In this issue of Law Matters, we have focused on the environment with Rowena Cantley-Smith reporting on the relationship between the environment and energy supply regulation leading up to the 13th United Nations Climate Change Conference being held in Bali this month. Also Kwame Mfodwo provides an insight into natural resources law and in particular how it relates to illegal or pirate fishing.

With the Kyoto Protocol identified by Prime Minister Kevin Rudd as one of the Federal Government’s top priorities (along with education), both Rowena and Kwame’s articles give an insight into just two of the many global environmental issues and why the development of new Australian law to support the Kyoto Protocol may be a more lengthy process than imagined.

While the focus of this edition of Law Matters is on the natural environment, I wanted to bring you up to date on the physical environment of the Law School and the work we have been undertaking over the past year. Through significant staff and student feedback we have been identifying our teaching, research and administrative needs and the facilities required to meet current and future needs. We are currently in the detailed process of developing a plan of a new Law School building layout. Once these plans are completed, the Faculty will decide whether to proceed with a new building at Caulfield.

While there is currently talk of the Rudd Government’s “Education Revolution” the Law School is experiencing a large increase in demand for both our undergraduate and postgraduate programs with a surge in Year 12 applicants for both the LLB and our double degree programs. Within the postgraduate area we have continued to increase the number of applicants through increasing the range of units offered at the city based Monash Law Chambers and further developing our range of units offered at the city based Monash School.

Finally, this edition of Law Matters contains a list of postgraduate units on offer in early 2008 should you wish to undertake any further professional development opportunities with Monash Law School.

I wish you a safe and enjoyable break over the New Year.

Professor Arie Freiberg
Dean, Monash Law School

DIARY DATES:
Throughout 2008
Monash Law School will present the ‘Professorial Lecture Series’.
marketing@law.monash.edu.au

February
Postgraduate units commence
For information visit www.law.monash.edu.au/postgraduate
Or email graduate@law.monash.edu.au
19 March
Law School Prizes Ceremony
marketing@law.monash.edu.au

12-18 May
Law Week
www.victorialaw.org.au/lawweek/

14 May
Great Law Week Debate
marketing@law.monash.edu.au

June
Costello Lecture
marketing@law.monash.edu.au
Pirate fishing is the common term for what is officially known as illegal, unreported and unregulated (IUU) fishing. Greenpeace estimates it is worth between $4 to $9 billion a year and accounts for about 20 per cent of the world’s total fish catch. One Monash Law School academic is working towards a solution.

Originally from Ghana, Kwame Mfodwo is an international and natural resources lawyer whose portfolio of research and policy advice work in fisheries, water and environmental matters stretches from Senegal in West Africa to Western Samoa in the South Pacific.

His work in the area of international fisheries is a field in which important international agreements have been signed by politicians, however the time has now come to enforce these new agreements. Especially as fish stocks dwindle and illegal fishermen become more organised and ruthless.

“This is proving extremely interesting because we are finding that issues of politics, economics, technology and trading networks are really more important than agreements and legal texts. That is where a law, policy and political economy focus comes in especially with issues like illegal fishing or negotiating equitable fisheries agreements” says Kwame.

Conservationists from Greenpeace say vessels from foreign nations often decimate stocks that could have been utilised by poor coastal people – hence the term “stolen”. They also complicate the management of fish stock and compound ecosystem problems.

The United Nations estimates around 75 per cent of the world’s fisheries have been fished to their limits, and West Africa’s coast is seen as a target for pirates as the region’s countries have few resources to protect marine life or enforce regulations at sea.

Kwame explains how illegal fishing has become an international exercise. “Together with colleagues in Australia and Europe, we have now established that illegal fishing in West Africa, the Indian Ocean and the South China Seas for instance, is made possible principally because legally authorised fuel tankers are able to go out to sea and refuel illegal fishing vessels. Whilst other legal fish transport vessels, called reefers, meet the illegal fishers and relieve them of their illegal haul. The catch, a mixture of legally and illegally caught fish, is then “laundered” through legal ports and sold on into the market.

“The answer to this would be to control the reefers and the fuel tankers. Illegal fishing could then become more controllable, but this is an area where fisheries and shipping law overlap.”

Working with countries with limited infrastructure it is very obvious that Kwame and others researching and lobbying in this area have their work cut out for them. In Africa’s west coast alone, Greenpeace estimates illegal fishing strips about $1 billion worth of fish each year.

Kwame’s work in fisheries also includes building the capacity of developing country governments so they can negotiate financially fairer and ecologically more sustainable fisheries agreements with powerful countries like Japan, the US, the EU and China.

He explains, “Recently, I finished a two-year project in which I designed a training manual, delivered training and supplied a supporting website to help the fisheries negotiators of seven West African countries address an entire gamut of issues in their negotiations. I found it to be a useful experience as during the training workshop, the key negotiators from African countries attended and we ran negotiation simulations.

“I got to see so many different negotiating styles and also learnt a lot about the kinds of dirty tricks and high jinks that go on. One of the powerful countries even sent somebody to spy on what we were doing.”

Exchanging experiences and knowledge on how to manage water resources in a sustainable way is a developing area of international law and another area in which Kwame works. His work on water law and policy takes place through the International Water Centre in Brisbane, a joint venture between Monash, Griffith, UWA and UQ. Kwame is part of the Foundation Team contracted by AusAid to teach a Masters in Integrated Water Management to government and NGO officials from China, Vietnam, South Africa and the Pacific.

The program aims to build the capacity of future leaders in water resource management, with an emphasis on professionals working in developing countries. The program draws on the expertise of international leaders in teaching and research across a wide breadth of disciplines, taking a multi-disciplinary ‘whole-of-water-cycle’ approach. It will equip students with practical tools and skills for adopting innovative solutions to local, regional, national and international water resource issues.
Alumni highlights

Judicial appointments

Supreme Court of Victoria
The Honourable Justice Lex Lasry, (BJuris 1971/LLB 1972)

Magistrates Court of Victoria
Ms Fiona Hayes (BA/LLB 1990)

State Coroners Office
Judge Jennifer Coate (BA 1979, LLB 1984)

Alumni achievements

Jennifer Coate (BA 1979, LLB 1984) has been appointed the new State Coroner of Victoria – the first woman and first judge appointed to the position. She leaves the County Court bench and her role as the first president of the Children’s Court. Prior to her appointment as a Magistrate, Judge Coate was involved in a combination of work as a barrister, solicitor and academic.

Anita Kwong (LLM 1996) has taken up the position of CEO and Director of Programs at The College of Law Victoria. Previously, Ms Kwong was State Manager VIC/TAS at the Taxation Institute of Australia and also managed Continuing Professional Development programs at the Leo Cussen Institute.

John Lenders (LLB 1987) has become the Victorian State Treasurer after changes in Parliament this year. Mr Lenders has worked as a Labor Party official in the Victorian branch of the Australian Labor Party. A State Secretary from 1994 until the 1999 election he oversaw the administration of the Victorian Branch and was its 1999 campaign director.

Environmental law barrister Simon Molesworth QC (BA/LLB 1977), founder of Australia’s first environmental law association and previous winner of Monash’s ‘Distinguished Alumni Award’, has been appointed non-executive director of GreenEarth Energy. The firm hopes to find renewable energy through drilling into hot rocks found outside of Melbourne.

Victorian barrister Ross Ray QC (LLB 1974) has been appointed president of the Law Council of Australia (LCA) after joining the Council in 1999. Previously Mr Ray has been chair of the Victorian Bar and the Victorian Bar’s Legal Education and Training Committee and Readers Course Committee.

One of the Law School’s original students who helped establish the Springvale Monash Legal Service, Professor Neil Rees (BJuris/LLB (Hons) 1974) has become the new chair of the Victorian Law Reform Commission (VLRC). After relinquishing his career as Professor of Law at the University of Newcastle, Professor Rees returned to Victoria to work at the VLRC where he will continue to work on major pieces of legislation.

Honouring the work of Lawrie McCredie

With the Palladium at Crown providing an impressive backdrop, 200 law alumni joined current and past staff of the faculty on Wednesday 20 June to honour past staff member Lawrie McCredie and to launch the Lawrie McCredie Student Support Fund.

Alumni attending the dinner valued the chance to honour Lawrie’s service to the faculty between 1966 and 1999 as a teacher, administrator, mentor, friend and colleague to hundreds of staff and thousands of students. His reputation as a teacher and scholar in the field of wills, probate and succession was surpassed only by his popularity as the Faculty’s Sub Dean, a position he held for many years.

Dean of Monash Law School, Professor Arie Freiberg, opened the evening with a welcome address, followed by the Vice Chancellor, Professor Richard Larkins. Both acknowledged the impressive contribution Lawrie made toward the Law Faculty during his time there.

More accolades followed when Professor Richard Fox and alumnus Jack Hammond, QC described their memories of working and studying under Lawrie, with Richard peppering his speech with anecdotes from former students about the impact Lawrie had on their study. In response Lawrie provided a heartfelt speech which reminded all present as to why he is held with such respect and admiration for his relationships with, and tireless support of, students of the Law School.

To honour Lawrie’s work into the future the Law School established the Lawrie McCredie Student Support Program. The Program, which was officially launched on the night, will co-ordinate and provide services for students such as language and learning support, career advice, course and other forms of counselling, mentoring, leadership programs, pastoral care and related programs. The night’s formalities were concluded with Law School Society President Scott Samson providing a final speech on how this program will positively impact on current students.

If you would like to continue the great work of Lawrie McCredie and make a donation to the Lawrie McCredie Student Support Program, please contact Louise Zygier on louise.zygier@adm.monash.edu.au or phone 03 990 34609.

Queen’s Birthday Honours List

Monash Law School is proud to announce that Honorary Associate Lawrie McCredie CBE was awarded a Member of the Order of Australia (AM) in the General Division in the Queen’s Birthday Honours 2007.

Lawrie McCredie received the honour for his service to legal education, particularly in the areas of tertiary administration and teaching, and to the community through advocacy roles for people living with a disability.
Monash Law International

Monash Law – Preparing students for a global workforce

“As we look into the 21st century, the students who will be graduating more and more will be spending their careers in a world where national boundaries will be less and less important.”

Vice-Chancellor and President, Monash University, Professor Richard Larkins AO

Aligning with Monash’s engagement with the world, the Faculty of Law has a worldwide network of connections and study opportunities for both undergraduate and postgraduate students. Taking Canada as just one example, here are three students who have taken the opportunity to pursue a legal education well beyond their regional borders.

After seven years in the Crown Attorney’s Office in Toronto, Canada, Jill Witkin considered undertaking postgraduate study in law and decided to look further afield for an LLM that was going to build both on her current skills and provide her with an international perspective on law and procedure.

Monash University offered an LLM program which enabled her gain further knowledge in her main interests which included research on video-link testimony in trials, an area which was far more progressive in Australia than in Canada.

With a husband and two young children, the decision to study her LLM at Monash Law School in 2003 meant not only a great change for her, but also her family who relocated to Melbourne. However Jill says “The experience as a postgraduate student with Monash Law gave me more opportunities than I imagined.”

Jill was able to undertake a minor thesis on video link testimony and was able to make representations to the Victoria Law Reform Commission regarding the implementation of child abuse laws and the impact of related evidentiary provisions contained in the Criminal Code of Canada and the Canadian Evidence Act.

Jill returned to the Crown Attorney’s Office in Toronto where she continues her work as an Assistant Crown Attorney. She is now the manager of Child Abuse Prosecution.

Another Canadian making the trip to Australia is Bryan Sim. Currently studying an LLB at Monash, Bryan said one of the attractions of Monash Law’s undergraduate degree is the four years of study it takes to complete, as opposed to the eight years it would take in Canada. Having Commonwealth and Common law systems in both countries means the Australian degree from Monash can be used in Canada.

Studying Law at Monash has meant hard work for Bryan, “The workload in Law is brutal! The amount they expect you to learn is unbelievable, and those 90% exams at the end of the year are not fun”. However Bryan, who hopes to work in the United States and Canada in the future, believes his time at Monash Law School has given him the confidence and international experience to make his work aspirations possible.

Juliet Sironi is a Monash Law undergraduate student currently on exchange to Osgoode Hall in Toronto where she is finishing her sixth year of study for a Bachelor of Arts (Honours)/Bachelor of Law.

Her experience of study in Canada has been an interesting contrast to the work she’s already undertaken at Monash.

“It’s difficult for me to compare all the subjects as I’m taking a lot of electives in Canada. There are no tutorials, so study is confined to attending lectures and, of course, self-study. I have found that Monash moves more quickly, as there are tutorials, whereas at Osgoode material must be learnt in lectures and through self-study. So far I have done well in my courses. I’ll know after exams how they compare!”

Juliet has found studying law in Canada a challenge at times because of the legal terminology, differing court structure, the culture, and the methods of legal research. However overcoming these differences has given Juliet new confidence that her research and study skills are now transferable worldwide.

With employers looking for graduates who have broadened their perspective and have an understanding of the globalised world, Monash Law School is keen to continue the engagement with both international students studying at Monash and Monash students incorporating overseas study as part of their degree.

Furthering the Law School’s internationalisation

The School of Law of the City University of Hong Kong (CityU) has recently launched its ‘Global Legal Education and Awareness Program’ (G-LEAP).

As one of its first initiatives, CityU will be collaborating with Monash Law School and offering CityU students the opportunity to gain a global perspective in the study of law by spending a month studying a unit at Monash Law School.

The G-LEAP program sees globalisation as having profound implications on the future of higher education worldwide, and important consequences for legal education. Therefore, G-LEAP seeks to create a global partnership among law schools in different parts of the world with a view to developing new perspectives on legal education.

Monash Law Dean, Professor Arie Freiberg, attended the signing of the agreement with CityU in Hong Kong and said “Monash welcomes the opportunity to increase staff and student interaction which will provide both our law schools with a deeper understanding of the legal and social cultures of two different societies”.

The program will be conducted initially for two years, with the first intake of students commencing in June 2008.

Professor Freiberg and Professor Wang with the signed agreements
A climate of change for the national energy market

Rowena Cantley-Smith

Climate change will be at the forefront of the international agenda in December 2007, when world leaders meet at the 13th United Nations Climate Change Conference in Bali to discuss how to combat this global dilemma. In addition to establishing global policy, the conference is intended to lay the groundwork for a new comprehensive international agreement on combating climate change. Given that the current Kyoto Protocol ends in 2012, it is imperative that international consensus on these matters is reached as soon as possible.

Leading the calls for decisive international leadership and cooperation on climate change, Ban Ki-moon – the United Nations Secretary-General – has called for “a comprehensive agreement that tackles climate change on all fronts – including adaptation, mitigation, deforestation, clean technologies and resource mobilisation. And we have to do what we can to reach this agreement as soon as possible… Our goal must be nothing short of a real breakthrough in Bali.”

Reforming traditional fossil fuel driven energy markets will be central to the success of these global efforts to combat climate change. With current energy supply and use accounting for more than 50% of present day global greenhouse gas emissions, the relationship between the environment and energy supply and use is far from being a promising one. On 17 November 2007, the International Panel on Climate Change (IPCC) released the Synthesis Report, its fourth and final assessment report on climate change, it effects and causes. Not surprisingly, the IPCC listed human activities, particularly the increased use of fossil fuels, as the major cause of global warming. It further noted that overall global greenhouse gas emissions due to human activities have increased by 70% between 1970 and 2004, while carbon dioxide emissions have risen by around 80% over the same period. Consequently, despite international efforts to curb global warming and climate change, in the face of rapidly rising demand for fossil fuels, energy emissions continue to grow.

Within the Australian context the situation is no different to that unfolding at the international level, with energy supply and use generating more than 50% of annual greenhouse gas emissions. According to Australia’s National Greenhouse Accounts 2007 (ANGA 2007), which are undertaken annually pursuant to its international obligations as a party to the United Nations Framework Convention on Climate Change, Australia’s net emissions rose by 4.5% from 1990 to 2005. Energy sector emissions increased by a staggering 42.6% over the same period. Notably, electricity generation (stationary energy) greenhouse gas emissions are shown by ANGA 2007 to be the primary source of this dramatic rise in energy sector emissions, increasing by 50.1%. This increase is attributed primarily to Australia’s heavy reliance on fossil fuel, with coal combustion emissions increasing by 45.3% and natural gas emissions increasing by 54.8%.

Combating climate change in Australia

Despite a raft of initiatives directed towards reducing the footprint of the energy sector on the environment, the adverse environmental impact of stationary energy supply and use in Australia is significant and continues to grow. Clearly, a broader approach to policy decision making and subsequent implementation processes is needed to induce any significant abatement in emission levels. Changes need to occur on both the supply and demand side of the Australian energy market.

The domestic fuel supply mix must move away from traditional fossil fuels towards more sustainable, renewable energies. However, Australia is heavily biased towards the use of black and brown coal – around 85% – in domestic electricity generation. For this to change, a fundamental shift in energy policy must occur.

Changing the underlying fuel mix also requires a cost-effective and productive renewable energy market. Ongoing government support – through policy as well as legislative and regulatory means – for existing mechanisms, such as the Mandatory Renewable Energy Target is essential to driving uptake of renewable energy and reducing stationary energy emissions in the long term. In light of the current international calls for urgent action on climate change, the previous Federal government’s refusal to adopt its own review panel’s recommendations to increase the target and extend its life should be overturned. Doing so would align Australia’s policy on renewable energies with that undertaken in other regions such as the European Union. Notably, in March 2007, the European Council adopted a comprehensive energy action plan, Energy Policy for Europe (2007–2009), in which it embraced a binding 20% renewable energy target for the European Union.
Enhanced demand management of the energy market is also important to combating climate change. Improved end use efficiency is especially important to achieving timely reductions in greenhouse gas emissions. Australian governments have embraced a range of policy and legislative initiatives directed towards encouraging increased end-use efficiency in the national electricity market. These include the National Framework for Energy Efficiency, which sets down a number of collaborative energy efficiency measures such as Minimum Energy Performance Standards for appliances and commercial and residential buildings and the Energy Efficiency Opportunities Act 2006 (Cth).

The Energy Efficiency Opportunities Act has introduced obligations for large electricity end-users to engage in investigating efficiency opportunities in their respective industries. Large energy users are defined as those organisations which use more than 0.5 petajoules (PJ) of energy per year. In financial terms – and depending on prices – the Department of Industry, Tourism and Resources suggests that this use threshold would translate into annual energy "bills of around $1.5 million for gas, $5 million for electricity, $11 million for diesel fuel or $13 million for unleaded petrol". Consequently the use threshold ensures that the act applies to approximately 250 corporations that, as a group, account for around 60% of overall electricity end-use by businesses and 40% of total electricity end-use.

The Energy Efficiency Opportunities Act also obliges these large consumers to produce publicly available reports on the energy efficiency opportunities identified through this process. This is an important development, with large energy users being made publicly accountable for their energy use practices.

In turn, the resulting greater levels of transparency about possible unsustainable use patterns ought to lead to improved policy decision making and legislative and regulatory responses on energy efficiency.

Cheap electricity – A barrier to greenhouse gas emissions reductions

While the Energy Efficiency Opportunities Act is certainly a step in the right direction, there are several impediments to improving demand management and end use efficiency in the Australian electricity market, especially in terms of achieving any sizeable reduction in stationary energy greenhouse gas emissions.

Participation in the energy efficiency opportunities program is mandatory for large end-users. However, these corporate participants are not legally required to adopt any efficiency opportunities identified through their investigations. This apparent failure to impose a mandatory, direct obligation upon those end-users who are the major energy consumers, and therefore ultimately, collectively the most significant source of stationary energy emissions, appears to be a disappointing and unfortunate omission. More specifically, from a practical perspective, it is arguable that the absence of a mandatory obligation for large end-users to implement the various energy efficiency opportunities they identify renders this new legislative mechanism largely ineffective in terms of achieving the ultimate goal of greenhouse gas emission reductions.

On the other hand, by legislatively requiring large corporate end-users to actively engage in the process of identifying energy efficiency opportunities within their various sectors, it could reasonably be expected that there will be some level of voluntary uptake of such opportunities, which in turn will lead to more efficient use of electricity and a corresponding reduction in greenhouse gas emissions.

This necessarily requires that such measures to be cost-effective, which in turn, depends in part upon ensuring that the market provides the right pricing signals to promote such a change in behaviour.

Herein, of course, lies much of the current problem with the new Act. As prices currently stand, the provision of electricity through the national electricity market fails to internalise the environmental costs of stationary energy production. Current Australian electricity prices are artificially low, primarily because they fail to properly account for the cost of widespread environmental pollution resulting from electricity supply and use.

Paying for the environmental cost of energy

After many years of low prices, Australian consumers have become immune to the true societal and environment cost of their unsustainable energy consumption patterns. The continuing failure to include the costs of environmental externalities in electricity prices presents a serious threat to enhanced demand management and improved end-use efficiency. Low prices also act as a barrier to changing the underlying fuel mix away from polluting fossil fuels to more sustainable renewable energies.

Given the growing dilemma of climate change, global warming and greenhouse gas emissions, it is becoming increasingly apparent that energy prices – especially electricity prices in Australia – need to increase and properly reflect the environmental costs associated with current energy supply and use. For example, in the absence of proper pricing signals, even with the strong support for improved end use energy efficiency in appliances and buildings, the demand for environmentally unfriendly appliances such as air-conditioners has risen dramatically in recent years. Unsound consumption practices such as these should not be encouraged. Once the price of electricity properly includes the environmental externalities, then the cost of unsustainable consumption will be revealed and unfavourable behaviour changed accordingly.

In terms of large end users who account for the major part the demand side of the market, prices which reflect the true environmental costs of energy use will almost certainly drive a change in industry practices.

For instance, the cost-effectiveness of the various efficiency measures identified by large end-users involved in the Energy Efficiencies Opportunities program can be better identified once the true value of inefficient, environmentally harmful industry practices are known.

This will, in turn, enable better understanding of the real relative value of efficiency measures, making it far more likely that large end-users will automatically engage in uptake of the various efficiency opportunities they discover annually through this process. Additionally, the legislative requirement to publicly report on such findings can be disseminated within industries. Cross-sectoral exchange of information and new developments would also be facilitated by such activities, leading to a much higher likelihood that substantial emissions abatement could be achieved.

Admittedly, adjusting prices to account for environment externalities such as greenhouse gas emissions will certainly result in a price rise, and therefore potentially be highly contentious for governments.

However, as long as prices remain artificially low, consumers will have little incentive to reduce demand and improve efficient end-use behaviour. Consequently, the potential environmental rewards of demand side responses will remain untapped and greenhouse gas emissions continue to rise.

Conclusion

As the major source of greenhouse gas emissions there are compelling argument for supporting a global transformation in energy markets to ensure that current attempts to combat climate change are not thwarted by continued reliance on fossil fuels. Mandatory targets for renewable energies in energy supply fuel mixes and efficient use of energy are likely to be high on the climate change reform agenda in Bali.

Australia must not be left behind or out of this important development stage of global policy and negotiations on a new international agreement on climate change. The time for a change in Australia’s climate change policy is long overdue. If the newly elected Australian government wishes to be taken seriously by the international community in Bali, then it must embrace these measures in the domestic energy market and ensure that Australian energy policy and the ensuing legal and regulatory framework fully supports these measures.

While many still wish to debate the scientific accuracy of climate change, the naysayers are really missing the point. Regardless of whether or not the dire predictions of future global climate calamity come to fruition in full, or in part, there is little that can be said to support the unsustainable energy production and consumption patterns which characterise present day traditional global, regional and domestic energy markets. This is particularly so in light of dwindling global supplies of fossil fuels, combined with increasing worldwide demand for those same resources and increasing geo-political problems associated with securing future energy supply. More importantly, just because human beings have been wasteful and wantonly destructive of their environment in the past, does not mean that such unsustainable behaviour ought to continue, unabated or unchanged.

Further information on environment and energy papers by Rowena Cantley-Smith can be found at http://www.law.monash.edu.au/staff/rcantley-smith/index.html

A conference on the impact of the environment on the Australian Energy Market will be held in February/March 2008. For further information and registration details please contact Rowena.Cantley-Smith@law.monash.edu.au or Diana.Bowman@law.monash.edu.au.
Freedom of speech wins Law Week debate

Two teams of internationally respected Monash Law graduates debated the controversial legal issue of “freedom of speech has gone too far” at the 2007 Great Law Week Debate.

Held at the Iwaki Auditorium at the ABC Southbank Centre in May, another record attendance has seen this annual debate become a key event during Victoria’s ‘Law Week’ celebrations.

The negative team of human rights expert Lex Lasry, QC, Monash Economics/Law graduate Kyle Lane, named best speaker in the world at the 2005 University Debating Championships, and presenter of the Law Report on ABC Radio National, Damien Carrick, were declared the winner of this topical debate.

In opening for the negative team, Kylie Lane outlined that a key reason to protect freedom of speech is that with a variety of views comes better knowledge. “You need a free and open discussion to search for the truth.”

“You can’t run a society as richly diverse by silencing discussion of what is going on around us… Suppressing speech is counter productive. It won’t produce the silent, safe world that you want” argued fellow team member Damian Carrick.

The affirmative team, comprising one of Melbourne’s most respected QCs David Galbally, together with Paul Ronalds, World Vision Australia’s Director of Policy and Programs and co-founder of wishlist.com.au joined former world debating champion Meg O’Sullivan who argued strongly that freedom of speech has gone too far, particularly in relation to media coverage.

Meg O’Sullivan reminded the audience that “there are currently many and varied restrictions on speech in Australia which are sensible, appropriate and importantly supported by the community”.

This was further supported by David Galbally, QC who affirmed “we need to curtail what is disseminated and if we want to be safe and we want to live in a safe society then freedom of speech today has gone to far”.

As the closing debater for the negative team, Lex Lasry, QC refuted the claims of the affirmative team and reminded the audience that “these sort of people want to perpetuate a climate of fear” and that freedom of speech enables the “discovery of the truth and checks government abuse of power”.

The judges from Monash University, Monash Association of Debaters, the Law Institute of Victoria, and Gary Singer, Acting Lord Mayor of the Melbourne City Council, commented that they had a tough decision to make, but unanimously awarded the title to the negative team.

Once again, Will Fowles, the effervescent Monash Law graduate who became the youngest ever member of the Melbourne Cricket Club Committee, acted as moderator and added his own insight to this controversial issue.

Teaching excellence continues at Monash Law

Congratulations to Professor Stephen Barkoczzy who has been awarded the 2007 Vice-Chancellor’s Award for Teaching Excellence for his inspirational teaching in taxation law.

Monash University recognises and rewards exemplary teaching through this award each year, with nominees being submitted for their influential teaching, development of curricula, approaches to assessment and feedback, student development and scholarly activities.

Taxation law is one of the most dynamic and complex areas of law. Over the last decade, this area has undergone more changes than most areas, and Stephen has remained at the forefront of teaching in this field in both academia and the legal profession.

Stephen’s major teaching objective is to maximise the potential each student has to think independently and solve problems legally and commercially. His aim is to bridge the gap between university education and legal practice to better equip Monash law graduates for the challenges which they will face as practising lawyers and to enhance their ability to compete successfully for high quality jobs.

Emeritus Professor wins global award

Global legal scholar and former Vice-President of the International Court of Justice, Monash Law Emeritus Professor Christopher Weeramantry has won the Right Livelihood Award. This award is an alternative Nobel Prize and seeks to recognise contributions in respect of the most urgent challenges facing the world today.

Professor Weeramantry won the award for his crucial role in addressing current global challenges such as the continued threat of nuclear weapons, the protection of human rights and the protection of the environment.

Professor Weeramantry spoke at the recent Castan Centre for Human Rights’ 2007 The Year in Review – Human Rights and the Environment Conference on the most urgent human rights issues the world currently faces.
Handy guides to improve government decisions

Associate Professor Pamela O’Connor, an expert in Administrative Law, has had five guides she created for government decision makers launched by the then Attorney General, Phillip Ruddock, in Parliament House in September this year.

Recent research has revealed a high error rate in decisions made by front-line decision makers, often due to deficiencies in their understanding of the legal requirements for their decision making.

The Palmer inquiry into errors made by immigration officials highlighted the need for officials to be better informed about the legal principles relevant to exercising administrative powers.

With these concepts in mind, Professor O’Connor collaborated with the Administrative Review Council (ARC) to release five ‘Best Practice Guides’ covering all key stages in the administrative decision-making process and providing clear guidance on legal and procedural requirements for making administrative decisions.

“The guides are intended to assist primary decision makers and can be tailored to the specific needs of individual departments and agencies,” Associate Professor O’Connor said.

Several agencies, including the Australian Taxation Office, Centrelink, the Department of Defence, and the Department of Immigration and Citizenship (DIAC), have indicated they will customise the guides for their own use.

Victorian Charter of Human Rights and Responsibilities Mooting Competition

Congratulations to the Law Faculty mooting team of Kaja Strzalka, Lucinda Bradlow and Jess O’Brien who won the Victorian Charter of Human Rights and Responsibilities Mooting Competition.

To mark the introduction of the Charter of Human Rights and Responsibilities Act 2006 (Vic), the Castan Centre for Human Rights Law held a mooting competition open to law students at all Victorian universities. The competition addressed issues associated with the new Charter and gave students the opportunity to hone their skills in this important new area of law. In the coming years, the Charter will become an integral part of all Victorian lawyers’ practices, and the Castan Centre considers it essential that students are given opportunities to develop their skills in this area.

New law school building update

Over the last six months the Law Faculty, working with the university capital planning branch and its own architectural advisers, prepared a planning brief for a possible new law school building. This detailed planning process has involved significant staff and student feedback as well as site visits to other new Law School facilities in Australia and overseas.

This briefing document was sent out to tender and a short-list of four leading architectural firms was invited to undertake the next phase of the process. After a rigorous selection process involving a written submission and interviews, the firm of Bligh Voller Nield Architecture was selected. BVN will commence the process of turning the quantitative data and aspirations of the faculty contained in the briefing document, into more detailed plans for a new Law School building on the Caulfield campus. This process will involve further detailed consultations with academic and general staff, students and the Law Library.

These planning documents will form the basis upon which the Faculty will decide whether or not to proceed with the new building. This process is due to be completed early in the new year. The Faculty will not make any decision without the support of its staff, students and major stakeholders. Alumni who wish to make their views known about the possible move are welcome to contact the Dean.

Castan Centre congratulates essay competition winner

Monash Law School, in conjunction with the Castan Centre for Human Rights Law, holds an annual ‘Writing for Human Rights Essay Competition’ with winners presented each year at the Great Law Week Debate.

The competition is open to all Victorian Year 11 and 12 students. This year students were asked to write on the topic “Freedom of speech has gone too far”. Students were allowed to argue either for or against the statement or elect to examine both sides of the issue. There was a fantastic response to the competition, highlighting how interested today’s youth are in both human rights and controversial public issues.

Illustrating her ability to demonstrate the importance of freedom of speech, while understanding the difficulties this human right can impose, Erin Stewart from Greensborough College, was announced the overall winner for 2007.

In Erin’s insightful essay, she contended that free speech is vital for social progression, increased compassion and the continuation of democracy. She was presented with her $1,000 prize by Castan Centre Deputy Director, Adam McBeth.

Other place-getters and recipients of special commendation awards were also presented with their prizes on the night, including Lowther Hall who received the School’s Prize for the overall high standard of their submissions.
Top researcher wins national recognition

Monash Law School Professor Bernadette McSherry has been awarded a prestigious Federation Fellowship from the Australian Government which will assist her in exploring the role the law plays in improving access to mental health care.

The Fellowships are bestowed on Australia’s top researchers and provide researchers of international standing an opportunity to focus on their groundbreaking work full-time. Over the next five years, it will assist Professor McSherry to make advances in her project titled “Rethinking Mental Health Laws: An Integrated Approach” and will draw on the expertise of a range of mental health professionals as well as lawyers and consumers.

Upon accepting her award, Professor McSherry said “It is an incredible honour…. the Fellowship provides an opportunity to do what I’ve always wanted which is to spend a concentrated period of time on advancing mental health laws in Australia.”

The program will bring together international and Australian mental health experts from a range of disciplines as well as consumer representatives to develop model frameworks for both civil commitment laws for those with serious mental illnesses and sentencing laws for mentally ill offenders.

These model frameworks will form approaches for attaining the highest attainable standard of mental health care and will put Australia in the forefront of the developing international focus on reforming mental health laws.

Monash University Deputy Vice-Chancellor (Research), Professor Edwina Cornish, said Professor McSherry was a deserving recipient of the Federation Fellowship. “This reinforces the commitment of Monash University to top-quality research. Professor McSherry is already well-respected in her field and this funding will allow her to continue her important research,” Professor Cornish said.

The Monash JD – keeping ahead of the class

The Master of Laws (Juris Doctor) will give students increased study options and greater practical and international experience with changes to the course commencing in 2008. Recognising that law is an evolving field and that the needs of non-law graduates returning to study are diverse, these changes expand and enhance the syllabus for graduates seeking the knowledge and skills to give them an advantage in today’s employment market.

The changes to the JD curriculum taking effect in February 2008 will see new JD specific electives, together with an increased opportunity to study elective units from the extensive Monash Law masters program, greater flexibility in the timing of units and the removal of three compulsory units.

Associate Dean (Postgraduate Studies), Professor Ann Monotti says, “These positive changes will not only enhance the program for new JD students, but will also benefit any current LLM(LP) or JD students who choose to transfer into the revised course”.

Two new JD specific electives provide the opportunity to study at Monash’s international campuses in Malaysia and Prato, Italy. The Law faculty has been running a successful Prato program for a number of years which has proved popular with LLB students.

The creation of new JD units will allow students in this course to enrol in the ‘Overseas study and research’ units in conjunction with attendance at classes in Prato or Malaysia.

“JD students will be able to participate in the international programme via units with an international focus which are available only in Prato or Malaysia. These new units will improve the international relevance and content of the JD program” Course Convenor Oyiela Litaba explained.

Practical legal training provides one of the best ways to learn the skills required in law, and the creation of a new JD specific elective will enable JD students to take advantage of the clinical program run from Monash Oakleigh Legal Service. Working with real clients on real cases under the expert supervision of legal practitioners will give Monash JD students a distinct advantage by allowing them to gain a range of lawyers’ skills and develop a professional commitment and ethical standards before they work in the legal profession.

The Monash JD is taught in a small, seminar-style format at the Monash University Law Chambers in Bourke Street, Melbourne. The course encourages interactive learning and experiences. The JD students are able to study alongside qualified lawyers and other professionals when undertaking elective units from the Monash Law masters program, which leads to lively class debates amongst professionals from both law and non-law backgrounds.

The introduction of the new units and study option changes will allow students to tailor their degree and choose units that compliment their interests and professional aspirations.

For further information on the Master of Laws (Juris Doctor), please contact the Postgraduate Office at: monashjd@law.monash.edu.au, phone +61 3 9641 6220, or visit the web at www.law.monash.edu.au/jd.
2008 Postgraduate Law Units: January to May

Contemplating further study? Then start with a single unit enrolment and choose from the following subjects still available for 2008.

<table>
<thead>
<tr>
<th>Unit</th>
<th>Commencing</th>
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<tbody>
<tr>
<td>Comparative competition law</td>
<td>4 January (semi intensive)</td>
</tr>
<tr>
<td>Associate Professor John Duns</td>
<td></td>
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<tr>
<td>Principles of taxation</td>
<td>4 February (intensive)</td>
</tr>
<tr>
<td>Professor Stephen Barkoczy</td>
<td></td>
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<tr>
<td>Payment systems and banking law</td>
<td>7 February (intensive)</td>
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<tr>
<td>Mr Rhys Bollen</td>
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<tr>
<td>Corporate governance and directors’ duties</td>
<td>22 February (intensive)</td>
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<tr>
<td>Stephen Charles, QC/John D Phillips, QC</td>
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<tr>
<td>Principles of privacy and freedom of information</td>
<td>25 February (intensive)</td>
</tr>
<tr>
<td>Associate Professor Moira Paterson</td>
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<tr>
<td>Competition law</td>
<td>25 February (semester long)</td>
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<tr>
<td>Associate Professor John Duns/Professor Ann Monotti</td>
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<tr>
<td>Law of the internet</td>
<td>25 February (semester long)</td>
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<tr>
<td>Dr Melissa De Zwart</td>
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<tr>
<td>Current issues in evidence</td>
<td>26 February (semester long)</td>
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<tr>
<td>Professor Bob Williams</td>
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<tr>
<td>Overview of intellectual property</td>
<td>26 February (semi intensive)</td>
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<tr>
<td>Mr Stephen Gray</td>
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<tr>
<td>Taxation of financial arrangements</td>
<td>26 February (semi intensive)</td>
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<tr>
<td>Ms Teresa Dyson</td>
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<tr>
<td>International criminal justice</td>
<td>27 February (semester long)</td>
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<td>Dr Gideon Boas</td>
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<tr>
<td>Law of employee relations</td>
<td>27 February (semi intensive)</td>
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<tr>
<td>Mr Richard Naughton/Mr Bruce Moore</td>
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<tr>
<td>Australian corporate law</td>
<td>28 February (semester long)</td>
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<tr>
<td>Mr Scott Wotherspoon</td>
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<tr>
<td>Overview of international human rights law</td>
<td>28 February (semi intensive)</td>
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<tr>
<td>Professor Sarah Joseph</td>
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<tr>
<td>Regulatory fundamentals: concepts, constructs and context</td>
<td>12 March (intensive)</td>
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<tr>
<td>Professor Graeme Hodge/Mr Rex Deighton-Smith</td>
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<tr>
<td>Advocacy: theory and practice</td>
<td>18 March (semester long)</td>
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<tr>
<td>Professor George Hampel</td>
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<tr>
<td>International banking and finance: law and practice</td>
<td>2 April (semi intensive)</td>
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<tr>
<td>Dr Emmanuel Laryea</td>
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<tr>
<td>Death dying and the courts</td>
<td>2 April (semi intensive)</td>
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<tr>
<td>Adjunct Professor Ian Freckleton</td>
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<tr>
<td>Trade marks and commercial designations</td>
<td>3 April (semi intensive)</td>
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<tr>
<td>Associate Professor Moira Paterson</td>
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<tr>
<td>Selected topics in public international law</td>
<td>7 April (semi intensive)</td>
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<tr>
<td>Ms Rowena Cantley-Smith</td>
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<tr>
<td>Children’s rights in international and domestic law</td>
<td>8 April (intensive)</td>
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<tr>
<td>Ms Paula Gerber</td>
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<tr>
<td>Workplace anti-discrimination law</td>
<td>14 April (semi intensive)</td>
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<tr>
<td>Ms Joanna Betteridge</td>
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<td>Copyright</td>
<td>16 April (semester long)</td>
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<td>Mr David Lindsay</td>
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<tr>
<td>Local government law</td>
<td>21 April (intensive)</td>
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<tr>
<td>Mr Mark Hayes</td>
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<tr>
<td>Negotiation and mediation skills</td>
<td>1 May (intensive)</td>
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<tr>
<td>Mr Shawn Whelan</td>
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<tr>
<td>Regulating the professions</td>
<td>14 May (intensive)</td>
</tr>
<tr>
<td>Professor Graeme Hodge</td>
<td></td>
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<tr>
<td>Local government contracts and procurement</td>
<td>22 May (intensive)</td>
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<tr>
<td>Mr Mark Hayes</td>
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Monash and Maddocks helping local government managers

With local government managers increasingly called upon to regulate and make sophisticated decisions about issues facing the community today, Monash Law School has continued its commitment to providing a legal education that works closely with industry partners by joining with law firm Maddocks, to create a postgraduate course that assists local government managers develop their knowledge of local government law.

Offered for the first time in January 2007, the Graduate Diploma in Local Government Law proved to be a rewarding and intellectually stimulating course for the first intake of students. Taught at the Monash University Law Chambers in Melbourne’s CBD, the course focuses on current issues in local government law relevant to the needs of senior and middle managers employed by local government authorities, as well as catering to the needs of non-lawyers engaged or interested in the local government sector.

The coursework units of the program were the outcome of many discussions with Maddocks, who act on behalf of 72 of the 79 councils in Victoria and have a high level of understanding and depth of expertise and experience in the local government sector.

Mark Hayes, Partner in the Maddocks Public Law group and an acknowledged authority on government (including local government) law, explains, “It is important that senior officers (and, for that matter elected representatives) of councils understand the legal framework within which they operate. In particular, it is important that they understand the Administrative Law constraints on decision-making… I thought this program filled a ‘gap’ in the education opportunities offered to those in the local government sector.”  

Mark joined forces with Monash to develop the local government law program and found that it was “fulfilling to teach to a group which is motivated and interested. I feel content that we are helping improve the knowledge base of senior officers of councils”.

The course is structured to be undertaken in either full-time or part-time mode and offers a variety of units to enable professionals working in local government to supplement their existing qualifications with advanced legal training specific to their area of need. Working with a leading law firm in public law also ensures the units taught are responsive to current issues and allows students to interact with leading practitioners in local government law and policy.

The second intake for the Graduate Diploma in Local Government Law will commence in February 2008 with applications closing at the end of January 2008. For further information please visit www.law.monash.edu.au/postgraduate/ or call (03) 9641 6232.
50 Years of Monash

Monash University is 50!
On 30 May 2008, Monash will celebrate the 50th anniversary of the proclamation of the Monash Act and incorporation of Monash as a University. Fifty years of existence is a significant milestone for the University and it is a time to highlight our many achievements: the benefits of a Monash education; the role of Monash in servicing the needs of the global community; and the achievements of our alumni in prominent positions around the world.

The Jubilee Anniversary provides a valuable opportunity to showcase the research and educational achievements of the University, as well as promoting the potential of the University into the future. An additional significance of the 2008 celebration is the recognition of the 10th anniversary of the Malaysia campus, the 80th anniversary of the Gippsland campus and the 50th of Peninsula.

Some facts about your University:
• Established by the Monash University Act in 1958, the first enrolments were in 1961 with 347 students.
• In 1961, Monash was present at one campus, which was Clayton.
• Today, Monash University, having earned its place in the prestigious Go8, is now Australia's largest university with nearly 64,000 staff and students, at our six Australian campuses, and our international campuses in Malaysia and South Africa. We also have a presence in Prato, Italy.
• Since the University opened its doors, almost 210,000 alumni have been educated.

Watch the University website for 50th Anniversary activities which includes the 50th Anniversary Public Lecture Series. www.monash.edu.au

Applications for Postgraduate Law in 2008 now open.

Whatever your area of expertise, a postgraduate law degree from Monash can give you a competitive edge or help you transition into a legal career. Choose from a wide range of programs covering everything from Commercial Law to Human Rights Law, Intellectual Property and Workplace and Employment Law.

Our programs, taught in Melbourne's CBD, are aligned with industry and taught by leading academics. So if you're looking to push your career to new heights, look no further.

APPLY NOW!
www.law.monash.edu/postgraduate
Email: graduate@law.monash.edu.au
Phone: + 61 3 9641 6232

Law Matters

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

Want to include something in the May 2008 edition of Law Matters?

If you have an interesting story of something you wish to say, please contact Liz Jones on + 61 3 9905 2630 or email liz.jones@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 Liz Jones on + 61 3 9905 2630 or email liz.jones@law.monash.edu.au

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Email: infochange@adm.monash.edu.au

Faculty of Law
Monash University
Clayton, Victoria 3800, Australia