Annual Report 2011

CREEL
Centre for Resources, Energy and Environmental Law
**Director’s Message**

In 2011 CREEL continued to build its international, national and regional linkages in environmental law, resources law, and energy regulation; and to consolidate its research profile in these fields. As interest in these areas of law has grown, we have seen a proliferation of subfields develop; for example, climate change law and renewable energy law might now be said to be established fields of research in their own right. As evidence of these developments, CREEL was fortunate in having a growing number of graduate researchers undertaking doctoral studies on a wide diversity of topics in 2011. Representative topics include Hao Zhang’s ‘Legal risks of payment scheme of carbon trade and its judicial remedy in China’. A further listing of the achievements of our Graduate Researchers is noted within the Annual Report. Indeed, CREEL has been progressively developing a strong cohort of PhD researchers working within the broad umbrella of CREEL’s research interests and supervised by CREEL academic staff. A growing number of these students are undertaking international fieldwork and representing CREEL through their scholarship at international and national conferences and in other forums.

Longstanding areas of scholarship by CREEL staff also continued to be of strong public interest with the mining/ resources boom and associated legal and taxation questions, including impacts on indigenous peoples, being ‘headline news’ in Australia. Water law and governance questions, focused around the Murray-Darling Basin plan, also attracted considerable attention. Our profile at the International level is growing with several CREEL staff publishing books in the field of international law or on international topics in 2011; for instance, Margaret A. Young, *Trading Fish, Saving Fish: The Interaction between Regimes in International Law* (Cambridge University Press, 2011).

Interdisciplinary research remained a particular strength of Centre with linkages to University of Melbourne Research Centres, such as the Melbourne Energy Institute and the Melbourne Sustainable Society Institute; collaborations with researchers in Monash Sustainability and international multidisciplinary centres. Several interdisciplinary workshops were organised by CREEL in 2011 including a Climate Change workshop in August 2011. Centre staff participated in international legal research groups in energy and environmental law, including the Academic Advisory Group (SEERIL) for the International Bar Association, and the International Law Association’s Committee on Climate Change Law. Melbourne Law School remained affiliated with the IUCN Academy of Environmental Law.

CREEL has fostered integration with the Melbourne Law Masters course; for example inviting students studying in the MLM programme to be engaged with centre activities and seminars. Our links to the JD and LLB also remained strong as CREEL staff teach into the core teaching subjects; and in specialty fields such as Environmental Law.

As our activities have expanded, the administration needed to manage them also has grown. Jenny O’Connell as Centre administrator has provided enthusiastic and effective support to the diverse range of activities undertaken by CREEL. She assisted greatly in redesigning CREEL’s ‘web presence’ over 2011.

CREEL staff are growing steadily with several research fellows associated with research projects in the Centre projects that have contributed much to the prolific research activities and outcomes over 2011. Externally-funded projects associated with CREEL include:

- ARC Discovery Projects: Responding to Climate Change: Australia’s Environmental Law and Regulatory Framework
- Climate Change Law and Mitigation: Forest Carbon Sequestration and Indigenous and Local Community Rights

The work of Anita Foerster, Jessica Rae and Lisa Caripis in coordinating; and contributing to the research under these projects is acknowledged.

On a final note, there is a wealth of people who contribute to the Centre in terms of giving time and assistance; the Advisory Board is prominent here, as well as guest lecturers in the programme and many professional staff across the Law School and University – but a special vote of thanks goes to the Melbourne Law Research Office under the leadership of Lucy O’Brien.

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**Professor Lee Godden**  
Director Centre for Resources Energy and Environmental law  
Melbourne Law School

Annual Report 2011
Centre for Resources, Energy and Environmental Law (CREEL)

Annual Report 2011

Table of Contents

Director’s Message ........................................................................................................... 1
About CREEL ...................................................................................................................... 3
Purposes and Objectives .................................................................................................... 3
Centre Directors ................................................................................................................ 4
Centre Members ................................................................................................................ 5
Centre Administrator ......................................................................................................... 6
Research Fellows .............................................................................................................. 7
Graduate Research Students ........................................................................................... 7
PhD Completions in 2011 ................................................................................................. 8
Graduate Thesis Prize ........................................................................................................ 9
The Melbourne Law Masters .............................................................................................. 9
Advisory Board Members ............................................................................................... 10
Events ............................................................................................................................... 11
Research and Publications ............................................................................................. 14
Journal Affiliations .......................................................................................................... 16
Government and Law Reform Submissions .................................................................... 17
Grants ............................................................................................................................... 17
Research Collaborations ................................................................................................. 17
Climate Law Blog ............................................................................................................ 17
Linkages ............................................................................................................................ 18
Contact Details ................................................................................................................ 19
About CREEL

The Centre for Resources, Energy and Environmental Law (CREEL) was established in 1986. At that time the Centre had a predominant orientation toward natural resources law. Since that time, CREEL has undergone several changes of name and scope, with a growing emphasis on environmental law and energy regulation in recent years. Currently, Centre staff members and affiliated students research across areas as diverse as international law and environmental regulation, mining and petroleum laws, climate change law, water law, property law, planning law, environmental taxation and the use of economic instruments in regulation, Indigenous peoples’ rights and economic development issues, jurisprudence related to the environment, biodiversity protection, and fisheries. A key function of the Centre is to provide a platform for considering emerging legal questions in these fields, as well as contributing to law reform and public interest issues across resources, energy and environmental law.

The Centre hosts a wide range of activities such as public seminars and academic workshops, as well as engaging in legal professional networks and community liaison.

Interested parties are invited to join the CREEL email list for notification of events. **CREEL oversees the Graduate Diploma in Environment, Energy and Resources Law in the Melbourne Law Masters. In 2013 a Master of Environmental Law will be offered.**

**Purposes and Objectives**

CREEL aims to promote research, teaching and publication into 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 planning for, and provision of infrastructure in urban areas, and that associated with energy and resource development; and
- the recognition and protection of Indigenous rights and interests in land and resources.

In addition, CREEL aims to:

- engage in these activities with respect to contemporary developments and issues in Australia, Asia/Pacific, and other selected regions;
- extend the Law School’s specialised collection of research and teaching materials relating to energy, natural resources, environmental law and native title;
- strengthen existing links and establish new connections with other centres in Australia and overseas engaged in equivalent activities;
- encourage persons from industry, private sector, investment institutions, government and universities in Australia and overseas to participate in the Centre’s activities;
- strengthen existing links and establish new connections with other centres in Australia and overseas engaged in equivalent activities; and
- encourage persons from industry, private sector, investment institutions, government and universities in Australia and overseas to participate in the Centre’s activities.
**Centre Directors**

**Director**

**Professor Lee Godden**

Lee Godden has been a staff member of the Melbourne Law School since 2002. She was appointed Director of the Centre for Resources, Energy and Environmental Law in 2008 after a joint appointment as Director, Office for Environmental Programs within the University. Lee Godden’s research interests include environmental law, natural resources law and governance, water law, property law and Indigenous law and human rights. Her work extends beyond Australia with comparative research on environmental law and sustainability, resource trading regimes, and Indigenous land rights issues in countries as diverse as Canada, New Zealand, UK, South Africa, and the Pacific. She is a member of the Commission for Environmental Law, IUCN and of the Academic Advisory Group Section on Energy, Environment, Resources and Infrastructure Law, of the International Bar Association. She serves on the editorial boards of the *Journal of Energy & Natural Resources Law*, the *Australian Resources and Energy Law Journal* and the *Legal Education Review*.

**Associate Directors**

**Professor Michael Crommelin AO**

Michael Crommelin is Zelman Cowen Professor of Law, a position he has held since 1985. Michael was Dean of the Melbourne Law School in 2010, a position he held 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 AMPLA 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. 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 Tehan’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 programs. Her publications and graduate studies reflect these interests. Immediately prior to joining the Faculty, Maureen was a solicitor with the Pitjantjatjara and Ngaanyatjarra Councils and continues to undertake consultancies in the area. Maureen held the position of Associate Dean, Undergraduate in the Melbourne Law School in 2009.
Centre Members

**Associate Professor Mark Burton**
Mark Burton has worked, taught and researched in the field of taxation law since 1990. Although Mark specializes in taxation law, his research is of an interdisciplinary nature with particular emphasis upon the political institutions. Mark’s recent research has combined elements of political science, political theory, social psychology and law in dealing with the application of democratic principles in the context of taxation law. At present Mark is writing a co-authored book (with Associate Professor Kerrie Sadiq, due February 2012) which critically examines the management of tax expenditures. Mark holds an LLB (Hons) and completed his PhD at the Australian National University. He is a Barrister and Solicitor of the Supreme Court of Victoria.

**Dr Kirsty Gover**
Kirsty Gover is the Director of the Comparative Tribal Constitutionalism Research Programme, co-sponsored by CREEL, Institute for International Law and the Humanities (IIIAH) and the Centre for Comparative Constitutional Studies (CCCS). Dr Gover is a graduate of the New York University (NYU) JSD Doctoral Program, where she was an Institute for International Law and Justice (IILJ) Graduate Scholar and New Zealand Top Achiever Doctoral Fellow. Kirsty received her BA/LLB from the University of Canterbury, New Zealand, and her LLM from Columbia University, United States, where she was a Columbia University School of Law Human Rights Fellow and James Kent Scholar. Kirsty is the author of *Tribal Constitutionalism: States, Tribes and the Governance of Membership* (OUP, 2010).

**Associate Professor Jürgen Kurtz**
Jürgen Kurtz is a Director of the International Investment Law Research Programme of the Melbourne Law School’s Institute for International Law and the Humanities. 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. In addition to research and teaching, Jürgen acts as a consultant to a variety of governmental and inter-governmental agencies, including the United Nations Conference on Trade and Development, the United Nations Development Program and the World Bank.

**Associate Professor Shaun McVeigh**
Shaun McVeigh joined the Melbourne Law School in 2007. He previously researched and taught at Griffith University in Queensland as well as Keele and Middlesex Universities in the United Kingdom. He has an extensive research background in critical legal studies in Australia and the UK. Shaun McVeigh has research interests in the fields of jurisprudence, health care, and legal ethics. His current research projects centre around three themes associated with refreshing a jurisprudence of jurisdiction: the development of accounts of a “lawful” South; the importance of a civil prudence to thinking about the conduct of law (and lawyers); and, the continuing need to take account of the colonial legal inheritance of Australia and Britain.
Professor Sundhya Pahuja

Sundhya Pahuja’s scholarship is broadly concerned with the changing role of law and legal institutions in the context of development and globalisation. It engages the practice, and praxis, of international law and development through political philosophy, political economy and postcolonial theories. In 2010, Sundhya was a Visiting Research Fellow at Birkbeck, University of London. She is currently a member of the organising committee of the Legal Theory Interest Group of the European Society of International Law and serves on the editorial boards of the Australian Feminist Law Journal and the Law, Social Justice and Global Development Journal (LGD) based at the University of Warwick.

Professor Miranda Stewart

Miranda Stewart is an Associate Professor and Director of Tax at the 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 graduate 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 Margaret Young

Margaret Young joined the Melbourne Law School 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. Her monograph, Trading Fish, Saving Fish: The Interaction between Regimes in International Law, was published by Cambridge University Press in 2011. 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. Margaret 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. Her edited collection, Regime Interaction in International Law: Facing Fragmentation (Cambridge University Press 2012), is based on the conference she convened at the University of Cambridge in 2009 on Regime Interaction in International Law: Theoretical and Practical Challenges.

Centre Administrator

Jenny O’Connell

Jenny O’Connell joined the Melbourne Law School in May 2010 as the CREEL Centre Administrator. Jenny holds a Bachelor of Arts (Hons) (majoring in History and Cinema Studies), a Diploma in Creative Arts and a Master of Arts (Cultural Material Conservation). As the CREEL Administrator Jenny provides support for the CREEL Director and Centre Members, maintains the CREEL web page, organises a range of CREEL public lectures, seminars and workshops, as well as being involved in designing publications and flyers for the centre.
Research Fellows
Jessica Rae
Anita Foerster
Mahala Gunther

Graduate Research Students

MPhil

Elizabeth MacPherson
Indigenous Freshwater Rights in Chile and Australia: Can Indigenous Water Rights be Sustainably Integrated within Water Markets?
Supervisors: Kirsty Gover and Maureen Tehan

PhD

Samuel Alexander (Kirk)
Voluntary Simplicity: Towards a Post-growth Theory of Property
Supervisors: Lee Godden and Gerry Simpson

Takele Bulto
The Imperatives of Extraterritorial Application of the Human Right to Water: A Case Study of the Nile Basin
Supervisors: Jacqueline Peel and Carolyn Evans

Julia Dehm
From REDD to green capitalism: law, life, growth and limits in crisis
Supervisors: Maureen Tehan and Margaret Young

Anita Foerster
Supervisors: Lee Godden and Jacqueline Peel

Angus Frith
Sustainable Indigenous Entities for Making Agreements
Supervisors: Lee Godden, Professor Marcia Langton (Centre for Health and Society, Melbourne School of Population Health) and Maureen Tehan

Steven Geroe
Supervisors: Lee Godden and Mike Sandiford (Melbourne Energy Institute)

George Kailis
A Public Right to Fish
Supervisors: Stuart Kaye and Michael Crommelin
Anne Kallies
Can the Market Fix it? Promoting Renewable Energy in Australia
Supervisors: Lee Godden and Jacqueline Peel

Melkamu Moges
Growing Practices on Safeguarding Land Rights Through Improving Land Registration Legislation in Ethiopia: Gaps and Strengths
Supervisors: Maureen Tehan and Matthew Harding

Erin O’Donnell
Environmental independence: how environmental law can adapt to an environmental corporation with property rights and a voice of its own
Supervisors: Lee Godden, John Freebairn and Sundhya Pahuja

Lily O’Neill
Negotiating Resource Agreements for Greater Sunrise and Browse: A Comparative Study
Supervisors: Maureen Tehan and Miranda Stewart

Yoriko Otomo
The Changing Landscapes of Risk
Supervisor: Anne Orford

Darren Parker
(Under)Mining a Culture: Can’t We Do Better than this? Recognising Transformative Values in Aboriginal Cultural Heritage
Supervisors: Maureen Tehan and Kirsty Gover

Rafael Plaza
Supervisors: Maureen Tehan and Lee Godden

Hao Zhang
Legal risks of payment scheme of carbon trade and its judicial remedy in China
Supervisors: Lee Godden and Sarah Biddulph

PhD Completions in 2011

Bulto, T
Rights, Wrongs and the River Between: Extraterritorial Application of the Human Rights to Water in Africa
Supervisors: Carolyn Evans and Jacqueline Peel

Kirk, S
Property Beyond Growth: Toward a Politics of Voluntary Simplicity
Supervisors: Lee Godden and Gerry Simpson
Graduate Thesis Prize

The 2011 Harold Luntz Graduate Research Thesis Prize was won by:

Dr Takele Bulto

Rights, Wrongs and the River Between: Extraterritorial Application of the Human Right to Water in Africa

The Harold Luntz Graduate Research Thesis Prize is awarded annually to the Melbourne Law School graduate research student judged to have presented the best thesis in the previous year. It is named in honour of Emeritus Professor Harold Luntz, a world expert on torts law and a former Dean and professor at Melbourne Law School.

Dr Bulto’s PhD thesis brings together international environmental law and human rights law to examine the legal obligations States owe to other States with which they share water (particularly rivers). It is an excellent thesis that has made a real contribution to thinking about the difficult problem of water-sharing and access to water between States. His research has made, and continues to make, an impact in an area of growing international importance.

The Selection Committee for the Prize said that, ‘Both examiners’ reports are particularly and consistently strong, emphasising the quality and important contribution of the thesis. The principal supervisor’s recommendation was also particularly strong, commending Dr Bulto on an excellent and important piece of scholarship that will make a very significant contribution the progressive development of international human rights law. Both examiners passed Dr Bulto without requiring any changes and the first examiner recommended Dr Bulto for the Chancellor’s Prize for Excellence in the PhD Thesis ranking the thesis as ‘near or at the very top of this scholarship’.

The Melbourne Law Masters (LLM)

CREEL members taught in the degree programs of the Melbourne Law School. Subjects taught in 2011 included:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Instructor(s)</th>
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<tbody>
<tr>
<td>Climate Change Law</td>
<td>Associate Professor Jacqueline Peel</td>
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<td>Dr Margaret Young</td>
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<td>Environmental Law</td>
<td>Professor Lee Godden</td>
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<tr>
<td>Indigenous Peoples, Land and Resources Law</td>
<td>Associate Professor Maureen Tehan</td>
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<td></td>
<td>Dr Kirsty Gover</td>
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<td>Angus Frith</td>
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<tr>
<td>International Environmental Law</td>
<td>Professor Stuart Kaye</td>
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<tr>
<td>Mineral Law</td>
<td>Professor Michael Crommelin AO</td>
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<tr>
<td>Petroleum Law</td>
<td>Professor Michael Crommelin AO</td>
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<tr>
<td>Planning Law</td>
<td>Mr Barnaby Chessell, Maddocks</td>
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<td>Mr Adrian Finanzio, Victoria Bar</td>
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<tr>
<td>Sustainability Law and Governance</td>
<td>Professor Klaus Bosselmann, University of Auckland, New Zealand</td>
</tr>
<tr>
<td>Energy Regulation and the Law</td>
<td>Professor Terence Daintith, University of Melbourne, University of Western Australia</td>
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<tr>
<td>Resources and Environment Taxes</td>
<td>Associate Professor Mark Burton</td>
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<tr>
<td></td>
<td>Mr James Macky, KPMG</td>
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<tr>
<td>Water Law and Natural Resources Management</td>
<td>Professor Lee Godden</td>
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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. Pieter is author or 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.

Russell Byard (Senior Member, VCAT)

Russell Byard is a lawyer and Senior Member of the Victorian Civil and Administrative Tribunal, with a speciality in the Planning and Environment list maintained by VCAT.

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 in the United Kingdom. Elisa is a regular presenter and author of articles on climate change and emissions trading. Elisa was recently named as a “leading lawyer” in the Australasian Legal Business Guide for Environmental Law.

Professor Ray Ison (Monash and Open University, UK)

As Professor of Systems (UK Open University; 1994 - present) Ray Ison has led or facilitated the development of new teaching programs (e.g. MSc in Environmental Decision Making), and established the Open Systems Research Group. He successfully coordinated a major interdisciplinary 5th Framework Program (30 researchers, 6 countries) researching social learning for sustainable catchment management. From 2002 - 7 the Environment Agency (England & Wales) funded research to apply social learning to implementation of the European Water Framework Directive. In 2008 he moved to a joint position at the Open University and a Professorship at Monash (Systems for Sustainability) where he has developed a Systemic and Adaptive Governance Research program.

Roz Hansen (Managing Director, Hansen)

Roz Hansen is Managing Director of Hansen Partnership, 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 regularly appears as an expert witness at VCAT and Planning Panels Victoria. A recipient of a Centenary Medal from the Federal Government is testimony of Roz’s wealth of experience in the planning arena. She holds a BA and Diploma in Town and Regional Planning, The University of Melbourne, and DipEd from Melbourne State College.

Sam Johnston (Senior Research Fellow, United Nations University)

Sam Johnston is Senior Research Fellow at the United Nations University Institute of Advanced Studies. Principal responsibilities of this position are to provide strategic guidance to the Director regarding the research priorities of the Institute and develop new research activities for the Institute. His research interests include: international law and policy associated with traditional knowledge, international intellectual property rights law, international environmental law and policy, international biotechnology law and policy, international law of development assistance, international law of the sea and the Antarctica Treaty System.

Professor Craig Pearson (Director, Melbourne Sustainable Society Institute, University of Melbourne)

Professor Craig Pearson FAIAST, GAICD, is foundation Director of the Melbourne Sustainable Society Institute. Craig facilitates interdisciplinary research to contribute to creating a sustainable society. His interests are in strategic research management, institutional change, and in disciplinary areas relating to agriculture and cities. He has held senior administrative and professor/honorary professor positions in nine universities in Australia, Canada and China and published several books.
Events

Book Launches

5 April 2011

Book Launch: Kirsty Gover, Tribal Constitutionalism: States Tribes and the Governance of Membership

The CCCS and CREEL co-hosted the launch of Kirsty Gover’s book Tribal Constitutionalism: States Tribes and the Governance of Membership (OUP, 2010) on Tuesday 5 April at 6pm at Readings, Carlton. The book launch was opened by Professor Carolyn Evans and an introduction to the book was given by Professor Jeremy Webber (University of Victoria, Canada).

Seminars

3 February, 2011

CREEL and ILAH Seminar: Achieving greater coherence and mutual supportiveness between the trade and climate change regimes

Speaker: Marie Isabelle Pellan, Visiting WTO Fellow at the Institute for International Trade, University of Adelaide

Against the backdrop of the ongoing UNFCCC negotiations, this seminar discussed the use of trade measures to address environmental policy objectives and the flexibilities available under WTO rules, focusing in particular on GATT Article XX jurisprudence and its potential relevance to GHG control measures. It was argued that while the WTO case law has evolved towards an accommodating view of public policy imperatives arising from global environmental challenges, the conclusion of an international agreement on climate change remains the first-best policy option to ensure mutually supportive outcomes both for the trade and climate change regimes. The presentation also highlighted how the multilateral trading system can contribute positively through its agenda to the achievement of climate change mitigation and sustainable development goals.

24 March 2011

CREEL Seminar: The Legal Protection of the Amazon

Speaker: Beatriz Garcia, Australian Centre for Climate and Environmental Law at Sydney Law School

Dr Beatriz Garcia gave a discussion regarding her book, The Amazon: from an International Law Perspective. With a vast river network and rainforests extending over eight South American countries the Amazon plays a vital role particularly in maintaining biodiversity and terrestrial carbon storage. Due to its ecological characteristics, the Amazon benefits not only those States, but also the international community at large. However, the Amazon forests are being rapidly cleared with a consequent loss of biodiversity and impact on global climate. In this light, the book examines whether international law has an impact on the protection of the Amazon. In particular, it enquires what forms of cooperation exist among the Amazon countries and between them and the international community, and to what extent international cooperation can help protect the Amazon. Given the role of this region in maintaining the balance of the global environment, the book also examines whether the Amazon should be granted a special legal status and possible implications in terms of international cooperation.

13 May 2011

CREEL Seminar: Learning from the USA experience in diffuse source regulation

Speaker: Professor Robin Kundis Craig, Associate Dean of Environmental Programs and Co-director of the Environmental and Land Use Law program at Florida State University, USA

Professor Robin Kundis Craig visited Victoria as part of Department of Primary Industries’ Visiting Scientists Program. In this seminar, Robin described the USA institutional context for diffuse source regulation and provided an overview of their experiences including key issues and challenges. She outlined what has worked well legally and why, and what has not. Given her considerable experience in both the Chesapeake Bay and Gulf of Mexico programs, she was able to draw on examples of leading state approaches to regulation of diffuse source pollution.
New Natures Seminar Series: Philosophy and Ecology after the End of the World

Speaker: Professor Timothy Morton, Professor of English (Literature and the Environment), University of California, Davis

Professor Morton’s books include The Ecological Thought (Harvard UP, 2010) and Ecology without Nature (Harvard UP, 2007). His highly developed engagements with ecological thought suggest new ways of thinking about politics and law, and aim to provide the “cognitive flashlights” to assist human life through its current ecological emergency.

CREEL/EDO Seminar: New directions in climate change law and policy

Speakers: Mark Dreyfus QC MP, The Parliamentary Secretary for Climate Change and Energy Efficiency
Associate Professor Peter Christoff, University of Melbourne
Elisa de Wit, Head of Australian Climate Change Practice, Norton Rose

Three guest speakers presented on the topic ‘New directions in climate change law and policy’ co-hosted by the Centre for Resources, Energy and Environmental Law and the Environment Defenders Office (VIC). The speakers addressed the Government’s Carbon Farming Initiative and the carbon price. These laws complement a number of existing federal climate change policies like the Renewable Energy Target. Questions addressed included will they be enough to tackle climate change? Are existing climate laws and policies successfully driving the transition to a clean economy? What more is needed?

CREEL Seminar: Interacting Regulatory Frameworks for Climate Change

Speaker: Dr Ottavio Quirico, Université Paris 2

The seminar presented by Dr Quirico explored transnational regulatory regimes targeting climate change, provided a possible systematisation, and sought to understand whether they are consistent with public multilevel environmental regulation. The focus was specifically on non-state ‘networks’ viewed from the standpoint of the horizontal relationship among different actors and regulatory frameworks as well as from that of the vertical relationship between private and public regulators and rules. Attention was also paid to the existence of possible overlaps, and thus consistency and inconsistency, with ‘external’ regulatory regimes. As a result, from the viewpoint of both primary and secondary rules, climate change transnational regulation was defined as a ‘regime complex’, positively characterised by flexibility, which should allow for allocation of border tax adjustments, but likely to be undermined by incoherence, ultimately based on comprehensive public regulation.

CREEL Seminar: The Titling of Customary Land in Sabah in the Name of Poverty Alleviation: or Oil Palm through Some Other Means

Speaker: Professor Fadzilah Majid Cooke, Universiti Malaysia Sabah, School of Social Sciences

This paper benefited from recent theorizing on exclusion in the administration of access to customary land. It described recent changes in land legislation that promotes extensive titling of customary land for indigenous peoples through group access (via communal title). With conditions attached to the issuance of communal titles, namely, that they ought to be used for growing crops of commercial value, often oil palm, it is easy to conclude that this could be another form of land grabbing. Official declarations point to communal titles as a means of avoiding unscrupulous sale of their lands if individual titles were given indigenous peoples through Native Titles. Another official reason is that the conditionality attached to communal titles is a form of making customary lands, much of which are managed under fallow (but viewed officially as idle lands), more productive. Nevertheless, bearing in mind the idea that all forms of land use be they for small scale subsistence or for large scale commercial plantation, requires some kind of exclusion, the paper examined the demands (including negotiation over exclusions) made by indigenous peoples in Sabah in their negotiation of a communal title being issued on customary lands at Lalampas in the District of Tongod.
Workshops

6 and 7 April 2011

**CREEL/NCCARF Workshop: Early Career Researcher Workshop**

Held at the Melbourne Law School, the objectives of this workshop were to create a conversation about water governance in Australia, build collaborative research links, create opportunities for co-researching and information sharing, and provide opportunities for early-career researchers to participate in a national network of researchers and research-users. Lee Godden co-convened the workshops and gave presentations.

8 April 2011

**CREEL/NCCARF Workshop: Researching Water Governance: New theories for new practices**

CREEL and NCCARF (National Climate Change Adaptation Research Facility) Workshop for water governance researchers: consisting of two sessions that focussed on the topics ‘Pathways to Water Governance Research’ and ‘New (and Old) Conceptual Approaches’. Lee Godden co-convened the workshops and gave presentations.

11-12 August 2011

**Beyond a Carbon Price: A Framework for Climate Change Regulation in Australia**

Beyond a Carbon Price: A Framework for Climate Change Regulation in Australia August 11-12, 2011, University of Melbourne. This workshop was a key outcome under the ARC Discovery Grant on climate change regulation held by Lee Godden, Jacqueline Peel and Rodney Keenan. It brought together leading climate policy and legal experts from the United States, United Kingdom, Germany and around Australia in Melbourne for a very productive two days to develop a framework for climate change regulation that would be both effective and fair. The papers from the workshop are to be published as two special issues of the journal Climate Law (late 2011, early 2012). Participants in the workshop also prepared a joint submission to on the proposed legislative package for Australia’s Clean Energy Future.

10 October 2011

**2011 Research Workshop Series**

Associate Professor Maureen Tehan, gave a seminar on ‘Indigenous Land Tenure, Title and Certainty: Land ‘Reform’ and the Boundaries of Property in Australia and Canada’, as part of the 2011 Research Workshop Series, Melbourne Law School.

15–16 December 2011

**Postgraduate and Early Career Researchers Workshop, Law and Its Accidents**

In its fourth annual year, this workshop brought together higher research students and early career researchers, from a range of different disciplines across a diverse field of scholarship, to engage with law and its theoretical and methodological questions. It was supported by the MLS and its research centres and institutes: Centre for Employment and Labour Relations Law (CELRL), Centre for Media and Communications Law (CMCL), Centre for Resources Energy & Environmental Law (CREEL), Institute for International Law and the Humanities (IILAH), Intellectual Property Research Institute of Australia (IPRIA) and the Postgraduate Law Student Association (PLSA). Speakers included Professor Paul Carter (Centre for Memory, Imagination and Invention, Deakin University) and Dr Rebecca Scott Bray (Department of Sociology and Social Policy, University of Sydney).
Research and Publications

Books


Young, M, *Trading Fish, Saving Fish: The Interaction between Regimes in International Law*, (Cambridge University Press 2011).

Book Chapters


Journal Articles – Refereed


Other Journal Articles Contributions


Major Reference Works


Conference Proceedings


Other


Journal Affiliations

<table>
<thead>
<tr>
<th>Journal</th>
<th>Editor Information</th>
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<tbody>
<tr>
<td>British Year Book of International Law</td>
<td>Margaret Young, Assistant Editor</td>
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<tr>
<td>Journal of Energy &amp; Natural Resources Law</td>
<td>Lee Godden, Member of the Editorial Board</td>
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<tr>
<td>Legal Education Review</td>
<td>Lee Godden, Member of the Editorial Board</td>
</tr>
<tr>
<td>Melbourne Journal of International Law</td>
<td>Jacqueline Peel, Member of the Advisory Board</td>
</tr>
<tr>
<td>Yearbook of Climate Change Compliance</td>
<td>Jacqueline Peel, Member of the Advisory Board</td>
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Government and Law Reform Submissions


Peel, J, Godden, L, Kallies, A et al, ‘Submission to Department of Climate Change and Energy Efficiency, Australian government’s Clean Energy legislative package, 22 August 2011.

Grants

Lee Godden, Jacqueline Peel and Rodney Keenan continued to work on ARC Discovery Grant ‘Responding to Climate Change: Australia’s Environmental Law and Regulatory Framework’ (ARC Discovery Grant 2009-2011).

Maureen Tehan, Lee Godden, Miranda Stewart, with Marcia Langton, Ciaran O’Faircheallaigh (Griffith public policy) and John Taylor (ANU demographer) continued work on ARC Linkage Project Grant for the project ‘Poverty in the Midst of Plenty: Economic Empowerment, Wealth Creation and Institutional Reform for Sustainable Indigenous and Local Communities’. A collaborative project with Industry Partners comprising of the Department of Families, Housing, Community Services and Indigenous Affairs Rio Tinto Ltd, Woodside Ltd, Santos Ltd and Marnka Mia (Aboriginal corporation) plus partner investigator contributions from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) (2009-2012).

Maureen Tehan, Lee Godden, Margaret Young and Kirsty Gover initiated research in 2011 on ARC Discovery Project: ‘Climate Change Law and Mitigation: Forest Carbon Sequestration and Indigenous Local Community Rights (2010-2014). The project examines the impact of climate change law and mitigation on Indigenous peoples and local forest communities in Australia, India and Malaysia. It examines the United Nations—Reducing Emissions from Deforestation and Forest Degradation scheme which gives credit for carbon sequestration in forests thus providing financial incentives to avoid deforestation for communities in sensitive ecosystems.

Miranda Stewart and Maureen Tehan, ‘Harnessing Legal Resources for Indigenous Empowerment’ received a University of Melbourne Knowledge Transfer grant from to work with Native Title Services Victoria to develop a partnership.

Research Collaborations

Associate Professor Maureen Tehan has been an Expert Academic Reviewer: Comparative Literature Review of Aboriginal Heritage Act (2006) (Vic).

Climate Law Blog

To keep track of Australian and overseas developments in climate change law, Associate Professor Jacqueline Peel has continued contributions to 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 the link: http://blogs.unimelb.edu.au/peel_climatechange/
Linkages

University

Melbourne Sustainable Society Institute (MSSI)
CREEL has established strong links with University of Melbourne researchers in the energy, resources and environmental fields. CREEL is a member of the Melbourne Sustainable Society Institute (MSSI) which fosters sustainability research on large public issues, by integrating research expertise from a range of disciplinary perspectives, www.sustainable.unimelb.edu.au

Melbourne Energy Institute
CREEL is a knowledge partner of the Melbourne Energy Institute, with CREEL Associate Director Professor Michael Crommelin being a researcher in Energy Law and Regulation. The Melbourne Energy Institute offers the critical capacity to rethink the way we generate, deliver and use energy.
www.energy.unimelb.edu.au

Office for Environmental Programs (OEP)
The Office for Environmental Programs (OEP) coordinates the Graduate Environmental Program at the University and allows access to a wide range of environmentally relevant subjects. CREEL has close links with OEP as Professor Godden is an Associate Director for the Office for Environmental Programs. CREEL members teach subjects in the program.

International

International Union for the Conservation of Nature (IUCN)
CREEL is a member of the International Union for the Conservation of Nature (IUCN) Academy of Environmental Law, University of Ottawa, Canada and remains affiliated with the Academy. This group is a leading international coalition of Law Schools researching and teaching environmental law.

International Law Association’s Committee on Legal Principles Relating to Climate Change
Associate Professor Jacqueline Peel, Associate Director of CREEL, is an expert member for the International Law Association’s Committee on Legal Principles Relating to Climate Change and was the Acting Rapporteur for the Committee at its 2012 meeting. The Association’s objectives are pursued through the work of its International Committees, the focal point of its activities being the series of Biennial Conferences. The Committee on Legal Principles Relating to Climate Change was established in November, 2008 and has produced two reports. Associate Professor Peel has contributed to the sections of the reports dealing with precaution and sustainable development.
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