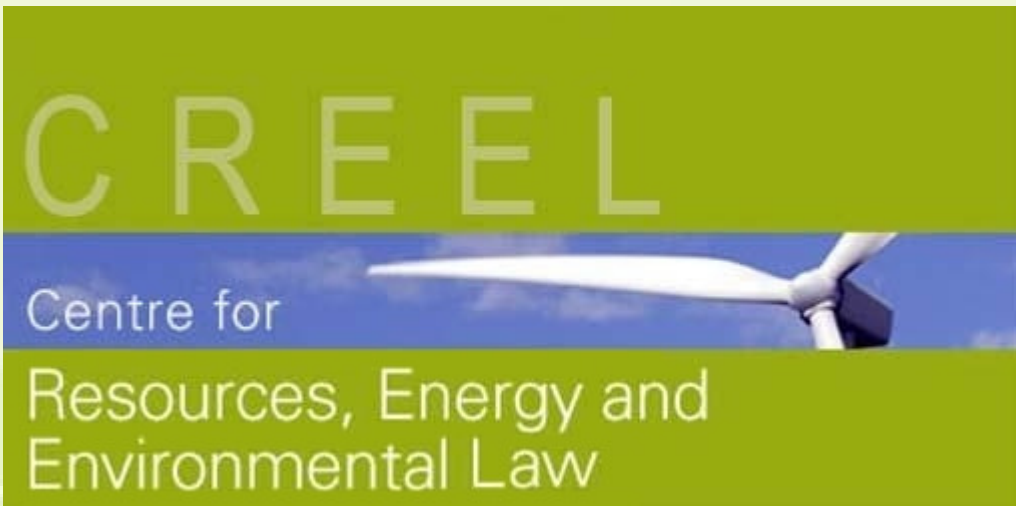




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## **Annual Report 2008**

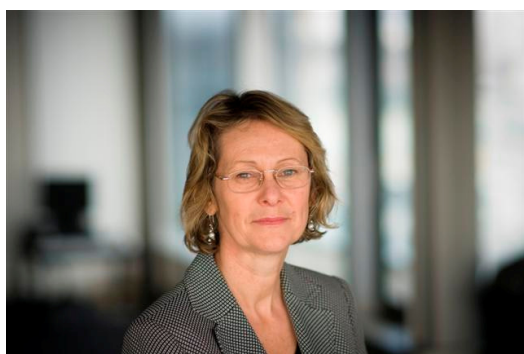
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# Centre for Resources, Energy and Environmental Law (CREEL) Annual Report 2008

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## Director's Message



This is the first opportunity to welcome people to the Centre of Resources, Energy and Environmental Law in my role as director and I am pleased to report on its growing profile. Indeed, the resurgent interest in the fields of energy, resources and environmental law has been reflected in the expanding scope of activities for the Centre over the past year. In particular the Centre has developed a strong profile in knowledge transfer engaging in a range of submissions to government and other organizations in line with the rapidity of change

in legislation and policy over this period. Thus the Centre for Resources, Energy and Environmental Law has engaged with law reform in areas such as biodiversity protection, water resources, climate change and energy as well as conducting research into more general themes such as environmental governance, institutional reorganization and complexity and community participation, including the involvement of indigenous peoples in natural resource management. Centre researchers have been successful in obtaining several externally funded grants to continue research around themes such as climate change governance.

The Centre has welcomed new members who have expanded the research directions into areas such as economic regulation and taxation, and their environmental implications. Existing links in areas of international law have been enhanced by the involvement of researchers interested in fisheries, law of the sea and conceptual issues such as the fragmentation of international regimes. Strong multidisciplinary linkages have been maintained with CREEL's involvement in University-wide interdisciplinary research centres, such as the Melbourne Sustainable Society Institute and the Energy Institute.

International linkages for the Centre have been developed further with the Centre assuming responsibilities for reporting on Australian developments for the International Yearbook of Environmental Law as well as the Centre instigating the membership of Melbourne Law School in the IUCN Academy of Environmental Law.

Centre researchers have continued to be very productive in generating research publications as can be gauged from the detail contained within the report. It is most pleasing to note that several of the research higher degree students associated with CREEL have published articles and presented paper at conferences.

A handwritten signature in blue ink that reads "Lee Godden".

**Lee Godden**

Professor of Law

Director, Centre of Resources, Energy and Environmental Law

[www.creel.law.unimelb.edu.au](http://www.creel.law.unimelb.edu.au)



## About CREEL

The Centre for Resources, Energy and Environmental Law (CREEL) was established in 1986 with a predominant natural resource orientation. It has undergone several iterations with a growing emphasis on environmental law in recent years. In 2008, the keen public interest in environmental law issues translated into a growing profile for the Centre, particularly in knowledge transfer activities. A key activity over 2008 was the large number of public and community submissions on environmental policy and law reform by Centre members. The associated teaching program in the Melbourne Law Masters focuses upon laws relating to mining, petroleum and water resources; the legal structure and financing of major resources and construction projects; environmental law and regulation and indigenous rights over land and waters. Studies focus upon the inter-relationship of government policies, legal and regulatory regimes and administrative practices with a strong interdisciplinary engagement. Over 2008, expansion in the teaching program was matched by growing diversity in the research areas covered by CREEL staff. Emerging research areas include the intersections between energy and climate change, interdisciplinary adaptive management in natural resources and environmental regulation and the implementation of effective environmental governance.

## Purposes and Objectives

CREEL aims to promote research, teaching; and publication into the legal, regulatory and policy frameworks that engage with:

- o the production and distribution of energy, including consideration of climate change regulation
- o the sustainable development of natural resources
- o the protection of the environment and the promotion of ecologically sustainable development
- o the planning for, and provision of infrastructure in urban areas, and that associated with energy and resource development
- o the recognition and protection of Indigenous rights and interests in land and resources.
- To engage in these activities with respect to contemporary developments and issues in Australia, Asia/Pacific, and other selected regions.
- To extend the Law School's specialised collection of research and teaching materials relating to energy, natural resources, environmental law and native title.
- To strengthen existing links and establish new links with other centres in Australia and overseas engaged in equivalent activities.
- To encourage persons from industry, professions, investment institutions, government and universities in Australia and overseas to participate in the Centre's activities.

## CREEL People

### Director



#### **Professor Lee Godden**

Professor Godden researches and teaches within the Melbourne Law School. She was appointed Director of the Centre for Resources, Energy and Environmental Law in 2008. Preceding that she held a joint appointment as Director, Office for Environmental Programs. Professor Godden's research interests include environmental law, natural resources management, property law and indigenous peoples' land rights. The impact of her work extends beyond Australia with comparative research on environmental law and sustainability, property law and resource trading regimes, water law resources and Indigenous land rights issues, in countries as diverse as Canada, New Zealand, UK, South Africa, and the Pacific.

### Associate Directors



#### **Professor Michael Crommelin**

Michael Crommelin is Zelman Cowen Professor of Law, a position he has held since 1985. He was Dean of the Faculty of Law from 1989 to 2002, and from 2003 to 2007. He has held visiting academic appointments in Canada, the USA, the UK, France and Norway. He was a founding member of AM-PLA Limited (the Australian energy and resources law association) and served as its president in 1985-6. He was chair of the Academic Advisory Group of the International Bar Association's Section on Energy and Resources Law from 1987 to 1990. He has been a member of the American Law Institute since 1998. His current teaching and research interests include energy and resources law, constitutional law and comparative law.



#### **Associate Professor Jacqueline Peel**

Jacqueline Peel is an Associate Professor of Law at the Melbourne Law School, University of Melbourne, Australia. She has dual degrees in science and law. Her research interests focus on climate change law, environmental law and international environmental law, including law/science interactions and risk assessment in the environmental field. She is the author of numerous publications on these topics, including *The Precautionary Principle in Practice: Environmental Decision-making and Scientific Uncertainty* (2005).



**Associate Professor Maureen Tehan**

Maureen's major focus of research and academic interest is Indigenous legal issues with particular emphasis on native title, heritage protection and land access, use and management. She has a major interest in comparative Canadian law in these areas. She teaches in these areas as well as in Property in both the Graduate and Undergraduate programmes. Her publications and graduate studies reflect these interests. Immediately prior to joining the Faculty, Maureen was a solicitor with the Pitjantjatjara and Ngaanyatjatjara Councils and continues to undertake consultancies in the area.

**Centre Members**



**Professor Stuart Kaye**

Stuart Kaye joined the Law School in 2006. He was Dean of Law at the University of Wollongong between 2002 and 2006. Prior to this appointment, he was Head of the Law School at James Cook University, and a senior lecturer in law at the University of Tasmania.

Stuart Kaye has an extensive research interest in the law of the sea and international law. He has written a number of books, including *Australia's Maritime Boundaries* (2001), *The Torres Strait* (1997) and *International Fisheries Management* (2001). He was appointed to the International Hydrographic Organization's Panel of Experts on Maritime Boundary Delimitation in 1995 and in 2000 was appointed to the List of Arbitrators under the Environmental Protocol to the Antarctic Treaty. Stuart's areas of expertise include the law of the sea and international environmental law.



**Associate Professor Miranda Stewart**

Miranda Stewart is an Associate Professor and Director of Tax at the University of Melbourne Law School. Prior to joining the Law School in 2000, she was working in the private sector and in government on business taxation including mining and petroleum resource rent tax. Her research interests include the politics of tax reform; tax incentives for investment; and tax and economic development. Miranda teaches postgraduate courses including *Corporate Tax, Fiscal Reform and Development*, and *Tax Incentives for Industry and Investment*. Miranda has an ongoing interest in resource taxation.

**Associate Professor Sundhya Pahuja**

Centre member Sundhya Pahuja is currently on maternity leave.



**Mr Jürgen Kurtz**

Jürgen researches and teaches in the various strands of international economic law including the jurisprudence of the World Trade Organization and that of investor-state arbitral tribunals. He has a particular interest in examining the impact of WTO rules on attempts to construct domestic and multilateral systems for mitigation of carbon emissions.



**Dr Kirsty Gover**

Kirsty Gover is the Director of the Comparative Tribal Constitutionalism Research Programme, co-sponsored by CREEL, ILHAH and the CCCS. The study focuses on the governance institutions and constitutions of tribal communities in Australia, New Zealand, Canada and the United States. These define the jurisdictional interface between tribes and other governments in settler societies. The study examines the ways in which tribal communities define and express their own jurisdiction, an under-interrogated aspect of indigenous governance scholarship. It includes analysis of agreements between tribal and other governments on resource management and the joint use and stewardship of land. A book and several articles focussing on the membership regimes in tribal constitutions, will be published in 2010.



**Dr Margaret Young**

New CREEL member Dr Margaret Young joined the Faculty as Senior Lecturer in 2009. She was previously the William Charnley Research Fellow in Public International Law at the University of Cambridge. She holds a PhD and an LLM from the University of Cambridge and a BA/LLB (Hons) from the University of Melbourne and has been a Visiting Scholar at Columbia Law School. Her research interests include international trade law, international environmental law and the law of the sea. Dr Young's monograph, *Trading Fish, Saving Fish: The Interaction between Regimes in International Law*, will be published by Cambridge University Press in 2010. She has practiced as a solicitor, has worked at the World Trade Organisation (Appellate Body Secretariat), the United Nations International Law Commission and at Greenpeace International, and is a former associate to the Chief Justice of the Federal Court of Australia. She is currently the Assistant Editor of the British Year Book of International Law.

## Administrator

**Anne Kallies**

## Postgraduate Research Students

### A highlight on some of our students:

#### **Anita Foerster**

Anita Foerster completed a double degree in Geography and Law (Honours) at the Australian National University. She joined the law school as a PhD candidate in 2005, researching the law, policy and practice of environmental water allocation. Anita's thesis is entitled 'Law, policy and practice for ecologically sustainable water allocation and management? An analysis of institutional developments to provide for environmental water needs in the Murray-Darling Basin (NSW and Victoria), 1994-2008' and is co-supervised by Lee Godden and Jacqueline Peel.

#### **Samuel Alexander**

Samuel Alexander has an LL.B from the University of Otago, New Zealand, and an LL.M (hons) from the Victoria University of Wellington, New Zealand. After graduating Sam practiced employment law in Christchurch, New Zealand, before joining Melbourne Law School in 2006 as a PhD student. Sam's thesis is entitled "Voluntary Simplicity: Towards a Post-growth Theory of Property" (supervisors Lee Godden and Jenny Beard). Sam has also founded the Life Poets' Simplicity Collective ([www.simplicitycollective.com](http://www.simplicitycollective.com)) which is a grass roots environmental organization dedicated to creatively promoting and celebrating sustainable culture.

#### **Takele Bulto**

Takele Bulto holds LLB and MA degrees from Addis Ababa University, Ethiopia, and an LL.M degree from University of Pretoria, South Africa. Takele worked as a judge and lecturer in Ethiopia and a visiting lecturer at the Centre for Human Rights, Faculty of Law, University of Pretoria. He also worked as Programme Coordinator for Child Rights and Child Rights Programming in Eastern and Central African Regional Office of Save the Children, Sweden. Just before taking up his PhD studies at Melbourne Law School Takele was a Legal Officer in a PanAfrican Pioneer NGO. Takele's thesis is entitled 'The Imperatives of Extraterritorial Application of the Human Right to Water: A Case Study of the Nile Basin' and explores the operationalisation of the emerging human right to water in Africa (supervisors Jacqueline Peel and Carolyn Evans).

## Research Assistants

The research efforts of CREEL were well supported by a number of law students who assisted the centre over 2008.



## CREEL Events

### Seminars

CREEL held two interdisciplinary workshops/seminars exploring the role of social learning in water policy and law in 2008. The first workshop on 3 October 2008 focussed on scoping an “Institutional Complexity” project in water management together with a small interdisciplinary group of scholars.

The follow-up seminar on 5 December 2008: “Systemic and adaptive water governance: Reconfiguring institutions for social learning and more effective water managing?” explored the potential for social learning to contribute to development of systemic and adaptive water governance. As one of Australia’s predominant public policy challenges, attending academics, members of environmental NGOs and state and federal government officials discussed the way we manage water catchments including the Murray Darling Basin and allocate water resources in an era of climate change. Speakers were Lee Godden (on regulatory approaches: planning, impact assessment and the National Water Act 2007); Daniel Connell of ANU (on the National Water Initiative); Chris Biesaga of the Murray Darling Basin Commission (on Water markets: no substitute for water governance) Anita Foerster, MLS (on Institutions for Environmental Water) and Ray Ison, Monash University and Open University, UK (on systemic and adaptive water governance).

### Presentations at conferences

**Lee Godden**, *Report on Agreement-making, Indigenous Peoples and Mining in Australia to Indigenous Peoples and Mining Special Interest Group*, presented at the International Bar Association Conference, Copenhagen, 7–8 May 2008.

**Lee Godden**, *Human Rights and Water Law in a Climate Change Era*, presented at a workshop on Climate Change Impacts in the Murray Darling Basin, MLDRIN & CSIRO, Melbourne, 16 May 2008.

**Lee Godden**, *Sovereignty: Mediations between Communal Governance and Individual Title*, presented at the New Worlds New Sovereignities Conference, The University of Melbourne, 4–6 June 2008.

**Lee Godden**, *Agreement-making with Indigenous Peoples and Economic Development*, Native Title Developments Conference, Brisbane, 22 October 2008.

**Lee Godden**, *World Heritage: People or Places? Partnerships for the Integration of Natural and Cultural Heritage in Australia and South Africa*, presented at the Building a Common Future: Africa and Australasia Conference, Melbourne, 26–28 November 2008.

## CREEL Members Research and Publications

### 2008 Publications

#### Book Chapters

**Lee Godden**, 'Property in urban water: Private rights and public governance' in Patrick Troy (ed) *Troubled waters: Confronting the water crisis in Australia's cities* (2008) 157-185.

**Lee Godden**, 'Law in the Schism: Its role in moving beyond the carbon economy in Australia' in D. Zillman, C. Redgwell, Y. Omorogbe, L. Barrera-Hernandez (ed), *Beyond the Carbon Economy: Energy Law in Transition* (2008) 459-480.

#### Journal Articles – Refereed

**Takele Bulto** 2008. Between ambivalence and necessity in the Nile Basin: Occlusions on the path towards a basin-wide treaty. *Mizan Law Review*. **2** (2): 201-228.

**Anita Foerster** 2008. Managing and protecting environmental water: Lessons from the Gwydir for ecologically sustainable water management in the Murray Darling Basin. *Environmental and Planning Law Journal*. **25** (1): 130-153.

**Anne Kallies and Lee Godden**, 'What Price Democracy? Blue Wedges and the hurdles of public interest environmental litigation' **33** (4) *Alternative Law Journal* 194 – 199

**Stuart Kaye** 2008. Emerging issues in the law of the sea to 2020 and their impacts for Australia and the Indo-Pacific region. *Papers in Australian Maritime Affairs*. **22**: 1-47.

**Jacqueline Peel** 2008. 'Climate Change Law: The Emergence of a New Legal Discipline' **32** (3) *Melbourne Uni Law Rev* 922-979

**Jacqueline Peel** 2008. 'Ecologically Sustainable Development: More than Mere Lip Service?' **12** (1) *Australasian Journal of Natural Resources Law and Policy* 1.

## Journal Articles - Unrefereed

**Maureen Tehan, Lee Godden, M. Langton and O. Mazel** 2008. 'Introduction: Accommodating Interests in Resource Extraction: Indigenous Peoples, Local Communities and the Role of Law in Economic and Social Sustainability' 26(1) *Special Edition: Journal of Energy and Natural Resources Law, Indigenous and Local Peoples and Resource Development: International Comparisons of Law, Policy and Practice* 1-30

**Stuart Kaye** 2008. Lessons learned from the Gulf of Maine case: The development of maritime boundary delimitation jurisprudence since UNCLOS III. *Ocean and Coastal Law Journal*. **14** (1): 73-99.

## Other

Lisa Phillips and **Miranda Stewart** 2008. 'Defining fiscal Transparency: Transnational Norms, Domestic Laws, and the Politics of Budget Accountability' *Joint Working Paper, Comparative Research in Law and Political Economy* (Osgoode Hall Law School, Toronto, Canada) and *University of Melbourne Legal Studies* (Melbourne Law School).

**Miranda Stewart** and Anne O'Connell (2008) Submission to *Innovation Review*, 29 April 2008.

## Grants

**Lee Godden** and **Maureen Tehan** finalised research under their ARC project, 'Managing Competing Claims to Land and Resources - Does Property Law Promote Sustainability' with a major publication *Sustainable Futures: Comparative Perspectives on Communal Lands and Individual Ownership*, forthcoming.

**Maureen Tehan**, Marcia Langton, **Lee Godden** and Lisa Palmer 'The implementation of agreements and treaties with indigenous and local peoples in postcolonial States' (ARC Linkage Grant 2006-2008), Industry Partners: Office of Indigenous Planning and Coordination and Riotinto Ltd. This project will use a case study methodology to explore the key attributes for the successful implementation of agreements with indigenous and local peoples. It includes the further development of the [ATNS database](#).

**Lee Godden**, **Jacqueline Peel** and Rodney Keenan were able to secure a major ARC discovery grant 'Responding to Climate Change: Australia's Environmental Law and Regulatory Framework' (2009-2011)

## CREEL Submissions

CREEL has a special interest in impacting on policy development in the area of resources, energy and environmental law.

### Submissions included:

**Lee Godden**, 'Submission to the Senate Standing Committee on Environment, Communications and the Arts — Inquiry into the Operation of the *Environment Protection and Biodiversity Conservation Act 1999* (C'th)', 30 September 2008

**Lee Godden**, **Jacqueline Peel** and **Anne Kallies**, 'Submission on Draft Victorian Bilateral Agreement under the EPBC Act', 10 November 2008

**Lee Godden**, **Jacqueline Peel** and **Anne Kallies**, '[Submission to Green Paper on a Carbon Pollution Reduction Scheme](#)', 9 September 2008

**Lee Godden**, **Anne Kallies** and **Jacqueline Peel**, '[Submission to the Emissions Trading System of the Garnaut Climate Change Review](#)', March 2008

**Lee Godden** and **Anne Kallies**, 'Submission to Desalination Plant', Invitation for Public Comment-EPBC Act (1999) Referral, February 2008

## Research Projects

Professor Michael Crommelin is engaged in an international research project on "Oil and Gas Management and Revenues in Federations", sponsored by the Forum of Federations. Twelve countries are involved: Argentina, Australia, Brazil, Canada, India, Malaysia, Mexico, Nigeria, Pakistan, Russia, U.S.A. and Venezuela. The project will conclude in 2010.

## Climate Law Blog

To keep track of Australian and overseas developments in climate change law, Dr Jacqueline Peel, has established a climate change law blog. The blog is used to disseminate research undertaken by CREEL researchers on climate change law. To access the blog please follow this link: [http://blogs.unimelb.edu.au/peel\\_climatechange/](http://blogs.unimelb.edu.au/peel_climatechange/)

## Teaching Program 2008

CREEL staff and faculty members associated with the Centre teach in the degree programs of the Law School and supervise research students. Subjects taught by centre members in 2008 included the following:

### The Melbourne LLB:

**Jacqueline Peel**  
Environmental Law

**Lee Godden**  
Property

**Maureen Tehan**  
Law and Indigenous Peoples in Australia

### The Melbourne Law Masters:

**Lee Godden**  
Environmental Law: Science and Regulation  
Environmental Law

**Jacqueline Peel**  
Environmental Law: Science and Regulation

**Stuart Kaye**  
International Environmental Law

**Maureen Tehan**  
Native Title Law and Practice

**Jürgen Kurtz**  
Developing Countries and the WTO  
Principles of WTO Law

**Miranda Stewart**  
Fiscal Reform and Development  
Taxation of small and medium enterprises

## Linkages

### University Linkages

CREEL established strong links with University researchers in the energy, resources and environmental fields in 2008, with membership of the Melbourne Sustainable Society Institute. Interdisciplinary research is a particular strength of Centre researchers with 2008 providing opportunities to build substantial collaborative partnerships with university and associated researchers in other disciplines.

#### **MSSI**

CREEL is a member of the Melbourne Sustainable Society Institute which fosters sustainability research on large public issues, by integrating research expertise from a range of disciplinary perspectives, taking a particular focus on Australia and the Asia-Pacific region. It is a hub for sustainability at the University. The Institute's research is themed as follows: Sustainable Cities, Regional Communities, People and Values, Climate Change, Changing Population, Health Equity, Water Food and Energy Governance and Infrastructure and Transport. [www.sustainable.unimelb.edu.au](http://www.sustainable.unimelb.edu.au)

#### **Energy Institute**

CREEL is a knowledge partner of the newly established Melbourne Energy Institute, with CREEL Associate Director Professor Michael Crommelin being a researcher in Energy Law and Regulation. By bringing together cross-disciplinary research and engaging with relevant organisations outside the University of Melbourne, the Melbourne Energy Institute offers the critical capacity to rethink the way we generate, deliver and use energy.

[www.energy.unimelb.edu.au](http://www.energy.unimelb.edu.au)

#### **OEP**

The Office for Environmental Programs coordinates the Graduate Environmental Program that crosses ten faculties at the University and allows you access to a wide range of environmentally relevant subjects taught by academics with a strong profile in environmental sustainability and other aspects of problem-solving in Australia and beyond. CREEL has close links with OEP as Professor Godden is the former director and now deputy director as well as a member of the academic advisory board of OEP, and CREEL members teach courses in the program.

### International Linkages

The Centre has developed international linkages with several groups of researchers including the Academic Advisory Group (SEERIL) for the International Bar Association and the Environmental Law Commission for IUCN. The Centre Director attended a 'Beyond the Carbon Economy' workshop in May 2008 in Copenhagen to strengthen existing links and establish new networks.

## Contact Details

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### Centre Website

<http://creel.law.unimelb.edu.au/>

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