedings (as a way of personalizing or maybe rather impeding justice).

As members of communities of faith often find arbitration to be a more efficient way of achieving justice than state court litigation, at the cross-road between religious norms and arbitral procedural rules interesting conflicts can arise. The paper examines the influences that religious (most particularly Islamic and Judaic) rules have over arbitral procedure and the reciprocal limitations imposed by one over the other.

- **[4:10–4:25] Bruce Arnold, Wendy Bonython & Skye Masters** - Law, Cultural Exceptionalism and Autopsies

The paper examines the operation of law regarding autopsies in Australian and other jurisdictions. It discusses questions about 'ethno-religious exemptions' in relation to adult and neonatal autopsies, such as *Evans v Northern Territory Coroner* [2011] NTSC 100, *Raymond-Hewitt v Northern Territory Coroner* [2011] NTSC 94, *Wuridjal v Hand* [2001] NTSC 99 and *Krantz v Hand* [1999] 39 NSWSC 432.

- **[4:30–4:45] Mirjana Drenovak Ivanovic** - LL.M Environmental Justice in a Comparative Context Serbia

The paper will analyse conditions for the establishment of equal protection of participants in the distribution and reduction of environmental risk. It will examine German and Great Britain law on the access to environmental information, the case law of the Court of Justice of the EU and the model of public participation in decision-making in the EU and Serbia.

- **[4:45–5:15] DISCUSSANT** - The Hon Michael Kirby AC CMG - CMG Retired High Court Judge
He will make some concluding remarks together with Lorraine Walker if her schedule permits.



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