

# The Australian Centre for Climate and Environmental Law

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## 2008 Highlights

ACCEL members were involved in many activities in the latter half of 2008, including teaching, research, and a well-attended conference. And, on top of this, a lot of packing and preparing to move from Phillip St in the centre of Sydney to Sydney University main campus.

There were two major highlights. The first was the inaugural conference of the Climate Law and Policy Group, "Intersections between Global Climate Change Law and Policy". This conference was convened by ACCEL and presentations were given by ACCEL members and many other international and Australian-based speakers.

The other highlight was ACCEL members, Rosemary Lyster (Chief Investigator) and Tim Stephens, along with other faculty members, Elisabeth Peden and Simon Butt, being awarded an ARC Bridging Support Grant of \$50,000. This project addresses the issue of avoided deforestation in Indonesia.

ACCEL members were also involved in other activities. Our Director, Associate Professor Rosemary Lyster was appointed interim Co-Director of the Sydney University Institute for Sustainable Solutions. The goal of the Institute is to encourage interdisciplinary sustainability research, teaching and community outreach activities across the University. She also spoke at the ACCEL conference on 'Approaches to recognising carbon offsets arising from avoided deforestation in developing countries'.

Emeritus Professor Ben Boer gave a presentation at the IUCN World Conservation Congress in Barcelona in October on 'New Approaches to effective implementation of international conventions on Protected Areas'. In October, Kate Miles spoke at the Annual Conference of the British Institute of International and Comparative Law in London on 'Foreign Investment Law and the UNFCCC/Kyoto Protocol: Barriers to Addressing Climate Change'. Justice

Brian Preston travelled to Port of Spain, Trinidad and Tobago in July to give the Inaugural Distinguished Lecture on Environmental Law organised by the Environmental Commission of Trinidad and Tobago. His presentation was titled 'Operating an environment court: The experience of the Land and Environment Court of New South Wales'.

Our members also spoke at local events. Dr Tim Stephens spoke at the Australian Museum in July on "Japanese Whaling in the Antarctic". Dr Andrew Edgar presented at a seminar at the Sydney Law School on the recent Japanese Whaling litigation in the Federal Court and Susan Shearing spoke at the ACCEL conference in August on "Climate Change and Corporations - Some Climate Governance Issues".

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*“I’m not aware of another Law School anywhere in the world that is approaching climate change from such a broad interdisciplinary angle”*

*Rosemary Lyster JuristDiction,  
Issue 2, 2008*

## The Climate Law and Policy Group

The Sydney Law School's Climate Law and Policy Group was established in the first half of 2008. The ACCEL conference in August 2008 provided an opportunity to showcase the range of expertise in the Faculty of Law relating to climate change.

Professor Gillian Triggs, Dean of the Sydney Law School, gave a presentation dealing with the interface between climate change and WTO law. Dr Ben Saul spoke on the extent to which climate change is a threat to international security. Professor Elisabeth Peden gave a presentation dealing with climate change and contract law and Celeste Black spoke

on tax policy and emissions trading schemes.

The conference theme related directly to the purpose of the group – the intersection between climate change and the law in all its different subject areas. Speakers from around Australia helped to develop that theme.

Victoria Lambropoulos, of Deakin University, spoke on climate change and labour law, and Paul Babie, of the University of Adelaide, presented on the intersections between property law theory and climate change. The keynote speaker, Professor Armin

Rosencranz, of Stanford University, gave a fascinating presentation on climate change politics in the United States – informing us of the strengths and weakness of the policies of Barack Obama and John McCain. A podcast of Professor Rosencranz's presentation is available on the ACCEL website at (<http://www.law.usyd.edu.au/accel/index.shtml>).

The conference was a resounding success – with these contributions and the contributions of ACCEL members very clearly showing the broad range of legal areas that are affected by climate change.

## Research Grant

In 2008 ACCEL members applied for an ARC grant entitled ‘Developing a legal framework for Indonesia’s participation in an internationally sanctioned scheme for Reducing Emissions from Deforestation (and Degradation)’ [“RED(D)“]. The research team was led by Rosemary Lyster, as Chief Investigator, and the team also included Tim Stephens, Elisabeth Peden and Simon Butt as co-investigators. The application was ranked B+ and was in the top 5% of applications. The investigators were awarded an ARC Bridging Support Grant of \$50,000.

The project addresses the issue of avoided deforestation in Indonesia. Deforestation is one of the main reasons for Indonesia being the third largest emitter of greenhouse gases in the world. A comprehensive regime of laws, regulations, guidelines and policies for forest management and accreditation is required for carbon credits from avoided deforestation to be credible in Indonesia. Effective structures of administration and governance will also be necessary. In this respect Indonesia’s participation in any RED(D) scheme will require radical assessment and reform of its legal and governance arrangements relating to natural

resources, land use planning and regulation, land tenure and property rights.

At present, Indonesia’s laws and policies do not address these issues. Moreover, the regulatory environment is complicated by Indonesia’s decentralization laws. This research project will assess and recommend options for legislative and governance reform, drawing on comparative studies and will provide a foundation for ongoing capacity building in Indonesia.

## Asia Pacific Journal of Environmental Law

In the second half of 2008, ACCEL published a special issue of the *Asia Pacific Journal of Environmental Law* relating to Japanese whaling in Antarctica. This topic was prompted by litigation in the Federal Court of Australia that culminated in the decision of Justice Allsop in *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* (2008) 165 FCR 510. In that case, Justice Allsop determined that Kyodo Senpaku Kaisha Ltd had contravened the *Environment Protection and Biodiversity Conservation Act*

1999 (Cth) by killing, injuring, taking and interfering with Antarctic minke, fin, and humpback whales in the Australian Whale Sanctuary. He ordered that the respondent be restrained from continuing such actions.

This special issue provides a comprehensive analysis of the various aspects of the litigation, Australia's jurisdiction in Antarctica with regard to Japanese whaling, the Antarctic Treaty System, and the international law consequences of recent anti-whaling actions by non-governmental organisations.

## Seminars

ACCEL held four seminars in the second half of 2008. On 22 October, Robert Wilcher (Partner, Herbert Greer) and Nick Thomas (Partner, Clayton Utz) spoke on reforms to the *Contaminated Land Management Act 1997* (NSW). Then on 5 November Dr Robert Stokes (MP for Pittwater) and Adjunct Professor Mary-Lynne Taylor (Consultant-Bartier Perry) gave presentations on the controversial amendments in mid 2008 to the *Environmental Planning and Assessment Act 1979* (NSW).

Later in November, ACCEL organised a fascinating seminar on the amendments to threatened species legislation and regulations that introduced

biobanking. Our presenters for this seminar were Emma Wartski (Associate - Baker & McKenzie) and Tom Holden (Scientific Director - Environmental Defender's Office (NSW)).

And finally in December, Vishal Ahuja (Mallesons Stephen Jaques) and Tony Bigwood (Australian Department of Environment, Water and Heritage) spoke at a seminar on developments relating to water law in New South Wales and the Commonwealth.

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***Indonesia, because of its rate of deforestation, is the third largest emitter of greenhouse gases in the world.***

# Centre Publications

## Gerry Bates

Laws of Australia, (Thomsons) – Environmental Law: General Principles and Basic Concepts. Halsburys Laws of Australia, (Lexis Nexis) – Natural and Cultural Resources. Halsburys Laws of Australia, (Lexis Nexis) – Environmental Litigation

## Ben Boer

'Article 3: Identification and delineation of World Heritage Properties' (85–102); 'Article 29: Reports' (335-345); 'Article 34: The Federal Clause' (355-360) in Francioni, F (Ed), *The World Heritage Convention: A Commentary*, Oxford 2008  
Ben Boer and Ian Hannam, 'Drafting Legislation for Sustainable Soils: Judicative principles towards sustainable land use and protection of the soil quality' *European Land and Soil Alliance Bulletin*  
Boer, B.W and Gruber, S. "Heritage Conservation Law", in *Local Government Planning and Environment Service*, Butterworths, 2008 (75 pages, forthcoming).

## Andrew Edgar

'Tribunals and administrative policies: does the high or low policy distinction help?' (2008) *Australian Journal of Administrative Law* (forthcoming)

## Zada Lipman

Zada Lipman and Rob Stokes "The technocrat is back: Environmental land-use planning reform in New South Wales" (2008) 25 *Environmental and Planning Law Journal* 305-324.

## Rosemary Lyster

'The Reality and Effect of "Advance Informed Agreement" under the Cartagena Protocol' in Michael Jeffries, Jeremy Firestone and Karen Bubna-Litic (eds) *Biodiversity Conservation, Law + Livelihoods* (Cambridge University Press: January 2008)  
'The Australian Carbon Pollution Reduction Scheme: What Role for Complementary Measures?' (2008) 31(3) *University of NSW Law Journal* 880

'Domestic and International carbon offsets under the Carbon Pollution Reduction Scheme: what prospects?' (2008) 28(1) *University of Tasmania Law Review* 111  
'The precautionary principle: a thrill ride on the roller coaster of Energy and Climate Law' (2009) *RECEIL* (forthcoming)

## Kate Miles

'Targeting Financiers: Can Voluntary Codes of Conduct for the Investment and Financing Sectors Achieve Environmental and Sustainability Objectives?' in Kurt Deketelaere et al (eds) *Critical Issues in Environmental Taxation—Volume V 947* (2008) Oxford University Press.

## Brian Preston

'The Land and Environment Court of New South Wales: moving towards a multi-door courthouse – Part 1' (2008) 19 *Alternative Dispute Resolution Journal* 72  
'The Land and Environment Court of New South Wales: moving towards a multi-door courthouse – Part 2' (2008) 19 *Alternative Dispute Resolution Journal* 144  
'Ecologically sustainable development in the context of contaminated land' (2008) 25 *Environmental and Planning Law Journal* 164  
'The environment and its influence on the law' (2008) 82 *Australian Law Journal* 180  
B J Preston and H Donnelly, 'Achieving consistency and transparency in sentencing for environmental offences', *Judicial Commission of New South Wales Monograph* 32, June 2008.  
B J Preston and H Donnelly, 'Environmental crime sentencing database is a world first' (2008) 20(4) *Judicial Officers' Bulletin* 27  
B J Preston and H Donnelly, 'The establishment of an environmental crime sentencing database in New South Wales' (2008) 32 *Criminal Law Journal* 214  
B J Preston and T Moore, 'The Trees (Disputes Between Neighbours) Act 2006 – background and operation' (2008) 14 *Local Government Law Journal* 84  
'Consultation: One aspect of procedural propriety in administrative decision-making' (2008) 16 *Australian Journal of*

*Administrative Law* 185  
'Foreword', *Forum – Climate Change Law in Australia* (2008) 14(2) *University of New South Wales Law Journal Forum* 2 reprinted (2008) 31(3) *UNSWLJ* 833  
'The art of judging environmental disputes' (2008) 12 *Southern Cross University Law Review* 103  
'Operating an environment court: The experience of the Land and Environment Court of New South Wales' (2008) 25 *Environmental and Planning Law Journal* 385

## Susan Shearing

'Here Today, Gone Tomorrow? Climate Change and World Heritage' (2008) 12(2) *Australasian Journal of Natural Resources Law and Policy* 161

## Tim Stephens

"Fishing-Led Development in the South Pacific: Charting a Pacific Way to a Sustainable Future" (2008) 39(3) *Ocean Development and International Law* 257-286.

## Centre Staff

ACCEL comprises the following full-time members:

**Associate Professor Rosemary Lyster, Director**  
**Ms Nicola Franklin, Deputy Director**  
**Mr Bernard Dunne**  
**Dr Andrew Edgar**  
**Ms Kate Miles**  
**Ms Susan Shearing**  
**Dr Tim Stephens**

ACCEL comprises the following Emeritus and Adjunct Professors:

**Dr Gerry Bates**  
**Emeritus Professor Ben Boer**  
**Professor Zada Lipman**  
**The Honourable Justice Brian Preston,**  
**Chief Judge, Land & Environment Court of NSW**

The ACCEL (Sydney) Advisory Board comprises the following members:

**Dr Nicholas Brunton, Partner, Henry Davis York**  
**Associate Professor Ronnie Harding,**  
**Institute of Environmental Studies,**  
**University of New South Wales**  
**Mr David O'Donnell,**  
**Environment and Planning Partner,**  
**Mallesons Stephen Jaques**  
**The Honourable Justice Nicola Pain,**  
**NSW Land and Environment Court**  
**Mr Jeff Smith,**  
**Chief Executive, Environmental Defender's Office**