



MELBOURNE LAW SCHOOL
Australia's first, Australia's global

Annual Report 2010



MELBOURNE LAW SCHOOL

Director's Message



The Centre for Resources, Energy and Environmental Law (CREEL) consolidated its activities in 2010, as well as participating in a successful University review of the Research Centre.

Centre Review

The Centre for Resources, Energy and Environmental Law (CREEL) underwent a major Centre Review in August 2010. The Panel Review comprised: Professor Jenny Morgan (Chair), Dr Kate Auty (Victorian Commissioner for Environmental Sustainability and Professor, La Trobe University) and Mr Louis Chiam, (Partner, Mallesons Stephen Jaques). The Panel committee concluded that;

The Centre is meeting its purposes and objectives, through an array of well targeted activities which have been outlined above. Since its reinvigoration in 2008, the Centre has produced an enormous amount of research and created a vibrant research community in the law school, made a major contribution to law reform and to the teaching program of MLS, with excellent links both locally and globally.

CREEL recognises the invaluable leadership of Professor Morgan in the review, the expert guidance and contribution made by Panel members, and thanks the members of the CREEL Advisory Board for their assistance and support. Administrative staff from CREEL and the Academic Support Unit within the law School ably supported CREEL in the review.

Research Activities

The scope of research being conducted in the Centre continues to expand. In 2010 the Centre welcomed several new doctoral students studying in resources and energy law. Many research activities relate to several projects associated with CREEL including, ARC Discovery Project: Responding to Climate Change: Australia's Environmental Law and Regulatory Framework and ARC Linkage Project: 'Poverty in the Midst of Plenty': Economic Empowerment, Wealth Creation and Institutional Reform for Sustainable Indigenous and Local Communities.

New research directions have included an emphasis on environmental taxation (including carbon pricing), climate change litigation and adaptation, more extensive work on indigenous land title, international regimes around fisheries, and energy regulation and renewable technologies. Long-standing research continues in environmental law and governance, adaptive water law and management, and the regulation of resources and mining in federal systems.

2010 also saw the launch of several books by Centre academic staff and a growing range of seminars and community engagement events.

Research Linkages

CREEL has continued to strengthen links with the legal profession, multidisciplinary researchers and cognate international and Australian law schools that specialise in resources, energy and environmental law. Interdisciplinary research continues to be a particular strength of Centre researchers with interdisciplinary water and energy workshops held in 2010. Melbourne Law School continued its affiliation with the IUCN Academy of Environmental Law at the University of Ottawa Canada.

Acknowledgements

CREEL has benefitted enormously from the contributions made by all staff associated with the Centre but particular recognition must go to Ms Jenny O'Connell, who as Centre Administrator has been the foundation for many successful events and the overall operation of the Centre.

A handwritten signature in blue ink that reads "Lee Godden". The signature is written in a cursive, flowing style.

Lee Godden

Professor of Law
Director, Centre of Resources, Energy and Environmental Law

Centre for Resources, Energy and Environmental Law (CREEL)

Annual Report 2010

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About CREEL

The Centre for Resources, Energy and Environmental Law (CREEL) was established in 1986. At that time the Centre had a predominant orientation toward natural resource laws. Since that time, CREEL has undergone several changes of name and scope, with a growing emphasis on environmental law and energy regulation in recent years. Currently, Centre staff members and affiliated students research across areas as diverse as international law and environmental regulation, mining and petroleum laws, climate change law, water law, property law, environmental taxation and the use of economic instruments in regulation, Indigenous peoples' rights and economic development issues, jurisprudence related to the environment, biodiversity protection, and fisheries. In 2010, the strong public interest in environmental and energy law issues translated into a growing profile for the Centre, particularly in knowledge transfer activities. A key function of the Centre is to provide a platform for law reform and public interest issues across resources, energy and environmental law. This focus is well demonstrated by the range of submissions to government and community organisations by Centre members.

CREEL oversees the Graduate Diploma in Environment, Energy and Resources Law in the Melbourne Law Masters.

Purposes and Objectives

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

- the production and distribution of energy, including consideration of climate change regulation,
- the sustainable development of natural resources,
- the protection of the environment and the promotion of ecologically sustainable development,
- the planning for, and provision of infrastructure in urban areas, and that associated with energy and resource development, and
- the recognition and protection of Indigenous rights and interests in land and resources.

In addition, CREEL aims to:

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

Centre Directors

Director



Professor Lee Godden

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

Associate Directors



Professor Michael Crommelin AO

Michael Crommelin is Zelman Cowen Professor of Law, a position he has held since 1985. Michael was Dean of the Melbourne Law School in 2010, a position he held from 1989 to 2002, and from 2003 to 2007. He has held visiting academic appointments in Canada, the USA, the UK, France and Norway. He was a founding member of AMPLA Limited (the Australian Energy and Resources Law Association) and served as its president in 1985-6. He was chair of the Academic Advisory Group of the International Bar Association's Section on Energy and Resources Law from 1987 to 1990. He has been a member of the American Law Institute since 1998. His current teaching and research interests include energy and resources law, constitutional law and comparative law.



Associate Professor Jacqueline Peel

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



Associate Professor Maureen Tehan

Maureen Tehan's major focus of research and academic interest is Indigenous legal issues with particular emphasis on native title, heritage protection and land access, use and management. She has a major interest in comparative Canadian law in these areas. She teaches in these areas as well as in property in both the graduate and undergraduate programs. Her publications and graduate studies reflect these interests. Immediately prior to joining the Faculty, Maureen was a solicitor with the Pitjantjatjara and Ngaanyatjarra Councils and continues to undertake consultancies in the area. Maureen held the position of Associate Dean, Undergraduate in the Melbourne Law School in 2009.

Centre Members



Professor Stuart Kaye (until early 2010)

Stuart Kaye joined the Law School in 2006. He was Dean of Law at the University of Wollongong between 2002 and 2006. Prior to this appointment, he was Head of the Law School at James Cook University, and a senior lecturer in law at the University of Tasmania. Stuart Kaye has an extensive research interest in the *Law of the Sea* and international law. He has written a number of books, including *Australia's Maritime Boundaries* (2001), *The Torres Strait* (1997) and *International Fisheries Management* (2001). He was appointed to the International Hydrographic Organization's Panel of Experts on Maritime Boundary Delimitation in 1995 and in 2000 was appointed to the List of Arbitrators under the Environmental Protocol to the Antarctic Treaty. Stuart's areas of expertise include the *Law of the Sea* and international environmental law. In 2010, Stuart took up the appointment as Winthrop Professor and Deputy Dean (Research) at the University of Western Australia.



Associate Professor Mark Burton

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



Associate Professor Sundhya Pahuja

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



Associate Professor Miranda Stewart

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



Associate Professor Shaun McVeigh

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



Dr Kirsty Gover

Kirsty Gover is the Director of the Comparative Tribal Constitutionalism Research Programme, co-sponsored by CREEL, Institute for International Law and the Humanities (ILLaH) and the Centre for Comparative Constitutional Studies (CCCS). The study focuses on the governance institutions and constitutions of tribal communities in Australia, New Zealand, Canada and the United States. These define the jurisdictional interface between tribes and other governments in settler societies. The study examines the ways in which tribal communities define and express their own jurisdiction, an under-interrogated aspect of Indigenous governance scholarship. It includes analysis of agreements between tribal and other governments on resource management and the joint use and stewardship of land. A book and several articles focussing on the



Dr Margaret Young

Margaret Young joined the Melbourne Law School as Senior Lecturer in 2009. She was previously the William Charnley Research Fellow in Public International Law at the University of Cambridge. She holds a PhD and an LLM from the University of Cambridge and a BA/LLB (Hons) from the University of Melbourne and has been a Visiting Scholar at Columbia Law School. Her research interests include international trade law, international environmental law and the *Law of the Sea*. Her monograph, *Trading Fish, Saving Fish: The Interaction between Regimes in International Law*, will be published by Cambridge University Press in 2011. She has practiced as a solicitor, has worked at the World Trade Organisation (Appellate Body Secretariat), the United Nations International Law Commission and at Greenpeace International. Margaret is a former associate to the Chief Justice of the Federal Court of Australia. She is currently the Assistant Editor of the British Year Book of International Law.



Mr Jürgen Kurtz

Jürgen Kurtz is a Senior Lecturer and Director of the International Investment Law Research Programme of the Melbourne Law School's Institute for International Law and the Humanities. Jürgen researches and teaches in the various strands of international economic law including the jurisprudence of the World Trade Organization and that of investor-state arbitral tribunals. He has a particular interest in examining the impact of WTO rules on attempts to construct domestic and multilateral systems for mitigation of carbon emissions. In addition to research and teaching, Jürgen acts as a consultant to a variety of governmental and inter-governmental agencies, including the United Nations Conference on Trade and Development, the United Nations Development Program and the World Bank.

Administrator

Anne Kallies

Anne Kallies fulfilled the joint roles of Centre Administrator and Researcher from 2009 until mid-2010.

Jenny O'Connell

Jenny O'Connell joined the Melbourne Law School in May 2010 as the CREEL Centre Administrator.

Research Assistants

Julia Dehm

Rachelle Downie

Carly Godden

Mahala Gunther

Anthony Kung

Michael Power

Briony Ruse

Kerri Rusnak

Naomi Wynn

Postgraduate Research Students

Samuel Alexander

Samuel Alexander has an LLB from the University of Otago, New Zealand, and an LLM (Hons) from the Victoria University of Wellington, New Zealand. After graduating Sam practiced employment law in Christchurch, New Zealand, before joining Melbourne Law School in 2006 as a PhD student. Sam's thesis is titled 'Voluntary Simplicity: Towards a Post-growth Theory of Property'. The thesis is being supervised by Lee Godden and Jenny Beard. Sam has also founded the Life Poets' Simplicity Collective (www.simplicitycollective.com) which is a grass roots environmental organization dedicated to creatively promoting and celebrating sustainable culture.

Takele Bulto

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

Julia Dehm

Julia Dehm is enrolled in an MPhil and her thesis is titled, 'An Investigation Into the Assumptions Made About the Management of Risk to Indigenous Peoples and Forest-Dependant Communities from REDD+; Indonesia and Beyond.' The thesis is being supervised by Maureen Tehan and Margaret Young.

Anita Foerster

Anita Foerster completed a double degree in Geography and Law (Honours) at the Australian National University. She joined the law school as a PhD candidate in 2005, researching the law, policy and practice of environmental water allocation. Anita's thesis is titled, 'Law, Policy and Practice for Ecologically Sustainable Water Allocation and Management? An Analysis of Institutional Developments to Provide for Environmental Water Needs in the Murray-Darling Basin (NSW and Victoria), 1994-2008' and is co-supervised by Lee Godden and Jacqueline Peel.

Angus Frith

Angus Frith's PhD thesis is titled, 'Sustainable Indigenous Entities for Making Agreements' and is co-supervised by Lee Godden, Professor Marcia Langton (Centre for Health and Society, Melbourne School of Population Health) and Maureen Tehan.

George Kailis

George Kailis' PhD thesis is titled, 'A Public Right to Fish?' and is co-supervised by Stuart Kaye and Michael Crommelin. George has worked in various organisations as a lawyer, manager and academic and holds a B.Juris, LLB (Hons) and an MBA.

Yoriko Otomo

Yoriko Otomo has worked in several government and non-government environmental organisations, and has contributed to publications relating to sustainable development, environmental law and humanitarian issues. Her doctoral thesis, 'The Changing Landscapes of Risk' (supervised by Anne Orford), seeks to develop a semiology of law through a Poststructural feminist analysis of key texts within the law of occupation and international economic law.

Virginie Tassin

Virginie Tassin's PhD thesis is titled, 'The Extension of the Continental Shelf: Sanctioning a New Relationship of the State of its Territory'. This project is being conducted under a Cotutelle agreement between the University of Melbourne and La Sorbonne University, Paris.

PhD Completions

Anita Foerster, 'Law, Policy and Practice for Ecologically Sustainable Water Allocation and Management. An Analysis of Institutional Developments to Provide for Environmental Water Needs in the Murray-Darling Basin (New South Wales and Victoria), 1994-2009.

Supervisors: **Lee Godden** and **Jacqueline Peel**.

Virginie Tassin, 'The Extension of the Continental Shelf.'

Supervisors: **Stuart Kaye**, **Andrew Mitchell** and Jean-Marc Sorel (Sorbonne University).

Advisory Board Members

Associate Professor Pieter Badenhorst (Deakin University)

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

Russell Byard (Senior Member, VCAT)

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

Elisa De Wit (Partner, Norton Rose)

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

Professor Ray Ison (Monash and Open University, UK)

As Professor of Systems (UK Open University; 1994 - present) Ray Ison has led or facilitated the development of new teaching programs (MSc in Environmental Decision Making, Systems Thinking in Practice, Information Systems and a undergraduate Diploma in Systems Practice) and established the Open Systems Research Group. He was Head of the Systems Department (1995-8; 25 academic staff) then from 2000-04 he successfully coordinated a major interdisciplinary 5th Framework Program (30 researchers, 6 countries) researching social learning for sustainable catchment management as well as running an EPSRC funded Systems Practice for Managing Complexity Network. From 2002 -7 the Environment Agency (England & Wales) funded research to apply social learning to implementation of the European Water Framework Directive. In September 2008 he moved to 0.3 time at the Open University (OU) and a 0.7 Professorship at Monash (Systems for Sustainability) where he has developed a Systemic and Adaptive Governance Research program within Monash Sustainability Institute and the School of Geography & Environmental Science.

Roz Hansen (Managing Director, Hansen)

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

Caroline Johnston (Executive Director, AMPLA Limited)

Caroline Johnston is the Executive Director of AMPLA: The Resources and Energy Law Association. AMPLA is a not-for-profit association that was established in 1976 by a group of young lawyers keen to know more about the law and practice relating to resources and energy. The interests of the Association have extended to include climate change, emissions trading, the environment, native title and all legal aspects of energy production and marketing. As Executive Director, Caroline's responsibilities include supporting the membership of 900, coordinating the AMPLA publications (*Australian Resources and Energy Law Journal* and the annual *Yearbook*), and presenting an annual conference in Australia and a bi-annual conference in South-East Asia.

Sam Johnston (Senior Research Fellow, United Nations University)

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

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

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

Events

Book Launches

22 February 2010 *Environmental Law: Scientific, Policy and Regulatory Dimensions*

Professor Philippe Sands, a renowned scholar and Professor of International Law at University College London, launched **Professor Lee Godden** and **Associate Professor Jacqueline Peel's** *Environmental Law: Scientific, Policy and Regulatory Dimensions* (Oxford University Press, 2010) at the Melbourne Law School.

20 April 2010 *Comparative Perspectives on Communal Lands and Individual Ownership: Sustainable Futures*

The Honourable Justice Tony North, from the Federal Court of Australia, launched **Professor Lee Godden** and **Associate Professor Maureen Tehan's** *Comparative Perspectives on Communal Lands and Individual Ownership: Sustainable Futures* (Routledge, 2010) at the Melbourne Law School.

Seminars

5 August 2010 *A Stifling Climate: Democracy, Coal Protest Laws and The Climate Movement*

Presenters: Vanessa Bleyer (solicitor and former President of Lawyers for Forests), Brian Walters SC (former President of Liberty Victoria) and Ellen Roberts (founder of Climate Action, Moreland).

8 November 2010 *Our Forests, Your Pollution: Indonesian Environmentalists Speak Out Against Australia's Carbon Offset Schemes*

Two climate justice activists from Friends of the Earth Indonesia were joined by Muliadi from Central Kalimantan to discuss Australia's plans for forest offsets in Indonesia.

New Natures Public Lecture Series

21 April 2010 *The People's Two Bodies: Modernity and the Endgames of Sovereignty* presented by Professor Eric Santner

In the second seminar of the New Natures Series, Professor Eric Santner, the Philip and Ida Romberg Professor in Modern Germanic Studies at the University of Chicago, presented 'The People's Two Bodies: Modernity and the Endgames of Sovereignty'. Professor Santner's numerous monographs create conversations between political, theological and psychoanalytic theory as well as literary and artistic criticism in reflecting on the nature of human life, law, politics, thought and history.

25 November 2010 *Mistrust, and the Pharmacology of Transformational Technologies* presented by Professor Bernard Stiegler

In this third seminar in the New Natures Series, Professor Bernard Stiegler explored the topic 'Mistrust, and the Pharmacology of Transformational Technologies.' Professor Stiegler has held positions as diverse as the Director of the Department of Cultural Development at the Centre Georges Pompidou and a Professorial Fellow at the Centre for Cultural Studies, Goldsmiths University of London.

Workshops

24 March 2010 *Climate Change and International Intervention - Examining the Implications of Donor Based Organisations and Ecological Service Provisions*

Held at the Melbourne Law School, this workshop for the associated research project examined emerging environmental, political, social and legal issues around recent forms of global environmental governance resulting from new climate change strategies.

16 July 2010 *Taxation of Native Title Payments: Legal Workshop*

This workshop was organised under the auspices of an ARC Linkage Grant and brought together experts in tax law and native title law to discuss the Treasury's Consultation paper on *Native Title, Indigenous Economic Development and Tax* (May 2010). Representatives from Treasury and the ATO attended, as well as Native Title Representative Body lawyers and other lawyers engaged in negotiating and drafting native title agreements.

27 and 28 October 2010 *Government of Mongolia Study Tour: Workshop on Mining and Environmental Law*

Professor **Lee Godden** and Associate Professor **Maureen Tehan** organized and presented at a Workshop as part of a Government of Mongolia study tour organised by the World Bank and funded by AusAID. **Angus Frith**, PhD candidate also presented. The study tour included three members of the Mongolian Parliament; a senior advisor to the President of Mongolia; the Chairman, Mineral Resources Authority of Mongolia; and a number of lawyers and advisors. Mongolia is a resource rich nation and is currently reviewing its mining and environment protection laws. Issues covered included:

- an overview of Australian mining laws;
- an overview of environmental law and protection as it relates to mining in Australia, EIA processes and water;
- an outline of Australia's experience in relation to the treatment of mining rights, their use as collateral in financing and financing issues generally;
- Australia's experience in relation to investment agreements in the mining sector;
- an outline of FIRB policy and requirements in the mining sector in Australia;
- and challenges facing investors in mining joint ventures, particularly minority investors;
- mining taxes and royalty regimes;
- application and enforcement of mining environmental regulation;
- financial assurance and mine closure and third party rights in the regulatory model of rights to explore/mine; and
- corporate social responsibility and agreements as tools for managing social and environmental impacts.

Co-Sponsored Events

CREEL and IILAH

28 October 2010 *The End of the Line* screening, hosted by IILAH and CREEL

This event included the presentation of the *End of the Line*, which is the first major documentary on the devastating effect of overfishing and the profound implications of a future world with no fish resulting in certain mass starvation. This presentation was accompanied by commentary from Dr Margaret Young and Melbourne-based writer Ms Hilary McNevin.

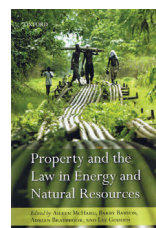
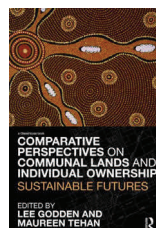
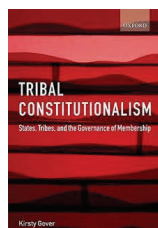
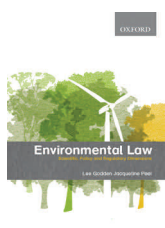
Research and Publications

Books

Lee Godden and **Jacqueline Peel**, *Environmental Law: Scientific, Policy and Regulatory Dimensions* (Oxford University Press, 2010).

Jacqueline Peel, *Science and Risk Regulation in International Law* (Cambridge University Press, 2010).

Kirsty Gover, *Constitutionalism: States, Tribes and Membership Governance* (Oxford University Press, 2010).



Edited Books

Lee Godden and **Maureen Tehan** (eds), *Sustainable Futures: Comparative Perspectives on Communal Lands and Individual Ownership* (Routledge, 2010).

Aileen McHarg, Barry Barton, Adrian Bradbrook and **Lee Godden** (eds), *Property and the Law in Energy and Natural Resources* (Oxford University Press, 2010).

Miranda Stewart (ed), *Housing and Tax Policy* Australian Tax Research Foundation Conference Series No 26 (Taxation Institute of Australia, 2010).

Book Chapters

Lee Godden, 'Globalised Localisms: Three phases of International Environmental Governance for Biodiversity Protection,' in Shawkat Alam, Natalie Klein and Juliette Overland (eds), *Globalisation and the Quest for Social and Environmental Justice: The Relevance of International Law in an Evolving World Order* (Routledge, 2011) 11.

Lee Godden, 'Governing Common Resources: Environmental Markets and Property in Water' in Aileen McHarg, Barry Barton, Adrian Bradbrook and Lee Godden (eds), *Property and the Law in Energy and Natural Resources* (Oxford University Press, 2010) 413.

Lee Godden, 'A Modern Understanding of the Rights of Indigenous Peoples in the 'Occupation and Enjoyment' of Land in Australia' in Shaun Berg (ed), *Coming to Terms: Aboriginal Title in South Australia* (Wakefield Press, 2010) 25.

Lee Godden, 'Conclusion' in Lee Godden & Maureen Tehan (eds), *Sustainable Futures: Comparative Perspectives on Communal Lands and Individual Ownership* (Routledge, 2010) 385.

Lee Godden and **Maureen Tehan**, 'Introduction: A Sustainable Future for Communal Lands, Resources and Communities' in Lee Godden & Maureen Tehan (eds), *Sustainable Futures: Comparative Perspectives on Communal Lands and Individual Ownership* (Routledge, 2010) 1.

Aileen McHarg, Barry Barton, Adrian Bradbrook and **Lee Godden**, 'Property and the Law in Energy and Natural Resources' in Aileen McHarg, Barry Barton, Adrian Bradbrook, and Lee Godden, *Property and the Law in Energy and Natural Resources* (Oxford University Press, 2010) 1.

Jacqueline Peel, 'Environmental Protection in the Twenty-First Century: The Role of International Law' in Regina Axelrod, Stacey Vandever and David Downie (eds), *The Global Environment: Institutions, Law and Policy* (CQ Press, 2010) 48.

Jacqueline Peel, 'Notice of Claim by an Injured State' in James Crawford, Alain. Pellet and Simon Olleson (eds), *The Law of International Responsibility* (Oxford University Press, 2010) 1029.

Miranda Stewart, 'Housing and Tax Policy: New Directions – Introduction' in Miranda Stewart (ed), *Housing and Tax Policy* (Taxation Institute of Australia, 2010).

Maureen Tehan, 'Customary Land Tenure, Communal Titles and Sustainability: The Allure of Individual Title and Property Rights in Australia' in Lee Godden and Maureen Tehan (eds), *Sustainable Futures: Comparative Perspectives on Communal Lands and Individual Ownership* (Routledge, 2010). 354.

Gavin Wood, Rachel Ong and **Miranda Stewart**, 'Housing Taxes and the Supply of Private Rental Housing' in Miranda Stewart (ed), *Housing and Tax Policy* (Taxation Institute of Australia, 2010) 219.

Journal Articles – Refereed

Samuel Alexander, 'Earth Jurisprudence and the Ecological Case for Degrowth' (2010) 6 *The Journal Jurisprudence* 131.

Lee Godden and **Mahala Gunther**, 'Realising Capacity: Indigenous Involvement in Water Law and Policy Reform in South-Eastern Australia' (2010) 20 *Water Law* 243.

Lee Godden, **Anne Kallies**, Rodney Keenan and **Jacqueline Peel**, 'Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD): Implementation Issues' (2010) 36 (1) *Monash University Law Review* 139.

Jacqueline Peel and **Michael Power**, 'Climate Change Law: Lessons from the Californian Experience' (2010) 27(3) *Environmental and Planning Law Journal* 169.

Margaret Young, 'Protecting Endangered Marine Species: Collaboration between the Food and Agriculture Organization and the CITES Regime' (2010) 11 *Melbourne Journal of International Law* 441.

Book Reviews

Jacqueline Peel, 'Book Review: Adjudicating Climate Change: State, National, and International Approaches' (2010) 1 *Climate Law* 227.

Jacqueline Peel, 'Book Review: When Cooperation Fails – the International Law and Politics of Genetically Modified Organisms' (2010) 11 *Melbourne Journal of International Law* 175.

Maureen Tehan, 'Book Review "The Native Title Market" and "Contesting Native Title" by David Ritter' (2010) 29(2) *Australian Energy and Resources Law Journal* 257.

Conference Proceedings

Samuel Alexander, 'Imagining a Post-Growth Jurisprudence of Property' in Proceedings of the Second International Conference on Economic Degrowth for Ecological Sustainability and Social Equity. <http://www.degrowth.org/Proceedings-new.122.0.html>

Other

Lee Godden and **Anne Kallies**, 'Country/Region Reports 18: Australia' (2010) 20(1) *Yearbook of International Environmental Law* 481.

Maureen Tehan, contributing author in Peter Butt and David Hamer (eds), *LexisNexis Concise Australian Legal Dictionary* (4th ed, Lexis Nexis Butterworths, 2010)

Forthcoming Publications

Samuel Alexander, 'Property Beyond Growth: Toward a Politics of Voluntary Simplicity' in David Grinlinton and Prue Taylor (eds), *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (Nijhoff/Brill, forthcoming 2011).

Samuel Alexander, 'The Path to Entropia,' in Jane Goddard (ed), *Continuing the Great Work: A Tribute to Thomas Berry's Contribution to Earth Jurisprudence* (forthcoming).

Samuel Alexander, *Just Enough is Plenty: Thoreau's Alternative Economics* (Stead & Daughters, forthcoming).

Lee Godden, 'Climate Change: Limits Discourses at the Interface of International Law and Environmental Law' in Kim Rubenstein and Brad Jessup (eds), *Connecting International Law with Public Law* (Series 3 Cambridge University Press, forthcoming 2010).

Yoriko Otomo, *Biodiversity and Climate Change Law* (Amsterdam Law Forum, forthcoming).

Miranda Stewart, 'Housing Tax Expenditures: Rethinking Benchmarks and Policy Goals' in Lisa Philipps and Jinyan Li (eds), *Tax Expenditures in Comparative and Public Policy Perspective* (Canadian Tax Foundation, forthcoming).

Miranda Stewart, 'Tax policy for Housing' in Susan Smith (ed), *International Encyclopedia of Housing and Home* (Elsevier, forthcoming).

Miranda Stewart, 'Tax Options for Indigenous Economic Development' in Marcia Langton (ed), *Poverty in the Midst of Plenty* (Melbourne University Press, forthcoming).

Maureen Tehan, 'Indigenous Land Title Systems: Land Tenure in Australia' in (editor/author?) *Land Title Systems in Canada, Peru, Australia, USA and South Africa* (Forum of Federations, forthcoming).

Maureen Tehan, 'Markets, Externalities and the Shadow of the Law: A Review of David Ritter's The Native Title Market and Contesting Native Title' (forthcoming) *Australian Resources and Energy Law Journal*.

Lee Godden, 'Communal Governance of Land and Resources as a Sustainable Property Institution' in David Grinlinton and Prue Taylor (eds), *Property Rights and Sustainability: The Evolution of Property Rights to Meet Ecological Challenges* (Martinus Nijhoff/Brill March, forthcoming 2011).

Maureen Tehan, Kathleen Birrell and **Lee Godden** 'Global Climate Change and REDD: Prisms For Conceiving Indigenous Peoples' Engagement' *Journal of Environment and Human Rights* (forthcoming, 2012).

External Conference and Seminar Presentations

Lee Godden, Al Lucas and Lavanya Rajamani, 'New Roles for Property in Energy and Natural Resources: Property in Energy and Resources in a Changing World' (Paper presented at the International Bar Association of the Section on Energy, Environment, Natural Resources and Infrastructure Law Biennial Conference, Toronto, 25-28 April 2010).

Lee Godden 'Development of Water Law in Australia – A National Focus' (Paper presented at the 6th Groundwater for Decision Makers Workshop, Melbourne, 14 July 2010).

Lee Godden, 'Integrated Environmental Law and Governance' (Paper presented at Indonesia's Climate Change Challenges, Policy Commitments and Policy Priorities, APRU World Institute and University of Indonesia, Jakarta, 18 – 19 March 2010).

Jacqueline Peel 'Issues in Climate Change Litigation' (Paper presented at Climate Change Governance After Copenhagen, co-hosted by Faculty of Law, University of Hong Kong and Faculty of Laws, University College London, Hong Kong, 4-5 November 2010).

Maureen Tehan, 'Rights of Indigenous Australians in the Federal System: Policies for Maintaining Unity in Diversity in the Operation of a Federation' (Paper presented at the 5th International Conference on Federalism, Addis Ababa, Ethiopia, 14-16 December 2010) <http://www.ethiopianfederalism.org>.

Maureen Tehan, 'Third party Rights in the Regulatory Model of Rights to Explore/Mine; Corporate social responsibility and agreements as tools for managing social and environmental impacts' (Paper presented at The Government of Mongolia Study Tour to Australia: Two-day workshop on Australian Mining Law and Environmental Protection (and Cultural Heritage), (Melbourne), 28 October 2010).

Margaret Young, 'Can International Trade Law Solve Environmental Problems?', Queen's College Guest Lecture Program, Queen's College, University of Melbourne, 13 September 2010).

Margaret Young, 'Climate Change Law and Regime Interaction' (Paper presented at Climate Change Governance After Copenhagen, co-hosted by Faculty of Law, University of Hong Kong and Faculty of Laws, University College London, Hong Kong, 4-5 November 2010).

Margaret Young, 'Regime Interaction: Climate Change & Trade Law' (Paper presented at the Society of International Economic Law Conference, Barcelona, 8-10 July 2010) www.sielnet.org.

Margaret Young, 'The Challenge of Food Security' (Paper Presented at the 3rd Biennial Ingram Colloquium on International Law and Development, UNSW Faculty of Law, Sydney, 14-16 December 2010).

Margaret Young, 'The Significance of the WTO Fisheries Subsidies Negotiations for International Law' (Paper presented at the 31st International Trade Law Symposium, Old Parliament House, Canberra 10-11 September 2010).

Presentations Research Higher Degree Students

Angus Frith, 'Indigenous peoples in Australia and Climate Change: Organising for Action' (Paper presented at Climate Change: Science and Humanities Conference, Harvard University, 23-24 March).

Angus Frith, 'The mob getting it right for the future: structures and processes of PBCs' (Paper Presented at the Native Title Conference, Canberra, Australia, 2-3 June 2010).

Rafael Plaza 'The South America's Dilemma: Sustainable Development and Renewable Energies. Can Transnational Power Grids assist in solving it?' (Paper Presented at the 7th International Summer Academy Energy and the Environment, Greifswald University, Greifswald and Berlin, Germany, 18-28 July 2010).

Government and Law Reform Submissions

Lee Godden and **Jacqueline Peel**, 'Submission to the Inquiry into the Environmental Effects Statement (EES) Process in Victoria, Including the Operation of the *Environmental Effects Act 1978*' 24 May 2010.

Maureen Tehan, 'Submission to Attorney General: Proposed Amendments to *Native Title Act 1998* (Cth) in relation to Historical Extinguishment' 2010.

Maureen Tehan, 'Submission to the Victorian Law Reform Commission in response to Consultation Paper: Review of the *Property Law Act 1958* (Vic)'

Maureen Tehan, **Lee Godden**, M Harding, A Godwin, O Webb, 'Submission to the Victorian Law Reform Commission Consultation Paper *Property Law Act 1958* (Vic)' June 2010.

Grants

Lee Godden & Mahala Gunther, (in association with other University researchers) were awarded University of Melbourne Social Justice Initiative (SJI) funding for the project, 'Climate Change and International Intervention – Examining the Implications of Donor Based Organisations and Ecological Service Provisions' (2009-2010).

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

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

Maureen Tehan, Lee Godden, Margaret Young and Kirsty Gover received funding in late 2010 for the ARC Discovery Project: '*Climate Change Law and Mitigation: Forest Carbon Sequestration and Indigenous Local Community Rights* (2010-2014).

Miranda Stewart & Maureen Tehan's project 'Harnessing Legal Resources for Indigenous Empowerment' received a University of Melbourne Knowledge Transfer grant from to work with Native Title Services Victoria to develop a partnership for a) student internships and b) professional development for staff and Board members.

Research Collaborations

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

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

Climate Law Blog

To keep track of Australian and overseas developments in climate change law, **Associate Professor Jacqueline Peel** has established a climate change law blog. The blog is used to disseminate research undertaken by CREEL researchers on climate change law. To access the blog please follow the link: http://blogs.unimelb.edu.au/peel_climatechange/

Teaching Program

CREEL members taught in the degree programs of the Melbourne Law School. Subjects taught in 2010 included:

The Melbourne JD

Principles of Public Law

Dr Margaret Young

Property Law

Dr Kirsty Gover

The Melbourne LLB

Environmental Law

Professor Lee Godden

The Melbourne Law Masters (LLM)

Climate Change Law

Professor Lee Godden

Dr Margaret Young

Environmental Law

Associate Professor Jacqueline Peel

Professor Lee Godden

Indigenous Peoples, Land and Resources Law

Angus Frith

Dr Kirsty Gover

Associate Professor Maureen Tehan

International Environmental Law

Professor Stuart Kaye

Mineral Law, Resources Joint Ventures

Professor Michael Crommelin AO

Planning Law

Professor Lee Godden

New Generation Breadth Subject

Aboriginal Land, Law and Philosophy

Associate Professor Maureen Tehan

Research Supervision

Members of CREEL supervise research students in the PhD and Masters of Law programs.

PhD

Samuel Alexander

'Voluntary Simplicity: Towards a Post-growth Theory of Property'

Supervisors: **Lee Godden** and Gerry Simpson

Takele Bulto

'The Imperatives of Extraterritorial Application of the Human Right to Water: A Case Study of the Nile Basin'

Supervisors: **Jacqueline Peel** and Carolyn Evans

George Kailis

'A Public Right to Fish'

Supervisors: **Stuart Kaye** and **Michael Crommelin**

Anita Foerster

'Law, Policy and Practice for Ecologically Sustainable Water Allocation and Management? An Analysis of Institutional Developments to Provide for Environmental Water Needs in the Murray-Darling Basin (NSW and Victoria), 1994-2008'

Supervisors: **Lee Godden** and **Jacqueline Peel**

Angus Frith

'Sustainable Indigenous Entities for Making Agreements'

Supervisors: **Lee Godden**, Professor Marcia Langton (Centre for Health and Society, Melbourne School of Population Health) and **Maureen Tehan**

Virginie Tassin

'The Extension of the Continental Shelf: Sanctioning a New Relationship of the State of its Territory'

Supervisors: **Stuart Kaye**, Andrew Mitchell and Jean-Marc Sorel (Sorbonne University)

Masters by Research

Julia Dehm

'An Investigation into the Assumptions Made About the Management of Risk to Indigenous Peoples and Forest-dependant Communities from REDD+; Indonesia and Beyond'

Supervisors: **Maureen Tehan** and **Margaret Young**

Knowledge Transfer Activities

Maureen Tehan and **Miranda Stewart** have a project in 2010 on developing a support relationship with Native Title Services, Victoria. The project has two elements: provision of student interns and provision of professional advice, assistance and training.

Lee Godden and **Jacqueline Peel** presented a paper on the 'Precautionary Principle' during a Seminar at the Environment Defender's Office (EDO), 13 July 2010, Melbourne.

Linkages

University

Melbourne Sustainable Society Institute (MSSI)

CREEL has established strong links with University of Melbourne researchers in the energy, resources and environmental fields. CREEL is a member of the Melbourne Sustainable Society Institute (MSSI) which fosters sustainability research on large public issues, by integrating research expertise from a range of disciplinary perspectives, taking a particular focus on Australia and the Asia-Pacific region.

www.sustainable.unimelb.edu.au

Melbourne Energy Institute

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

www.energy.unimelb.edu.au

Office for Environmental Programs (OEP)

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

International

International Union for the Conservation of Nature (IUCN)

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

International Law Association's Committee on Legal Principles Relating to Climate Change

Associate Professor Jacqueline Peel, Associate Director of CREEL, is an expert member for the International Law Association's Committee on Legal Principles Relating to Climate Change. The Association's objectives are pursued through the work of its International Committees, the focal point of its activities being the series of Biennial Conferences. The Committee on Legal Principles Relating to Climate Change was established in November, 2008.

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