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Women's Energy and Climate Law Network (WECLN) Launch

Friday, 8 December 2017, Melbourne Law School, Level 2, Room 221

9:30 – 9:45 Registration and Arrival

9:45 – 10:00 Welcome and introduction - *Jacqueline Peel, University of Melbourne*

10:00 – 11:00 Roundtable Discussion

- What are the energy and/or climate law issues addressed in your work?
- What are the key challenges and opportunities for research and practice in this field?
- What is the particular role for women in addressing issues of energy and climate law?

11:00 – 11:15 Coffee Break

11.15 - 12.30 The Paris Agreement and the Future of Climate Law

Hari Osofsky (Dean, Penn State Law and School of International Affairs) in conversation with Lavanya Rajamani (Professor, Centre for Policy Research, New Delhi) and Lisa Benjamin (Assistant Professor, University of The Bahamas)

12:30 - 1:30 Lunch

1:30 – 3:00 Workshopping Energy and Climate Law Scholarship

Short presentations from scholars and practitioners, with senior colleagues acting as discussants:

- *Alexia Staker (ClientEarth)* - Director's Liability and Climate Risk under UK Law
- *Phillipa McCormack (University of Tasmania)* - Adaptation-oriented reform of conservation law and policy
- *Lisa Benjamin (University of The Bahamas)* - Renewable energy and developing countries – incentivizing community renewable energy projects and gender equality
- *Kerryn Brent (University of Tasmania)* - The no-harm rule and geoengineering: when is harm 'significant'?
- *Anita Foerster (Melbourne Law School)* - Adaptation, Disasters and Transformation

3:00 – 3.30 Coffee Break

3:30-4:30 Brainstorming WECLN's role

- How is WECLN relevant to your career path (academic, practitioner, advocacy)?
- In what ways can this network best support and facilitate your work?
- What opportunities are there for collaboration and mentoring between network members?
- Are there particular projects WECLN could work on and make a contribution to?

4.30 Close (Dinner for participants, 6pm)



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Abstracts - Workshopping Energy and Climate Law Scholarship

Director's Liability and Climate Risk under UK Law - Alexia Staker, Legal Consultant at ClientEarth

In many jurisdictions, company directors owe various duties and obligations under company and securities law, both to their company and more generally. The CCLI is examining the extent to which some of these laws (particularly directors' duties laws) in Australia, Canada, South Africa and the United Kingdom require company directors to assess, manage and report on the financial risks that climate change presents to their company, and the circumstances in which directors could be held personally liable for failing to do so. The CCLI is considering the technical legal basis for directors' potential liability, as well as practical issues, such as the factual circumstances in which liability might arise and factors that might affect the availability of legal intervention, including evidentiary and procedural barriers. The presentation to WECLN would provide an overview of CCLI's research to date in relation to UK law and, more generally, would discuss the practical application of fiduciary principles through ClientEarth's Company & Financial Project.

Adaptation-oriented reform of conservation law and policy - Philippa McCormack, PhD Candidate, Faculty of Law, University of Tasmania

Australia has an unenviable record of species extinctions, ecological fragmentation and biodiversity decline. Against that backdrop, anthropogenic climate change has emerged as a significant new threat to Australia's biodiversity. This paper will argue that the purpose of conservation laws – explicit and implicit – is to preserve the status quo. Conservation legislation and statutory instruments typically reflect a presumption that nature is 'stationary', and that biodiversity can be preserved indefinitely within historical, 'native' distributions and species compositions. This presumption is demonstrably false. Legal frameworks for conservation, and for natural resource management more broadly, must be reformed to maximise opportunities for Australia's rich biodiversity to adapt and persist in a climate changed world. This paper will synthesise recommendations from international and Australian scientific and legal scholarship for adaptation-oriented reform of conservation law and policy. It will use this synthesis to develop a climate adaptation reform agenda for Commonwealth and state conservation laws in Australia.

Renewable energy and developing countries – incentivizing community renewable energy projects and gender equality - Lisa Benjamin, Assistant Professor, University of The Bahamas

Over one billion people in the world do not have access to modern energy services. The overwhelming majority of those people live in developing countries, and over 80% live in rural areas in those countries. Rural households in developing countries are increasingly female-headed, and often lack clean cooking facilities. The majority of deaths from COPD and lung cancers attributable to solid fuel use occur in women. Energy poverty is one of the primary reasons why developing countries are reluctant to make stringent cuts in their greenhouse gas emissions. Traditional grid technology is also vulnerable to extreme events, often leading to loss of power even in communities with access to electricity. Lack of access to modern energy services affects the health and wellbeing of communities, increases disease burdens, and impedes the development trajectory of these states. Renewable energy, off-grid solar energy, and in particular community renewable energy projects, provide opportunities to expand energy into rural communities through decentralized energy systems which can provide economic benefits to communities, incentivize growth of small to medium sized businesses, and can contribute to both poverty reduction and gender equality.



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The no-harm rule and geoengineering: when is harm 'significant'? - Dr Kerry Brent, Lecturer, Faculty of Law, University of Tasmania, Australia

Stratospheric aerosol injection (SAI) geoengineering involves injecting particles into the stratosphere to reflect incoming sunlight and offset climate change. Scientists at Harvard University plan to field-test SAI for the first time in the stratosphere. The scale of this test is small and unlikely to be of international concern. However, large-scale SAI could detrimentally impact other states and the atmosphere. Under the customary international law 'no-harm' rule, states have a duty to prevent significant transboundary harm to other states and to global commons areas. This paper uses hypothetical scenarios to analyse when an SAI activity would give rise to obligations under the no-harm rule. It is unclear when SAI would trigger the no-harm rule as there is no objective definition or criteria to determine when the threshold of 'significant' harm is met, especially for harm to the atmosphere. States therefore have wide discretion in deciding when SAI gives rise to preventative obligations, including the duty to conduct an EIA. This paper proposes a set of criteria to reduce legal ambiguity and state discretion in determining if activities, including SAI, present a risk of 'significant' harm so as to enhance the capacity of the no-harm rule to protect the global environment.

Adaptation, Disasters and Transformation – Dr Anita Foerster, Melbourne Law School

At the outer boundaries of climate change adaptation lies the concept of 'transformative adaptation' – measures which have the potential to transform existing settlement patterns and development trends to reduce physical exposure to climate change impacts and ensure capacity and flexibility to address climate risks effectively and equitably as they evolve over time. In practice, one potential manifestation of transformative adaptation might involve managed retreat and relocation away from particularly high-risk areas, coupled with the introduction of more flexible or short-lived land uses in hazard zones and resettlement of affected communities in lower risk locations. Generally, as an adaptation measure, managed retreat and relocation tends to be viewed as extreme and not yet considered to be a timely, appropriate and cost-effective response in all but the most high-risk situations, especially given the long time-horizons and uncertainties associated with many projected climate change impacts. In the context of extreme events and disasters, where existing settlements and infrastructure have been significantly impacted, more transformative measures may be easier to introduce, and there are examples emerging around the world, with varying measures of success. This paper explores how the concept of transformation is taking hold in laws and associated policies for climate change adaptation and disaster risk reduction. In particular, it assesses whether laws are developing which may help to drive or facilitate more transformative measures or whether laws and associated social practices and behaviours act as barriers to the development and implementation of these measures. To do this, the paper profiles a select number of exploratory case studies in climate change adaptation and post-disaster rebuilding which have involved significant and deliberate transformations of land use to enhance resilience to future events and climate change impacts. It seeks to identify factors in the legal and policy settings which have enabled the introduction of these transformative measures and considers potential barriers to their effective implementation. The case studies are drawn from diverse contexts to reflect the various challenges in developing transformative measures in both a developed and a developing country context and in the context of both longer term, anticipatory climate change adaptation programs and more reactive responses to particular disaster events. They include: new approaches to flood infrastructure in the Netherlands; post-typhoon resettlement and relocation strategies in the Philippines; and post-flood managed retreat in Australia.