

12th Frontiers in Environmental Law
Colloquium 2026
Book of Abstracts



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Law Association

This Book of Abstracts follows the conference program order, organised by day and session. Panel sessions and individual papers are presented under their respective session headings, in line with the structure of the conference. This layout is intended to assist participants in navigating the program and locating contributions with ease.

DAY 1

Session 1A: Indigenous Governance and Legal Pluralism in Environmental Law

Chair: Alice Palmer, University of Melbourne

Lee Godden and Marcus Stewart

Melbourne Law School

Environmental Law, Treaty Law, and Legal Pluralism

Taking the conference theme that ‘all law is environmental law’ as a starting point, this paper seeks to problematise that position by reference to the view that Indigenous Law/ Lore is not necessarily subsumed by environmental law. Environmental law, while it may stand in a strong relationship to First Peoples’ law, the two spheres of law are not coextensive. The exclusion of Aboriginal Peoples from the utilisation of ‘natural resources’ has characterised both colonial and postcolonial property law, resources regimes and at times, environmental law. Accordingly, the paper explores the continuities between colonial resource extraction in Australia and the contemporary environmental regulation that ineffectually regulates exploitative regimes such as carbon resources. The rise of market capitalism has enabled resources to become progressively more fungible and extracted from local control. What alternative trajectories for managing resource regimes and environmental law and regulation may arise in the context of the Victorian statewide treaty and the progressive negotiation of local treaties across the state? From that vantage, the presentation explores the implications for legal pluralism and co-governance as Australia’s first Treaty begins its implementation phase across 2026.

Karisma Karisma

Asia School of Business

Indigenous Voices and Wisdom in Climate Policymaking: Towards Co-Governance and Legal Pluralism

Indigenous wisdom embodies intergenerational ecological knowledge, woven from centuries of lived experience and deep relational understanding of land, water, and more-than-human kin. It integrates adaptive practices rooted in reciprocity, spiritual connection, and holistic stewardship, offering resilient pathways for biodiversity conservation and climate adaptation that transcend conventional scientific approaches. Yet their voices remain marginalised within national and global climate governance structures, often confined to consultation roles without genuine influence over climate policymaking. Drawing on comparative insights from Malaysia and Australia, this paper critically examines the barriers that impede Indigenous participation in climate policy development, highlighting the disjuncture between recognition justice in principle and implementation in practice. Through engagement with normative frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and emerging jurisprudence on Indigenous sovereignty over land and sea Country, the paper explores how environmental law and legal practitioners can move beyond tokenistic engagement toward structural inclusion through co-governance, Indigenous-led environmental monitoring, and legal pluralism in climate regulation and constitutional reform, centring decolonial praxis that dismantles colonial policy legacies. By reimagining environmental law through Indigenous ontologies of stewardship and responsibility, the paper demonstrates how plural legal systems can advance ecological integrity within planetary boundaries. In essence, by internalising and institutionalising indigenous epistemologies and practices, the paper advances the case for climate

justice that is not only ecologically sound but also socially and culturally equitable, ensuring that the pathways toward a sustainable future.

Trevor Daya-Winterbottom

University of Waikato

Sunset for Indigenous Biodiversity Protection in Aotearoa New Zealand

The resource management system in Aotearoa New Zealand has struggled to protect indigenous biodiversity on private land since the enactment of the Resource Management Act 1991 and the promise of achieving the sustainable management of natural and physical resources, including, areas of significant indigenous vegetation and significant habitats for indigenous fauna. The policy gap was "finally" closed by promulgation of the National Policy Statement for Indigenous Biodiversity 2023. However, the National Policy Statement has effectively been put in abeyance to encourage economic growth in both infrastructure and development and the primary sector. The requirement for local authorities to identify and notify new significant natural areas has been suspended, implementation of the National Policy Statement has generally been deferred for three years, and the consenting pathways for coal mines and other extractive industries has been liberalised. These policy debates have taken place against the backdrop of state of the environment reporting recording the continued decline of indigenous biodiversity. This paper will critically analyse the policy debate and interrogate the impact of this policy failure.

STREAM 1

Session 2A: Panel - Feminist Approaches to Environmental Law

Co-chairs: Rowena Maguire and Katherine Keane, QUT

This panel will feature four chapters from a forthcoming edited research handbook, 'Feminist Approaches to Environmental Law' (edited by Rowena Maguire and Katherine Keane). While other social science disciplines have long used feminist theories to critique environmental governance, legal environmental scholarship drawing on these rich insights has been limited. Recent developments within Multilateral Environmental Agreements have seen the development of Gender Action Plans, with expectations that these plans will incorporate gender within national environmental laws. However, much confusion exists as to what "doing gender" in environmental law requires, and this collection explores some of the tensions that arise when seeking to mainstream gender initiatives without first understanding why a feminist or gender lens is useful. This edited collection draws on the benefit of existing deep thinking by feminist scholars from social science disciplines. It expands these theories to critique the design, operation and structural injustices of environmental law. This collection, spanning over 30 chapters written by more than 45 academic and practitioner authors from around the world, includes: theoretical chapters, chapters on international environmental law, chapters on national environmental laws, and chapters exploring the social and human rights aspects of environmental regulation. This panel session will include presentations on four chapters from the collection.

Rowena Maguire

QUT

Feminist Tools for Critiquing Environmental Law

This chapter invites those working in the field of environmental law to: 1) think about knowledge – what knowledge is being used to justify and shape environmental regulation; 2) think about markets – how are market structures and interests influencing the shape and operation of environmental law; 3) think about power and the relationships between and among humans and nature; and 4) think about the gendered materials impacts of environmental policy.

Katherine Keane (On behalf of her co-authors Deanna Grant-Smith, Katherine Webber and Sarah Casey).

QUT

The Trouble with Toilets: Women’s Rights in the Work Environment in Australia

This chapter focuses on the needs of women workers as a constituency that is often overlooked or marginalised in discourse and governance regarding toilets. Inspired by Donna Haraway’s call to ‘stay with the trouble’, the chapter approaches this dilemma not as a technical “hardware” or infrastructural problem, but as a complex “software” issue that demands slow, situated, and relational forms of care. Understanding these troubles requires a feminist lens to look beyond physical infrastructure to the everyday lived experience of users.

Monica Taylor, (co-authored with Beth Goldblatt)

QUT

Burning Inequality - Legal Responses to the Gender Dimensions of Extreme Heat .

This chapter examines the role of law in addressing the gendered injustice of extreme heat and demonstrates how extreme heat is a feminist issue. The authors argue that greater attention must be paid to gender in repurposing different areas of law and legal services to protect people living in hotter conditions who are disproportionately impacted by extreme heat.

Fleur Kingham and Steph Payne,

Chair Queensland Law Reform Commission, and Queensland Law Reform Commission respectively

The Decision Maker and the Crocodile: Integrating Ecofeminist Perspectives for a New Approach to Climate Change

Fleur Kingham and Steph Payne will discuss their chapter, ‘The Decision Maker and the Crocodile: Integrating Ecofeminist Perspectives for a New Approach to Climate Change’. This chapter addresses the law’s failure to respond to the existential threat of climate change. The authors posit that law reflects and perpetuates systems of human domination over nature, and they examine how one legal concept, causation, demonstrates the disconnect between human legal systems and nature. The authors discuss how an alienated concept of causation affects climate change decision makers and their decisions. They propose, as an alternative, an ecofeminist approach, which reveals how society and the law are constructed through the dualistic othering of nature, and provides an integrative approach that could enhance decision makers’ competence.

STREAM 2

Session 2B: Panel - Constitutional Law and Environmental Problems

Chair: TBC

Panellists:

Lael ('Lulu') Weis; *Greening Australian Constitutional Law*, **Liz Hicks;** *Environmental Democracy and Popular Sovereignty in Australia*, **Sam Bookman;** *A New Agenda for Environmental Constitutionalism: Thinking Beyond Rights*

Constitutional law is both fundamental law — establishing the basic framework of governance — and the foundational source of legal norms. Environmental law, on the other hand, is the law of environmental problems. But environmental problems are ‘the troubles of law’: collective problems, caused by and affecting the actions of many, that impact human and ecological health (Fisher 2017). Thus understood, in what ways can, or should, environmental concerns be integrated into constitutional law? And do such efforts at integration make constitutional law a form of environmental law?

This panel will offer a range of perspectives on these questions, with a comparative focus on Australia and the United States. Discussion of this topic usually focuses on formal integration through constitutional amendment and impact litigation. However, Australian perspectives — which place greater emphasis on the small ‘c’ or political constitution — point to other possibilities. In the United States, intergovernmental and interbranch conflicts offer insights into both how constitutional law structures responses to environmental challenges and also how environmental challenges shape constitutional law.

Panellists will consider themes such as Australian traditions of environmental democracy, pathways for incremental norm change that do not rely on constitutional rights adjudication, and how courts adjust constitutional doctrines in response to ongoing environmental threats.

Cecile Bester, Nicola Silbert- *Has the apple fallen too far from the tree? Questioning the constitutional foundations of the EPBC Act*

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is the domestic vehicle by which the Commonwealth seeks to implement its obligations under a range of treaties relevant to biodiversity and environmental protection.

It is well-established that the Commonwealth cannot legislate generally on the subject-matter of a treaty to which it is a party: the legislation must be capable of being regarded as an appropriate means of giving effect to the obligations created by that party. In this paper, we develop an argument that the EPBC Act, particularly in light of proposed recent amendments, can no longer be considered a genuine or “appropriate” attempt to implement the relevant treaty obligations. As such, we argue that it may be unsupported by the external affairs power and at least partly invalid.

Analysis of the external affairs power to date has focused largely on what it empowers, in the sense of what areas of legislative capacity it creates. This paper approaches that question from a very different perspective. We draw out two problematic aspects of the EPBC Act: the exemptions it creates for logging and land clearing; and its authorisation (without assessment) of the climate harm caused by large fossil fuel projects. These flaws are significant enough that they undermine the substance of the Convention on Biological Diversity and other key international treaties, instead of implementing them. We analyse the history and development of the external affairs and explore the existing limitations on its scope, as well as those which might be further developed.

The result for which we argue: the constitutional invalidity of the EPBC Act – is somewhat destabilising. At the conclusion of our paper we offer some observations, as current practitioners in environmental litigation, on what the implications for such an upending of the national environmental legislation might be.

STREAM 1

Session 3A: Foundations for Transformative Environmental Governance: Rights, Obligations and Judicial Approaches

Chair: Alice Bleby, Monash University

Peter Lawrence- University of Tasmania (UTAS), *Integrating the rights of nature and human rights: Lessons from the Inter-American Court of Human Rights Advisory Opinion*

The advisory opinion of the IACtHR on the climate emergency in May 2025 broke new ground by recognising a right to a healthy climate and urging states to recognise nature as a subject of rights. A strength of the judgement is its integration of ecological values with human rights concepts in a manner which may come to influence other tribunals.

Roanna McClelland

Melbourne Law School

Water and climate litigation: conflict or confluence?

As global non-state actors and communities grapple with the effects of climate change and seek avenues to hold governments and corporations to account for climate action, legal mechanisms relating to freshwater are increasingly intersecting with climate litigation. ‘Water’ in this context can be employed in a number of ways: as a deliberate legal avenue to hold governments and corporations to account for climate action; by using bodies of water as tangible symbols of climate change impacts; when freshwater concerns arise as a peripheral issue in climate litigation; or when litigation relating to freshwater includes climate change as a peripheral concern.

The intersection of water and climate change in litigation has received little analysis to date, highlighting the traditional disconnect between water law and climate law. However, this intersection warrants attention for several reasons, including who or ‘what’ is the subject of litigation, the motivations and aspirations behind litigation that joins water and climate change, and potential legal and institutional outcomes.

This paper provides a snapshot of two areas in which water and climate litigation are interacting to better understand the possibilities and implications of integrating water and climate litigation: 1. The global rise of rights-based litigation underpinned by water issues, including ‘rights for rivers’, the human right to water, and a right to a healthy environment. This trend of litigation incorporates both water and climate change issues to varying degrees. 2. Administrative challenges to fossil-fuel projects in Australia based on water impacts.

Kathleen Birrell

La Trobe University

Legal Obligations as Ecological Norms

This paper explores how a more expansive understanding of obligations, owed to one another and to nature, provides the foundation for better laws for environmental protection, restoration and resilience. Obligations here refer to the relationships of dependence and care that define human societies in an ecological context, noting that the exercise of rights is conditional upon the fulfilment of obligations.

Legal scholars have long argued that law contributes to reinforcing the human practices that cause ecological harm, and to perpetuating the hierarchies and injustices that prevent ecological flourishing. Whereas prevailing responses to ecological harm have emphasised rights, including the extension of rights to the natural world, this framing has been described as transitional rather than transformational.

This paper will address the gap in legal research and practice created by a disproportionate emphasis on rights. Examining obligations expressed and adjudicated in recent caselaw, which encompass the fulfilment of legal duties as well as cultural commitments, I will explore the role of obligations as a prior and wider condition for social cohesion, collective action and effective law reform.

STREAM 2

Session 3B: Evolving Legal Doctrines for Climate Accountability: Courts, Constitutions, and International Law

Chair: Liz Hicks, University of Melbourne

Sam Bookman- A Common Law Climate Canon?

This paper investigates whether courts can and should develop a “climate canon”—a substantive judicial approach to interpreting statutes and constitutions in the era of climate crisis. Using a doctrinal-interpretive methodology and drawing on case law throughout the common law world, I chart current judicial trends and advocate for a more coherent, principle-driven canon. Unlike the prevailing rights-based paradigm, I argue that creative climate interventions should hinge on flexible, judicially-crafted principles rather than automatic rights “trump cards.” Part I conceptualizes a climate canon as more than a procedural device: it requires judges to integrate climate considerations into the very fabric of legal reasoning, beyond rote statutory compliance. Part II identifies five defining features of this emerging canon: (1) substantive engagement with climate policies, not just formalities; (2) a context-sensitive focus on the real impact of state action; (3) heightened judicial scrutiny of government measures; (4) integration of climate considerations into administrative and environmental decision-making; and (5) a transversal reach, cutting across traditional legal boundaries.

Part III addresses major objections—namely, alleged deficits in democratic legitimacy and judicial competence. I rebut these with three sets of justifications: external (necessitated by the urgency of the crisis), internal (grounded in existing interpretive methods), and comparative-institutional (drawing on analogous judicial practices from human rights law). While ideally such a canon would be codified through legislative or constitutional means, I argue that courts possess both the precedent and the responsibility to advance one where legislatures fall short. Given the scale of the climate emergency, it is imperative that public law evolve, with the judiciary playing a proactive, principled role in embedding climate responsiveness into legal interpretation.

Hannah Leoni Stahl

University of Heidelberg

Separation of powers for climate protection? What constitutional law and climate litigation in Germany and Australia can tell us about the role of administrative review in protecting the climate.

“Separation of powers” arguments have become a common feature in climate litigation across jurisdictions. Defendants and courts frequently invoke the principle to justify limits on judicial review considering the complexity of climate change, emphasizing that political rather than judicial institutions should provide solutions. Yet, in the absence of comprehensive climate legislation translating the Paris Agreement’s temperature goals into all domestic decision-making, courts face the legal challenge of addressing climate considerations without having sufficient legislation fleshing out “climate standards”. In such circumstances, turning to constitutional principles for guidance appears to be a legitimate measure.

By comparing the separation of powers doctrine in German and Australian constitutional law, this paper examines how the function of administrative review is shaped differently in both jurisdictions. Drawing on recent climate litigation cases against public decision-makers, it explores how the separation of powers doctrine may influence which legal questions arise in climate litigation, and how a court’s understanding of its role in the climate law context may determine the legal solutions the court offers.

The comparative findings suggest that the separation of powers doctrine does not merely constrain judicial intervention but can also affirm the judiciary’s role in maintaining checks and balances. Legal challenges arising in climate litigation cases do not necessarily call for judicial restraint. Instead, they demand clear reasoning and rigorous application of existing law to individual cases. When interpreted in its full complexity, the separation of powers doctrine can help to unlock the potential of administrative review to strengthen climate law and governance. This paper thus reconsiders the judicial function in climate litigation as an active component of constitutional balance rather than a passive limitation.

Hossain Mohammad Reza

Melbourne Law School,

The Promise and the Paradox of Standing Rules in Climate Change Litigation.

The rules on standing, or *locus standi*, remain a central and contested issue in climate litigation. While restrictive standing prevents plaintiffs from seeking judicial accountability for climate change, broad standing often coincides with the rise of climate litigation. This paper, however, challenges the assumed interplay between climate litigation development and broad standing rules, offering a nuanced account of their relationship.

Drawing on twenty-six in-depth interviews with Supreme Court judges, lawyers, and scholars (conducted under ethics approval from Melbourne Law School), this paper demonstrates that Bangladesh’s broad standing rules have not produced substantial climate litigation cases. This paper reveals how socio-cultural intricacies and institutional deficiencies undermine the promise of broad standing, impeding the emergence of climate litigation in Bangladesh.

Bangladesh’s Constitution limits public interest litigation, the main avenue for climate claims, to ‘aggrieved persons.’ In the Flood Action Plan case, the Supreme Court of Bangladesh interpreted ‘person aggrieved’ expansively, conferring standing on any citizen or organisation demonstrating ‘sufficient interest’ in environmental protection, including those ‘whose heart bleeds for less fortunate fellow beings.’ This expansive approach makes Bangladesh a model for accessible climate litigation.

However, this paper reveals a critical paradox: Bangladesh's broad standing doctrine has failed to catalyse robust climate litigation. Broader standing, in Bangladesh, has been undermined by several socio-legal obstacles, such as low public awareness, religious beliefs framing climate disasters as divine will, fear of political retaliation, the psychological burden of protracted litigation, and weak evidentiary systems for proving climate causation.

This paper argues that broad standing alone cannot foster the development of climate litigation. Socio-legal barriers may render these broad standing as limiting in practice as restrictive standing rules. Without addressing such barriers, the promise of broad standing will remain unfulfilled. The insights drawn from this analysis hold relevance for other countries facing similar challenges.

Agnes Chong

The Chinese University of Hong Kong

Reframing Climate Protection as Systemic Integration and Progressive Development of International Law

This paper engages the colloquium's provocation—*Is all law environmental law?*—by situating it within two trajectories: (i) systemic integration; and (ii) the progressive development of international law through the prism of climate protection. International climate law offers a critical case study of how environmental principles have shifted from the margins of specialised environmental law regimes to the centre of general international law, reshaping its coherence while exposing its internal tensions.

The evolution from resource allocation-based rules toward integrated environmental governance marks a structural transformation in international law. Classical principles such as No-Harm, Prevention, Precaution, Due Diligence and Sustainable Development have been reinterpreted through the lenses of climate protection, inter- and intra-generational equity and human rights. These reinterpretations permeate the law of the sea, transboundary watercourses, biodiversity, desertification as well as trade and investment regimes. The principles also intersect with norms concerning the rights of indigenous peoples, refugees, and victims of conflict and disaster, while incorporating the expanding responsibilities of the private sector in global climate governance.

The growing body of climate litigation and recent ITLOS, Inter-American Court and ICJ Advisory Opinions on climate obligations form an emerging jurisprudence of systemic integration and progressive development in international law. These developments articulate the consequences of State responsibility for failing to mitigate greenhouse gas emissions as internationally wrongful acts. Yet uncertainties persist: what level of reduction satisfies the obligation, and at what point does failure engage State responsibility?

These questions expose a deeper dilemma at the centre of the colloquium's provocation itself: as environmental obligations evolve into structural duties of prevention and cooperation, the very coherence of international law depends on reconciling the protection of the global environment as a common good with the preservation of sovereign responsibility, illustrating how, in substance and form, all law is becoming environmental law.

STREAM 1

Session 4A: Investment and economic interventions and the Environment

Chair: Fia Hamid-Walker, University of Melbourne

Dr Margherita Feleppa

University of Wollongong

Greening the Australian Consumer Law: how better repair rights can advance Australian consumers' participation into the circular economy

Repairing what we own and keeping our products for longer is one of our best tools in the fight against climate change. A fight that we can no longer postpone as the window to take meaningful action is rapidly closing. The latest State of the Climate Report warns there may be as little as seven years left. Europe is using consumer law to advance consumers' participation into the circular economy. The European Union (EU) has recently passed legislation granting consumers a right to repair their products while ensuring that all products entering the EU market are sustainable by design. However, these important changes remain confined to Europe. Australia is a long way behind: Australian consumers still lack a right to repair, despite comprehensive national inquiries and recent policy advancement towards a circular economy. This paper explores how the EU approach to repair can shape and inspire Australia's right to repair laws, reflecting on the advantages and challenges of following in the EU footsteps. More specifically, the paper will consider options for greening the Australian Consumer Law, discussing the benefits and pitfalls of a consumer-centric approach to the circular economy.

Elizabeth Sheargold,

Monash University

Is international investment law really capable of integrating climate change considerations?

International investment treaties protect foreign investors protection from certain government actions, such as expropriation of property without compensation, and many allow for investor-state arbitration. In recent years, there has been a growing number of climate-related investor-state arbitrations, with several pending disputes in which investors are seeking substantial damages for denial of approval for new fossil fuel projects, or the phase out of existing fossil fuel projects. This paper considers how states' obligations to mitigate climate change (particularly as elaborated in the recent ICJ Advisory Opinion) should shape both the interpretation and application of investment treaty obligations.

The ICJ's Advisory Opinion provides important support for states seeking to argue that measures reducing fossil fuel production and consumption are proportional and reasonable environmental policies, and in line with Article 31(3)(c) of the VCLT, that investment treaties should be interpreted in light of states' obligations to mitigate climate change. However, analysis of the specific arguments raised in investor-state disputes shows that investors do not usually challenge the legitimacy of climate change mitigation policies or the right of states to enact such policies. Instead, investor arguments typically fall into two categories: (1) allegations that climate change mitigation policies have been implemented unfairly or discriminatorily; or (2) that while the state may have the right to regulate GHG emissions, that the investor is entitled to compensation for loss of their rights / expectations. To prevent international investment treaties acting as a barrier to urgent climate action, this paper argues that to truly take account of the obligation on states to take urgent action to mitigate climate change, tribunals interpreting investment treaties must allow states a sufficient margin of appreciation in the design of climate policies and recognise that requiring compensation will act as a barrier to climate action.

STREAM 2

Session 4B: Norms and Regulation for an Equitable Climate Transition

Chair: Sam Bookman, University of Melbourne

Astrid Milena Bernal Rubio

Melbourne Law School

The Just Energy Transition as an Emerging Normative Framework in International Law

The concept of a Just Energy Transition (JET) has gained increasing relevance within the international climate regime, particularly in the context of the accelerated mobilisation of public and private investment required to deliver the energy transition. While States increasingly rely on legal principles to orient the JET, the legal nature and normative scope of the JET as a legal category remain under formation, with uncertainty as to whether it constitutes an autonomous legal principle, a purely political aspiration, or an emerging sectoral normative framework.

Through my doctoral research, using qualitative methods on doctrinal and textual analysis, I examine how, based on State practice developed under the Paris Agreement, and specifically through the institutional processes and mechanisms of the Just Transition Work Programme (JTWP), the JET begins to acquire an operational normative content. The analysis shows that States do not mobilise the JET to create clearly defined legal obligations. Rather, they use it as a sector-specific framework through which established principles of the climate regime, together with emerging formulations, are reinterpreted to guide the implementation of the energy transition according to substantively differentiated priorities across national contexts.

The research argues that this differentiated mobilisation of principles does not, at present, result in the consolidation of autonomous legal obligations. It does, however, significantly shape JET's meaning and the exercise of State discretion and may influence the assessment of compliance with existing climate obligations by affecting how States interpret, justify, and prioritise energy transition measures in light of emerging standards of justice under the Paris Agreement.

Annas Akbar Sultansyah

Monash University

Carbon Taxation as Environmental Law: Fiscal Architecture for Durable Decarbonisation in Coal-Exporting Nations

Is all law environmental law? This project argues that carbon taxation, designed through Pigouvian fiscal principles, operates as environmental law in practice—an architecture that corrects externalities while governing distribution, simplicity, and pace of change. It addresses three persistent deficiencies: procedural complexity that slows regulation, inertia that weakens voluntary measures, and legitimacy deficits that undermine market instruments. In a developing, coal-exporting economies like Indonesia, these weaknesses are magnified by low institutional capacity, entrenched industry lobbying, and policy priorities that privilege growth and affordability over environmental commitments.

Situated between command-and-control and behavioural nudges, the framework's distinctiveness lies in comprehensive revenue-spending architecture: carbon taxation become truly environmental when revenues serve as instruments of governance, not incidental by-products. An upstream levy on coal's carbon content at the point of production ensures broad coverage and swift implementation, cutting through inertia and complexity. Earmarking and recycling convert fiscal flows into visible investments in renewables and just transition, delivering outcomes where softer measures falter. Legitimacy is reinforced not only through redistribution but through a renewed sense of justice: powerful coal

interests, long shielded from accountability, are compelled to contribute more visibly to the national budget and to repairing ecological damage. In this way, fiscal architecture offers a more workable path to effective policy and encourages broader compliance.

The project's contribution is to foreground architecture: how levy-point choices and revenue pathways interact with political economy and administrative capacity. Rather than centring on revenue raising, it takes contextual spending as the measure of environmental law's effectiveness—aligning fiscal design with national characteristics to overcome enduring limitations. Though most effective in the energy sector and carbon-fuel-exporting economies, the framework's principles also apply wherever extractive rents and urgent decarbonisation converge. In this integrated form, carbon taxation emerges as the most adaptable and durable fiscal expression of environmental governance.

Rebekkah Markey-Towler

Melbourne Law School,

Climate action starts at home: Regulatory mixes for mortgage lending in a changing climate

Climate change is a cross-sectoral challenge that will affect most, if not all, areas of life. This includes mortgage lending. Climate change will create risks, for example, homes damaged by floods, sea level rise and bushfires, and climate change opportunities, for example, banks offering green home loans. Well-designed mixes of multiple regulatory instruments will be critical to respond to these challenges and opportunities. This presentation therefore asks whether current mixes of regulatory instruments from banking law, consumer law and public law in Australia are well-designed, meaning that they can appropriately to respond to the challenge of mortgage lending in a changing climate.

To answer this question, this presentation establishes an analytical and evaluative framework drawing on insights from regulatory design literature. Its main contribution is a novel '3Is framework'. Through this framework, this presentation contends that well-designed regulatory mixes will be those that are intentional (effective for and relevant to the problem), integrated (objectives, actors and instruments work together), and iterative (responsive to change over time, while maintaining legitimacy and efficiency).

Applying this framework to the current mixes of regulatory instruments in Australia, this presentation finds that, while having some strengths, regulatory mixes overall are not well-designed. They are not sufficiently targeted to the problem at hand, integration between objectives, actors and instruments is lacking, and the mixes often fail to respond to changes over time, while maintaining legitimacy and efficiency. This is at least in part because regulators, where they have intervened, have generally favoured less interventionist, more flexible and more plural regulatory instruments.

A new approach to regulatory design is therefore proposed, again based on the 3Is framework. Three principles ought to guide regulators: climate priority principle (to help achieve intentional regulatory design), a climate mainstreaming principle (to help achieve integrated regulatory design), and a principle of iterative decision-making (to help achieve iterative regulatory design). A new regulatory design heuristic—a series of concentric circles—helps regulators imagine the full suite of instruments available at their disposal. Substantive design recommendations are then elaborated based on this new approach.

DAY 2

STREAM 1

Session 5A: Panel - *Past, present and future: The evolving role for covenants in private land management*

Chair: Vic Marles, Chair, Australian Land Conservation Alliance

Benjamin Richardson, UTAS, *Can restrictive covenants aid private land conservation?*

From the 1930s to the 1970s, Australian federal and state governments established film units to produce and distribute documentaries to clarify and broadcast the official ambitions of the state. Many of their films concerned subjects of environmental significance, from nature tourism to natural resource industries. These film units were, in effect, a means of “soft” governance, a technology of authority to help legitimate the state’s management of natural resources and shape public attitudes. Foucault’s theory of governmentality provides a useful lens for conceptualising this age of state-sponsored filmmaking, in which documentaries are seen as a form of propaganda complementing official regulation but with the advantage of not being overtly recognisable as a means of state control. This historical analysis focuses on films made by the federal and Tasmanian governments, and identifies several distinct subjects in their cinematic outputs: (1) the ‘improvement’ of nature through resource industries (eg hydropower and forestry); (2) nature as a tourism destination (eg national parks); (3) nature as having scientific values helpful to define a distinctive Australian geography. The rise of the environmental movement from the late 1960s challenged the age of state-sponsored cinema, as environmental activists turned to documentary films as a tool to lobby for better environmental laws. This activism also contributed to the demise of government film units in Australia, as they lost efficacy and legitimacy as a means of governance. This history is significant in helping us to rethink how the state has “governed” environmental challenges and sought to influence society.

Sarah Brugler, UTAS, *Delivering 30 x 30 on private land in Australia: What’s the difference between covenants and environmental markets and why does it matter?* / **Phillipa McCormack**, The University of Adelaide, *Update: Conservation covenants and their potential role in climate adaptation in Australia* / **Nate Camatta**, The University of Adelaide, *Update: Conceptualising climate-adapted restoration governance principles*

Before town planning or environmental law became well established in Australia, the restrictive freehold covenant was used to protect natural values as early as the 1920s. From the 1970s the Australian states introduced legislation, such as the Victorian Conservation Trust Act 1972 (Vic), to establish statutory conservation covenants that could overcome some of the freehold restrictive covenant’s limitations, namely being that they only allow negative obligations (e.g. not to remove trees) and the benefit of the covenant must accrue to a neighbouring property.

Today, conservation covenants are an important legal tool for enabling private land conservation and have significant potential to help Australia meet its land conservation goals, including meeting the representation component of the 30x30 target. Statutory conservation covenants (or easements) are also being used globally in various forms and capacities. Less clear is whether conservation covenants can

be used to facilitate ecosystem restoration and climate adaptation goals. This has implications for Australia's new Nature Repair Market. For climate adaptation, although not typically formally incorporated into national or state strategies, conservation covenants are emerging as a key on ground mitigating strategy. For both restoration and climate adaptation, conservation covenant regimes may themselves need to adapt to meet long term restoration and climate adaptation goals on private land.

A review of the evolution of covenants to their current use today offers valuable insights into the role of conservation covenants in delivering 30 x 30 and whether they could play an expanded role in the context of ecosystem restoration and climate adaptation. This panel includes practical insights from those that have held senior management roles at Trust for Nature (Victoria), as well as preliminary findings from researchers considering these issues in an ARC discovery project examining the role of conservation covenants in facilitating ecological restoration and adaptation to climate change.

Mat Hardy, NRM Regions Australia, *Conservation covenants in Victoria, practical insights with predictions for the future*

STREAM 2

Session 5B: From Ecocide to Civil Penalties: Rethinking Penalties in Environmental Law

Chair: Joanna Kyriakakis, Monash University

Melissa Strydom

UWA

Criminal Law as Environmental Law: Reflections to Make Sanctions Work

Criminal law, as established in criminal codes (or common law), doesn't appear to fit easily into environmental law, but environmental protection legislation has routinely created criminal offences to make criminal law environmental law. This is the case across different jurisdictions. Criminal sanctions are often increased in new or reformed environmental (or other) laws as a means of addressing local and global environmental concerns. To be effective, this criminal law needs to be enforced in relation to environmental offences.

Practically, the utility of statute-created criminal offences and penalties (and their deterrent effect) may be questioned where enforcement capacity, or the criminal justice system's ability to secure successful prosecutions effectively, is constrained. When offenders are not prosecuted in accordance with statutory provisions (and the prescribed penalties in relation to the severity of an offence), the deterrent effect of the prescribed criminal sanctions is undermined. While jurisdictions face varying challenges or degrees of difficulty in investigating and prosecuting environmental crimes, certain enforcement challenges are common across contexts.

Being newly immersed in the Australian context, this paper builds on doctoral research into environmental crime prosecutions in South Africa to explore enforcement trends in Western Australia. The purpose is to develop insights for and from an Australian context, aiming to strengthen the implementation and enforcement of the core body of environmental laws.

Analysing concluded prosecutions and identifying trends can enhance the broader understanding of how criminal offence provisions work in practice. Such insights may contribute to efforts to improve the effectiveness of existing environmental laws. Increased awareness of successful prosecutions and the

sanctions imposed could also improve deterrence, ultimately contributing to reduced environmental impacts and pollution.

Kellie Toole

Adelaide University

Considering Australia's Readiness for a Domestic Ecocide Offence

Multiple countries across Asia, South America and Europe have introduced domestic offences of ecocide, and the European Union's 2024 environmental crime directive requires member states to introduce comparable offences within two years. Concurrently, there is a movement for the introduction of an international crime of ecocide under the Rome Statute, which has been intensified by recent support from the United Nations High Commissioner for Human Rights. Australia is a signatory to the Rome Statute, so if ecocide is recognised as an international crime, it will incur obligations regarding its domestic criminalisation.

However, Australia lacks political and academic analysis of the nature and extent of its environmental crimes, the efficiency of the framework for its regulation, the barriers to its enforcement, and lessons from international law that could inform its reform. These gaps thwart Australia's ability to both protect its natural resources and contribute to global efforts to address domestic and transnational environmental crime, including through the offence of ecocide.

This paper is part of a project examining the possibility of defining, introducing and implementing a crime of ecocide in Australia. To create a practical, Australia-specific evidence-base for law and policymakers, we are analysing decisions from Australia's two specialist environment courts that hear criminal cases: the Land and Environment Court of New South Wales and the Environment, Resources and Development Court of South Australia between 2019 and 2025.

We seek to identify a principled basis for criminalising environmental harm in Australia (as opposed imposing to civil liability or administrative law requirements) by identifying and articulating an Australian perspective on what characterises 'criminality' in environmental crimes, and the extent to which broader criminal law principles are applied to interpret environmental crimes.

Hamish McNamara and Kellie Toole

Adelaide University

Exploring the Rationale for Criminal Law Penalties for Environmental Crime Offences in the South Australian Context

In recent years, increased public awareness and stronger community sentiment have driven a growing trend toward the criminalisation of environmental harm in Australia. In the South Australian ('SA') context, at least a dozen legislative instruments provide for environmental offences, many of which attract criminal penalties. These offences span a broad spectrum covering environmental pollution, animal welfare and vegetation degradation. Despite this expanding body of environmental crimes, there does not appear to be a consistent or transparent framework guiding the allocation of criminal versus civil penalties. This presentation presents the findings of a paper that investigates the legal architecture underpinning environmental offences in SA, as a case study for an issue that is evident, and largely unaddressed, in other Australian and overseas jurisdictions. It has a focus of discerning a rationale, if any, that informs whether an offence shall be characterised as a civil infraction or a criminal act. For offences that attract the spectrum of civil and criminal penalties, it also considers how judges are

expected to discern between those options in particular cases. The view put forward in this paper identifies the absence of formal decision-making criteria or decision-making processes governing this distinction taken by lawmakers. The working view suggests that legislative responses to environmental harm may be reactive rather than principled, lacking a coherent methodology for offence and penalty classification. The broader objective of this piece is to identify key themes which inform the severity of penalties that should inform future law reform in this space, contributing a more consistent and functional environmental enforcement regime.

Marie Beillevert,

Adelaide University

Global trends for Ecocide and their Lessons for Australia

Serious environmental crimes are escalating worldwide, posing an existential threat to ecosystems and humanity. While “environmental crime” typically refers to acts already criminalised under existing laws, catastrophic harms continue to occur through destructive activities that remain legal. Current legal frameworks often prove inadequate to prevent or punish such damage, fuelling a growing call for stronger accountability.

In 1970, American biologist, Arthur Galston, coined the phrase ‘ecocide’ in response to the environmental effects of the use of Agent Orange during the Vietnam War. Since that time, the introduction of a crime of ecocide has emerged as a leading recommendation, at both international and domestic levels, to address widespread and serious harms against the environment.

The debate over defining ecocide at the international level has been intense. In 2021, an independent expert panel proposed a definition for inclusion in the Rome Statute of the International Criminal Court. While this proposal marks a significant step forward, the proposed definition itself, and the practical implications of criminalising ecocide under international law, have sparked controversy. There is a parallel movement for countries to integrate ecocide into their criminal frameworks. Some nations are leading the way, and while these initiatives have faced criticism for being “deeply imperfect,” they provide a valuable foundation for further development.

This presentation forms part of a broader research project examining the characteristics of ecocide and assessing the feasibility of its introduction in Australia. We explore approaches that would complement the proposal for the international offence, by analysing other national jurisdictions’ efforts to criminalise practices leading to environmental destruction. Through doctrinal analysis and case studies, this presentation examines how several jurisdictions are reforming criminal law to recognise ecocide as a distinct offence and evaluates the implications of these reforms for the protection of nature.

Sarah Wright

University of Wollongong

Reconsidering Purpose, Consistency and Approach in the Enforcement of Environmental Law: The Proposed Introduction of Civil Penalty Proceedings in NSW.

The original mechanism available to enforce breaches of NSW environmental laws was criminal prosecution. Over time, maximum fines for offences were increased, signifying the seriousness of environmental crime. Furthermore, the courts have emphasised environmental crimes are ‘real crimes’

and punishment must be sufficient to deter offenders. Alternative sentencing orders were subsequently introduced to allow a greater range of sentencing outcomes, including orders aimed at environmental restoration and reparation. Nevertheless, criminal enforcement is expensive and not always appropriate. Accordingly, NSW environmental regulators have been given an increasing range of administrative and civil enforcement options as alternatives to prosecution. This included penalty notices and later, drawing on tools available to ASIC and the ACCC, negotiable court-enforceable undertakings. The most recently proposed enforcement tool in the NSW water management area is civil penalty proceedings. While some other states and the Commonwealth already have environmental civil penalty regimes, this enforcement tool again draws on experiences from outside environmental law.

The second reading speech indicated the reasons behind introducing the water management civil penalty regime included the difficulty with proving offences beyond reasonable doubt, that the maximum penalties for criminal offences were not high enough to deter and that ‘the stigma of criminal conviction carries less weight’ for corporations. This paper examines the purpose behind the proposed civil penalty regime and the increasing adoption and use of administrative and civil enforcement mechanisms (used in other areas) within environmental law, perhaps indicating increasing disillusionment with environmental criminal prosecutions. The paper also examines inconsistency in approach within different NSW laws. While civil penalties are proposed in the water management area, in comparison they have not been adopted under NSW pollution laws and instead, maximum penalties for criminal offences were recently increased. The paper also considers the perceived benefits and disadvantages of civil penalty proceedings in NSW.

STREAM 1

Session 6A: *Teaching and Regulating Our Legal Relationship with Nature*

Chair: Lael (‘Lulu’) Weis, University of Melbourne

Margaret Castles and Alex Wawryk

Adelaide University

The Biodiversity and Regional Australia Study Tour: Learning Environmental Law

Much legal education front-ends ‘the law’. We start with legal principles, whether they are grounded in social expectations, legislation, case law, government policy, then apply these principles to ‘the real world’. Curriculum design requires us to teach in ‘silos’ as for example, mining and energy law, environmental law, Aboriginal people and the law, criminal law, corporate law. Concepts like access to justice, equity and multidisciplinary themes, are at best add-ons to the particular legal context.

Adelaide Law School has been enabling students to discover what it means to learn in an undefined and unlimited geographical, cultural, intellectual, multidisciplinary space. We take a cohort of students on a seven-day tour through diverse environments in remote SA. We co-teach with policy-makers, magistrates, legal practitioners, Aboriginal Elders on Country, pastoral leaseholders, scientists and mining engineers.

This rich, contextual exposure provides students with the opportunity to make deep critical connections as they learn about the multiplicity of legal, social, environmental and economic issues arising at each place we visit, and across landscapes. Students explore the interactions and conflicts between law and policy at each place, and between different places. They engage with people who live in and provide services in the places, in situ, and see and experience the context of what they are learning.

Our presentation will demonstrate how this teaching model successfully turns the ‘theory first – context second’ on its head. By immersing students in the geographical, social, cultural, situational contexts, they develop understanding by framing the questions that they need answered. They describe and explore the integration of concepts and reality, on country, each day in student-led presentations and discussion. This unique multidisciplinary learning model equips students with the mindset they need to be environmental lawyers in policy, practice, and action.

Ed Couzens

University of Sydney Law School,

Implications from CITES CoP 20 globally and for Australia

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (CITES) is the most important treaty of global scope dealing with the management of trade in wildlife species. Conferences of its Parties meet every three years (most recently in 2022) – and the 20th CoP will meet in Uzbekistan in November and December 2025. CITES operates through three Appendices, Appx I bars commercial trade; Appx II manages commercial trade; and Appx III is a ‘watchlist’. Uplisting to Appx’s I and II are often contentious; and the 2025 CoP contains some proposals which are likely to be legally and politically fraught. Much can be learned about trends in biodiversity protection from considering such battles.

Australia has been an important role-player in CITES, but relatively ‘inactive’ in recent years. In 2016 and 2019, Australia made several downlisting proposals, but these were largely ‘administrative’ in nature and made at the request of the Secretariat which wished to remove species from Appendix I where these were not actively threatened by trade. After years of quietude, however, Australia has begun making uplisting proposals in CITES again – in 2022 Australia made one proposal to list a species on Appx I (the Adelaide pygmy blue-tongue skink) and listed a number of agamas, lizards, geckos and skinks on Appx III. For CoP20, Australia has made two proposals for uplisting to Appx II – both being gecko species.

This paper will analyse both the main overall outcomes of CoP20 and explain what happened with Australia’s proposals; and will consider what these outcomes indicate about possible future moves in CITES generally and within Australia particularly. This is especially important at a time when Australia is considering reform of its Environmental Protection and Biodiversity Conservation Act 1999 – through which species listed on CITES Appendices are managed and protected in Australia.

Astrid Bernal Rubio; Melbourne Law School **and Dr Bruce Lindsay,** Environmental Justice Australia, ***The Ramsar Convention as a living instrument for wetlands living through major anthropogenic changes: managing the Gippsland Lakes***

Multilateral environmental agreements such as the Ramsar Convention are not static instruments. Designed as enduring frameworks for cooperation, they must evolve in order to remain effective during accelerating ecological change. Ramsar provides a particular example. As one of the earliest environmental treaties, its core commitment to the “wise use” and “maintenance of ecological character” of wetlands must now be understood in light of contemporary ecological science and the accelerating pace of anthropogenic transformation.

This paper uses the Gippsland Lakes, a series of connected subcoastal wetlands in eastern Victoria, as a particular example. The Gippsland Lakes are the largest navigable waterway in Australia. They are listed under the Ramsar Convention. These wetlands have existed through two and now potentially three ‘step changes’ produced by anthropogenic intervention in modern (post-invasion) times. The Gippsland Lakes Ramsar Site benefits from legal and regulatory controls under Australian’s national environment law, the EPBC Act. In addition to the well-known controlled action provisions, protected areas provisions of that Act also require the Commonwealth to take positive actions in management of the Gippsland Lakes. These provisions rely in part on the incorporation of the Ramsar Convention as such into domestic Australian law.

Building on the international law doctrine of evolutionary interpretation, we explore how the notion of treaties as “living instruments” may inform management of Ramsar sites in the face of profound anthropogenic change. This presentation considers this interpretive choice in its application to the Ramsar Convention and, drawing on emerging treaty jurisprudence, in application of the Convention to management of the Gippsland Lakes Ramsar Site. Rather than offering definitive conclusions, we consider the relevance of this approach to domestic implementation of the Convention through EPBC Act protected area provisions, in the context of an ecosystem affected by past and contemporary human-induced change.

STREAM 2

Session 6B: *Environment-related Law and Crises*

Chair: Lee Godden, University of Melbourne

Belinda Reeve, University of Sydney Law School, **Belinda Bennett**, The University of Newcastle, **Katherine Owens**, University of Sydney Law School, **Matthew Blundell**, University of Sydney Law School

Creating climate responsive public health law for Australia’s states and territories

This presentation evaluates the role of Australian public health Acts in preventing and responding to climate change, which has been identified by the World Health Organisation as an urgent threat to public health globally. Each Australian state and territory has its own public health Act and accompanying public health infrastructure and workforce. These Acts have long been concerned with unhealthy local environmental conditions (public health ‘nuisances’), as well as infectious disease control, and public health emergency preparedness and response. However, their role in responding to climate change has been limited to date, and is under-explored in the research. To investigate how Australian public health law can contribute to climate change mitigation and adaptation, we conducted a legislative mapping study informed by public health law research methods, involving a comparison of key provisions in each state’s and territory’s public health Act. We found that these Acts contain duties and powers that are relevant to identifying, reporting on, and addressing climate-related health risks, as well as to the introduction of mitigation and adaptation measures. Key provisions include the principles and objects of public health legislation (where the precautionary principle, sustainability and environmental health can be incorporated); public health planning at state and local government level; public health investigations; and Health Impact Assessment. While both state and local governments are already using some of these powers to act on climate change, our research identifies significant legislative unevenness across Australian jurisdictions, creating gaps in the ability of some states and territories to respond to climate change. We conclude with a discussion of legislative reforms that aim

to create public health Acts which empower states and territories to act for the benefit of all Australians in preventing and addressing climate-related health risks.

Fia Hamid-Walker

Melbourne Law School and Research associate for Natural Hazards Research Australia

Is All Bushfire Law Environmental Law? Divergent Private Duties to Reduce Bushfire Fuel Loads in Australia

Australian fire laws are different across regions. In New South Wales, South Australia, the ACT, and the Northern Territory, landowners must regularly take reasonable steps to prevent fires, such as maintaining firebreaks and following Fire Management Plans. In other states, such as Victoria, Western Australia, Tasmania, and Queensland, rules only come into effect after officials issue notices or when a fire actually occurs. This article provides an overview of how different models developed from traditional fire safety laws and 20th-century city regulations. It explains their effects on landowners' responsibilities, enforcement actions, and coordination with planning and environmental policies. The article makes three main points. First, choosing a model significantly changes how we understand baseline deterrence and who is responsible when fires get out of control, even if permit systems and fire bans appear similar. Second, codes and standards, like pile-burning rules, serve as practical guidelines for “reasonable steps,” but their importance varies depending on whether there's an ongoing duty or a notice. Third, some standardisation—such as common trigger definitions, more explicit rules during bans or emergencies, and a consistent civil safe harbour based on codes—could make the process more straightforward without eliminating state differences. This paper explains how fuel-load responsibilities involve property, tort, and administrative law. It argues that “bushfire law” functions as environmental law in practice and highlights why the decision between continuous and on-notice duties is important for climate governance.

Session 6C: Human Rights and the Environment

Chair: Katherine Keane, QUT

Gillian Moon

Australian Human Rights Institute, UNSW

State of Denial: The ICJ Advisory Opinion, human rights and Australia's fossil fuel exports.

This paper will present the first examination of Australia's binding international human rights law obligations with regard to harms in its own territory attributable to its fossil fuel exports. Australia is a major driver of global warming. It ranks world second for exported fossil fuel lifecycle CO₂ emissions, which in 2022 were 3.5% of global fossil fuel emissions. Its fossil fuel exports contributed an estimated 30 billion tonnes of CO₂ between 1960 and the present. Based on government and industry projections, they will produce a further 15 billion tonnes over the decade to 2035.

Despite IPCC warnings of escalating harms from every fraction of a degree of global warming, and despite massing evidence of escalating human harms in Australia - rising mortality and morbidity from heat extremes disproportionately affecting vulnerable communities - Australia has no cap or limit on the exports, no reduction target and no plans to reduce the exports in the future. Instead, it maintains a demand-led approach, regularly approving new projects, some for decades into the future, while providing subsidies and infrastructure support.

In July 2025, the International Court of Justice in its Advisory Opinion rejected Australia's argument that limited Paris Agreement procedural requirements fulfill its international law obligations. The ICJ concluded that all States have a binding international law duty to prevent significant harm to the climate system through anthropogenic greenhouse gas emissions – an obligation which applies regardless of the location of the emissions causing the harm.

The paper sets out Australia's international human rights law obligations as they relate to its failure to regulate its fossil fuel exports, with a particular focus on the implications of the ICJ's Opinion. The paper concludes with outlining four steps Australia's must take to comply with its positive protection obligations under international human rights law.

Zhen Yu, Monash University, *Enforcing Corporate Accountability Beyond Borders: The Extraterritorial Effects of Mandatory Human Rights and Environmental Due Diligence (mHREDD) Laws in the Asia-Pacific Region*

Transnational corporations play a central role in global production, but their activities often cause extraterritorial human rights and environmental harms beyond national borders. The Asia-Pacific region, a major production base for European markets, faces the intertwined crises of climate change, biodiversity loss, and pollution - evident in deforestation, coral bleaching, land conversion, industrial expansion, and pollution that damage ecosystems and threaten human well-being. In response, laws such as France's Loi de Vigilance, Germany's Lieferkettengesetz, and the EU Corporate Sustainability Due Diligence Directive establish mandatory human rights and environmental due diligence (mHREDD) obligations intended to reshape corporate conduct across global supply chains. While these laws articulate ambitious regulatory aims, their actual effects depend on how their norms are "translated" into the corporate context and subsequently "grounded" in diverse domestic settings.

This paper sets out the PhD research design and presents early conceptual work on how mHREDD norms may "travel" beyond Europe and shape corporate compliance in the Asia-Pacific region. Drawing on literature on norm translation, localization, and domestication, the paper theorizes how due diligence obligations articulated in European mHREDD laws might be interpreted, reframed, or selectively adopted as they enter new corporate and regulatory environments. This theoretical examination forms the foundation for the project's subsequent empirical stages. The paper outlines how the next phase will map the initial appearance of translated norms through desk-based analysis of corporate, state, and civil-society documents, and how a later phase will employ case studies and semi-structured interviews to empirically investigate how these norms are ultimately "grounded" within specific domestic contexts across the Asia-Pacific.

STREAM 1

Session 7A: Panel - Climate harms and the future of the tort of negligence: Reflections on *Pabai v Commonwealth*

Chair: Kathleen Birrell, La Trobe University

Panellists:

Liz Hicks, University of Melbourne, *Separation of powers reasoning in climate litigation and the problem with the "core policy exclusion"* / **Joanna Kyriakakis**, Monash University, *Time*,

Colonialism and Narrative in Climate Litigation /Maria Nawaz, UNSW, ***Causation on trial: challenges and opportunities in climate litigation***

In the July 2025 decision of *Pabai v Commonwealth*, the Federal Court concluded that the Commonwealth did not owe any duties of care to Torres Strait Islanders with respect to certain climate harms. The case also failed on other elements including causation and compensable injury. The decision follows the earlier *Sharma* litigation (2021-22), where the Full Court of the Federal Court concluded that the Minister for the Environment did not owe Australian children a duty to take reasonable care to avoid personal injury to them when approving fossil fuel projects under relevant legislation. But legal questions about the actions and omissions of public authorities with respect to climate harms can be expected to grow. Forecasts predict that extreme weather events and rising sea levels attributable to climate change will result in significant harms to lives and property in Australia, which will drive the continued development of negligence principles.

In this panel speakers will reflect on the *Pabai* litigation and the future of the tort of negligence in responding to climate harms. Discussion will include: implications of the Court's reliance on separation of powers concerns — expressed as 'core policy' — to limit engagement with particular subject-matters; the centering of colonialism in the applicants' duty case and expressive implications of the judgment; and the challenge of complex causation in climate litigation.

STREAM 2

Session 7B: *Interrogating the assumptions of laws for nature*

Chair: Erin O'Donnell, University of Melbourne

Alice Bleby

Monash Business School

Empirical evidence of a constitutional function in laws recognising nature as a legal subject

Laws recognising nature's legal rights or recognising nature/natural entities as legal persons are emerging around the world. This presentation discusses early empirical evidence of the implementation of these laws, using case studies from Aotearoa New Zealand and the United States to illustrate an emerging constitutional function performed by laws that recognise nature as a legal subject. A constitutional function suggests a normative (and potentially also procedural) framework that reaches beyond the immediate application of the law in question, and requires other laws, policies and governance practices to implement the values and principles that it articulates.

Empirical evidence from this study suggests that laws recognising nature's rights or personhood can influence the way that (other) law and policy is interpreted and applied; that they can inform the generation of new law; and that they can also establish procedural obligations that may bear upon the legitimacy of law and policy. Although there is early evidence of these outcomes catalysed by the enactment of laws recognising nature as a legal subject, there is also much scope to develop this function. This includes contemplating how to strengthen this function in existing and potential future enactments recognising nature as a legal subject; and also exploring which laws – or even how all law – might be influenced by the operation of this constitutional function.

Emille Boulot,

University of Tasmania,

Reimagining Nature Positive Law Reform

The concept of nature positive marks a paradigmatic shift in the governance and regulation of biodiversity. Moving beyond traditional environmental laws that focus primarily on mitigating and preventing environmental harm, emerging international nature positive obligations seek to actively restore and enhance ecological systems with the aim of halting and reversing nature loss by 2030 (based on a 2020 baseline) and achieve full recovery by 2050.

Despite this transformative agenda, nature positive law reform to date remains predominantly constrained by neoliberal logics, promoting conservation practices bounded by private property or the development of tradable biodiversity offset or credit markets. A focus on property boundaries often creates fragmented spatial units independent of their social and ecological contexts. These units are misaligned with the ecological realities of biodiversity (especially as species ranges shift due to climate changes), watershed dynamics, and landscape-scale connectivity. Market orientated solutions for biodiversity have been criticised for their poor biodiversity outcomes due to fundamental ecological flaws in reducing complex, irreplaceable ecosystems to tradable units that ignore context and connectivity and perverse incentives which can legitimise destruction through "offsetting", thereby creating spatial and temporal mismatches between harm and restoration. Property and market solutions have also been critiqued for their social and justice impacts: limiting collaboration between landholders and communities, allowing wealthy actors to buy their way out of environmental responsibility, and the ongoing enclosure of the commons. To achieve full recovery by 2050, a fundamental shift in the logic underpinning environmental law is required to facilitate collective action across social and ecological territories.

The commons, understood as collectively governed resources, offers an alternative to property and market-based conservation models. Building on commons scholarship demonstrating that communities can effectively and sustainably manage shared resources outside frameworks of privatisation or state control, this paper seeks to articulate a research agenda to identify the institutional arrangements and governance structures that can support legislators and community groups to scale ecological restoration and recovery across landscapes. In doing so, the paper aims to articulate the environmental law logics required to move beyond neoliberal paradigms and a genuinely transformative nature positive future.

Alice Palmer

Melbourne Law School

Are photographic images in judgments environmental law?

STREAM 1

Session 8A: Panel - Is all law climate law?

Chair: Jackie Peel, University of Melbourne

Climate change is one of the most pressing and complex threats facing the planet and its human and non-human inhabitants. A focus on 'climate harm', and relatedly, who (or what) should be held accountable for such harm, is proving generative for bringing together previously siloed areas of law and new forms of lawyering. This panel examines how developing ideas around climate harm and accountability have generated relationships between climate law and other areas of law such as:

Corporate accountability Nature, water and biodiversity law Constitutional law Human rights law and Peace and Security

In asking if all law is now climate law, this panel considers what can be achieved by policy and practice – supported by legal scholarship – that starts from a position of climate harm and climate accountability and considers who (or what) should be involved in the development of climate law into the future, shaping comprehensive responses drawn from diverse areas of law.

Panellists

Roanna McClelland, Melbourne Law School / **Andrea Furger**, University of Melbourne / **Ella Vines**, Monash Business School / **Rohan Nanthakumar**, Melbourne Law School

STREAM 2

Session 8B: Governing Seas under International Law

Chair: Liz Sheargold, Monash University

Shushmita Ahmed

UTS

Beyond the Horizon: Rethinking Deep Seabed Mining and the Expanding Boundaries of Environmental Law

The planet is experiencing escalating ecological crises, leading to a dissolution of traditional boundaries between environmental law and other areas of international regulation. Deep seabed mining, regulated by the United Nations Convention on the Law of the Sea (UNCLOS) and the International Seabed Authority (ISA), illustrates this convergence. The deep seabed mining regime, initially envisioned as a tool for resource extraction and economic growth, now occupies a critical position at the convergence of environmental protection, distributive justice, and global equity. Articles 136–145 of UNCLOS establish that the resources of the international seabed, referred to as the “common heritage of mankind,” are to be managed for the benefit of all humanity. The ecological vulnerability of the deep ocean, coupled with power imbalances among states, undermines the effectiveness of this legal framework in achieving true sustainability and equity.

This paper contends that governance of deep seabed mining should be viewed within the context of environmental law, indicating a transition from resource exploitation to ecological stewardship. The paper argues that environmental law constitutes the normative core of ocean governance by integrating principles such as the precautionary approach, intergenerational equity, and the protection of marine biodiversity. This analysis utilises recent ISA discussions, scientific research, and legal scholarship to evaluate the capacity of the current deep seabed mining framework to align developmental goals with planetary limits. This paper examines how reinterpreting deep seabed mining from an environmental perspective can reveal avenues for establishing a more inclusive, equitable, and sustainable global ocean framework.

Yulu Liu

National University of Singapore

Where to situate the discussions on small-scale fisheries in the future global plastic treaty

Small-scale fisheries are especially vulnerable to ecosystem degradation, due to their proximity to the coast, low-tech fishing methods, and limited catch for subsistence or local consumption. Reportedly,

fishers find their ecosystems increasingly polluted by land-based pollution, in particular plastic pollution, as well as sea-based pollution, including discarded abandoned, lost, or otherwise discarded fishing gear (ALDFG). More alarmingly, plastic is also found in landed catch from fishing activities and consequently enters food chain and human bodies.

Internationally, the ongoing intergovernmental negotiations for a plastic treaty are facing challenges with disparity in stances among states and stakeholders, featuring the regulation scope and treaty financial arrangements. Drafts of the negotiating texts, in its part covering releases and leakages of plastics, mentioned to prevent and reduce plastic pollution from fishing activities, especially from ALDFG; and in the same passage, highlight was also given to the needs of artisanal and small-scale fishers. Other draft provisions, in particular, on just transition, also paid attention to small-scale fishers as a vulnerable group calling for attention and assistance.

It is from observing the need to strike such a balance that this proposed presentation aims to investigate key issues in managing plastic pollution from small-scale fisheries in the context of the future global plastic treaty. First, small-scale fisheries contribute to marine plastic debris—primarily from fishing gear—while simultaneously suffering from plastic pollution. Second, small-scale fisheries require targeted assistance to manage plastic pollution, and there is a growing need to coordinate efforts to provide such assistance. This presentation will also examine the interaction between the global plastic treaty and the work of relevant international organisations and existing multilateral agreements.

Kate Jama

Melbourne Law School

Constructions of the sea in the Seas and Submerged Lands Act 1973 (Cth) and beyond

The two decades between 1963 - 1983 were a period of immense political change in Australia. This thesis examines the shifting juridical construction of the sea adjacent to Australia's coast during this time. Applying a critical oceans approach, I examine the legislation, judicial decisions and intergovernmental agreements that preceded and followed the Seas and Submerged Lands Act. I argue that, across three distinct stages, the sea was constructed in interconnected ways: as materially and juridically divided, as a distinct sea territory and as an extractive frontier.

Elizabeth Macpherson

University of Canterbury

Blue Carbon Laws in Aotearoa New Zealand: Centering Rights, Justice, and Equity in marine and coastal law and policy

Effective management and restoration of coastal wetlands, saltmarshes, mangroves and sea grasses is recognised as a nature-based solution to climate change, providing a range of co-benefits to local communities. Advocates argue that a combination of regulatory controls and economic incentives, including in compliance and voluntary markets for carbon and biodiversity credits, can be used to support shifts away from unsustainable management and land use practices commensurate with the threats facing these 'blue carbon' ecosystems. There is growing scientific consensus about the ways and rates at which blue carbon ecosystems store and release carbon, necessary for the design of any regulatory or market system. However, legal and policy frameworks have been slow to follow. In this presentation I explore the legal challenges and opportunities involved in designing blue carbon laws, focusing on legal and policy frameworks in Aotearoa. Unsettled land tenure arrangements around the coast, and complicated and fragmented administrative approvals processes present significant barriers for proponents who wish to undertake blue carbon restoration. These barriers are of particular concern

for Indigenous Māori people, who have deep ancestral relationships and unresolved legal rights in the foreshore and seabed. I argue that we must centre justice and equity in the design of blue carbon laws in order to avoid repeating or compounding colonial injustices, but that where led by Māori, blue carbon restoration could provide an opportunity for ‘Indigenising the blue economy’.

Panel: EPBC Act - recent and emerging issues

Nicola Sibert, Environmental Justice Australia

TBC, Clayton Utz

Justine Bell-James (TBC)

DAY 3

Session 9: Panel: *Climate Conscious Lawyers*

Chair: Elaine Johnson, Johnson Legal (TBC)

Panellists

- Julia Dehm, La Trobe
- Nicole Graham, Sydney Law School
- Zoe Nay, University of Melbourne

Session 10- Panel: Implications of the ICJ advisory opinion on climate change for Small Island Developing States and climate finance

Chair: Rohan Nanthakumar, University of Melbourne

Panellists:

Nina Araneta, University of Melbourne / **Dylan Asafo**, University of Melbourne / **Alofipo So'oalo Fleur Ramsay**, Barrister, Victorian Bar

In 2025, the International Court of Justice delivered its advisory opinion on states’ obligations in relation to climate change, marking a significant moment in the development of international climate law. For Small Island Developing States (SIDS), which have been central to the advisory proceedings, the opinion carries important implications for climate justice, addressing loss and damage, and climate finance.

This panel examines how the ICJ’s Advisory Opinion could shape legal arguments and policy debates relevant to SIDS, with a particular focus on climate finance. Drawing on perspectives from international law and climate advocacy, the discussion will explore the extent to which the opinion clarifies States’ obligations, strengthens claims for loss and damage funding, and can be mobilised in litigation, diplomacy, and advocacy. The panel will also reflect on the practical limits of the Opinion in delivering material outcomes for SIDS.

STREAM 1

Session 11A: Legal Tools for Ecological Networks: Canopy, Verges and Corridors

Chair: Christine Parker, University of Melbourne

Emma Scaife

UWA

Australia's urban tree canopy is under threat, creating a legal and environmental dilemma: how do we reconcile a landowner's right to develop their property with the public's need for vital green infrastructure?

From the author of a recent comprehensive review of the problems associated with increasing urban tree canopy on private land in Australia, this presentation examines the complex interplay between private property rights and public environmental interests. Drawing on an analysis of key Australian case law, the presentation covers successful and unsuccessful legal challenges to tree retention policies. A central focus will be the recent landmark Zorzi case from Western Australia, which fundamentally redefines the legal basis for tying development permits to tree retention, providing a robust justification for local governments to implement broad tree protection measures.

The presentation also examines the friction between tree retention policies and the common law principles of private nuisance, such as a tree causing damage to a neighbour's property. A recent qualitative study, based on interviews with landowners, will be presented to illustrate the real-world impact of tree retention laws on neighbourly relations. Finally, this talk presents current research into innovative frameworks that go beyond traditional approaches to address the cumulative loss of urban canopy on private land. By integrating green infrastructure concepts with existing legal instruments, the author offers a path toward legally sound and politically viable solutions that minimise the tension between private property rights and public environmental needs.

Alexandra Scott

UWA

Biodiversity Corridor Regulation in Western Australia - How can legal history inform future landscape-scale regulation?

In 2020, the IUCN recommended that the designation 'ecological corridor' be recognised in law and policy internationally (1). Biodiversity corridors (2) are critical to overcoming the adverse environmental consequences of habitat fragmentation (3).

This presentation proposes to explore: - how biodiversity corridors have been identified and regulated in Western Australia; and how an understanding of the historical regulation of biodiversity corridors in Western Australia can inform future landscape scale regulatory protection.

The presentation will look the concepts of regulatory (4) and relational space (5), and address the following questions: What does a map of the historical regulatory and relational space look like? What legal constructs and relationships are important to effective environmental regulation? Why are maps and baselines important to the design of future legal solutions?

These questions are particularly important at a time where the Federal government is proposing "go" and "no go" areas under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)(6), and the Western Australian Auditor-General has noted significant failures in implementation of the Biodiversity Conservation Act 2016 (WA)(7).

(1) Hilty, J., Worboys, G.L., Keeley, A., Woodley, S., Lausche, B., Locke, H., Carr, M., Pulsford I., Pittock, J., White, J.W., Theobald, D.M., Levine, J., Reuling, M., Watson, J.E.M., Ament, R., and Tabor, G.M., *Guidelines for conserving connectivity through ecological networks and corridors. Best Practice Protected Area Guidelines Series No. 30.* (Gland, Switzerland: IUCN 2020), 44. 'Ecological connectivity' is defined in this work, at 2, as the 'unimpeded movement of species and the flow of natural processes that sustain life on Earth', citing the Convention on the Conservation of Migratory Species, *Improving Ways of Addressing Connectivity in the Conservation of Migratory Species, Resolution 12.26 (REV.COPI3), Gandhinagar, India (17-22 February 2020), UNEP/CMS/COP13/CRP26.4.4.*

(2) The terms 'biodiversity corridor', 'wildlife corridor' or 'connectivity corridor' are used interchangeably to refer to corridors that allow for the free movement of animals and plants between protected areas. Chris Park and Michael Allaby, *A Dictionary of Environment and Conservation (3 ed)*(Oxford University Press, 2017) define "wildlife corridor" as "a linear habitat or feature that allows animals and plants to move between isolated sites". "Habitat connectivity" is defined as "[t]he network of corridors that links isolated patches of habitat, which allows organisms to move through an area." "Fragmentation" is defined as [t]he breakup of large habitats into smaller, isolated fragments, which may or may not be connected by corridors."

(3) See, for example, David Lindenmayer and Joern Fischer, *Habitat Fragmentation and Landscape Change: An Ecological and Conservation Synthesis* (CSIRO Publishing, Australia 2006), 55; 61-62. 3 Jodi A Hilty, Annika T H Keeley, Willian Z Lidiker Jr and Adina M Merelender, *Corridor Ecology: Linking Landscapes for Biodiversity Conservation and Climate Adaptation (2nd ed)* (Island Press,2019) 6-9. See also World Wildlife Fund, *Why connectivity matters to wildlife – and people* <https://www.worldwildlife.org/stories/why> accessed 2/10/2025.

(4) See Arie Freiberg, *Regulation in Australia (2ed)* (The Federation Press, 2025), xl and 115, defining regulatory space as "a concept that holds that regulatory power is dispersed throughout a number of bodies or groups in one jurisdiction", citing L Hancher and M Moran, 'Organizing Regulatory Space' in L Hancher and M Moran (eds) *Capitalism, Culture, and Economic Regulation*, Oxford, Clarendon Press; reprinted in R Baldwin, C Scott and C Hood (eds) *A Reader on Regulation* (Oxford University Press, 1989).

STREAM 2

Session 11B: Practising Environmental Justice: Supporting Communities and Country

Chair: Kate Jama, Victoria Legal Aid

Ally McAlpine and Connor Wright

Environmental Justice Australia

Climate justice in remote communities: in the face of climate change, how do we support remote Aboriginal and Torres Strait Islander communities to protect cultural heritage and country?

Climate justice in remote communities: in the face of climate change, how do we support remote Aboriginal and Torres Strait Islander communities to protect cultural heritage and country?

Remote Aboriginal and Torres Strait Islander communities will bear the brunt of climate change impacts, yet little is done to protect their cultural heritage – both the tangible and intangible. Climate change adaption measures for such communities are often implemented after litigation. So remote Aboriginal and Torres Strait Islander groups are often forced to broach the costly and time-intensive exercise of litigation if they want to ensure the protection of their communities, country, and cultural heritage.

One might expect the various cultural heritage protection legislative regimes across Australia to provide protection. Yet as Aboriginal and Torres Strait Islander communities lead the charge in sounding the alarm on climate impacts, the current legislative regime is ill equipped to deal with the threat to cultural heritage.

Of course, climate change poses threats to tangible heritage like rock art and sacred sites. But it also poses threats to the intangible. The changing landscape from climate change is already impacting Aboriginal and Torres Strait Islander communities' ability to care for country and to access land for cultural practices. Saltwater inundation and changing temperatures have impacted what were seasonal norms for communities, meaning they often cannot access bush foods that form an important part of

cultural practices and food source. Rising temperatures and sea level rises will threaten the homes and health of these communities.

As part of this proposed paper, building on the above we plan to use a case study of climate impacts on remote communities in East Arnhem Land and how access to climate justice is fraught and current cultural heritage protection regimes insufficient to cope with the impacts of climate change.

Elena Aydos and Sven Rudolph

The University of Newcastle

Mitigation, Justice, and the Expanding Project of Environmental Law

Literature on domestic climate change mitigation policy has predominantly focused on environmental effectiveness and economic efficiency outcomes. In contrast, relatively little is known about the social and climate justice impacts of real-life mitigation policy. This paper examines whether Australia's evolving climate mitigation framework—particularly the Safeguard Mechanism—embodies the principles of social and climate justice, and explores the role of environmental law in ensuring that these principles are realised in practice.

In 2022, Australia updated its Nationally Determined Contribution under the Paris Agreement, committing to achieve net-zero emissions by 2050. The Safeguard Mechanism is a key market-based instrument designed to meet this target. It sets emissions baselines for Australia's largest industrial facilities, requiring them to keep net emissions at or below those limits. Reforms introduced in 2023 strengthened the scheme by establishing declining baselines aligned with Australia's net-zero trajectory and by enabling the use of Australian Carbon Credit Units (ACCUs) for compliance—operating in practice as a form of emissions trading. The next review of the Safeguard Mechanism will occur in 2026–27.

Drawing on the Sustainable Model Rule (SMR)—developed by the authors to evaluate carbon-pricing design through the integrated lenses of environmental effectiveness, economic efficiency, and justice—this paper assesses whether the Safeguard Mechanism advances or undermines social and climate justice in Australia's transition to net zero. By situating the Safeguard Mechanism within broader discourses of environmental justice and planetary governance, the paper contributes to ongoing reflections on whether, in practice, all law is environmental law.

Inshani Ward

Environmental Justice Australia

Community lawyering to achieve environmental justice - case studies from a public interest environmental law centre.

STREAM 1

Session 12A: Nature, Risks and the Law

Chair: Bec Nelson, University of Melbourne

Anita Foerster

Monash Business School

Nature-related risks and the Australian real estate sector - one step forward, two steps back?

For companies in the Australian real estate sector engaged in land and housing development, biodiversity loss and decline pose significant financial risks, particularly transition risks associated with

policy responses introduced to address these problems. In line with recent international developments, there has been an uptick in Australia in regulatory activities to influence companies to identify, disclose and manage nature-related financial risks – including through voluntary nature reporting standards, investor engagement and stakeholder advocacy. There has also been increased policy attention paid to the biodiversity crisis globally and in Australia, with comprehensive reforms on the table or well underway at national and subnational scales. In this exploratory study, we analyse how large Australian companies in the real estate sector are responding to these shifting regulatory pressures. Our results suggest that without mandatory sustainability reporting standards that apply to nature, and without substantial progress on policy reform to address biodiversity loss, Australian companies are unlikely to take significant steps to address their nature-related risks and impacts.

Justine Bell-James

UQ

When all regulators are environmental regulators - quantifying risk perception in restoration permitting

Marine and coastal restoration projects need multiple permits from a range of government agencies spanning local, state and federal levels (Bell-James et al, 2025). The time, cost, and delay associated with this process has been well-documented, and has led to calls for law reform to streamline legal permitting processes (Shumway et al, 2021; Bell-James et al, 2023).

Because of how the legal permitting system is structured, projects have to be assessed by government agencies with mandates such as road or maritime safety, water and electricity infrastructure provision, and biosecurity. In essence, all regulators have to become environmental regulators in this domain. Our earlier research hypothesised that, the further a regulator’s primary mandate is removed from environmental protection, the more risk averse the regulator is likely to be – resulting in potential permit refusal, or onerous conditions including in perpetuity liability (Bell-James et al, 2023). In turn, this has the ability to undermine ambitious global and national restoration goals.

Here we present the findings from an empirical study conducted as part of the National Environmental Science Program project ‘De-risking nature repair activities in Australian marine and coastal ecosystems’. We interviewed regulators from a range of government agencies to better understand and quantify their perceptions of risk, which is a necessary precursor to environmental law reform.

STREAM 2

Session 12B: Navigating Climate Regulation - Practical Insights

Chair: Bek Markey-Towler, University of Melbourne

Liz Hicks, Guy Baldwin, Sam Bookman, Lauren Nishimura

Melbourne Law School

Accountability for downstream emissions in Australia, Canada and the United Kingdom: Lessons for constitutional climate democracy

Support for climate action has increased in many democracies. Despite this support, governments across the world are planning to expand fossil fuel extraction and production. Accounting methods — and particularly the differentiation between scope 1, 2 and 3 emissions — partly explains the disconnect between political discourse on climate action and continued extractive practices. But the disconnect

also demonstrates the challenges of mass democracies in holding governments accountable on contested, complex problems in cotemporary information ecosystems. This paper compares the extent to which legislative frameworks and constitutional structures in Australia, Canada and the United Kingdom have promoted accountability for downstream emissions. These jurisdictions share a broadly similar constitutional structure and are also the site of legal challenges regarding the status of downstream emissions.

The paper begins by exploring how the recent ICJ Advisory Opinion on Climate Change clarifies the liability of states for conduct across the fossil fuel supply chain. It then compares how various domestic mechanisms — legislative frameworks, federalism structures, environmental agencies and fourth branch institutions — have promoted accountability for downstream and exported emissions in the three jurisdictions. By comparing how these various mechanisms have interacted with domestic climate politics, it seeks to make more generalisable observations about the relationship between climate change, the energy transition and democracy. The paper forms part of a research grant funded by the Manchester-Melbourne-Toronto Research Fund on Ensuring Constitutional Accountability in the UK, Australia and Canada.

Ella Vines

Monash Business School

Compliance in Transition: Early Corporate Responses to Australia's Safeguard Mechanism

To meet its emissions reduction targets and contribute to the goals of the Paris Agreement, Australia relies primarily on two instruments: the Safeguard Mechanism—an emissions trading scheme—and the Australian Carbon Credit Unit (ACCU) Scheme, a related carbon offset market. In theory, this combination reflects a smart and economically efficient regulatory strategy, integrating complementary instruments to support flexible and effective climate governance. This article provides preliminary empirical evidence to evaluate that proposition by analysing early compliance practices under the reformed Safeguard Mechanism.

Originally introduced in 2016, the Safeguard Mechanism imposed limits on scope 1 greenhouse gas emissions for large industrial facilities, capping emissions above a set baseline but not requiring reductions below it. Major reforms in 2023 aligned the scheme with Australia's 2030 and 2050 climate targets, introducing progressively declining baselines, creating Safeguard Mechanism Credits (SMCs) for overperformance, and prohibiting facilities from generating ACCUs through their own scope 1 emissions reductions.

While these changes aim to enhance regulatory and economic efficiency and drive decarbonisation, concerns remain about the scheme's overall effectiveness. The mechanism continues to exclude some emissions sources and retains key flexibilities that may undermine its impact. Notably, there is no cap on the use of ACCUs for compliance, a design feature carried over from the original scheme. Concurrently, the integrity of the ACCU Scheme itself remains contested, with several issues identified in a 2022 independent review still only partially addressed.

With a statutory review scheduled for 2026–27, it is timely to assess how companies are responding to the reformed framework. This article investigates the extent to which facilities are relying on ACCU surrender versus adopting in-house abatement strategies that can generate SMCs. In doing so, it evaluates the emerging credibility of Australia's reformed approach to industrial emissions reduction and its potential to support long-term climate goals.

Session 13: Panel - Is AI Law Environmental Law?

Co-chairs: Christine Parker, University of Melbourne, and Cameron Holley, UNSW

Panellists:

Sonia Qadir

UNSW

AI lifecycle' approach to 'supply chain capitalism of AI'

This paper begins with a reading of recently proposed AI regulatory mechanisms in Australia and their emphasis on the 'whole of AI lifecycle' approach. It argues that despite the name, this approach does not take environmental impacts of AI infrastructures across their entire lifecycle adequately into account. It then delves into examples of ecological impacts of rare-earth mining and dumping of E-waste in the global south- both connected to AI's lifecycle yet not taken into consideration within Australian AI regulation. Instead, the paper argues that the conceptual framework of 'supply chain capitalism of AI' provides a more holistic framing to understand and account for these ecological impacts. Using this framework, the global architecture of circulation that underpins capitalist supply chains, including for AI, comes into view. This architecture of circulation requires that regulatory mechanisms within AI and environmental law and policy de-centre traditional framings of national jurisdiction, to make policy and legislation within Australia that can account for impacts of AI in global south jurisdictions.

Lina Przhedetsky

Melbourne Law School

Governing AI for Environmental Impact: An Overview of Current Approaches and Their Limitations

An expanding body of literature is drawing attention to the adverse environmental impacts of AI systems. High demands for energy, water, land, and raw materials, as well as the placement of undersea cables and the production of hazardous electronic waste are cited as key material impacts. AI systems' epistemological impacts – though harder to quantify – are also significant: their affordances influence the collection, generation, interpretation, and application of environmental knowledge.

A range of formal and informal governance mechanisms are being positioned as solutions to AI's environmental problems. These include legislation, ethics frameworks, voluntary standards, impact assessments, design methods, economic incentives, iterative evaluation tools, and more. Although at a high level, these mechanisms can be seen as working towards the same goal, there are significant variations between them, for example, in their design, intended audiences and effects.

This research uses a 'modalities of control' framework to describe how diverse AI governance mechanisms intend to influence human actors to address AI's environmental impacts. It describes how modalities – command, competition, consensus, communication, or code – position the relationships between people, AI systems, and the environment. In doing so, it contemplates the scope of interventions, nature of and likely effectiveness of intended interventions (prevention, mitigation, justification, measurement, or neutralisation), and the conceptualisation of environmental outcomes.

Anna Huggins

QUT

Is algorithmic regulation environmental regulation?

Across diverse regulatory domains there is growing attention to algorithmic regulation involving the use of algorithmic systems for regulatory tasks and purposes. To date, however, insufficient attention has been paid to algorithmic regulation in environmental regulatory contexts. In this presentation, we analyse different types of algorithmic systems and the features of environmental regulatory rules and problems they tend to foreground or problematise. We argue that the use of algorithmic systems in environmental regulation warrants further attention as a distinctive subset of broader algorithmic regulation discourses.

Cameron Holley and Carley Bartlett

UNSW

Whither risk regulation? Unpacking the potential impacts of AI imaginaries in environmental regulation.

Risk regulation, which fundamentally is about diverting regulatory attention towards those issues and/or regulated actors at greatest risk of causing environmental harm through non-compliant behaviour, has long been a way for environmental regulators to choose where to direct scarce regulatory resources. With promises of speed and efficiency, environmental regulators are actively being encouraged to use AI tools in ways that may disturb risk based approaches. This presentation will draw on interviews with environmental regulators to examine how they actively and accidentally construct visions or imaginaries of AI in environmental regulation. We will argue that although some of the most fully formed visions of technocracy may fundamentally disrupt approaches to risk based environmental regulation, the current absence of industry and civil society involvement in contesting or contributing to these visions has the potential to pose risks to notions of environmental justice and the public legitimacy of regulatory decision-making.

Lev (Leo) Bromberg, La Trobe University, **and Christine Parker**, University of Melbourne, ***Multispecies Justice for Wildlife AI***

The promise of artificial intelligence (AI) to rapidly collect, evaluate and analyse environmental data at scale is leading to rapid uptake of these technologies in wildlife conservation and habitat protection: apps enable citizen scientists to swiftly identify species through machine vision or listening to assist in habitat protection, AI-enabled traps can identify and eliminate introduced species to protect native species, and language models are supposed to soon enable interspecies communication. However, the rapid expansion of data collection, analysis and automated decision making and action, enabled by AI, may reinforce or amplify existing harms to both native and introduced animals, or create new sources of harm. Governance frameworks to ensure wildlife AI is used to benefit animals without adversely impacting their wellbeing, to address how conflicts between human and animal interests or between different animal interests, and to avoid extractive, exploitive and anthropocentric AI are lacking. In this presentation we will draw on ideas in animal law and AI governance to propose a multi-species justice approach to wildlife AI that would (1) recognise that other beings have a legitimate interest in their own data and how it is used, (2) embed animal-centred risk assessment in AI governance, (3) ensure those developing and deploying these technologies prioritise responsibility and care for non-human animals in data governance and AI applications; and (4) create institutions to permanently represent animals and their rights and interests in wildlife AI.

