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**CDU School of Law and Menzies School of Health**

***Child Rights Forum  
Health and Law Research Workshop and  
Student Showcase***

**27<sup>th</sup> and 28<sup>th</sup> February 2017**

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***CDU School of Law would like to acknowledge that this event is held on the traditional lands of the Larrakia people, and pay respect to elders both past and present.***



***“You have come by way of the Larrakia Land. You will hear the voice of Larrakia ancestors. When you leave, the Larrakia message will stay with you.”***

**- The late Reverend Walter Fejo**

IMAGE AND QUOTE TAKEN FROM [WWW.LARRAKIA.COM](http://WWW.LARRAKIA.COM)

## Child Rights Forum

Day 1 Monday 27<sup>th</sup> February

CDU Theatre, **Orange 3**, CDU Campus  
Casuarina

2pm	<b>Welcome</b> <b>Heather D'Antoine</b> , Associate Director, Aboriginal Programs; Division Leader, Education and Research Support at Menzies School of Health
2.20pm	<b>Keynote Addresses</b> <b>Kim Mulholland – It's not just the children in detention - A Global Perspective on Child Health</b> MBBS, FRACP, MD, Professorial Fellow Group Leader, Murdoch Children's Research Institute <b>Felicity Gerry QC – An EU Project on Rights of Children with Mental Disabilities – why not the NT?</b> International QC and Senior Lecturer, School of Law, CDU
2.40pm	<b>Panel Discussion on Child Rights</b> <b>Ngaree Ah Kit</b> – Member for Karama, Northern Territory Government. <b>Nicole Butler</b> – Assistant Commissioner, Office of Children's Commissioner NT <b>Jared Sharp and Madeleine Calleja</b> , Jesuit Social Services <b>Antoinette Carroll</b> - Youth Justice Advocacy Project Coordinator, CAALAS
3.10pm	<b>Q and A</b>
6.30pm	<b>Speakers' supper</b> <b>Student presentations from</b> Gabrielle Hill (Bilata) and Emma Fuller and Rikki Hudson (IJE)

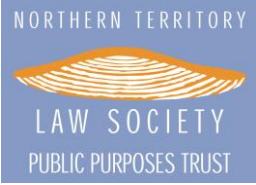

# Health and Law Research Workshop and Student Showcase

**Day 2 Tuesday 28<sup>th</sup> February 2017**

**Blue 6.1.01 CDU Campus Casuarina  
Collaborate Room in Law Central**

<p><b>9am</b></p>	<p><b>Welcome</b> <b>Heather D’Antoine</b>, Associate Director, Aboriginal Programs; Division Leader, Education and Research Support at Menzies School of Health</p>
<p><b>9.10am</b></p>	<p><b>Keynote Address – <b>Spotlight on Euthanasia</b></b>  <b>Professor Colleen Cartwright</b>, Emeritus Professor at Southern Cross University and Principal Director of Cartwright Consulting Aust Pty Ltd</p>
<p><b>10am</b></p>	<p><b>Assisted Dying Research Project Showcase</b>  <b>Felicity Gerry QC</b> – an introduction to the project  <b>Sarah Morris</b> – CDU Alumna: Should Australia Adopt the Groningen Protocol? Considering the effects of legalising assisted dying on persons with disabilities who cannot consent.  <b>Elizabeth Bartley</b> – The Role of Jurisprudence in Regulation of Assisted Dying at End of Life Stage for Palliative Care Patients and Other People</p>
<p><b>10.45am</b></p>	<p><b>Tea/Coffee</b></p>

11.15am	Prof Kim Mullholland <b>CHILD HEALTH</b>
11.45am	Paul Lawton Unconscious Bias in Indigenous Health care <b>Online from Adelaide</b>
12.15pm	Alex Clunies-Ross <b>Mental Health Recovery</b>
	<b>CDU School of Law / Menzies Collaborative Research Project – Women’s Health and Law...an update and a short video on Female Genital Mutilation and the law...</b> <a href="https://www.youtube.com/watch?v=Gbj52tPDrVg">https://www.youtube.com/watch?v=Gbj52tPDrVg</a>
<b>12.45pm</b>	<b>Lunch</b>

<p><b>1.30pm</b></p> <p><i>*The Indigenous Justice and Exoneration Project</i> in the School of Law at CDU is supported by the Law Society NT Public Purposes Trust</p> 	<p><b>Indigenous Justice and Exoneration Project Showcase*</b></p>  <p><b>INDIGENOUS JUSTICE</b></p> <ul style="list-style-type: none"> <li>• <b>Felicity Gerry QC</b> – <i>An introduction to the project</i></li> <li>• <b>Rikki Hudson and Emma Fuller</b> – <i>Problem Solving Courts.</i></li> <li>• <b>Gabrielle Hill and Kate Bremner</b> - <i>FASD: The slow erosion of traditional language and Indigenous community via the introduction of alcohol.</i></li> </ul>
<p>2pm</p>	<p><b>Rebecca McWhirter</b> Legal issues in genomic research with Indigenous communities</p>
<p>2.30pm</p>	<p><b>Seranie Gamble</b> Justice Partnership Project - adapting a Health Justice Partnership (HJP) Framework to the NT context</p>
<p>3pm</p>	<p><b>Russell Goldflam</b> Indefinite detention of persons with psychiatric and cognitive disorders <b>Online from Alice Springs</b></p>
<p>3.30pm</p>	<p>Felicity Gerry QC and Anne Hamilton Bruce <b>Consent to experimental Research in stroke</b></p>
<p><b>4pm</b></p>	<p><b>Closing remarks and Refreshments</b></p>

**Heather D'Antoine**  
**Associate Director for Aboriginal Programs**  
**and Division leader of Education and Capacity**  
**Building**  
**Menzies School of Health Research.**



**Heather D'Antoine** is the Associate Director for Aboriginal Programs and Division leader of Education and Capacity Building at Menzies School of Health Research. Heather is a [Bard woman from the West Kimberley](#). She has 25 years of experience in health services as a registered nurse and midwife and as a health service manager.

In the last 12 years, Heather has worked in health research: eight years at the Institute for Child Health Research and two years at the Menzies School of Health Research. Heather's research interest is in maternal and child health. She is particularly focused on the area of fetal alcohol spectrum disorders (FASD) and other birth defects. Heather has worked with a research team on a number of projects in this area including describing what health professionals and women know and do about alcohol and pregnancy and FASD and developing resources to support health professionals to address alcohol and pregnancy.

**Kim Mulholland**  
**MBBS, FRACP, MD, Professorial Fellow**  
**Group Leader, Murdoch Childrens Research**  
**Institute**

**It's not just the Children in Detention: A global  
Perspective on Child Health.**



**Kim Mulholland** is an Australian paediatrician, trained at Melbourne University and the Royal Children's Hospital, Melbourne. With post-graduate training in immunology, respiratory medicine and tropical medicine he joined the Medical Research Council Laboratories in 1989, where he developed a program of research covering all aspects of the problem of childhood pneumonia. This included studies of the aetiology, clinical signs, and treatment of pneumonia cases, with particular reference to very young infants and malnourished children. These studies guided WHO policy in the field and contributed to the development of the strategy of Integrated Management of Childhood Illness (IMCI), as well as guiding oxygen and antibiotic management for hospitalized children. His Hib vaccine trials were the first to demonstrate the capacity of conjugate vaccines to prevent bacterial pneumonia, and paved the way for Hib vaccine introduction in Africa. After six years in the Gambia he joined



WHO where he oversaw the development of standardized methods for the evaluation of pneumonia vaccines in developing countries. Since leaving WHO in 2000 he has continued to work in the pneumonia field with particular emphasis on vaccines. He was one of the founders of the Global Action Plan for Pneumonia, and one of the leaders of the successful Hib Initiative project that saw the introduction of Hib vaccines into the poorest countries of the world. During the same period he established leading pneumococcal microbiology and immunology laboratories at the Murdoch Childrens Research Institute (MCRI), Melbourne, along with major field research programs in Vietnam, Fiji and Mongolia, and growing programs in Indonesia and Laos. He currently holds professorial appointments at the MCRI in Melbourne and the London School of Hygiene and Tropical Medicine in UK.

**Felicity Gerry QC**  
**Queen’s Counsel London, Leeds and Darwin.**  
**Senior Lecturer, School of Law at CDU**  
**Leads the Indigenous Justice and Exoneration**  
**Project and led the Assisted Dying Research**  
**Project.**

**An EU Project on Rights of Children With**  
**Mental Disabilities – Why not the NT?**



**Felicity Gerry QC** is a Senior Lecturer in the School of Law at Charles Darwin University, where her research focusses on Women & Law, Technology & Law, and reforming Justice Systems. She leads the *Indigenous Justice and Exoneration Project*. She is on the Management Committee of *The Advocate’s Gateway* which produces toolkits for advocacy with vulnerable people. She has a particular expertise in issues relating to vulnerable witnesses and suspects and recently provided her advocacy expertise to a project providing training to lawyers across all

28 Member States of the EU on the rights of children with mental disabilities. Her Chapter on vulnerable witnesses and parties in civil proceedings in *Addressing Vulnerability in Justice Systems* (published 2016) was described as “such a broadly comprehensive chapter on the subject of vulnerability within the legal system that it could stand as a practitioners’ potted guide in itself. She is admitted in England and Wales, Australia, Hong Kong(ad hoc) and Gibraltar (ad hoc). She has been recognised in the *Legal 500* as “well respected for national and international appellate issues” and “Fearless and independent minded” and in *Chambers and Partners* as “a vastly experienced advocate noted for her experience in serious sexual cases, homicides and frauds”. She has long experience in cases involving

health and scientific issues. She has appeared in the BAFTA nominated FGM documentary *The Cruel Cut*, ABC Foreign Correspondent's documentary *Saving Mary Jane*, BBC 3 Series 'Sex on the Edge' and on all major news channels including ABC, BBC News, Sky News, Russia Today and Al Jazeera.

**Keynote Address Day 1 – Rights of Children with mental disabilities – a project across 28 EU Member States, Why not the NT?**

The United Nations estimates that there are 1 billion and rising people worldwide who have disabilities. Among these, significant proportions have mental health disabilities and/or intellectual disabilities. It is an issue which affects many families and which has been addressed in international law through many human rights mechanisms. Law and lawyers have a key role to play in advocating for the rights of persons with mental disabilities. We can identify the issue – rights violations – and often have unique access to children to having their rights removed through our work. MDAC training bridges the gap between the brilliant standards in international human rights law and the lived reality of kids on the ground. This presentation discusses the UN Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities as well as other legal standards which are tools which seem absent in the NT. Key rights include: non-discrimination, right to live in the community, right to education, right to health, freedom from abuse, right to access to justice/fair trial. Taking a rights based approach can ensure that barriers for children with disabilities are identified and rights based solutions are accessed against a background of skilled communication and cultural awareness. If suitable and reasonable adaptations are implemented for community benefit as a positive proactive approach this would avoid the current reactive commissions and disparate responses.

**Felicity will also present the paper on consent in stroke with Anne Hamilton Bruce on Day 2**  
**Felicity also researches on FGM and the law, an issue which will be presented at the workshop on Day 2 by video.**

## Ngaree Ah Kit



**Ngaree Ah Kit** is the current Member for Karama in the Northern Territory Legislative Assembly and the Assistant Minister for Suicide Prevention, Mental Health, Disability, Youth and Seniors. Ngaree is 35-year-old Aboriginal and Torres Strait Islander woman who was born and bred in the Territory and has a passion to work in positions that enable her to contribute to her community by focusing on community development, resilience, and empowerment.

Ngaree spent the past 16 years working in government and volunteering and advocating in the areas of youth leadership, Indigenous affairs, and suicide prevention.

In her capacity as Member for Karama she is concentrating on working as part of a team to develop partnerships to deliver quality and sustainable outcomes for Territorians. Her aim is to encourage and empower others to be part of the solutions that they would like to see delivered in the community and to work closely with a range of stakeholders to improve outcomes for all Territorians.

# **Jared Sharp and Madeleine Calleja**

## **Jesuit Social Services**

### **Madeleine Calleja – Research, Policy and Advocacy Officer, Jesuit Social Services**

Madeleine is newly arrived to Darwin, after working with Jesuit Social Services in Victoria for two years. Her policy work has had a particular focus on youth justice issues as well as addressing disengagement in educational settings. She has also run a Homework Club Program for students from migrant and refugee backgrounds with the Brotherhood of St Laurence and has a first class honours degree in Religion and Philosophy from Monash University. Madeleine hopes undertake further research on the relationship between educational disengagement and contact with the justice system in the future.

### **Moving to a specialist youth justice in the Northern Territory**

This paper will look at adolescent development, the age of criminal responsibility, as well as the importance of therapeutic, culturally strengthening and restorative justice responses in the Northern Territory youth justice system. This paper will examine adolescent development in the context of youth offending. Adolescent brain development impacts the nature of youth offending and sees it differing significantly from adult offending. Children from disadvantaged backgrounds are more likely to experience delays in their brain development, putting them at greater risk of involvement in the justice system.

Currently in all Australian jurisdictions children as young as ten are considered to be criminally responsible at law and are subject to criminal hearings and sanctions in Children's Courts. Yet evidence about brain development shows that the brains of children under 12 are not sufficiently developed to enable them to have the necessary skills for full criminal responsibility – and that these skills do not adequately develop in many children until around 15. For this reason, the United Nations has ruled that age 12 is an absolute minimum for jurisdictions to hold children criminally responsible;

currently breached by each Australian state and territory. This paper will discuss the reforms required raise the age of criminal responsibility in Australia and appropriate responses to children's anti-social behavior.

The Artful Dodgers Studios is all about art and music. Using art as the hook to engage 'at risk' young people, this paper will cover how Jesuit Social Services' Artful Dodgers Studios offers a flexible and welcoming space for young people to work in fully equipped art and music studios with experienced artists and musicians in order to increase social connectedness, self-esteem, foundation and employability skills and re-engage positively in the learning process. The studios consist of safe and vibrant art spaces where 'at risk' young people can develop their artistic skills, and be recognised as cultural contributors and decision makers about their arts practice.

At the same time, cultural safety for Aboriginal young people is paramount. This paper will also discuss Jared's 2012 Churchill Fellowship, which considered culturally strengthening justice initiatives in Canada, the United States and New Zealand, and how these approaches could be adapted in the NT to support Aboriginal young people in the justice system.

The paper will consider Jesuit Social Services' new youth justice group conferencing program in the Northern Territory and some case studies of conferences in the last few years. It will look at impacts of these conferences on the young people concerned, including Aboriginal young people who might have been previously considered too entrenched in the system for a restorative process to be considered. For some of these young people, participation in a conference has been the catalyst for tremendous change, both in terms of halting their offending trajectory, as well as improving their relationships with carers and family. It will look at strategies to make restorative justice conferences a fair and accessible process that Aboriginal young people can participate in, and the cultural safety planning and other supports that need to be put in place.

# Professor Colleen Cartwright

## Spotlight on Euthanasia



**Professor Colleen Cartwright** is Emeritus Professor at Southern Cross University and Principal Director of Cartwright Consulting Aust Pty Ltd. She has extensive teaching and research experience in ageing, ethics and medical decisions at the end of life, at national and international levels, with publications in major journals and a number of book chapters.

Much of her research and teaching over 25 years has involved ethical and legal issues relating to care at the end of life, including advance care planning, informed consent and capacity, adequate pain relief, what is/is not euthanasia, issues for carers and special challenges of caring for people with dementia. Professor Cartwright ran the Australian arm of an international study on Medical Decisions at the End of Life (MDEL) and conducted research on MDEL in the Northern Territory in 1996, while the Rights of the Terminally Ill Act was in place. She regularly runs workshops on these topics for health and allied professionals and provides advice to lawyers and to government departments.

## Anne Hamilton-Bruce



**Anne Hamilton-Bruce** is a Principal Medical Scientist, Co-Director, Stroke Research Programme, Co-Lead, Research and Education, Neurology, Central Adelaide Local Health Network and Affiliate Associate Professor, School of Medicine, University of Adelaide. With a neuroscience and management background, Anne undertakes and supervises research, with a focus on its translation. She also has a specific interest in other interdisciplinary research, having collaborated with allied health and nursing and more recently participating in evaluation research with the School of Animal and Veterinary Sciences at the University of Adelaide. Anne is completing her BLAWG degree at Charles Darwin University, and has used opportunities provided through her legal studies to research areas of interest for translation and publication.

### **Consent in Stroke with Felicity Gerry QC**

The process of informed consent is an integral component in the daily practice of medicine. Patients in extremis or the persons responsible for them are often asked to make complex medical decisions in relation to experimental investigational approaches which cannot be rehearsed given the nature of the condition. Documents, if used, cannot cover every scenario and time can



restrict the ability to communicate the issues. Noting patient consent is fraught. Often what is noted is informed refusal. The US Food and Drug Administration refers to 'waiver of consent' in emergency research. Approaches are not standardised and there are competing legal and ethical considerations. This paper starts with a literature review and considers the scenario of a patient with an acute major ischemic stroke in the South Australian context but also considers whether consent in medical treatment generally based on concepts of autonomy arguments is the appropriate approach in such a quick life or death situation and where research is otherwise difficult to achieve without some experimental effort to save life or some quality of life. One solution is for a donor card system in advance of treatment but more conceptually there may be less room for autonomy and more room for a general 'best interests' approach in critical care thus avoiding the provision of information regarding the presumed effects of a drug, device, or procedure when there is little time for understanding by the patient or the representative to be achieved and when the actual details remain unclear whilst also addressing the nuances of informed consent which are particularly complex in acute stroke.

**Paul Lawton**  
**MBBS, FRACP, PhD**  
**Senior Research Fellow, Menzies School of**  
**Health Research**



**Dr Paul Lawton** is a kidney specialist with over 18 years' experience working as a clinician across the Northern Territory, including four years as Director of Northern Territory Renal Services for the NT Department of Health. He is currently a Senior Research Fellow at the Menzies School of Health Research, and the recipient of nationally-competitive continuous fellowship funding from 2012 to 2021 (from the National Health and Medical Research Council and the Royal Australasian College of Physicians). His multiple award-winning clinical, health policy and research work has led to sustained improvements in survival for Indigenous patients receiving dialysis in the NT, changed the way Indigenous patients with kidney transplants are cared for nationally and shaped guidelines that have altered clinical practice for all Australians. In his current research, he addresses questions about kidney disease care disparities and outcomes among Indigenous Australians, using larger already existing datasets, including some

data linkage. How can we do better for disadvantaged populations, and why aren't we? He has been a contributor to public debate about the care of Indigenous patients with kidney disease in recent years, with numerous appearances in stories in The Guardian and on ABC radio and television locally and nationally. Dr Lawton also works clinically as a kidney specialist in Darwin, including at Aboriginal Medical Services. His main clinical interests are chronic kidney disease (particularly in Indigenous Australians) and the management of complex conditions in remote and disadvantaged environments.

*Improving the health care of Indigenous Australians: let's address unconscious bias*

PD LAWTON<sup>1</sup>, J CUNNINGHAM<sup>1</sup>, Y PARADIES<sup>2</sup>, N PRIEST<sup>3</sup>, DR WILLIAMS<sup>4</sup>

<sup>1</sup> Menzies School of Health Research, Charles Darwin University, Darwin, Northern Territory, <sup>2</sup> Alfred Deakin Institute, Deakin University, Melbourne, Victoria, <sup>3</sup> Centre for Social Research and Methods, Australian National University, Canberra, ACT, <sup>4</sup> Dana Farber/Harvard Cancer Center & Harvard School of Public Health, Harvard University, Boston, MA, USA

Recent data shows that racially-associated treatment disparities are persistent and pervasive in Australia. In 2011-12 and 2012-13, hospitalised Indigenous patients were 33% less likely to receive a procedure than non-Indigenous patients, even when age, sex, remoteness of usual residence, hospital type, state jurisdiction and diagnoses were taken into account. However, allegation that treatment decisions may have been affected by factors such as “racial profiling” in recent high-profile cases in Western Australia (Ms Dhu) and the Northern Territory (Gurrumul Yunupingu) have been vigorously rejected by senior hospital staff.

A large body of scientific evidence suggests that everyone, including Australian health professionals, is likely to be biased without knowing it. While simple antipathy against others is rare, favouritism towards those similar to ourselves is common. This has important consequences in the health system: (i) unconscious biases are more likely to have influence under conditions that

diminish cognitive capacity and are frequently found in health care settings; (ii) unconscious biases are often not aligned with stated beliefs; (iii) unconscious discrimination leads to demonstrably worse outcomes for those discriminated against; and (iv) unconscious bias can explain beliefs and behaviours that are internalised, interpersonal and institutional.

Evidence-based interventions to reduce unconscious bias exist, but can only be introduced if unconscious bias is first acknowledged. Unconscious bias can be reduced in and by individuals, through counter-stereotype imaging, individuation, or positive, non-competitive, sustained contact with others under conditions of equality. Biased decision making can be prevented through “de-biasing” organisations, by guiding decision-makers around potential biases (by blinding or transparency) or allowing observation by others from diverse backgrounds. However, some group processes can amplify bias or lead to cascade effects. Simply asking people to suppress stereotypes can make things worse, as do policies focused solely on equality without recognising differences. Voluntary measures are ineffective in preventing bias; setting targets with consequences has some empirical support.

This suggests a need to focus on institutional approaches within the Australian health system. Organisations should measure unconscious bias, introduce strategies to reduce its impact, regularly evaluate outcomes and be held accountable.

## Dr Rebekah McWhirter



**Dr Rebekah McWhirter** is a research fellow at the Centre for Law and Genetics and Menzies Institute for Medical Research (both University of Tasmania) and the Menzies School of Health Research. Her research focuses on genetics, community consultation, and the legal and ethical aspects of health and medicine, particularly with respect to Aboriginal and Torres Strait Islander health.

### Legal issues in genomic research with Indigenous communities

Early genetic research with Aboriginal and Torres Strait Islander peoples was poorly handled, and highlighted the potential for serious harm. Genomic research can present serious risks to Indigenous populations, including: racial stereotyping, cultural undermining, genetic theft, using genetics to define Aboriginality, and deflecting attention from social and environmental health determinants. In Australia, the perceived difficulties of undertaking such research has meant that Indigenous peoples have largely been excluded as research participants until very recently. Indeed, the vast majority of our knowledge of medical genetics has come from research based on participants of European descent. This has major implications for the ability of clinical genomic initiatives to meet the health needs of Indigenous patients, and risks exacerbating existing health disparities, rather than helping to close the gap.

Balancing the potential harms of exclusion against the risks of inclusion represents a major challenge for genetic research today. In navigating these issues, researchers need to be aware of a number of legal issues that have important implications for study design and research conduct. This paper outlines the regulatory landscape relating to genomic research with Indigenous communities and highlights key legal issues for researchers, including: informed consent; individual versus community consent; property law and sample ownership; and material transfer agreements and data sharing. Recommendations for practice will be made to assist researchers in increasing diversity in genetic research, and ensuring that Indigenous participants are neither unjustly excluded nor harmed by inappropriate protocols.

## Seranie Gamble



### *Justice Partnership Project - adapting a Health Justice Partnership (HJP) Framework to the NT context*

**Seranie Gamble** has been in the NT and with NTLAC since 2011 working as a solicitor at DVLS, Outreach lawyer and then Project Manager since 2013. Seranie's passion and expertise is working to improve access to justice for vulnerable people. She practices in the area of civil law and does a large amount of community engagement and legal education. Previously she worked as a human rights lawyer at the Aboriginal Legal Service of WA, and in private practice in NSW specialising in Aboriginal Land Rights and Native Title. She has also worked in government at the state and federal level as a policy advisor, researcher and legal intern. Seranie completed a Masters in International Human Rights Law at Oxford University in 2012 and a Bachelor of Law and Bachelor of Social Science at UNSW in 2006. She was awarded Junior Woman Lawyer of the Year by the WA Women's Lawyers Association in 2011 and in 2015 her project engaging with Culturally and Linguistically Diverse Communities to develop and deliver Community Legal Education was recognised as Highly Commended in the diversity category of the NT Human Rights Awards.

## Russell Goldflam



**Russell Goldflam** has been the Principal Legal Officer at the Alice Springs office of the Northern Territory Legal Aid Commission since 2001. Since 2011 he has served as President of the Criminal Lawyers Association of the Northern Territory. He is a Northern Territory Legal Aid Commissioner and Fellow of the Australian Academy of Law. As a member of the Northern Territory Law Reform Committee he contributed to its “Report on the Interaction between people with Mental Health Issues and the Criminal Justice System” (2016). Also in 2016 he gave evidence to the Senate Community Affairs References Committee Inquiry into the Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia. He frequently appears in Part IIA matters in the Supreme Court of the Northern Territory.

### *Indefinite detention of persons with psychiatric and cognitive disorders*

**Abstract:** Defence lawyers often skirt around the elephant in the room that is the apparent cognitive impairment of a client, in order to avoid the prospect of a potential lifetime of custodial supervision, and instead cop a brief sentence of imprisonment. In the Northern Territory, accused persons charged on indictment who are unfit to stand trial and/or not guilty by way of mental impairment are subject to a “Supervision Order” under Part IIA of



the *Criminal Code* (NT). Although this scheme offers more protection for mentally ill defendants than, for example the Western Australian laws which have been harshly criticised recently by the UN Committee on the Rights of Persons with Disabilities, the NT laws fall short of complying with the human rights standards embodied in international Conventions to which Australia is a party. Reform of Part IIA is needed, as is the extension of judicial powers to make therapeutic supervisory orders in the Local Court. Just as importantly, there is a pressing need to improve assessment and treatment services and pathways for persons in custody who have a cognitive impairment, whether that be from mental illness, an acquired brain injury, a congenital disability and/or substance abuse.

**Sarah Morris**  
**CDU Alumna and Volunteer in Assisted Dying**  
**Research Project**



**Sarah Morris** is a recently admitted lawyer employed in the area of civil litigation. Sarah moved to the Northern Territory 16 years ago and attended St John's College and Casuarina Senior College. She undertook her Bachelor of Laws through Charles Darwin University and graduated with Honours. She completed her Graduate Diploma in Legal Practice through Australian National University and is currently undertaking her Masters. Since she was young, Sarah has had a passion for helping people with disabilities and has been a carer for Total Recreation, The Sony Foundation and Variety the Children's Charity. In 2011 Sarah's family was blessed with her nephew, Jerome. Jerome was born with Angelman's Syndrome; a rare neurological disorder caused by a missing section of chromosome 15 causing him to have severe

intellectual and physical developmental delays. He inspired her to write this Honours research paper.

**Abstract - Should Australia Adopt the Groningen Protocol? Considering the effects of legalising assisted dying on persons with disabilities who cannot consent.**

Nancy Fitzmaurice was a 12 year-old child born with hydrocephalus, meningitis and septicaemia and was blind, could not walk, talk, eat or drink and was in need of constant care. In late 2014 her mother, Charlotte Fitzmaurice, was allowed to euthanise her on the grounds she was in too much pain and was suffering. This was despite being given morphine and ketamine to assist with the pain while she was being treated at London's Great Ormond Street Hospital. Charlotte spoke of the 'light from her [daughter's] eyes' leaving and being 'replaced with fear and a longing to be at peace.' It was the first decision involving a child who was still breathing by themselves and not on life support being allowed to die. It bears the question of whether the decision to terminate the life of a disabled person should be that of their loved ones and doctors, the courts or a combination of all. In this paper, the Dutch Groningen Protocol is analysed to consider whether this method should be adopted in Australia, and if it is, the framework in which it would possibly operate. It will be demonstrated that abuse of vulnerable persons, such as those with disabilities, is unlikely to occur in the legal framework set out in Australia, as well as the ethical dilemma in determining whose decision ultimately it will be to assess the capacity of disabled persons seeking assisted dying for themselves or a disabled relative.

**Elizabeth Bartley**  
**Student Assisted Dying Research Project**  
**CDU School of Law**



**Elizabeth Bartley** sat in the National Library, Canberra: “when I was on a family holiday and felt inspired but intimidated by so many wonderful books. Shortly afterwards we had family sadness and my school results showed.

I returned to that very library earlier this year, 40 years on. It smelt the same. I have spent my life making up for lost time and have committed my life to studying relentlessly since. I know what I want. I want to feel that I have passed on a love of learning to my son and the students that I have taught”.

**Whole Scale Change or Blending: Assisted Dying and Transforming Legal Theory in Australia’s Western style of Jurisprudence?**

The regulation of assisted dying at end of life stage for palliative care patients in Australia may pose a serious problem for the Western style of jurisprudence that underpins the Australian Legal System. Any parliament may vote in favour of assisted dying but people’s views change and going back is difficult. A major

concern is the possibility of law reform without a structure of relevant legal theory in place that supports any changes and still pursues the purpose of Western jurisprudence. This paper shows why assisted dying is an emotive and controversial issue where the current legal theories are as opposed as the argument itself. It also examines how the Western legal theories of legal positivism and natural law can be utilized but may not be the best approaches to the legal issues of assisted dying.

Additionally, the Australian Legal System can look to comparative law approaches to using legal theory in assisted dying law, should it crystalize. The role of the Director of Police Prosecutions has been shown overseas to have used a public interest test to balance legal issues in this controversial area of assisted dying. Legal issues in assisted dying have implications for family members, carers or doctors of patients in palliative care at end of life stage when the law becomes involved. The focus of the research has shown that planning around legal theory that may be wholesale change of legal theory or blending of legal theory before assisted dying is regulated, is wise.

# Gabrielle Hill

## Student Indigenous Justice and Exoneration Project

### CDU School of Law

*FASD: The slow erosion of traditional language and Indigenous community via the introduction of alcohol.*

#### *Bilata Presentation*

**Gabrielle Hill**, an undergraduate mature aged Indigenous student, comes from a diverse background of skills and life experiences. Currently in her final year of an Undergraduate Associate Degree of Law with Charles Darwin university, her qualifications include



certificates in Youth work, Social work and Indigenous Aboriginal and Torres Strait Islands Primary Health Care. Believing strongly in holistic approaches to past and contemporary issues, Gabrielle gained a wide range of experience in her

former employment role as Remote Indigenous Coordinator in Youth and Community Services, working specifically with disengaged and disadvantaged youth in the Northern Territories remote and regional communities.

Gabrielle's achievements include the successful implementation of international youth leadership volunteer program, taking NT disadvantaged youth to volunteer in impoverished regions of South East Asia. These cross-cultural exchange programs enabled the facilitation for NT youth to deliver English language and Indigenous cultural lessons to children of Vietnam and Cambodia, working alongside local people to improve local infrastructure and

the deliverance of soup kitchen programs. Leading to official recognition in its first year of service from the Vietnamese Education system, these programs hold a 98% success rate of redirecting at risk youth away from crime into education and employment. Further to this, Gabrielle took on a Youth Justice Counsellor role with wilderness programs in both the Northern Territory and Flinders Rangers, Adelaide.

After recently returning from CDU's 4<sup>th</sup> New Colombo Plan's program in Transnational Organised Crime, studying with the University of Indonesia, her study plan now extends her research into the plight of child trafficking and child soldiers. Gabrielle was honoured in 2015 to deliver her research into Foetal Alcohol Spectrum Disorder at the Charles Darwin University First Nation Peoples workshop.

An active volunteer within the NT community, Gabrielle serves in an advocacy capacity with Darwin Asylum Seeker Support Advocacy Network, Red Cross Youth Justice Advocacy volunteer and animal foster carer with Top End Rehoming. She looks forward to a future in human rights and legal advocacy.

**Abstract:** A 2011 study conducted by the University of Copenhagen, led by Professor Eske Willerslev, recognised conclusively that Australia's First Nation Indigenous Aboriginal peoples represents the oldest continual culture on the planet, dating back to as much as 75,000 years. Prior to British colonisation Australia's Indigenous people, stood strong in self-empowerment and knowledge, demonstrating throughout the land, various ritualistic culture and mystic beliefs within totemic lore, songs and symbols. Skin groups supported individual and collective traditions with self-sustaining governmental systems, upholding the dignity and endurance of a people, who continue even today, to fight for the right to uphold their way of ecological being. However, the slow erosion of traditional language and Indigenous community, was facilitated via the introduction of alcohol. A Teratogen drug, alcohol disrupts the normal cognitive development of a foetus with the potential to create anomalies to various organs, creating Foetal Alcohol Syndrome Disorder, an irreversible and incurable life time disability, becoming a factor of a child's genetic makeup. The

effects of Alcohol consumption with its direct causal linkage to FASD is an unseen enemy, slowly eroding the mind, body and spirit of those least able to fight against the resultative and accumulative effects of depression, anxiety and high risk of suicide. Many youths within the Australian justice system present with FASD, a result of in-utero alcohol consumption, displaying difficulties in taking responsibility for actions, whilst struggling to resist social and peer pressures, further leading to an inability to grasp legal processes and procedures. This therefore, provides for reduced capacity to fulfil fault elements leading to a certain miscarriage of justice along with a legal and political system that fails to recognise FASD as a disability. Statistical evidence demonstrates that an overwhelming number of youth held within the Northern Territory Department of Corrections alone are Indigenous. Youth present with a higher risk of reoffending if left with undiagnosed and untreated FASD conditions. A number of initiatives within Australia strive to educate and inform Australia's first people on the effects of alcohol consumption and drug abuse on an individual and communal level, encouraging support and practical assistance at foundational levels. Many issues facing Australia's Indigenous Australian's can be found mirrored within the Canadian First Nation people demographic. This report analysis's both systems and procedures, giving recognition to positive management schemes found within the provisions of holistic prognoses and rehabilitative options, in concerted efforts to re-empower and build the spirit of those that may have lost their way. Whilst international comparisons aid in construction of specific recommendations, it is through collaborative active engagement with government, courts and independent bodies that will facilitate honest conversation regarding the Australian societal view of alcohol consumption and acceptance, whilst solidifying the importance of introducing FASD into new legislative provisions.



# **Rikki Hudson**

## **Student Indigenous Justice and Exoneration Project**

### **CDU School of Law**

#### *Problem Solving Courts and IJEP Presentation with Emma Fuller*



**Rikki Charmaine Hudson** is a fifth-year Law and Arts (international relations/political science) student at Charles Darwin University and is concurrently completing her Graduate Diploma in Legal Practice. During her undergraduate course, she has been the recipient of two New Colombo Plan grants by the Commonwealth government in an international exchange arrangement that aimed at establishing international relations between the Commonwealth of Australia and the Indo Pacific.

In 2014, she represented Charles Darwin University and Australia at the Universitas Gadjah Mada, Yogyakarta (Indonesia) undertaking 'International Business Law' and again in 2016, was once more chosen to represent at the China University of Political Science and Law in Beijing studying 'the Chinese Legal System'.

Since 2015, Rikki has been engaged with the Australian Centre for Indigenous Knowledges & Education where she continues to mentor and tutor Indigenous law students. Rikki has also advanced her involvement within the law through several legal internships throughout the Northern Territory. In 2015, she undertook an internship at Top End Women's Legal Service where she predominantly worked on matters relating to family law, tenancy, debt and domestic violence. In 2016, Rikki was chosen to be a part of the Exoneration Project under her supervisor Felicity Gerry QC where she received gainful experience at William Forster Chambers and was exposed to indigenous legal issues and criminal law by assisting in the Exoneration Project's grounds of appeal

transactions. Rikki then undertook a five-month internship at North Australian Aboriginal Justice Agency's (NAAJA) Law and Justice Projects division. Rikki has recently completed a three-month internship at the NT Legal Aid Commission where she was predominantly involved in responding to the Royal Commission's Notices to Produce.

Upon completing her tertiary studies in the law, Rikki hopes to seek admission to practice and work as a Solicitor, particularly in relation to indigenous, family, and criminal law matters.

**Emma Fuller**  
**Student Indigenous Justice and Exoneration**  
**Project**  
**CDU School of Law**

***Problem Solving Courts and IJEP Presentation with Rikki Hudson***

**Emma Fuller** is a current CDU student in her third year of Law. With a colonial Australian heritage and a long family history in Darwin, she has a keen interest in Indigenous issues and engagement with the legal system. Emma has spent considerable time volunteering in communities throughout the Arnhem and Gulf regions, primarily in education-based and social-engagement capacities with survivors and offenders. She has been involved in working with vulnerable individuals who come into contact with the legal and health systems, from assisting in basic advocacy with professional staff to engaging with patients in specialised units; this has included volunteering with youth in mental health facilities. Emma has written and published educational materials in collaboration with key Indigenous performing artists for use with the Australian Curriculum, focusing on current issues facing Indigenous youth. Over the past six months, her work in CDU's Indigenous Justice and Exoneration Project has focused on the

interaction of Indigenous people with the Territory's court system, and developing advocacy techniques when working with people who have diverse vulnerabilities.

**Abstract:** A 2015 report from the UK Centre for Justice Innovation on criminal court reform highlighted the need for therapeutic courts in the criminal justice system. Problem Solving Courts ('PSCs') are speciality courts that explore therapeutic justice and rehabilitation as the paramount objective rather than the justice system's traditional punitive measures. Specialist streams address underlying issues and tackle the core of the offending behaviour, which has been shown to improve crime rate and reduce repeat criminal behaviour. Existing statistics indicate that punitive forms of justice contribute to higher incarceration rates and re-offending whilst PSC have been proven to dramatically reduce recidivism. The NT has not established appropriate forms of therapeutic justice and continues to lead high imprisonment and recidivism rates within Australia. The research explored the prospects of implementing PSCs within the NT, where they are required and to what extent they should be employed.

This presentation will consider the prospects of implementing PSCs in the NT criminal jurisdiction, and propose that specialist streams for Aboriginal people be introduced, and therapeutic justice streams used to address the underlying social issues which contribute significantly to crime in the NT's unique and challenging circumstance. The research findings determined that PSC for Indigenous offenders far outweigh the disadvantages as Indigenous offenders also overshadow the number of non-Indigenous offenders. These findings are of particular interest to health and legal professionals since this holistic approach encompasses mental health needs and responses to addictions, substance abuse and public health and interest issues which intersect with the legal sphere.