



THE UNIVERSITY OF
MELBOURNE

Centre for Resources, Energy and Environmental Law (CREEL)
Melbourne Law School

Annual Report

2017



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Director's Report

2017 was a period of both change and consolidation for the Centre for Resources, Energy and Environmental Law (CREEL). The Centre benefitted from expanding research directions and the energy and enthusiasm of new academic staff associated with the centre. We also farewelled staff and graduating RHD students that had had a long association with the Centre – although many of those researchers continue to have links with CREEL.

One of the strengths of CREEL is the cohort of highly engaged Graduate Researchers associated with the Centre. It is a pleasure to see doctoral theses and research projects coming to completion and people taking up new challenges. We have several, former CREEL Ph. D students that have taken up academic positions in other Victorian Law schools, and in International Law Schools and Research Centres, such as City University Hong Kong. Other CREEL researchers are working in legal professional practice, at the Victorian Bar, in positions with the Victorian government and in NGOs, such as Transparency International or pursuing rather different careers, such as documentary film making. If you have contacts for former students and researchers, please forward details to the CREEL administrator so that we can keep in touch with this group.

CREEL's continuing commitment to fostering early career research was given tangible form by hosting the *Frontiers in Environmental Law Conference* in February 2017. The conference, while open to all scholars, was an opportunity for early career researchers and PhD students to present their work in a collegial setting. Brad Jessup took the lead in organising this event. He developed a programme that was academically engaging, which offered interdisciplinary insights and teaching perspectives, as well as examining the professional and 'everyday' impacts of environmental law. He followed up this splendid effort by being one of three editors of a Special Issue in the *Environmental and Planning Law Journal* that was based on a collection of papers from the Frontiers Conference. A big thank you to Brad.

We were blessed with a cornucopia of conferences, workshops and seminars toward the end of 2017 at which CREEL staff presented, chaired sessions, networked, and in the case of several staff such as McKenzie Post-Doc, Kathleen Birrell, were involved in the major organisation of these events.

It was a year also when some long-standing projects were finally completed. On this note can we thank Maureen Tehan for her continuing involvement in CREEL, principally through the Australian Research Council, Climate Mitigation – REDD+ Discovery project; despite it leaching into her 'retirement'. The major outcome of the project was a book, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities: International, National and Local Law Perspectives on REDD+* (Cambridge University Press) 2017 co-authored by four CREEL academic staff and assisted along the way by successive 'generations' of CREEL research assistants. The book truly was a CREEL 'outcome'. Thanks to all involved; including the wonderful Law Research Service that assisted with this book and other publications undertaken by CREEL staff.

Again, CREEL academics were highly productive in 2017 with an impressive number of publications and projects; including work on ARC climate litigation projects, climate justice and energy transition led by Professor Jackie Peel. Anita Foerster (another CREEL former PhD) is working with Jackie on these projects. CREEL also would like to congratulate Jackie Peel and her USA collaborator Professor Hari Osofsky on the launch of the Women's Climate Change Network in December 2017.

CREEL continued its strong links with University of Melbourne researchers in the energy, resources and environmental fields with the Centre Director serving on the Board of the Melbourne University Energy Institute and on the Advisory Boards for the EU Centre for Shared Complex Challenges and the Master of Environment Programme. Associate Professor Margaret Young is CREEL's representative to Melbourne Sustainable Society Institute. CREEL staff and students are involved in Energy Transition Hub and a range of other University wide research initiatives.

Other CREEL academic staff were active in maintaining a high profile in International Environmental Law, such as Margaret Young's involvement with the Global Pact for the Environment. CREEL academics across many fields have strengthened the linkages with international legal researchers in energy and environmental law. Several CREEL staff were funded under an international liaison grant to build international research networks and to undertake preliminary research. CREEL's engagement with the international legal profession in 2017 included memberships in the Academic Advisory Group (SEERIL) and the Human Rights Forum within the International Bar Association and the Environmental Law Commission for the IUCN.

2017 was also a time for internal reorganisation and for putting into effect the recommendations arising from the Centre Review in 2016. The focus for 2017 in this respect was to reorganise and greatly enhance the web profile of the Centre. This was a time-consuming task undertaken by Cindy Halliwell, the Centre Administrator. Her work in this regard and more generally in navigating the myriad administrative and organisational demands of CREEL is gratefully acknowledged. The web site is an ongoing evolution, and CREEL staff are welcome to provide items, short written or podcast input and ideas for improvement. In late 2017, planning began for a reorganisation of Centre governance to be implemented over 2018.

Given the many competing demands on academic time, the involvement of CREEL staff in the many seminars and events that are organised is most welcome. These events are listed below.

Finally, as things have been in flux somewhat in the Law School in 2017 (not least carpets and furniture) and many people moved to new roles or new positions, it is timely later in the report to provide a listing of CREEL staff and research higher degree students, as well as other people associated with the Centre.

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

Professor Lee Godden

Melbourne Law School



About CREEL

The Centre for Resources, Energy and Environmental Law (CREEL) is a dynamic research centre at the Melbourne Law School. It was established in 1986. Until 1996 it was known as the Centre for Natural Resources Law, and the teaching program was focused on laws relating to mining, petroleum and water resources; the legal structure and financing of major resources projects; and some aspects of environmental regulation.

In 1996 substantial changes were made to extend the program. Subjects were added to cover contemporary issues of national and international importance. These include production and distribution of energy; development of infrastructure; environmental impact of energy, resources and infrastructure projects; and indigenous rights over land and waters. Studies focus upon the inter-relationship of government policies, legal and regulatory regimes and administrative practices.

Many of the subjects are highly relevant to international students as well as Australian students. The increased scope of the graduate teaching program is also reflected in CREEL's research, publishing, seminars and related activities.

Purposes and Objectives

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

- the production and distribution of energy, including consideration of climate change regulation;
- the sustainable development of natural resources;
- the protection of the environment and the promotion of ecologically sustainable development;
- the protection for, and provision of, infrastructure in urban areas and infrastructure associated with energy and resource development
- 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.

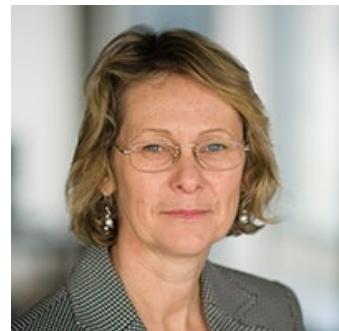
To encourage professionals from industry, investment institutions, government and universities in Australia and overseas to participate in the Centre's activities.

Centre Directors

Professor Lee Godden, Director

Lee Godden (PhD, MA, B.Leg S, BA Hons) is the Director, Centre for Resources, Energy and Environmental Law. She researches in environmental resources law, natural resources law, water law, and indigenous people's land and resources rights. Recent publications include *Environmental Law: Scientific Policy and Regulatory Dimensions 2010* (with J. Peel), *Comparative Perspectives on Communal Lands and Individual Ownership: Sustainable Futures 2010* (with M. Tehan) and *Australian Climate Law in Global Context 2013* (with A. Zahar and J. Peel).

Professor Godden's research interests include environmental law, natural resources law (especially water) 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.



Professor Jacqueline Peel, Associate Director

Jacqueline Peel is an expert in the field of environmental and climate change law. Her scholarship on these topics encompasses international, transnational and national dimensions, as well as interdisciplinary aspects of the law/science relationship in the environmental field. She has been an active contributor to public policy formulation on climate change and environmental issues at the national and international level through her work on bodies such as the ILA Committee on Legal Principles Relating to Climate Change. Professor Peel current research focuses on questions of climate change litigation and governance, and the role of corporate and securities law in fostering private sector energy transition. She holds ARC Discovery Project grants for a project on US and Australian climate change litigation and corporate energy transition, partnering with Professor Hari Osofsky, Dean of the Penn State University Law School and School of International Affairs, and (on the latter grant) Professor Brett McDonnell of the University of Minnesota Law School.



Professor Michael Crommelin AO, Associate Director

Michael Crommelin was Dean of the Law School from 1989 to 2007. He holds a BA and LLB (Hons) from the University of Queensland and an LLM and PhD from the University of British Columbia. Michael has held visiting appointments at the University of Oslo, the University of British Columbia, the University of Calgary and Georgetown University. He has published extensively in the fields of energy and resources law, constitutional law and comparative law. In 2009, Michael was made an officer of the Order of Australia for service to the law and to legal education, particularly as a tertiary educator and through the development of mining and petroleum law in Australia. In addition, Michael has served as President of AMPLA (the Australian Mineral and Petroleum Law Association) and as a member of the Council of the Section on Energy and Resources Law of the International Bar Association. He has published extensively in energy and resources law, constitutional law and comparative law.



Memberships and Affiliations: American Law Institute; Council of Legal Education (Victoria); Panel of International Referees, Singapore Academy of Law; International Advisory Panel, National University of Singapore, Faculty of Law.

Centre Faculty Members

Professor Sundhya Pahuja

Sundhya Pahuja is the Director of Melbourne Law School's Institute for International Law and the Humanities (IILAH). Her research focuses on the history, theory and practice of international law in both its political and economic dimensions. She has interests in international law and the relationship between North and South, and the practice, and praxis, of development and international law. Sundhya has been awarded the American Society of International Law Certificate of Merit (2012), the Woodward Medal for Excellence in the Humanities and Social Sciences (2014) and a Fulbright Senior Scholar award which she took up in 2016 at the Institute for Global Law and Policy at Harvard Law School. In 2017, Sundhya will hold a fellowship at the Stellenbosch Institute for Advanced Studies (STIAS) in South Africa. Sundhya has been invited to give the 2018 Lauterpacht Lectures at the University of Cambridge.



Responsibilities: Director, IILAH; Director of Studies, International Law; Director of Studies, Law and Development; Co-Director of Studies, Public and International Law.

Associate Professor Mark Burton

Dr Mark Burton has worked in the field of taxation law for more than 20 years: in private practice and as an academic. Mark has taught extensively in the taxation law field at undergraduate, graduate and postgraduate levels. Mark has undertaken consultancies with the Australian Taxation Office and with the Australian National Audit Office.



Mark's research and scholarship on tax matters have been published both within Australia and internationally. This research spans technical tax issues, the theory and practice of tax administration, the ethical aspect of taxation law, tax policy and the tax legislative process. Mark is co-author of *Understanding Taxation Law*, LexisNexis, 2017 and *Tax Expenditure Management – A Critical Assessment*, Cambridge University Press, 2013. Mark completed his PhD (Law) at the Australian National University, and his doctoral dissertation examined the theory, history and practice of interpreting tax legislation.

Affiliations: Taxation Institute of Australia, Fellow.

Professor Jürgen Kurtz

Dr Jürgen Kurtz is a Professor and Director of International Economic Law Studies at the University of Melbourne Law School in Australia. 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 research interests in the impact of treaty-based disciplines on regulatory autonomy and development strategies. Jürgen's most recent book is *The WTO and International Investment Law: Converging Systems* (Cambridge University Press, 2016). Jürgen has held research fellowships at the Jean Monnet Centre for International and Regional Economic Law Justice at New York University Law School (as an Emile Noel Fellow), at the University of Michigan Law School (as Grotius Fellow), the Academy of International Law in The Hague and the European University Institute (as Fernand Braudel Senior Fellow) in Florence. He is also a Director of Study at the Academy of International Trade and Investment Law based in Macau and Shenzhen and organized by the Institute of European Studies.



Membership and Affiliations: Executive Committee Member, Society of International Economic Law, Board of Editors, Journal of International Dispute Settlement; Board of Editors, Journal of World Investment and Trade.

Responsibilities: Director of Studies, International Economic Law, Melbourne Law Masters.

Associate Professor Margaret Young

Associate Professor Margaret Young is the author of *Trading Fish, Saving Fish: The Interaction between Regimes in International Law* (Cambridge University Press, 2011), which was awarded the International Union for Conservation of Nature (IUCN) Academy of Environmental Law Junior Scholar Prize in 2012. Her edited collection *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press, 2012) includes contributions from leading international, comparative and constitutional law scholars and is based on the conference she convened at the University of Cambridge in 2009 on Regime Interaction in International Law: Theoretical and Practical Challenges. Dr Young 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. She has worked at the World Trade Organisation (Appellate Body Secretariat) and the United Nations International Law Commission and is a former associate to the Chief Justice of the Federal Court of Australia. In 2016, Margaret's was awarded the research excellence prize, the Woodward Medal for her book *Trading Fish, Saving Fish: The Interaction between Regimes in International Law* (Cambridge University Press, 2011).



Memberships and Affiliations: Assistant Editor, *British Year Book of International Law*; Editorial Board of *Journal of Environmental Law*; Member of the Society of International Economic Law, the American Society of International Law and the Australian and New Zealand Society of International Law (ANZSIL).

Responsibilities: Law School Research Committee; Coordinator, MLS Judge in Residence Program.

Associate Professor Kirsty Gover

Kirsty Gover is Associate Professor at Melbourne Law School. Her research addresses the law, policy and political theory of indigenous rights. Dr Gover is the author of *Tribal Constitutionalism: States, Tribes and the Governance of Membership* (Oxford University Press, 2010) and is working on a book entitled *When Tribalism Meets Liberalism: Political Theory and International Law* (Oxford University Press), examining the ways in which indigenous self-governance influences the development of international law and international legal theory by altering the behaviour of settler states. Dr Gover is a graduate of the New York University JSD Doctoral Program, where she was an Institute for International Law and Justice Graduate Scholar and New Zealand Top Achiever Doctoral Fellow.



Memberships and Affiliations: Law and Society Association; Australia and New Zealand Society of International Law.

Responsibilities: Program Director: Indigenous Peoples in International and Comparative Law Research Program; Indigenous Liaison Officer; Chair, Staff Equity and Diversity Committee.

Mr Brad Jessup

Brad Jessup is a human geographer and an environmental law specialist. Brad's work crosses disciplines in the legal geography tradition. He draws on political theories, his knowledge of environmental law processes and case study examples of law in society. Brad is especially interested in the law of place, perceptions and discourses of law, and the human and environmental experience of harm and the role of the law. He is the co-author with Professor Kim Rubenstein of the edited collection *Environmental Discourses in Public and International Law* published by Cambridge University Press in 2012 and an editor of the Melbourne Law School High Court blog. Brad is a graduate of Monash University and Cambridge University and a former practitioner with five years' experience. He has been a visiting scholar at the University of California, Berkeley in the United States and North-West University – Potchefstroom in South Africa. Brad's principal research area is environmental justice and the exploration of environmental legal conflict. He also has research expertise in Vietnamese environmental laws, environmental rights, planning and risk, sustainability sharing and the city, and marine protected areas.



Dr Kathleen Birrell

Kathleen Birrell is a McKenzie Postdoctoral Fellow at Melbourne Law School. She also holds a PhD from Birbeck, the University of London and a BA and LLB from the University of Melbourne. Her research is strongly interdisciplinary, engaging with critical approaches to property law, native title, environmental and climate change law, human rights law and intersections between Indigenous peoples and the law, as well as critical legal theory, philosophy of law, sociolegal studies and law and literature. Her postdoctoral project investigates intersections between the global imperatives of international climate change initiatives and associated legal frameworks and their domestic implementation, international human rights, and the narratives of Indigenous communities. Dr Birrell is author of *Indigeneity: Before and Beyond the Law* (Routledge, 2016).



Memberships and Affiliations: Committee member of the Law, Literature and the Humanities Association of Australasia; Global Network for the Study of Human Rights and the Environment.

Dr Olivia Barr

Olivia Barr joined the Law School as a Senior Lecturer in February 2016. She completed her LLB (Distinction) and BA (Anthropology and Philosophy) at the University of Western Australia, an LLM at the University of British Columbia, and a PhD at Melbourne Law School. She has also worked as a government solicitor, in law reform, and for the United Nations Permanent Forum on Indigenous Issues. With Dr Karen Crawley (Griffith University), she is the Managing Editor of the Australian Feminist Law Journal: A Critical Legal Journal. Olivia writes in jurisprudence, and her cross-disciplinary work engages with geography, anthropology, philosophy, architecture and contemporary public art practices. Her current research concerns questions of lawful place, and argues for greater attention to the place-making practices of law.



Memberships and Affiliations: Managing Editor, Australian Feminist Law Journal Law; Literature and the Humanities Association of Australasia; Urban Environments Research Network, University of Melbourne; Research Unit in Public Cultures, University of Melbourne, Centre for Resources, Environment and Energy Law, Melbourne Law School; 'Space, Place, Country', Sydney College of the Arts, University of Sydney.

Dr Rebecca Nelson

Rebecca Nelson is a Fellow (Non-Resident) of the Stanford Woods Institute for the Environment and a Senior Fellow of the Melbourne Law School, where she teaches water law. Her research focuses on natural resources law and policy in Australia and the United States, with an emphasis on empirical research and practical solutions. From 2010-2014, she led the Comparative Groundwater Law and Policy Program, a collaborative initiative between Water in the West at Stanford University and the United States Studies Centre at the University of Sydney.



Dr Nelson formerly worked as a lawyer at the Murray-Darling Basin Authority and in private practice in Australia. In 2014 she was named the Law Council of Australia's Young Environmental Lawyer of the Year for her contribution to water law and environmental law. Dr Nelson also acts as a Director of Bush Heritage Australia (a private conservation organization), and an independent water lawyer and policy consultant. She holds a Doctor of the Science of Law from Stanford University, where her dissertation focused on empirically assessing regulatory arrangements for protecting surface water and ecosystems from the impacts of pumping groundwater. She also holds a Masters in Law (Stanford) and Bachelor of Engineering (Environmental) and Bachelor of Laws (University of Melbourne).

Affiliations related to CREEL: Director of the Board, Bush Heritage Australia, and member of the Science and Conservation Committee, and Finance, Audit and Risk Committees.

Professor Christine Parker

Professor Christine Parker joined Melbourne Law School again in February 2016 after several years away. She has previously held positions at Griffith University, University of New South Wales, the Australian National University and Monash University. She holds a BA (Hons) and LLB (Hons) from The University of Queensland and a PhD from the Australian National University.

Professor Parker has written, researched and consulted widely on how and why business comply with legal, social and environmental responsibilities, what difference regulatory enforcement makes and how businesses can work with lawyers and compliance professionals to build internal corporate social responsibility systems that work. Her work has been published in academic journals and used in policy making and enforcement strategy. Her books include *The Open Corporation* (2002) on corporate social responsibility, business compliance systems and democratic accountability of companies; and *Explaining Compliance* (2011, with Vibeke Nielsen), an edited collection of the leading practice and policy oriented empirical research on how and why businesses do and do not comply with the law.



Associate Professor Jianlin Chen

Associate Professor Jianlin Chen grew up in Singapore and Taiwan. He obtained his LLB from National University of Singapore, and his LLM and JSD from the University of Chicago. He is qualified to practice in Singapore and New York. He joined the Melbourne Law School in July 2017 after starting his academic career at the University of Hong Kong in 2011.

His primary research interests are in the areas of natural resources law and property law, with a particular focus in emerging natural resources (e.g., wind, sunlight, atmospheric moisture) and through a combination of comparative perspectives and economic analysis.



Together with other previous and current research projects that traverse diverse subject matters (e.g., law & religion, corporate law, government procurement, securities regulations, culture war, tax law), his underlying research agenda is to develop an overarching theoretical inquiry that 1) explores how the different forms of state actions—ranging from law, regulation, tax, state ownership, public contract, government speech—have surprisingly similar capacity and propensity (or the lack thereof) to achieve public interest objectives; and 2) critically evaluates the prevailing approach of prescribing distinct legal constraints and normative considerations for each category of state interventions.

Cindy Halliwell, Research Centre Administrator

Cindy Halliwell joined the University of Melbourne in 2010 as Communications Coordinator for the Centre for Aquatic Pollution Identification and Management (CAPIM) in the Faculty of Science. In 2015, she joined the Melbourne Law School as Research Centre Administrator for several research centres including CREEL. Cindy brings experience from the airline, finance and university sectors. She holds a Bachelor of Arts in Public Relations/ Tourism, a Graduate Diploma in Business Administration and is currently undertaking a Bachelor of Laws.



CREEL Advisory Board Members

Associate Professor Pieter Badenhorst (Deakin University)

Pieter Badenhorst is currently an Associate Professor of Law at Deakin University. He was previously professor of Law at the Nelson Mandela Metropolitan University in Port Elizabeth, South Africa. Pieter is admitted as an attorney and notary of the High Court of South Africa. Since 1985 he is author and co-author of 97 articles, notes and case discussions. Pieter is author and co-author of 4 books on South African Property law and Mining law. This includes the current Mineral and Petroleum Law of South Africa, which is a commentary on the new South African Mineral law system.

Elisa De Wit (Partner, Norton Rose)

Elisa de Wit is a partner in the Melbourne office of Norton Rose Australia, a leading international law firm. She leads the environment group of the Melbourne office and heads the Australian climate change practice. With over 20 years of experience, Elisa's practice covers both environmental and climate change matters, and she has practiced in three Australian jurisdictions and the United Kingdom. A regular presenter and author of articles on climate change and emissions trading, Elisa is also editor of Norton Rose Australia's environment and climate change newsletter, "Legally Green". Elisa was recently named as a "leading lawyer" in the Australasian Legal Business Guide for Environmental Law.

Professor Roz Hansen (Managing Director, Hansen Consulting)

Roz Hansen is Managing Director of Hansen Partnership being a multi award winning company offering professional consultancy services in urban planning, urban design and landscape architecture. Roz is a highly skilled urban planner with more than 30 years of experience in a diverse range of projects in Australia and overseas. Roz offers a sound understanding of planning and development issues at the local, national and international levels. Her strong leadership qualities, coupled with her excellent communication skills and capacity to think in an innovative and creative manner, have been applied in collaborative projects in Australia and overseas. Roz regularly appears as an expert witness at VCAT and Planning Panels Victoria. A recipient of a Centenary Medal from the Federal Government and her on-going appointment as an Adjunct Professor at Deakin University since 1995 is testimony of Roz's wealth of experience in the planning arena.

Professor Ray Ison (Monash and Open University, UK)

As Professor of Systems (UK Open University; 1994 - present) Ray has led or facilitated the development of new teaching programs (MSc's in Environmental Decision Making, Systems Thinking in Practice, Information Systems and an undergraduate Diploma in Systems Practice) and established the Open Systems Research Group. He was Head of the Systems Department (1995-8; 25 academic staff) then from 2000-04 he successfully coordinated a major interdisciplinary 5th Framework Program (30 researchers, 6 countries) researching social learning for sustainable catchment management as well as running an EPSRC funded Systems Practice for Managing Complexity Network. From 2002-7 the Environment Agency(England & Wales) funded research to apply social learning to implementation of the European Water Framework Directive.

In September 2008, he moved to 0.3 time at the Open University (OU) and a 0.7 Professorship at Monash (Systems for Sustainability) where he has developed a Systemic and Adaptive Governance Research program within Monash Sustainability Institute and the School of Geography and Environmental Science.

Ian Havercroft (Global Lead – Legal and Regulatory, Global CCS Institute)

Ian Havercroft is the Senior Adviser – Legal and Regulatory at the Global CCS Institute, and is based in Melbourne, Australia. He was previously an academic at University College London's Faculty of Laws, where he taught on the environmental law programme and undertook contracted research for a range of organisations, including governments and industry. He co-founded and managed the UCL Carbon Capture Legal Programme between 2007 and 2010.

Ian has acted as an expert reviewer or an adviser to several organisations on CCS law and regulation; these include the International Energy Agency and the IEA Greenhouse Gas R&D Programme. He holds undergraduate and postgraduate degrees in law and in 2012, was appointed as an Honorary Visiting Senior Research Fellow at University College London's Faculty of Laws.

Sam Johnston, (Senior Fellow, United Nations University)

Sam Johnston is a Senior Research Fellow at the United Nations University Institute of Advanced Studies – a policy think tank for the United Nations based in Japan. His principal responsibilities are to provide strategic guidance to the Director regarding the research priorities of the Institute, develop new research activities for the Institute and assist with fundraising efforts.

His research interests include International Environmental Law, Governance of International Spaces, International Regulation of Biotechnology, Law of the Sea and Antarctica. In 2011 he taught and was the coordinator of the International Environmental Law Masters Course offered by the Faculty. He has raised over \$10m in research funding from governments, international organizations and philanthropic organizations. Johnston has degrees in chemistry and law and is a qualified lawyer in the Supreme Court of Victoria, Australia.

Research

Land use planning, pipelines and the urban fringe (2017)

Mr Brad Jessup received a grant (\$45,000) from the [Energy Pipelines CRC](#) to research the planning law and policy influence on urban development on the fringe, which is increasingly encroaching on pipeline infrastructure. This applied aspect of the project was undertaken in 2011 and completed in early 2012. The next stage of the research project has been to situate this research within concepts of risk, geography and resilience. In 2017 Brad [presented](#) and published research on the role of planning laws and pipeline regulation to materialise and informate otherwise invisible legal geographies. (2011-2012).

Researcher:

Mr Brad Jessup



ARC Discovery Project – The Role of Climate Change Litigation in Shaping our Regulatory Path

Climate change is an urgent environmental problem requiring a rapid transition to sources of clean energy. Yet governments - both nationally and internationally - have moved only slowly and timidly to put in place the necessary long-term regulatory steps to reduce greenhouse gas emissions. In this setting, environmental advocates have looked increasingly to courts, mounting ambitious climate litigation in an effort to block fossil fuel use and force consideration of climate change impacts in planning decisions. This innovative project analyses the capacity of climate litigation in key fossil-fuel producing countries, Australia and the US, to influence regulation so contributing to putting these nations on the path to a clean energy future. This project was funded by the Australian Research Council Discovery Project (DP 130100500) for 2013-2017.

Researchers:

Professor Jacqueline Peel, Melbourne Law School, *Principle Investigator*

Professor Hari Osofsky, University of Minnesota Law School, *Partner Investigator*

ARC Project – Devising a legal blueprint for corporate energy transition

Funded by an Australian Research Council Discovery Project grant (DP160100255) for 2016-2018, this project explores how corporate and securities law mechanisms can be used to incentivise private sector transition to clean energy sources and business practices. There is considerable scope for the private sector to contribute to cutting greenhouse gas emissions and transitioning energy systems to low-carbon, clean energy sources to avoid catastrophic climate change impacts on Australian businesses, communities and the environment. There is also increasing recognition by Australian companies across all sectors of the importance of managing risks associated with climate change. This project will evaluate how existing corporate law tools (such as reporting and disclosure requirements, shareholder actions and director's duties) can and are being used to motivate companies to adopt clean energy practices; and whether there are options for law and governance reforms to promote greater uptake.

Researchers:

Professor Jacqueline Peel, Melbourne Law School, *Principle Investigator*

Professor Hari Osofsy, University of Minnesota Law School, *Partner Investigator*

Professor Brett McDonnell, University of Minnesota Law School, *Partner Investigator*

Dr Anita Foerster, Melbourne Law School, *Senior Research Fellow*

ARC Project – Regulating Food Labels: The Case of Free-Range Food Products in Australia

This ARC Grant was awarded to Professor Christine Parker (Discovery Projects DP150102168, 2015 – 2018). Professor Parker's current research focuses on the politics, ethics and regulation of food. She is working on an ARC Discovery Project grant with Dr Gyorgy Scrinis and Dr Rachel Carey (in the Faculty of Veterinary and Agricultural Science) to examine the possibilities for food labeling to increase democratic engagement with and governance of the food system using free range and higher animal welfare labeling of eggs, chicken meat and pork products as a case study. She is also researching and writing on misleading health claims on superfood labeling as part of another ARC Discovery Project on the regulation of anti-ageing treatments. Prof Parker has also been writing on pesticide regulatory policy and enforcement and sustainability issues.

Researchers:

Professor Christine Parker, Melbourne Law School, *Investigator*

Dr Gyorgy Scrinis, University of Melbourne, *Investigator*

Dr Rachel Carey, University of Melbourne, *Research Fellow*



ARC Project – Climate Change Law and Mitigation: Forest Carbon Sequestration and Indigenous and Local Community Rights

CREEL researchers have investigated the potential impact of the global greenhouse gas mitigation scheme, Reduced Emissions from Deforestation and Degradation (REDD+) on indigenous and local community rights. This project has involved fieldwork in REDD+ recipient countries as well as with the international organisations (the World Bank, the United Nations Development Program (UNDP), the United Nations Environment Program (UNEP) and the United Nations Food and Agriculture Organisation (FAO)) and civil society groups. Presentations have been given by investigators in Australia and abroad, working papers have been drafted and a book has been submitted and is in press. This Discovery Project, DP110100259, was funded between 2011-2017.

Researchers:

Associate Professor Kirsty Gover, Melbourne Law School, *Investigator*

Professor Maureen Tehan, Melbourne Law School, *Investigator*

Associate Professor Margaret Young, Melbourne Law School, *Investigator*

Professor Lee Godden, Melbourne Law School, *Investigator*

National Native Title, Cultural Flows Project (Component 5)

\$186,000

The project aimed to help embed Aboriginal water allocations in Australia's water management framework. The final report, Cultural flows: reforming water law and policy, has been developed to describe different ways that the Echuca Declaration concept of cultural flows can be implemented using law and policy. It builds on earlier work about cultural flows to show how First Nations' best values about water can be translated into laws and policies to make change happen on the ground. Funding for the project has been generously provided by the Murray-Darling Basin Authority, the Commonwealth Environmental Water Office, the National Water Commission and the Department of Families, Housing, Community Services and Indigenous Affairs.

Researchers:

Professor Lee Godden, Melbourne Law School, *Investigator*

Dr Rebecca Nelson, Melbourne Law School

Dr Bruce Lindsay, Environmental Justice Australia

Events

Joint Seminar: 12 January 2017

Value Creation in a Sustainable Manner

Presenter: Professor Mervyn King SC, at CPA Australia, Southbank

Hosts: CPA Australia and Melbourne Law School's Centre for Resources, Energy and Environmental Law (CREEL) and Centre for Corporate Law and Securities Regulation (CCSLR)

Presentation

Attendees gained insights from one of the world's leading thinkers on the changing role of the corporation and how this may play out in complex regulatory and legal environments.

In our resource deprived world, value is no longer looked at through a financial lens, but rather, a sustainability lens. The result? A global shift away from short-term profit with a focus on *financial* capitalism to long-termism and *inclusive* capitalism. However, unless value is created in a sustainable manner, an organisation may actually be destroying value. As part of meeting these challenges in the changed world of the 21st century, Chief Financial Officers should perhaps view themselves as Chief Value Officers.

Professor King's presentation was followed by an open forum discussion and broader analysis of the potential effects of local and international developments in climate change litigation. How will increased shareholder activism force corporate decision-makers to consider and manage climate change risks? Will it drive a longer-term perspective and preserve corporate value?

About the speaker

Professor King is a Senior Counsel and former Judge of the Supreme Court of South Africa. He is Professor Extraordinaire at the University of South Africa on Corporate Citizenship, Honorary Professor at the Universities of Pretoria and Cape Town and a Visiting Professor at Rhodes. He has an honorary Doctorate of Laws from the Universities of the Witwatersrand and Leeds, is Chairman of the King Committee on Corporate Governance in South Africa, which produced King I, II and III, and is First Vice President of the Institute of Directors Southern Africa.

He is Chairman of the International Integrated Reporting Council (IIRC), Chairman Emeritus of the Global Reporting Initiative (GRI) and a member of the Private Sector Advisory Group to the World Bank on Corporate Governance. He chaired the United Nations Committee on Governance and Oversight and was President of the Advertising Standards Authority for 15 years.

He has been a chairman, director and chief executive of several companies listed on the London, Luxembourg and Johannesburg Stock Exchanges. He has consulted, advised and spoken on legal, business, advertising, sustainability and corporate governance issues in over 60 countries and has received many awards from international bodies around the world. He is the author of three books on governance, sustainability and reporting and sits as an arbitrator and mediator internationally.



Conference: 15 & 16 February 2017

Frontiers 3: Frontiers in Environmental Law Colloquium

Organiser: Mr Brad Jessup, Melbourne Law School / CREEL

Summary

The annual Frontiers in Environmental Law Colloquium provided a forum for environmental law teachers and researchers to share and discuss their ideas, research and teaching practices. Through a supportive forum, to appreciate and implement best practices and explore innovative ideas across the discipline and institutions and in doing so shape a sustainable future in the region. Frontiers 3: the third Frontiers in Environmental Law Colloquium was hosted by the National Environmental Law Association and the Centre for Resources, Energy and Environmental Law at Melbourne Law School, The University of Melbourne.

Colloquium Aims

The aims of this colloquium were to:

- Provide a collegial forum in which participants exchange ideas, information and research on environmental law and policy issues.
- Promote an inclusive and supportive network of Australian and New Zealander environmental law scholars.
- Identify and discuss opportunities for research synergies, career progression and collaboration.
- Share and learn about innovative approaches to teaching and research in environmental law.

Colloquium Themes

The papers discussions and presentations that engaged with the ideas of frontiers, boundaries and intersections in environmental law, particularly were:

- Intersections across environmental disciplines and environmental law.
- Multi-level or trans-jurisdictional governance of environmental problems.
- Researching environmental law through partnerships or novel or less frequently used methodologies.
- The regulation of cross-cutting or emerging environmental issues.
- Unpacking framings and foundational ideas of environmental law (e.g sustainability, justice, resilience, adaptation).
- Critical and contextual understandings of recent case law.
- New, experimental, or research-integrated approaches to teaching environmental law.

Program

The focus of the colloquium was on research paper presentation sessions, interspersed with brief provocative plenary incursions and collaborative sessions on teaching, research methodologies, and environmental law interactions and intersections outside of the academy.

Outcome: Special Issue Environmental and Planning Law Journal (see publication list)



Conference: 16 & 17 February 2017

Australian Legal Geography Symposium

Organiser: Mr Brad Jessup, Melbourne Law School / CREEL

Summary

The Institute of Australian Geographers Legal Geography Study Group has convened in a workshop setting in various cities along the eastern seaboard over recent years. This symposium was the continuation of those past summer time meetings, and the first in Melbourne, supported by the Centre for Resources, Energy and Environmental Law (CREEL) and the Institute for International Law and Humanities (IILAH) at Melbourne Law School.

Symposium Aims

The symposium offered a collegial environment to keep abreast of the research of study group members, to broaden the network, to support PhD scholarship, and to explore research synergies and collaborations.

Twenty participants presented a lightly developed work-in-progress paper with the purpose of receiving constructive peer guidance, and with the aim of drawing connections with the research of others. The overarching goal of the symposium was to form research themes for forthcoming conferences for which participants will further develop their papers, and in doing so to highlight our collective scholarly contribution.

Symposium Themes

Participants' papers explored a topic, method or concept in the field of legal geography. Framed by the reflective keynote address from legal geography pioneer, Professor Lee Godden, the symposium allowed participants to recall the progress the Institute of Australian Geographers Legal Geography Study Group has made in less than a decade of shared scholarship and to consider future research within the field. The symposium followed the conclusion of the Annual Colloquium of Environmental Law Teachers and Researchers.

Outputs

Unlike past workshops and meetings, the goal of the symposium was not to develop a themed publication, rather to share work-in-progress papers that can be further developed and presented at later conferences in a shared thematic context.



Seminar: 1st March

Three Legal Conundrums to Making REDD+ (Reducing Emissions from Deforestation and forest Degradation) Work

Presenter: Professor David Takacs, University of California, Hastings College of Law

Convenor: Associate Professor Margaret Young

Presentation

In REDD+ (Reducing Emissions from Deforestation and forest Degradation), a community or individual is paid to avoid deforesting land or to reforest land that has been degraded. Usually the payer then obtains greenhouse gas reduction credits for the carbon thus saved in biomass. A coalition of unlikely bedfellows pose this as a win-win-win in environmental conservation: This is an efficient market mechanism where businesses and citizens mitigate greenhouse gas build up inexpensively, providing a funding stream to protect imperilled biodiversity and functioning ecosystems, while transferring billions of dollars from global North to South.

Yet REDD+ has attracted opponents who see potential methodological and human rights problems with its application. In this talk, I will discuss three thorny legal conundrums that must be addressed if REDD+ is to work as its proponents' advocate: 1) Carbon is a new form of property: Who may own what property rights in carbon in a given locale? 2) What and how is carbon measured, monitored, reported, and verified in a REDD+ scheme, and who gets to dictate the terms? 3) How do we fulfil Environmental Democracy legal norms in REDD+ deals, where symmetries often existing knowledge and power between those prizing forests for their carbon sequestration properties and those depending on forests for their livelihoods?

About the speaker

David Takacs is Professor of Law at University of California, Hastings College of the Law in San Francisco. His scholarly work addresses carbon offsetting, biodiversity conservation law, the Public Trust Doctrine, and the human right to water. He is the author of *The Idea of Biodiversity* (Johns Hopkins U. Press). In 2017, he received the Rutter Award for Outstanding Teaching at UC Hastings. He holds a J.D. from U.C. Hastings, an LL.M. from the School of Oriental and African Studies at the University of London, and a B.S. (Biology), M.A. (History and Philosophy of Science) and Ph.D. (Science & Technology Studies) from Cornell University.



Seminar: 22nd March

U.S. Environmental Law under the Trump Administration

Presenter: Professor Robert L. Glicksman, George Washington University

Convenor: Dr Rebecca Nelson

Presentation

The advent of modern environmental law in the United States beginning in 1970 was made possible because of a bipartisan consensus on the importance of protecting the public health and preserving the nation's natural resource heritage. Over the ensuing decades, several efforts by presidents or congressional leaders to alter those basic commitments ran aground. Attacks on core environmental legislation such as the Endangered Species Act failed, and laws such as the Clean Air Act were strengthened, even under Republican presidents.

The election in 2016 of Donald Trump as President dramatically changed this landscape. The bipartisan consensus in favor of environmental protection has been shattered and the likelihood of radical reform that fundamentally weakens U.S. environmental law is significant. This presentation will review the steps that President Trump's Administration, backed by Republican majorities in both houses of Congress, have already taken and have promised to take. If implemented, these changes will make U.S. environmental law unrecognizable to anyone familiar with its substance and process over the past half century.

About the speaker

Robert L. Glicksman is a nationally and internationally recognized expert on environmental, natural resources, and administrative law issues. A graduate of the Cornell Law School, his areas of expertise include environmental, natural resources, administrative, and property law. Before joining the law school faculty in 2009, Professor Glicksman taught at the University of Kansas School of Law, where he joined the faculty in 1982 and was named the holder of the Robert W. Wagstaff Distinguished Professor of Law in 1995. Professor Glicksman has practiced with law firms in DC and New Jersey before joining and while on leave from academia, focusing on environmental, energy, and administrative law issues. He has consulted on various environmental and natural resources law issues, including work for the Secretariat of the Commission for Environmental Cooperation in Montreal, Canada.



Brown Bag: 24 May 2017

Ecosystem-based Adaptation and Disaster Risk Reduction: Flood Risk in Australia

Presenter: Dr Anita Foerster

Background

This paper was presented at IUCN Environmental Law Colloquium, Cebu, Philippines.



The aim of the paper was to:

- Explore the value of an ecosystem-based model for climate adaptation and disaster risk reduction law and policy – by looking at the way that we are approaching adaptation to flood risk in Australia.
- Continue from previous work on spatial adaptation planning for coastal climate hazards and bushfire, and particularly a paper that looked at trade-offs between public interest environmental values and private economic interests, particularly property – arguing that PIEV were undervalued in adaptation planning and there was a preference for adaptation measures that protected private interests – and therefore resulted in hard engineering, rather than retreat and relocation to allow natural ecosystems to adapt...

This research was funded out of the MLS International Collaboration Initiative to strengthen international linkages in relation to flood disaster research. Dr Foerster travelled to Utrecht University in the Netherlands and some of the sites of the Dutch Room for the Rivers program, which were used as small case studies in this presentation and a subsequent book chapter (publication pending).

Seminar: 25th May

Global Project on Artificial Photosynthesis and the Transition from Corporatocene to Sustainocene

Presenter: Professor Tom Faunce, ANU College of Law and ANU Medical School

Convenor: Professor Lee Godden

Presentation

This seminar explored characteristic governance features of the contemporary Corporatocene and how some of their more deleterious impacts may be ameliorated by globalisation of the technology of global artificial photosynthesis- the science of converting roads and buildings on the earth's surface so they make clean fuel, food and fertiliser from water, sun and air. Some of the likely regulatory and governance changes associated with this shift to the Sustainocene epoch was analysed. The talk also explored innovative ways of communicating this positive vision of humanity's future including music.

About the speaker



Tom Faunce is a Professor jointly in the ANU College of Law and ANU Medical School. He has been awarded an ARC Future Fellowship and five Discovery grants in the area of health technology regulation including impacts of trade agreements and nanomedicines on Australia's PBS. He served as a consultant with UNESCO on its Global Health Law database and has been a Brocher Foundation fellow at Geneva. Tom edits the Medical Law Reporter for the *Journal of Law and Medicine*. He has published over 200 refereed articles and over 50 book chapters. His published books include *Who Owns Our Health?* (UNSW Press) and the edited volume *Nanotechnology Toward the Sustainocene* (Pan Stanford). His most recent field of research is governance of global artificial photosynthesis and he has edited special editions on this theme for the *Australian Journal of Chemistry* and the Royal Society's *Interface Focus* as well as co-written a music album. He serves on the A.C.T Civil and Administrative Appeals Tribunal for health professional matters and on the central Human Research Ethics Committee at the ANU.

Workshop: 11th August

New Developments in the Legal Status of Rivers

Part of the Australian Earth Laws Alliance workshop series on Exploring the Legal Status of Nature

Convenors: Dr Erin O'Donnell and Professor Christine Parker

Background

In 2017, four rivers have been given the status of legal persons: the Whanganui in NZ, the Ganges and Yamuna Rivers in India and the Rio Atrato in Colombia. In Victoria, the state government has committed to establishing the 'Birrarung Council' to be the voice of the Yarra River. These unprecedented developments have fundamentally altered the legal status of rivers in law. Will they also help us to protect them?

This workshop was also part of a broader research and publication project run by the Australian Earth Laws Alliance on the legal status of nature, and provided an opportunity to contribute to an emerging field of law and policy.

Researchers, legal practitioners and students were invited to a workshop at Melbourne Law School on Friday 11 August 2017, to hear more about these fascinating developments in the legal status of rivers.

This workshop was jointly hosted by the Australian Earth Laws Alliance and the Centre of Resources, Energy and Environment Law (CREEL). Thanks to Dr Michelle Maloney for her presentation and the support of this workshop.

Presentations and Recordings:

- **Virginia Marshall** (Principal, Triple BL Legal)
First Nations' Perspective on Legal Rights for Rivers.
- **Michelle Maloney** (Convenor, Australian Earth Laws Alliance)
Exploring the Legal Status of Nature
- **Erin O'Donnell** (Senior Fellow, CREEL)
Legal Rights for Rivers: the Ganges and Yamuna Rivers, India.
- **Julia Talbot-Jones** (ANU, Crawford School)
Legal Rights for the Whanganui River, New Zealand.
- **Lisa Caripis** (Transparency International)
Legal Rights for the Rio Atrato, Colombia
- **Bruce Lindsay** (Environmental Justice Australia)
Yarra River Protection Act: A New Statutory Process
- **Elizabeth Macpherson** (Lecturer, University of Canterbury, NZ)
Legal Rights for the Rio Atrato, Colombia.
- **Trent Wallis** (Co-Executive Officer, Victorian Environmental Water Holder)
Environmental Water Rights in Victoria

Workshop Report

The Workshop Report detailing the outcomes from the day, is available on the CREEL website.



Workshop: 28 & 29 September

Workshop on Food Labelling and Democratic Engagement in the Food System

Convenors: Professor Gregory Scrinis, Professor Christine Parker and Dr Rachel Carey

The workshop was part of an ARC-funded research project led by Professor Parker with Dr Scrinis on Regulating food labels: The case of free-range food products in Australia (DP 150102168).

The food label has become an important site of contestation and controversy in food systems. While food safety, nutrition and health information have often figured strongly in scholarly and policy discussion of food labelling, a range of issues now compete for space on the label: including animal welfare, environmental sustainability, technological methods of production (eg. GM and organic), country and place of origin, and fair trade. A range of stakeholders—including governments, producers, food corporations and civil society groups—aim to use the food label to draw attention to and communicate various attributes of food products and the conditions under which they were produced and distributed. Purchasers of food products—whether they be individual consumers or other business including retailers (such as supermarkets) -- are also demanding an increasing range of information of the foods they purchase. What type of information is provided, for what purpose, how this information is regulated, and who gets to decide, - a matter which is increasingly being contested.

The aim of this workshop was to focus attention on the politics and regulation of food labelling itself as an important interface between markets, politics and civic engagement in the food system. The researchers suggested that the label, and the practices and politics that shape it, was worthy of analysis and study in its own right as a window into the relationship between production, consumption, distribution and a range of external stakeholders and policy goals in the food system. How the label itself was constructed, who controlled it and how labelling issues and controversies played out and resolved would have likely both reflected and shaped underlying food system dynamics. It was therefore worth critically examining labelling issues themselves, not just the underlying certification and production issues that a particular label represents.

This event included a Public Lecture.

Public Lecture: 27th September

Can Food Labelling help create more Sustainable Food Systems?

Facilitator: Richard Cornish, Food Journalist and Author

Panelists: Professor Christine Parker, University of Melbourne; Katinka Day, CHOICE; Dr Kate MacDonald, University of Melbourne; Dr Kate Johnson, Sustainable Fish Lab

What role can labelling play in creating more sustainable food systems? What kinds of labelling would enable consumers and producers to support environmentally sustainable and ethical practices of food production and consumption?

Food journalist and author Richard Cornish was in conversation with a dynamic panel of experts, who explored this question through case studies of food labelling for sustainably sourced fish, free range animal products and products containing palm oil.

Organised by the Faculty of Veterinary and Agricultural Sciences, University of Melbourne in association with Professor Gregory Scrinis' and Professor Christine Parker's ARC funded grant and Food Labelling workshop.

Masterclass: 10 October

Tackling Climate Change through Carbon Taxes under WTO Law

Presenter: Professor Jennifer Hillman

This event was co-hosted between CREL and GELN.

In recent years, carbon taxes have been a major source of discussion in the United States and around the world. Supporters contend that they offer an efficient way to simultaneously create incentives to emit less carbon dioxide and increase government revenue. Carbon taxes are often proposed alongside measures to ensure that the most affected domestic industries are not placed at a competitive disadvantage with respect to competitor producers operating in countries that have not imposed any restrictions or taxes on carbon usage. Can carbon taxes and associated measures be applied in a way that does not violate WTO law? Former WTO Appellate Body Member Professor Hillman will discuss these and related issues within the context of current global developments.

About the speaker

Jennifer Hillman is a professor of international law at Georgetown Law School in Washington DC, teaching and writing about international trade, investment and economic law. She has had a distinguished career in public service, having served as a member of the WTO Appellate Body, as a Commissioner at the U.S. International Trade Commission, as the General Counsel and Ambassador/Chief Textile Negotiator at the Office of the U.S. Trade Representative, and as the legislative director for U.S. Senator Terry Sanford (NC). She is a member of the Council on Foreign Relations and the Board of Visitors of the Sanford School of Public Policy at Duke University. She was formerly a partner at the law firm of Cassidy Levy Kent, a former fellow at the German Marshall Fund of the US and a former member of the selection committee for Truman Scholars. She is a graduate of Duke University and the Harvard Law School.



Research Seminar: 23 October 2017

A moment in the sun: does the Paris Agreement on climate change mark an evolution or an extinction of international environmental law? Jacob Werksman in conversation with Alice Palmer

Speaker: Professor Jacob Werksman, lead negotiator for the European Union

Convenor: Alice Palmer, Melbourne Law School, CREEL

Background

Since world leaders met in Paris in 2015 and adopted an agreement on climate change, states have been eager to promote the pact as a triumph of international cooperation.

But does the Paris Agreement's deference to sovereign choice mark a significant erosion in the nature of international climate change law? Or is the agreement a pragmatic framework for cooperation and accountability that recognizes the practical limitations of international law?

About the speakers

Jacob Werksman is Principal Adviser to the European Union Directorate General for Climate Action, where his work focuses on the international dimensions of European climate policy. His responsibilities include leading aspects of the European Union negotiations under the UN Framework Convention on Climate Change. Jacob formerly held positions at the United Nations and major not-for-profit organisations working on international environmental law and policy.

Alice Palmer is a Senior Fellow teaching Melbourne Law Masters subjects on international law and environmental protection. She was previously the Director of the Foundation for International Environmental Law and Development (FIELD) in London where she worked with developing country governments and advocacy groups to use international law for the environment. Alice's recent article, *Valuing Aesthetics in World Heritage Decisions*, examines the extent to which world heritage status is confined to natural landscapes that conform to an European Romantic ideal.



Workshop: 28 & 29 November 2017

Going beyond the crisis response: Building trust and maintaining legitimacy in environmental flows funded by the Academy of Social Sciences in Australia

Convenors: Dr Erin O'Donnell, Dr Avrill Horne, Professor Brian Head and Professor Lee Godden

Water law and policy reform typically occurs in response to environmental and social crises, such as the Millennium Drought in the Murray-Darling Basin. However, the ongoing need for trust, engagement and participation is often overlooked. Ten years on from the Brisbane Declaration of 2007, it is time to re-examine the role of legitimacy in environmental flows implementation.

This workshop explored how to embed *legitimacy* as a core measure of success for environmental flows programs, by bringing together multi-disciplinary research in social engagement, water law and policy, and catchment management to create institutional frameworks and develop new tools to empower people to engage with and participate in water governance, and environmental flows programs specifically.

This workshop aimed to connect researchers, practitioners and community leaders, and to draw on their unique experiences to develop metrics and methods to build and maintain legitimacy as a key investment, and fundamental indicator of success, for environmental flows programs.

This workshop was funded by the Academy of Social Sciences in Australia, and is hosted by the Centre for Resources, Energy and Environment Law at the University of Melbourne, in partnership with the Institute for Social Science Research at the University of Queensland, and the Environmental Hydrology and Water Resources Group in the Department of Infrastructure Engineering, at the University of Melbourne.

Launch: 8 December 2017

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

Convenor: Professor Jacqueline Peel, Professor Hari Osofsky (Dean, Penn State Law and School of International Affairs).

Background

The Women's Energy and Climate Law Network (WECLN) was established by Jacqueline Peel (Professor, Melbourne Law School) and Professor Hari Osofsky (Dean, Penn State Law and School of International Affairs) to create a virtual community of female energy/climate law scholars and practitioners to share research, provide mentoring support, and give voice to women's perspectives on energy/climate law issues. The network is off to a very good start after a successful first in-person gathering in Melbourne on Friday 8 December 2017 that was characterised by a strong collaborative, supportive, positive and very constructive atmosphere. The launch was attended by women living and working in Australia, the United States, United Kingdom, Philippines, Caribbean and India, who work on various aspects of energy and climate law at the local, regional, national and international scales. The launch combined discussion panels with eminent energy and climate law scholars, small group sessions to obtain feedback on works-in-progress, mentoring sessions on careers in climate and energy law, and an opportunity to input into the future directions for the network. [View Program and Agenda.](#)



Publications

Authored Research Books

Tehan, M, Godden, L, Young, M and Gover, K, *The Impact of Climate Change Mitigation on Indigenous and Forest Communities International, National and Local Law Perspectives on REDD+*, Cambridge University Press, United Kingdom (2017)

Book Chapters

Barr, O, 'Mourning Place' in C Butler and E Mussawir (eds), *Spaces of Justice: Peripheries, Passages, Appropriations*, Routledge, United Kingdom (2017), 73-93

Godden, L and Amiet-Knottenbelt, M, 'Marine Plastic Pollution: Protecting Biodiversity on the High Seas -Gaps in UNCLOS and CBD Frameworks' in A Toledo and V Tassin (eds), *Guide to the Navigation of Marine Biodiversity Beyond National Jurisdiction*, Livraria D'Placido, Brazil (2017) 393-426

Gover, K, 'Indigenous Citizenship in Settler States' in A Shaachar, R Baubock, I Bloemraad and M Vink (eds), *The Oxford Handbook of Citizenship*, Oxford University Press, United Kingdom (2017), 453-477

Gover, K, 'The Treaty and Human Rights in New Zealand Law: Will the Common Law Presumptions Help or Hinder?' in D Meagher and M Groves (eds), *The Principle of Legality in Australia and New Zealand*, Federation Press, Australia (2017) 209-236

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Haines, F and **Parker, C**, 'Moving towards Ecological Regulation: The Role of Criminalisation' in C Holley and C Shearing (eds), *Criminology and the Anthropocene*, Routledge, United Kingdom (2017) 81-108

Le Mire, S. and **Parker, C**, 'Lawyers as Whistleblowers: The Need for a Gatekeeper of Justice Whistleblowing Obligation/Exception' in R Levy, M O'Brien, S Rice, P Ridge and M Thornton (eds), *New Directions for Law in Australia: Essays in Contemporary Law Reform*, ANU Press, Australia (2017) 103-116

Parker, C and Nielsen, V, 'Compliance: 14 Questions' in P Drahos (ed), *Regulatory Theory: Foundations and Applications*, ANU Press, Australia (2017) 217-232

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Peel, J, 'Climate Change' in A Nollkaemper, I Plakokefalos and J Schechinger (eds), *The Practice of Shared Responsibility in International Law*, Cambridge University Press, United Kingdom (2017) 1009-1050

Peel, J and Stephens, T, 'Australia and International Environmental Law' in D Rothwell and E Crawford (eds), *International Law in Australia*, Thomson Reuters, Australia (2017) 457-483

Pahuja, S, 'Changing the World: The Ethical Impulse and International Law' in R Gaita and G Simpson (eds), *Who's Afraid of International Law?*, Monash University Press, Australia (2017) 21-42

Pahuja, S and Storr, A, 'Rethinking Iran and International Law: The Anglo-Iranian Oil Company Case Revisited' in J Crawford, A Koroma, S Mahmoudi and A Pellet (eds), *The International Legal Order: Current Needs and Possible Responses - Essays in Honour of Djamchid Momtaz*, Koninklijke Brill NV, The Netherlands (2017) 53-74

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Barrera-Hernandez, L, Barton, B, **Godden, L**, Lucas, A and Ronne, A, 'Sharing the Costs and Benefits of Energy and Resource Activity: a new book by SEERIL's Academic Advisory Group' (2017) 35(3) *Journal of Energy & Natural Resources Law* 317-323

Burton, M, 'A Review of Judicial References to the Dictum of Jordan CJ, Expressed in Scott v Commissioner of Taxation, in Elaborating the Meaning of 'Income' for the Purposes of the Australian Income Tax' (2017) 19(1) *Journal of Australian Taxation* 50-72

Carey, R, **Parker, C** and Scrinis, G, 'Capturing the Meaning of "Free Range": The Contest between Producers, Supermarkets and Consumers for the Higher Welfare Egg Label in Australia' (2017) 54 *Journal of Rural Studies* 266-275

Crommelin, M, 'Constitutional Conventions and the Headship of State: Australian Experience' (2017) 40(3) *Melbourne University Law Review* 1132-1141

Jessup, B, Godden, L and Peel, J, 'Special Issue Editorial: Frontiers in Environmental Law' (2017) 34(6) *Environmental and Planning Law Journal* 469-474

Jessup, B, 'Trajectories of Environmental Justice: From Histories to Futures and the Victorian Environmental Justice Agenda' (2017) 7(1) *Victoria University Law and Justice Journal* 48-65

Jessup, B, 'Book review: The Tasmanian Dam Case 30 Years On: An Enduring Legacy' (2017) 91(8) *Law Institute Journal* 60

Jessup, B and Carroll, C, 'The Sustainability Business Clinic - Australian Clinical Legal Education for a "New Environmentalism" and New Environmental Law' (2017) 34(6) *Environmental and Planning Law Journal* 542-559

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Foerster, A and Peel, J, 'US Fossil Fuel Companies Facing Legal Action for Misleading Disclosure of Climate Risks: Could it Happen in Australia?' (2017) 32(3) *Australian Environment Review* 56-61

Cho, S and **Kurtz, J**, 'The Limits of Isomorphism: Global Investment Law and the ASEAN Investment Regime' (2017) 17(2) *Chicago Journal of International Law* 341-369.

Cho, S and **Kurtz, J**, 'International Cooperation and Organizational Identities: The Evolution of the ASEAN Investment Regime' (2017) 37(2) *Northwestern Journal of International Law & Business* 173-212

Lunny, S, **Nelson, R** and Steinemann, A, 'Something in the Air but not on the label: A Call for Increased Regulatory Ingredient Disclosure for Fragranced Consumer Products' (2017) 40(4) *University of New South Wales Law Journal* 1366-1391

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Peel, J and Osofsky, H, 'Climate Change Litigation: Lessons and Pathways' (2017) 29(11) *Judicial Officers' Bulletin* 99-104

Scrinis, G, **Parker, C** and Carey, R, 'The Caged Chicken or the Free-Range Egg? The Regulatory and Market Dynamics of Layer-Hen Welfare in the UK, Australia and the USA' (2017) 30(6) *Journal of Agricultural & Environmental Ethics* 783-808

Young, M, 'Energy Transitions and Trade Law: Lessons from the Reform of Fisheries Subsidies' (2017) 17(3) *International Environmental Agreements-Politics Law and Economics* 371-390

Conference Papers:

O'Donnell, E, Horne, A, Head, B and **Godden, L**, *Going Beyond the Crisis Response: Building Trust and Maintaining Legitimacy for all Stakeholders in Environmental Flows and Water Governance*, Academy of the Social Sciences in Australia, Australia (2017)

Reports/Working Papers

O'Donnell, E, Horne, A, Head, B and **Godden, L**, *Going Beyond the Crisis Response: Building Trust and Maintaining Legitimacy for all Stakeholders in Environmental Flows and Water Governance*, Academy of the Social Sciences in Australia, Australia (2017)

O'Donnell, E, Maloney, M and **Parker, C**, *New Developments in the Legal Status of Rivers*, Centre for Resources, Energy and Environmental Law, University of Melbourne and Australian Earth Laws Alliance, Australia (2017)

Fowler, R, Farrier, D, **Godden, L**, Cunningham, N, Holley, C, Jaireth, H, Lindsay, B, McDonald, J, Makuch, Z, Martin, P, **Peel, J**, Richardson, B, Walmsley, R and Wilcor AO QC, M, *Blueprint for the Next Generation of Australian Environmental Law*, Australian Panel of Experts on Environmental Law, Australia (2017)
full paper available at: apeel.org.au

Higher Degree Continuing Students 2017

Barker, Sarah	Jacqueline Peel (Principal) Judith Marychurch (Co-Supervisor)	Directors' Liability for Corporate Responses to Climate Change: A Comparative Study of Australian, US and UK Law	PhD (Law)
Baxter, Timothy Andrew	Lee Godden (Principal) Jason Varuhas (Co-supervisor)	Negligence of Australian Public Functionaries for Inadequate Climate Mitigation: Could equitable remedies (re)define the duty of care in massive torts?	M Phil (Law)
Bond, James Gregory	Brian Cook (Principal - Faculty of Science, School of Geography) Lee Godden (Co-Supervisor)	The materiality of expertise	PhD (Science)
Cummins, Philip	Michael Crommelin (Principal) Cheryl Saunders (Co-Supervisor)	Judicial Culture and Judicial Office in Australia	PhD (Law)
Gleeson, Penelope	Christine Parker (Principal) Michelle Taylor-Sands (Co-Supervisor)	The legitimacy of the regulation of therapeutic goods in Australia and the challenge posed by ethically contentious therapeutic goods	PhD (Law)
Hainbach, Richard Benjamin	Jurgen Kurtz (Principal) Margaret Young (Co-Supervisor)	Renewable Energies in International Trade and Investment Law	PhD (Law)
Islam, Mohammad Sohidul	Lee Godden (Principal) Rebecca Nelson (Co-Supervisor)	The Role of Law in Protecting Groundwater: Challenges and Opportunities for Global and State Action	PhD (Law)
Khatarina, Josi	Tim Lindsey (Principal) Margaret Young (Co-Supervisor)	Assessing Central Government Performance in a Decentralized Natural Resource Management Setting: A Case Study of Environmental Governance of the Palm Oil Industry in Indonesia	PhD (Law)
Lamond, Sophie	Gyorgy Scrinis (Principal - Faculty of Veterinary and Agricultural Sciences) Christine Parker (Co-Supervisor)	Big Food and digital foodscapes: How is Big Data transforming food system governance?	PhD (Agricultural Sciences)
Leins, Kobi-Renee	Alison Duxbury (Principal) Christine Parker (Co-Supervisor)	Nano-enhanced Weapons and the Legality of Military Use under Existing Legal Frameworks	PhD (Law)
McIntyre, Juliette Marie	Hilary Charlesworth (Principal) Margaret Young (Co-Supervisor)	Procedures of the International Court: Theory, Function and Practice	PhD (Law)
Mulyani, Lilis	Tim Lindsey (Principal) Kirsty Gover (Co-Supervisor)	Reforming Legal Personhood in Indonesian Land Law: Towards equitable land rights	PhD (Law)

Palmer, Alice	Lee Godden (Principal) Robert McVeigh (Co-Supervisor)	Reimagining international environmental law	PhD (Law)
Rioseco Sullivan, Sebastian Andres	Margaret Young (Principal) Hilary Charlesworth (Co-Supervisor)	State Consent in the Activities of Conferences of the Parties	PhD (Law)
Rive, Vernon John Charles	Margaret Young (Principal) Michelle Foster (Co-Supervisor)	Scattered laws, scattered lives: fragmented international responses to climate change-related displacement, migration and relocation	PhD (Law)
Sarcich, Raif	Fiona Haines (Principal - Faculty of Arts, School of Social and Political Sciences) Michael Crommelin (Co-Supervisor)	Federalism, policy formation and the energy market transition in Australia	PhD (Arts)
Schujers, Laura	Margaret Young Jacqueline Peel (Co-Supervisor)	The Capacity of the Legal System to Manage Environmental Risk Through Environmental Impact Assessment ('EIA'): A Study on Natural Gas Fracking	PhD (Law)

Higher Degree Completions 2017

Kolieb, Jonathan Asher	Christine Parker (Principal) Sean Cooney and Gerry Simpson (Co-Supervisors)	Corporate peacebuilding and the law: regulating the private sector for conflict transformation	PhD (Law)
O'Donnell, Erin Louise	Lee Godden (Principal) Sundhya Pahuja and John Freebairn (Co-Supervisors)	Constructing the aquatic environment as a legal subject: legal rights, market participation, and the power of narrative	PhD (Law)
Paine, Joshua	Anne Orford (Principal) Margaret Young (Co-Supervisor)	International adjudicatory functions: a comparative study through the lens of environmental cases	PhD (Law)

Grants

New Discovery Grants:

- **Professor Hilary Charlesworth and Associate Professor Margaret Young**

The potential and limits of international adjudication

\$424,608

This project aims to analyse the place of adjudication in international affairs, using a case study of Australia's extensive engagement with the International Court of Justice. The project sets out to provide the first detailed account of the context and impact of the cases in which Australia has been involved before the Court as well as to assess the complex roles that adjudication and advisory opinions can play in the resolution of international disputes more generally. This timely project will not only document an historic set of engagements spanning 70 years, but also provide guidance on when international adjudication may be productive for Australia, the Asia-Pacific region and the international legal order.

- **Dr Rebecca Nelson**

Regulating cumulative environmental effects: designing global best practice

\$363,996

Scientists know that the environmental effects of separate projects can accumulate to pose significant risks. Yet law often allows unintended environmental harms by ignoring cumulative effects, or using weak controls that fail to prevent harm in practice. This innovative research aims to analyse and evaluate the theoretical bases, adoption and use of laws regulating cumulative environmental effects in the US, EU, Canada and Australia. Using novel methods combining law, ethics, and natural and spatial science, this project seeks to build an framework of globally relevant best practice tools for regulating cumulative effects. This promises to increase the capacity of regulators, industry, and the community to better manage environmental harms.

- **Professor Mark McMillan, Associate Professor Ann Genovese, Associate Professor Shaun McVeigh and others [administered by RMIT]**

Indigenous leaders: lawful relations from encounter to treaty

\$430,661

This multi-disciplinary project draws together history, law and the creative arts to recover, make visible and make accessible the continuous traditions of Indigenous people's leadership in conducting lawful relations in Victoria. The project aims to develop innovative and creative methods of translating these encounters and their attendant insights, in order to inform the practical activities of conducting lawful relations in the present and the future. The intended outcomes should shape critical deliberations on the future of non-Indigenous Australia's legal and social relationships with its First Peoples, particularly regarding treaty-making.

Teaching Program

Juris Doctorate

JD Subjects	
Core Subjects	
Torts	Brad Jessup
Property Law	Kirsty Gover
Legal Theory	Lee Godden
LMR	Michael Crommlin
Elective Subjects	
Environmental Law	Brad Jessup
Sustainability Business Clinic	Brad Jessup

Melbourne Law Masters Program

Master of Environmental Law	
Core Subjects	
Climate Change Law	Margaret Young Damien Lockie
Disaster Law and Climate Adaptation	Lee Godden Anita Foerster
Environmental Compliance and Enforcement	David Markell
Environmental Rights	Alice Palmer
International Environmental Law	Jacqueline Peel Sam Johnston Alice Palmer
Toxics, Waste and Contamination Law	Brad Jessup
Law of the Sea	Margaret Young Sam Johnston
Water Law and Natural Resources Management	Lee Godden Rebecca Nelson Erin O'Donnell
Other Subjects	
Construction Risk: Allocation and Insurance	Tony Horan Peter Wood
Construction, the Community and Neighbours	Philip Britton
Energy Regulation and the Law	Terence Daintith

Fundamentals of the Common Law	Judy Bourke Erica Grundell Raelene Harrison Claire Kaylock Simon McKenzie
Human Rights and Climate Change	Scott Leckie,
International Law and Development	Sundhya Pahuja Luis Eslava
International Legal Internship	Bruce Oswald CSC John Tobin
International Mineral Law	Stephen Creese
Major Project Delivery: Legal Interfaces	Jeremy Chenoweth
Payment Matters in Construction Projects	John Baartz David Campbell-Williams
Principles of Construction Law	Matthew Bell Wayne Jocic Philip Evans
Principles of International Law	Tim McCormack Gerry Simpson Thomas Skouteris
Principles of Natural Resources Law	Michael Crommelin AO
Project Finance	Peter Fox QC Michael Tuckfield
Public Private Partnerships Law	Mr Owen Hayford, Coordinator Ms Ilsa Kuiper

Master of Energy and Resources Law

Core Subjects

Energy Regulation and the Law	Terence Daintith,
Energy Resources in Emerging Markets	Paul Stephan
Fundamentals of the Common Law	Judy Bourke Erica Grundell Raelene Harrison Claire Kaylock Simon McKenzie
International Commercial Arbitration	Richard Garnett Robert Kovacs
International Economic Law	Jürgen Kurtz
International Environmental Law	Jacqueline Peel Sam Johnston Alice Palmer

International Legal Internship	Bruce Oswald CSC John Tobin
International Mineral Law	Stephen Creese
International Petroleum Transactions	Owen L Anderson
Law of the Sea	Margaret Young Sam Johnston
Major Project Delivery: Legal Interfaces	Jeremy Chenoweth
Natural Resources Law in Asia	Jianlin Chen
Principles of Natural Resources Law	Michael Crommelin AO
Project Finance	Peter Fox QC Michael Tuckfield
Public Private Partnerships Law	Owen Hayford Ilisa Kuiper
Resources Joint Ventures	Michael Crommelin AO
Toxics, Waste and Contamination Law	Brad Jessup
Water Law and Natural Resources Management	Lee Godden Rebecca Nelson Erin O'Donnell

Teaching Responsibilities

Professor Jacqueline Peel is Associate Dean of the Melbourne Law Masters.

Associate Professor Margaret Young is the Director of Studies, Masters of Law, Melbourne Law School.

Associate Professor Margaret Young: Co-ordinator of the Judge in Residence Program at Melbourne Law School.

Visiting Scholars

January – May 2017

Professor Robert L. Glicksman
Professor of Environmental Law
The George Washington University Law School

Linkages

University

Melbourne Sustainability Society Institute

CREEL is a member of the Melbourne Sustainable Society Institute (MSSI) which aims to facilitate and enable research linkages, projects and conversations leading to increased understanding of sustainability and resilience trends, challenges and solutions. The MSSI approach includes a particular emphasis on the contribution of the social sciences and humanities to understanding and addressing sustainability and resilience challenges. The society is hosted by the Faculty of Architecture, Building and Planning at the University of Melbourne.

Melbourne Energy Institute

CREEL is a knowledge partner of the Melbourne Energy Institute. The MEI is an access point for industry, government and community groups seeking to work with leading researchers on innovative solutions in the following areas: new energy resources, developing new ways to harness renewable energy, more efficient ways to use energy, securing energy waste and framing optimal laws and regulation to achieve energy outcomes. Professor Michael Crommelin AO is on the MEI Executive Committee.

Office for Environmental Programs

The Office for Environmental Programs (OEP) coordinates the Graduate Environment Program at the University and allows access to a wide range of environmentally relevant subjects. CREEL has close links with OEP. Brad Jessup is a member of the academic advisory committee and CREEL members teach subjects in the program.

Contact Details

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



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