



THE UNIVERSITY OF  
**SYDNEY**

**AUSTRALIAN CENTRE FOR CLIMATE  
AND ENVIRONMENTAL LAW**

**ACCEL**

**2010 ANNUAL REPORT**

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## ACCEL MEMBERS

### **Full-time academic staff**

Associate Professor Rosemary Lyster (Director)

Dr Kate Miles (Deputy-Director)

Ms Celeste Black

Associate Professor Chester Brown

Dr Simon Butt

Mr Bernard Dunne

Dr Andrew Edgar (Coordinator of the Environmental Law Program)

Ms Nicola Franklin

Ms Susan Shearing (Coordinator of the Environmental Law Program)

Dr Timothy Stephens

### **Adjunct Professors and Associates**

Emeritus Professor Ben Boer

Adjunct Professor Gerry Bates

Adjunct Professor The Hon. Justice Brian Preston, Chief Judge, Land & Environment Court NSW

Emeritus Professor Zada Lipman

### **Advisory Board**

Dr Nicolas Brunton, Partner, Henry Davis York

Mr John Connor, The Climate Institute

Associate Professor Ronnie Harding, Institute of Environmental Studies, University of NSW

Mr David O'Donnell, Environment and Planning Partner, Mallesons Stephen Jaques

The Honourable Justice Nicola Pain, NSW Land and Environment Court

Mr Jeff Smith, Director, Environmental Defender's Office

## RESEARCH AND PUBLICATIONS (FULL TIME STAFF)

### ***Celeste Black***

#### *Chapters in Research books*

"Climate Change and Tax Law: Tax Policy and Emissions Trading" in Rosemary Lyster (ed), *In the Wilds of Climate Law*, Australian Academic Press (2010).

### ***Chester Brown***

#### *Chapters in Research Books*

'Bringing Sustainable Development Issues before Investment Treaty Tribunals', in Markus Gehring, Marie-Claire Cordonnier-Seger, and Andrew Newcombe (eds), *Sustainable Development in World Investment Law* (2010) 177-190.

'Procedure in Investment Treaty Arbitration and the Relevance of Comparative Public Law', in Stephan Schill (ed), *International Investment Law and Comparative Public Law* (2010) 659-688.

*Refereed Journal Articles*

'International, Mixed and Private Disputes Arising under the Kyoto Protocol', *Journal of International Dispute Settlement* (2010) 1 447-473.

**Simon Butt**

*Chapters in Research Books*

'Judicial Mafia: The Courts and State Illegality in Indonesia' with Tim Lindsey, in E Aspinall & G van Klinken (eds), *The State and Illegality in Indonesia*, KITLV Press: The Netherlands (forthcoming).

'Unfinished Business: Law Reform, Governance and the Courts in Post-Soeharto Indonesia' in M Kunkler, & A Stepan (eds), *Indonesia, Islam and Democratic Consolidation*, Columbia University Press: US (forthcoming).

'Foreign Investment in Indonesia: The Problem of Legal Uncertainty' in Vivienne Bath & Luke Nottage (eds), *Foreign Investment and Dispute Resolution Law and Practice in Asia*, Routledge: London (forthcoming).

'Who Owns the Economy? Property Rights, Privatization, and the Indonesian Constitution: The Electricity Law Case' with Tim Lindsey, in A McHarg, B Barton, B Bradbrook & L Godden (eds), *Property and the Law in Energy and Natural Resources*, Oxford University Press: Oxford (2010) 236-254.

*Refereed Journal Articles*

'Corruption, Law, Politics and Frame-Ups: The Plot to Dismantle Indonesia's Anti-Corruption Commission' with Parsons, J (2010) 11(2) *Harvard Asia Pacific Review* (forthcoming).

'Indonesia's Anti-Corruption Drive and the Constitutional Court' *The Journal of Comparative Law* (forthcoming).

'Regional Autonomy and Legal Disorder: The Proliferation of Local Laws in Indonesia' (2010) 32(2) *Sydney Law Review* 177-197.

**Andrew Edgar**

*Refereed Journal Articles*

'Participation and Responsiveness in Merits Review of Polycentric Decisions: a comparison of development assessment appeals' in *Environmental and Planning Law Journal* (2010) 27 EPLJ 36.

**Rosemary Lyster**

*Edited Books*

*In the Wilds of Climate Law*, Australian Academic Press (2010)

#### *Chapters in Research books*

'Reducing Emissions from Deforestation and Degradation: The Road to Copenhagen' in Rosemary Lyster (ed) *In the Wilds of Climate Law*, Australian Academic Press (2010).

#### *Refereed Journal Articles*

'Smart Grids: Opportunities for Climate Change Migration and Adaptation' *Monash University Law Review* (2010) 36(1) 173.

### **Kate Miles**

#### *Edited Books*

*Evolution in Investment Treaty Law and Arbitration*, Kate Miles & Chester Brown (eds), Cambridge University Press: UK (forthcoming).

#### *Chapters in Research Books*

'Blue Oil: Water Resources, Social Justice, and the International Law on Foreign Investment', in Natalie Klein et al (eds) *Globalisation and International Law: The Quest for Social and Environmental Justice*, Routledge (2010) 53.

'Sustainable Development, National Treatment and Like Circumstances in Investment Law' in Marie-Claire Cordonier Segger, Andrew Newcombe and Markus Gehring (eds), *Sustainable Development in International Investment Law*, Kluwer (forthcoming 2010).

'Reconceptualising International Investment Law: Bringing the Public Interest into Private Business' in Meredith Kolsky Lewis and Susy Frankel (eds), *International Economic Law and National Autonomy*, Cambridge University Press: UK (2010) 295-319

#### *Articles in Refereed Journals*

'Arbitrating Climate Change: Regulatory Regimes and Investor-State Disputes' in *Climate Law* (2010) 1(1) 63-92.

'International Investment Law: Origins, Imperialism and Conceptualizing the Environment' in *Colorado Journal of International Environmental Law and Policy* (2010) 21(1) 1-47.

### **Susan Shearing**

#### *Chapters in Research Books*

"Biodiversity" in D. Leary and B. Pisupati (eds), *Future of International Environmental Law and its Role in Development*, UNU Press (forthcoming 2010).

"Climate Governance and Corporations – Changing the way Business does Business?" in Rosemary Lyster (ed), *In the Wilds of Climate Law*, Australian Academic Press (2010).

#### *Refereed Journal Articles*

Susan Shearing and V. Tava, "Environmental Law-Australia and New Zealand", in *Encyclopedia of Sustainability, The Law & Politics of Sustainability*, Berkshire Vol 3/10 (2010).

"Australia's National Heritage Law Framework under Review", *Asia Pacific Journal of Environmental Law* (2010) 13(1) 1-15.

### **Tim Stephens**

#### *Authored Research books*

Tim Stephens & Don. R. Rothwell, *The International Law of the Sea*, Hart Publishing (2010).

#### *Chapters in Research Books*

"International Courts and Climate Change 'Progression', 'Regression', and 'Administration'" in Rosemary Lyster (ed) *In the Wilds of Climate Law*, Australian Academic Press (2010).

'Sustainability Discourses in International Courts: What Place for Global Justice?' in Duncan French (ed), *Global Justice and Sustainable Development*, Brill (2010) 39-56.

#### *Refereed Journal Articles*

Fleur Johns, Ben Saul, Philip Hirsch, Tim Stephens and Ben Boer, 'Law and the Mekong River Basin: A Social-Legal Research Agenda on the Role of Hard and Soft Law in Regulating Transboundary Water Resources' in *Melbourne Journal of International Law* (2010) 11, 154-174.

Tim Stephens and Alan D Hemmings, "Reconciling Regional and Global Dispensations: The Implications of Subantarctic Extended Continental Shelf Penetration of the Antarctic Treaty Area" *New Zealand Year Book of International Law*, (2009) 8 273-292 [published in 2010]. Available at <http://ssrn.com/abstract=1437273>

Alan D Hemmings and Tim Stephens, 'Extended Continental Shelves from Sub-Antarctic Islands: What Implications for Antarctic Governance?', *Polar Record* (2010) 46, 312-327.

#### *Case Notes*

Chester Brown, Jacqueline Mowbray, Tim Stephens and Brett Williams, 'Australian Cases before International Courts and Tribunals Involving Questions of Public International Law 2007', *Australian Year Book of International Law* (2009) 28, 255-282 [published in 2010]

Lucas Bastin, Naomi Hart, Justin Hogan-Doran, Meredith Simons, Hannah Stewart-Weeks, Tim Stephens and Houda Younan, 'Australian Cases before Australian Courts and Tribunals Involving Questions of Public International Law 2007', *Australian Year Book of International Law* (2009) 28, 221-253 [published in 2010].

## RESEARCH AND PUBLICATIONS (ADJUNCT STAFF)

### **Gerry Bates**

#### *Authored Research Books*

*Environmental Law in Australia*, 7th edition, LexisNexis (May 2010).

#### *Refereed Journal Articles*

Gerry Bates and Kate Meares, 'Options for funding environmental compliance programs in NSW', *Local Government Law Journal* (2010) 16, 32.

### **Ben Boer**

#### *Major articles*

Fleur Johns, Ben Saul, Philip Hirsch, Tim Stephens, Ben Boer, 'Law and the Mekong River Basin: A Social-Legal Research Agenda on the Role of Hard and Soft Law in Regulating Transboundary Water Resources' *Melbourne Journal of International Law* (2010) 11, 154-174.

Ben Boer and Stefan Gruber, 'Legal Framework for Protected Areas: Australia', *IUCN Environmental Law Centre* (published on disk).

Ben Boer and Stefan Gruber, 'Legal Framework for Protected Areas: New South Wales', *IUCN Environmental Law Centre* (published on disk).

### **Zada Lipman**

#### *Refereed Journal Articles*

'An evaluation of Compliance and Enforcement Mechanisms in the Environmental Protection and Biodiversity Conservation Act 1999 (Cth) and their Application by the Commonwealth', (2010) *Environmental and Planning Law Journal*, 98 – 112.

#### *Loose Leaf Services*

The Laws of Australia - 14.6 'Environmental Harm: Pollution Control and Hazardous Substances', Updating author [14.6.199] - [14.6.394], Thomson Reuters, update 253 - September 2010.

### **Brian Preston**

#### *Chapters in Research books*

"Reflection on Water Use and Justice", in J McKay, G Karemane and A Gray, *Picturing Freshwater Justice in Rural Australia*, Cooperative Research Centre for Irrigation Futures, Adelaide, 2010, 84.

"Climate Change Litigation" in Rosemary Lyster (ed) *In the Wilds of Climate Law*, Australian Academic Press, Sydney (2010), 208.

“The role of courts in relation to adaptation to climate change”, in T Bonyhady, A Macintosh and J McDonald (eds), *Adaptation to Climate Change: Law and Policy*, Federation Press, Sydney (2010) 157.

"Foreword" in D E Fisher, *Australian Environmental Law: Norms, Principles and Rules*, Second Edition, Thomson Reuters, Sydney (2010).

#### *Refereed Journal Articles*

“A Judge’s Perspective on Using Sentencing Databases”, *The Judicial Review* (2010) 9(4), 421; also published in *Journal of Court Innovation* (2010) 3(1), 247.

“An Institute for enhancing effective environmental adjudication”, S Abed de Zavala, A H Benjamin, H G Davide Jr, A Dunn, P Hassan, D W Kaniaru, R Macrory, B J Preston, N A Robinson and M Wright, *Journal of Court Innovation 1* (2010) 3(1).

“Leadership by the courts in achieving sustainability” *Environmental and Planning Law Journal* (2010) 27(5), 321; also published in *Resource Management Theory & Practice* (2010) 17.

“Climate change in the courts” in *Monash University Law Review*, (2010) 36(1), 15.

### EDITORSHIPS (FULL TIME STAFF)

- Rosemary Lyster, Special Water and Energy Law Editor for *Environmental Planning and Law Journal*
- Kate Miles, Assistant Editor, *Asia Pacific Journal of Environmental Law*
- Kate Miles, Book Review Editor, *Asia Pacific Journal of Environmental Law*
- Susan Shearing, Editor in Chief, *Asia Pacific Journal Of Environmental Law*
- Susan Shearing and Tim Stephens, Editors in Chief, *Asia-Pacific Journal of Environmental Law*
- Tim Stephens, Co-Editor in Chief, *Asia Pacific Journal of Environmental Law*
- Tim Stephens, Associate Editor, *Australian International Law Journal*
- Tim Stephens, Editor and Contributor of International Law Terms, LexisNexis Concise Australian Legal Dictionary (4th Edition)

### EDITORSHIPS (ADJUNCT STAFF)

- Gerry Bates, Editor-in-Chief, *Environmental Planning and Law Journal*
- Ben Boer, Member, Editorial Board *Review of European Community and International Environmental Law*, London
- Ben Boer, Member, Editorial Board *Journal of Environmental Law*, London
- Ben Boer, Member, Editorial Board *Asia Pacific Journal of Environmental Law*, ACCEL

- Ben Boer, Member, Editorial Board *Comparative Environmental Law and Policy series*, Kluwer International.
- Zada Lipman, Australian editor of the *Environmental Liability Journal*
- Zada Lipman, New South Wales and Pollution special editor of the *Environmental and Planning Law Journal*
- Brian Preston, Member of Editorial Board, *Local Government Planning and Environment NSW Service*, LexisNexis Butterworths.
- Brian Preston, Member of Advisory Board of *TREENET*, a national arboricultural research and education organisation based at Waite Arboretum, University of Adelaide
- Brian Preston, Member of the Editorial Advisory Board for the *Asia Pacific Journal of Environmental Law*.
- Brian Preston, Title editor of The Laws of Australia – Title 14 “*Environment and Natural Resources*”, Thomson Reuters.

## CONFERENCE AND SEMINAR PRESENTATIONS (FULL TIME STAFF)

### **Celeste Black**

'The Use of Market Mechanisms to Bolster Forest Carbon: A Critical Analysis' presented at 11th Global Conference on Environmental Taxation, Thailand (3-5 November 2010).

'A Link Between Theories of Justice and the Legal Concepts of Charity? The Case of Animals' presented at JSI Legal Theory at Sydney Seminar Series, Sydney (23 September 2010).

'Tax Accounting and Liabilities under Emissions Trading Schemes' presented at Sydney Law School Tax Work-in-Progress Seminar Series, Sydney (1 June 2010).

'Tax Accounting for Transactions under an Emissions Trading Scheme: An Australasian Perspective' presented at the Second Annual Meeting of the Society for Environmental Law and Economics, Emory University, Atlanta, Georgia, USA (26-27 March 2010).

'The Taxation of Carbon Emissions Units: A Comparative Analysis' presented at the 22nd Annual Conference of the Australasian Tax Teachers Association, UNSW, Sydney (20-22 January 2010).

### **Chester Brown**

'Comments on “A New Strategy for Europe: Trade, Growth, and World Affairs”’, EU Trade Forum with Mr Joao Aguiar Machado, EU Deputy Director-General for Trade, University of Sydney, Faculty of Law, 13 December 2010.

'An Introduction to the ICSID Arbitration Procedures', Chartered Institute of Arbitrators Diploma on International Commercial Arbitration, Penang, Malaysia, 7 October 2010.

'The Role of Dispute Settlement in Building the Regime of International Investment Law', Workshop on Resolving International Law Disputes: Strategies, Options, and Outcomes, Macquarie University, Sydney, Australia, 17 September 2010.

'Recent Developments in the Use of International Arbitration in Commercial Disputes in Australia', ICC Conference: 'International Arbitration in Australia and Beyond', Sydney, Australia, 14 September 2010.

'The Cross-Application of Rules in WTO Dispute Settlement and Investment Treaty Arbitration', 31st International Trade Law Symposium, Old Parliament House, Canberra, 10 September 2010.

'The Emerging Field of Investment Treaty Arbitration', Singapore Academy of Law, Supreme Court Building, Singapore, 14 April 2010.

'The Proliferation of International Courts and Tribunals: Problems and Prospects', Centre for International Law, National University of Singapore, Singapore, 13 April 2010.

'How Bilateral Investment Treaties Can Protect Foreign Investment', Seminar on The Global Economy: Tips and Tricks for Protecting Overseas Investment, Clayton Utz, Sydney, Australia, 23 March 2010.

'Questions of Interpretation Concerning the Obligation to Accord Fair and Equitable Treatment', Conference on International Investment Treaty Law and Arbitration: Evolution and Revolution in Substance and Procedure, University of Sydney, Sydney, Australia, 20 February 2010.

'The Abuse of "Treaty Shopping" in Investment Treaty Arbitration', Investor-State Arbitration Seminar, Allens Arthur Robinson, Sydney, Australia, 18 February 2010.

### ***Simon Butt***

'Foreign Investment in Indonesia: The Problem of Legal Uncertainty' presented at Investment in Asia Book and Sydney Law Review Project Paper Discussion Workshop, Sydney, 29 October, 2010.

### ***Bernard Dunne***

'Environmental Impact Assessment', ACCEL Seminar Series 2010, Sydney, 21 April 2010.

### ***Andrew Edgar***

'Resilience and the Law: The Role of the Courts', ACCEL Conference 2010: Resilience and Climate Change: Law's Response?, Sydney, 26-27 August 2010.

'Negotiating the law/politics dichotomy in Australian environmental law', The 2nd NUS-Sydney Law Symposium, Singapore, 15-16 July 2010.

'The High Court in Kirk – Jurisdictional Errors and Misconstruing Statutes', Bar Association Seminar, Sydney, 2 June 2010.

'Environmental Litigation', ACCEL Seminar Series 2010, 12 May 2010.

'Environmental Planning Law', ACCEL Seminar Series 2010, Sydney, 14 April 2010.

**Nicola Franklin**

'Developing Resilient Cities: A Fresh Agenda for Planning Law?' presented at ACCEL Conference 2010: Resilience and Climate Change: Law's Response?, Sydney (26-27 August 2010).

**Rosemary Lyster**

'Are Resilience and Water Markets Compatible?', presented at ACCEL Conference 2010: Resilience and Climate Change: Law's Response?, Sydney, 26-27 August 2010.

'Reducing Emissions from Deforestation and Degradation under the Copenhagen Accord', presented at ACCEL: The New International Carbon Offset?, Sydney, 24 February 2010.

**Kate Miles**

'Transparency in Investor-State Arbitration', forthcoming presentation at *International Investment Agreements and Investor-State Dispute Settlement at a Crossroads: Identifying Trends, Differences and Common Approaches*, Second Symposium on International Investment Agreements, OECD/UNCTAD, Paris, France, December 2010 (invited speaker).

'Access to Environmental Justice, Investment Law and Human Rights', Guest Lecture, *The Environmental Protection of Human Rights Seminar*, European University Institute, Florence, Italy, November 2010 (invited speaker).

'International Investment Law, Empire and the Environment', presented at The Lauterpacht Centre Lecture Series, Lauterpacht Centre for International Law, University of Cambridge, United Kingdom, November 2010 (invited speaker).

'Private Finance for Climate Adaptation', presented at Climate Change Governance After Copenhagen, University College London (UCL) and University of Hong Kong, Hong Kong, November 2010 (invited speaker).

'Soft Law Instruments in Environmental Law: Models for International Investment Law?', presented at the 74th Conference of the International Law Association, The Hague, The Netherlands, August 2010 (invited speaker).

'International Investment Law and Non-Investment Issues: Engaging with Cross-Cutting Issues', presented at International Investment Treaty Law and Arbitration: Evolution and Revolution in Substance and Procedure, University of Sydney, February 2010.

**Susan Shearing**

'Environmental Law and Corporate Standards', Macquarie University Law School, 2 November 2010.

'Marine Biodiversity and Adaptation to Climate Change', NELA National Conference: The Politics of Biodiversity, Canberra, 20-23 October 2010.

'Marine Biodiversity and Climate Change: What is the Role of the Law in Facilitating Climate Change Adaptation?', 8th IUCN Academy of Environmental Law Colloquium Linkages Between Biodiversity and Climate Change, Ghent, Belgium 14-16 September 2010.

'Marine Biodiversity and Climate Change: Legal Responses to the Challenge of Adaptation', ACCEL Conference 2010: Resilience and Climate Change: Law's Response?, Sydney, 26-27 August 2010.

'Heritage and Biodiversity', ACCEL Seminar Series 2010, Sydney, 5 May 2010.

### ***Tim Stephens***

'Protecting the Deep Seabed: Free Riders Within Cooperation Regimes', ANU Centre for European Law, Conference on Third Parties and Cooperation Regimes, ANU, Canberra, Australia, 22 November 2010.

'Marine Environmental Protection', Macquarie University Law School, 7 October 2010.

'Australia's Participation in International Environmental Litigation', Resolving International Law Disputes: Strategies, Options and Outcomes, Macquarie University Workshop, 17 September 2010.

'Australia's Case Against Japan Over "Scientific" Whaling', International Law Association Seminar, Marque Lawyers, Sydney, 21 June 2010.

'Seeing the Forests for the Trees: The Copenhagen Climate Accord and Emissions from Deforestation', Lunchtime Seminar, University of Queensland T.C. Beirne School of Law, 11 June 2010.

'Australian Foreign Policy on Global Environmental Issues', Guest Lecture, Department of Government and International Relations, University of Sydney, 15 April 2010.

'Enforcing the REDD Provisions in the Copenhagen Accord', The New Carbon Offset, Workshop, Faculty of Law, University of Sydney, 24 February 2010.

## **CONFERENCE AND SEMINAR PRESENTATIONS (ADJUNCT STAFF)**

### ***Ben Boer***

'Biodiversity, Climate Change and Protected Areas', IUCN Academy of Environmental Law Annual Colloquium, Ghent, September 2010.

'Protected Areas Law Case Studies', Conference of the Parties, Convention on Biological Diversity, Nagoya, Japan, October 2010.

'World Heritage Convention and Climate Change', seminar for Heritage Law Interest Group, European University Institute, Italy, November 2010.

'Conference of the Parties, Convention on Biological Diversity,' seminar to Environmental Law Interest Group, European University Institute, Italy, November 2010.

Social Environmental Justice and Climate Change, presentation to Social Environmental Justice Conference European University Institute, Italy, November 2010.

'Biodiversity, Protected Areas and Climate Change' Staff seminar, European University Institute, Italy, November 2010.

Presentations on various topics for Advanced Human Rights and Environment postgraduate seminar series, September to November 2010, European University Institute, Italy.

### ***Zada Lipman***

'Resilience and Legal Strategies for Coastal Management', ACCEL Conference 2010: Resilience and Climate Change: Law's Response?, Sydney, 26-27 August 2010.

### ***Brian Preston***

"Climate change litigation: a conspectus", a paper presented to the 23rd Biennial LAWASIA Conference, 11-14 November 2010, Delhi, India.

"Climate change litigation", a paper presented to "Climate Change Governance after Copenhagen" Conference, 4 November 2010, Hong Kong, China.

"Climate change litigation: International and domestic perspectives", University of Southern Queensland (USQ) Public Lecture, 14 October 2010, Ipswich, Queensland.

'Implementing the International Framework for Court Excellence: The experience of the Land and Environment Court of New South Wales', delivered by Justice Brian J Preston at the Asia-Pacific Courts Conference 2010, Singapore (5 October 2010).

"Operating an Environmental Court: the experience of the Land and Environment Court of NSW", a presentation to the Australian Institute of Architects (NSW Chapter), Continuing Professional Development Program, "In Your Court", 23 September 2010, Sydney, NSW.

"Expert witnesses – Lessons learned from specialised environment courts", "Balancing expert opinion: Role of Judges and Commissioners", and "Environment court dispute resolution processes", presentations to the "Promoting Improved Court Policies and Practices on the Environment in Thailand", 18-19 September 2010, Bangkok, Thailand.

'Welcome Remarks' delivered by Justice Brian J Preston at the opening session of the Australasian Conference of Planning and Environment Courts and Tribunals (ACPECT) 2010, Sydney. 1 September 2010.

'Commentary on paper by Dr M Groves, 'Federal constitutional influences on State judicial review' delivered by Justice Brian J Preston to the Australian Association of Constitutional Law (AACL) Seminar, Sydney. 26 August 2010.

"Judicial specialisation in environmental law: The Land and Environment Court of NSW", a presentation to the Asian Judges Symposium on Environmental Decision-Making, the Rule of Law, and Environmental Justice, 28 July 2010, Manila, Philippines.

‘Global Warming, the Environment and Litigation: A Commentary’, delivered by Justice Brian J Preston at the International Council of Advocates and Barristers, Fifth World Bar Conference, held between 1-4 April 2010 in Sydney. 4 April 2010.

“Enforcement of environmental and planning laws in New South Wales”, a paper presented to the University of Southern Queensland (USQ) Law and Sustainability Symposium, 11 March 2011, Brisbane, Queensland.

“The use of restorative justice for environmental crime”, a paper presented to the EPA Victoria seminar on Restorative Environmental Justice, 22 March 2011, Melbourne, Victoria.

## POSTGRADUATE SUPERVISION AT FEBRUARY 2011

### ***Celeste Black***

de Lemos

Pinto Aydos	Elena	PhD	Full time	01/03/2010	01/03/2013	
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### ***Ben Boer***

	Allenisheo Lalanath					
De Silva	Mark	PhD	Part-time	01/07/2005	01/07/2013	01/07/2014
	Stefan Alexander					
Gruber	Karl	PhD	Full-time	01/02/2008	01/02/2012	

### ***Nicola Franklin***

	Andrew Michael					
Martin		PhD	Part-time	01/02/2004	01/02/2012	01/07/2012
	Loretta					
Nash	Jane	PhD	Part-time	01/02/2000	01/02/2007	01/07/2010

### ***Rosemary Lyster***

Crossley	Penelope Jane	PhD	Full time	01/07/2010	01/07/2013	
Govind	Paul	LLM by Research	Part time	01/07/2007	01/07/2011	
	Andrew Michael					
Martin		PhD	Part-time	01/02/2004	01/02/2012	01/07/2012
Toner	Janice	PhD	Part-time	01/07/2003	01/07/2011	

Lorraine

de Lemos

Pinto Aydos Elena PhD Full time 01/03/2010 01/03/2013

**Brian Preston (Associate Supervisor)**

Beverley Paul  
Terrance PhD Part time 2005 2010

**Susan Shearing**

Owens Katherine  
Anne PhD Full time 01/07/2010 01/07/2013

**Tim Stephens**

Crossley Penelope  
Jane PhD Full time 01/07/2010 01/07/2013

Kadir Rizal Abdul  
PhD Full time 01/03/2010 01/03/2013

Govind Paul  
LLM by Research Part time 01/07/2007 01/07/2011

**2010 PHD GRADUATES**

**Ben Boer / Tim Stephens**

Miles Katherine  
Louise PhD Part-time 01/02/2004 01/02/2008 01/02/2010

**Rosemary Lyster / Nicola Franklin**

Bates Rebecca  
Louise PhD Full-time 01/07/2005 01/07/2009 01/02/2010

**Tim Stephens / Eleanor Bruce (School of Geosciences as Principal Supervisor)**

Gillespie Jo  
PhD  
(Geography) Part-time 01/07/2006 01/02/2010

### Collaborative and interdisciplinary research

#### University strategy:

Develop a small number of major cross-disciplinary initiatives in research.

#### ACCEL response:

Members of ACCEL are currently engaged in a number of interdisciplinary research projects which are likely to endure over the next few years. Some but not all of these projects involve research collaborations within the Division. Nevertheless, in accordance with discussion at the Dean's Executive Meeting, all are relevant to the Law School's Strategic Plan. Each of these would be worthy of further research funding support. These include:

Reducing Emissions from Deforestation and Degradation (REDD+) (Rosemary Lyster, Simon Butt, Tim Stephens, Elisabeth Peden)

'Implementing REDD+ in Indonesia: the need for legal institutions to support transparency and participation in the context of indigenous peoples' and local communities' resource rights'

Without adequate protections, there are concerns that indigenous peoples' and local communities' livelihoods, access to resources and other rights, such as cultural rights, will be disrupted where deforestation is substantially reduced or halted. Indigenous people face the risk that governments will 'zone' forests thereby creating protected areas, biological corridors, forest reserves and sustainable forest management zones. Governments might then grant state-authorized forest concessions to manage these forests, prohibit community use of forestry resources, or evict indigenous peoples and communities from parks or protected areas. Secondly, there are concerns that insecure tenure may itself promote deforestation as resource users clear forests in order to show occupation where land claims are contested. From a legal and governance perspective, transparency, openness and accountability in government driven REDD+ projects are facilitated by four key pillars: access to information; access to legal remedies before courts and tribunals; the right to participate in government decision-making; and access to an independent Ombudsman, or Public Protector, who investigates instances of maladministration in government agencies. This research investigates the status of each of these pillars in Indonesia.

The research includes a collaboration with academics in the Department of Geosciences including Professor Phil Hirsch, Dr Jeffrey Neilson, Associate Professor Bill Pritchard and Dr Robert Fisher.

- Animal Law (Celeste Black)

The Human Animal Research Network (HARN) at the University of Sydney is a new interdisciplinary and cross-Faculty research group comprising members from the Faculty of Arts and Social Sciences, Faculty of Science, Faculty of Veterinary Science and the Faculty of Law. From the perspectives of

Science, Law, Veterinary Science and the Humanities, both the 'animal' and the 'human' carry different meanings and unique philosophical genealogies, and much can be learnt when these perspectives interact, consult, teach and learn from each other. HARN aims to promote cross-disciplinary dialogue within the university and between the university and community groups, international human animal studies organizations and other Australian University based organizations.

Celeste Black is an Executive (and founding) Member of HARN. The first event (a seminar on the topic 'horse') was held on the 3<sup>rd</sup> of May which included presentations by three academics (from Law (Celeste), Vet Science and Geography). HARN aims to hold two public seminars per semester. It has a newly launched website <http://sydney.edu.au/arts/research/harn/about/index.shtml> and a growing membership which also includes higher degree research students.

- Treaty implementation and the creation of domestic political venues (Susan Shearing)

This project will analyse of implementation patterns of three international treaties; the World Heritage Convention (environmental), the UN Refugee Convention (human rights), and UN Convention Against Corruption (governance); in Australia, Canada, and the United States

The Research group includes four full time staff from three Departments across two faculties: Government and International Relations, Sociology and Social Policy, and the Sydney Law School.

Funding: Faculty of Arts Collaborative Research Scheme 2010.

- Mekong Laws: Scales, Sites and Impacts of 'Hard' and 'Soft' Law in Mekong River Basin Governance (Ben Boer, Fleur Johns, Ben Saul with the Australian Mekong Resources Centre)

This project draws together law and social science scholars with a diversity of research strengths. Few studies of international and national law have combined theoretical inquiry into the circulation and impacts of legal ideas, institutions and vocabularies with ethnographic mapping of particular socio-legal fields. Conversely, Mekong-specific social science literature has tended to be inattentive to law. By addressing these weaknesses, this project expands knowledge in international law (especially international law on transboundary watercourses), regional and national environmental law and the discipline of social sciences (especially human geography), and integrates recent theorising in both discipline areas in an innovative way.

Members of ACCEL have been very successful in raising REDD research funding. In 2009, Rosemary Lyster and Time Stephens and an interdisciplinary team of researchers at the University received \$96,636 from the Institute for Sustainable Solutions to undertake research into the payment of environmental services for forest carbon in Indonesia. In 2009, Rosemary, Tim, Simon Butt and Elisabeth Peden have together also been awarded a \$224,000 ARC Discovery Grant to support their research in this area. Funding has been granted for 2010, 2011 and 2012.

In July and August 2009, and July 2010 while an invited guest visiting scholar at Trinity College, Cambridge, Rosemary Lyster visited a wide range of interdisciplinary scholars at Cambridge, Oxford, Columbia and Stanford Universities to invite their collaboration in this area of research. They will

now collaborate on a book approved by Cambridge University Press, Rosemary Lyster, Constance McDermott, Catherine MacKenzie, *Law, Carbon and Tropical Rainforests: The case of REDD+*.

Celeste Black has been successful in securing ARC funding for climate law research. Celeste, Prof Lee Burns and Prof Milne have been awarded a \$217,000 ARC Discovery Grant to support their research into the design and application of taxation laws to domestic and cross-border transactions triggered by carbon emissions trading schemes. Funding has been granted for 2010, 2011 and 2012.

## TEACHING

In 2010 ACCEL hosted two visiting professors from Europe: Professor Han Somsen from Tilburg University, Netherlands, whom co-taught with Professor Rosemary Lyster on Genetically Modified Organisms and Environmental Law; and Professor Jonathan Verschuuren, also from Tilburg University, who presented a conference paper at the ACCEL 'Resilience and climate change: Law's response' conference, titled 'Adaptation to Climate Change - Towards a New Approach to Restoration in Europe'. In addition Professor Rosemary Lyster co-taught with Professor Kurt Deketelaere from Leeuwen University, Belgium under the LLM in Europe Program at Cambridge; the unit was Comparative Climate Law.

Four new units of study were established at Sydney Law School in 2010.

A new unit, coordinated by Professor Rosemary Lyster, entitled Global Energy Resources Law covered Global energy security, international access to energy resources and the resolution of cross-jurisdictional energy access disputes; land law; energy resources and approvals; dealings and registrations; environmental protection law; and financial aspects such as project finance, energy trading and taxation. The reform of the energy market in Australia and its implications for competition law, Third party access and trade practices, as well as the interface between energy resources and global climate change, will be canvassed

ACCEL has strategically added to the climate law offerings in the postgraduate environmental law program so as to position the Law School as one of the world's leaders in climate law. US Climate Law was a new second semester intensive unit which examined the response of the United States to the United Nations Convention on Climate Change, the Kyoto Protocol and the Copenhagen Agreement. Assistant Professor Michael Wara from Stanford Law School taught the unit. An expert on environmental law and policy, Michael Wara's research focuses on climate policy and regulation, both domestically and internationally

ACCEL introduced a new postgraduate course on Environmentally Sustainable Business, co-ordinated by Susan Shearing. This course examined the environmental regulation of corporations and how regulation has evolved from 'command and control' to incorporate a diverse range of instruments designed to inculcate corporate environmental responsibility. The unit explored regulatory flexibility, co-regulation and voluntary agreements, and the participation of non-government entities, such as financial institutions and environmental NGOs in corporate environmental regulation. The course also focused on: Traditional regulation; market-based strategies (price-based and rights-based); information strategies (such as emissions inventories and corporate reporting); environmental

auditing and environment management systems (including ISO 14001); the role of corporate social responsibility (CSR) in driving changes in corporate attitudes towards the environment and articulating the corporate benefits of going beyond compliance with the letter of environmental laws

ACCEL also added a new unit on Environmental Litigation taught by Adjunct Professor Brian Preston, Chief Justice, NSW Land and Environment Court and Dr Andrew Edgar in September 2010. The course focused on litigation as a tool for resolving environmental disputes and examined different types of environmental litigation and issues that can arise in litigation processes. The aim of the course is for students to develop an understanding of the characteristics of environmental litigation, the advantages and limitations of different types of proceedings, and the range of outcomes that are possible for environmental litigation.

In 2010, the University introduced a new multi-disciplinary postgraduate program, the Master of Sustainability (MSUST). The articulated program provides advanced training to sustainability professionals and continuing students who wish to expand their understanding of complex social, economic and environmental sustainability issues. ACCEL has been involved in the development of the program from its inception. Susan Shearing and Professor Rosemary Lyster have been working with colleagues from across the University in designing and teaching a number of the core units.

### ***Postgraduate intensives 2010***

In 2010, there were 87 students enrolled in postgraduate Environmental Law programs (MEL, GradDipEnvLaw): from these enrolments there were 16 MEL graduates and 10 GradDipEnvLaw graduates. This does not include those who suspended or deferred their candidature for the year. The breakdown of units of study and student numbers is listed in the table below:

<b>Postgraduate unit of study</b>	<b>Semester</b>	<b>Number of students</b>
LAWS6936 Carbon Trading, Derivatives and Taxation	2	28
LAWS6900 Comparative Admiralty and Maritime Law	2	11
LAWS6921 Comparative Climate Law	2	10
LAWS6163 Energy and Climate Law	1	45
LAWS6043 Environmental Impact Assessment	2	19
LAWS6044 Environmental Law and Policy	1 and 2	70
LAWS6041 Environmental Litigation	2	27
LAWS6045 Environmental Planning Law	1	30
LAWS6899 Environmentally Sustainable Business	2	27
LAWS6964 Global Energy and Resources Law	2	21
LAWS6933 Global Oil and Gas Contracts Issues	1	34
LAWS6864 GMOs and Environmental Law	1	8
LAWS6055 Heritage Law	1	33
LAWS6898 Integrated Natural Resource Management	1	21
LAWS6061 International Environmental Law	1	35
LAWS6047 Law of the Sea	2	23
LAWS6154 Sustainable Development Law in China	1	9

Postgraduate unit of study	Semester	Number of students
LAWS6959 US Climate Law	2	6
LAWS6191 Water Law	2	17

### ***Undergraduate environmental law***

This unit is an optional unit of study for students in the final year of the LLB program. It is a popular course as is evidenced by the high enrolment numbers.

Undergraduate unit of study	Number of students
LAWS3430 Environmental Law – semester 1	57

## **PROFESSIONAL MEMBERSHIPS AND CONTRIBUTIONS (FULL TIME STAFF)**

### ***Nicola Franklin***

- Member of IUCN Commission of Environmental Law
- Chairperson, Warringah Development Review Panel, Warringah Council

### ***Rosemary Lyster***

- Member of IUCN Commission on Environmental Law
- Member of IUCN Water and Wetlands Working Group
- Member of IUCN Energy and Climate Change Working Group.
- Consultant to Mallesons Stephen Jaques on a one day a week basis.

### ***Susan Shearing***

- IUCN Commission on Environmental Law
- IUCN Commission on Environmental, Economic and Social Policy
- Member, National Environmental Law Association
- Member, World Commission on Protected Areas
- Barrister and Solicitor Supreme Court of New South Wales
- Barrister and Solicitor Supreme Court of Victoria

### ***Tim Stephens***

- Member, International Law Association Committee for Sustainable Development Law
- Member, IUCN Commission on Environmental Law
- Member, Executive Council, Australian and New Zealand Society of International Law
- Barrister and Solicitor of Supreme Court of New South Wales

- Rapporteur for the Sydney and Canberra Panels of Independent International Legal Experts commissioned by the International Fund for Animal Welfare to examine the legality of Japanese 'special permit' whaling in Antarctica.

## PROFESSIONAL MEMBERSHIPS AND CONTRIBUTIONS (ADJUNCT STAFF)

### ***Gerry Bates***

- Member of the Environment Protection Authority Board.
- Chairman of the Regulation sub-committee of the Environment Protection Authority Board.
- Member of the State of the Environment Advisory Council.
- Director, Kimbriki Environmental Enterprises (regional landfill and resources recovery)

### ***Ben Boer***

- Barrister and Solicitor, Supreme Court of Victoria.
- Barrister, New South Wales.
- Co-Director, IUCN Academy of Environmental Law, University of Ottawa (2006 - 2008)
- Member, Advisory Committee, Asia Pacific Centre for Environmental Law, National University of Singapore.
- Member, IUCN Commission on Environmental Law
- Co-Chair, Joint Taskforce on Protected Areas Law and Policy of the IUCN World Commission on Protected Areas and the IUCN Commission on Environmental Law
- Member, Steering Committee, Protected Areas Legislative Guidelines Advisory Group, IUCN Environmental Law Centre
- Member, Sustainable Soils and Desertification Specialist Group,
- Member, World Commission on Protected Areas
- Member, International Council for Environmental Law, Bonn.
- Member, Historic Houses Trust, New South Wales
- Member, Australian Conservation Foundation.

### ***Zada Lipman***

- Member of the IUCN Commission on Environmental Law
- Member of the IUCN, Special Working Groups on Enforcement and Compliance and Oceans, Coasts and Coral Reefs
- Member of the Environmental Defenders' Office

### ***Brian Preston***

- Chairperson of Standing Committee on Environmental Law of the Law Association for Asia and the Pacific (LAWASIA)
- Member of the Adhoc Advisory Committee of Judges, United Nations Environment Programme (UNEP) Judges Program
- Member of the Environmental Law Commission, International Union for Conservation of Nature (IUCN)
- Member of the Australian Centre for Climate and Environmental Law (Sydney), Faculty of Law, University of Sydney
- Official member, Judicial Commission of New South Wales

## ACCEL EVENTS AND CONFERENCES

***Distinguished Scholars Lecture Series: Confronting the Greenhouse Conundrum in a Climate of Uncertainty:*** On 12 October Professor Rosemary Lyster, University of Sydney Inaugural Professor of Climate and Environmental Law, presented a lecture entitled ‘Confronting the greenhouse conundrum in a climate of uncertainty’, as part of the Law School’s 2010 Distinguished Scholar Lecture Series. In this lecture, Professor Lyster discussed and analysed whether the regulation of greenhouse gases poses any unique challenges to the notion of law.

***Inaugural Kevin McCann Lecture on Energy and Resources Law (29 September):*** ACCEL and Sydney Law School co-hosted the annual Kevin McCann Global Energy Resources Law address. The inaugural presentation by Dr Ziggy Switkowski, Chair of the Australian Nuclear Science and Technology Organization is entitled ‘Nuclear Power in the Context of Climate Change and Energy Security’. This lecture traced the growing importance of nuclear technology around the world, examined the concerns with its use, and concluded that nuclear power cannot be excluded if Australia is to meet its energy and climate change targets

***ACCEL Conference 2010:*** On 26-27 August 2010, ACCEL and the Institute for Sustainable Solutions at the University of Sydney collaborated to present an annual conference entitled ‘*Resilience and Climate Change: Law’s Response?*’

The specific focus of the conference was the resilience of Australia’s biodiversity, water, coasts and cities in the context of global climate change. In this conference, scientific and economic perspectives of Australia’s resilience to climate change were offered, while the capacity of Australia’s current environmental legislation to respond to the resilience challenge was questioned. Government representatives explained current policy and legislative responses to build resilience to the impacts of climate change. Presenters at the conference were drawn from universities, government departments, and the CSIRO, and include some of Australia’s key thinkers on the question of resilience and climate change. *(See Appendix A for Speakers List)*

***ACCEL presents - The New International Carbon Offset?:*** On 24 February, ACCEL held a mini-conference entitled ‘The New International Carbon Offset? Reducing Emissions from Deforestation and Degradation’. Professor Gillian Triggs, presented on ‘The Copenhagen Accord: Is it Legally Binding?’; followed by Professor Rosemary Lyster who spoke on ‘Reducing Emissions from

Deforestation and Degradation under the Copenhagen Accord'; Kushla Munro, Director, Australian Government International Forests Partnership, discussed 'Australian Government Perspectives on REDD'; and Dr Tim Stephens presented on 'Enforcing the REDD Provisions in the Copenhagen Accord'. The event was chaired by Adjunct Professor Robert Hill from the US Studies Centre.

**ACCEL co-sponsors Conference at Emory Law School:** On 26-27 March, Emory Law School and ACCEL co-hosted the second meeting of the Society for Environmental Law and Economics. The meeting brought together scholars in law, economics, public policy and related fields to present papers on various topics at the intersection of environmental law and economics. Two members of ACCEL presented papers. Professor Rosemary Lyster presented a paper entitled 'A Comparative Jurisprudence Supporting REDD Resource Rights' while Dr Celeste Black's paper was entitled 'Tax Accounting for Transactions under an Emissions Trading Scheme: An Australian Experience'. ACCEL's sponsorship of the conference was supported by Sydney Law School and the University's International Program Development Fund.

## ACCEL SEMINARS

ACCEL presented its inaugural annual seminar series, coordinated by Dr Andrew Edgar, over a period of seven weeks during April and May. In these seminars, ACCEL members shared their expertise in the areas of climate change, environmental impact assessment, heritage, biodiversity and water. The seminars were designed to appeal to a wide audience and the attendees came from a range of backgrounds – including law, environmental management, and government policy. The attendees' feedback was very encouraging. ACCEL is planning to run the same seminar series in first semester 2011.

## PROPOSED CLES FOR 2011

ACCEL is planning to develop an environmental law CLE series to run in first semester for 6 weeks. The series is intended to showcase ACCEL research expertise through the members presenting one or two CLEs. Each seminar will involve an overview of the most important changes to the particular area of law in the past year. The seminars will be for two hours (or shorter if necessary) and may also include a presentation by a non-ACCEL speaker.

The topics are:

- Environmental Planning Law (Dr Andrew Edgar)
- Environmental Impact Assessment (Mr Bernard Dunne)
- Biodiversity (Ms Susan Shearing)
- Environmental Litigation (Dr Andrew Edgar)
- Pollution (Adjunct Professor Zada Lipman)
- Climate Law (Professor Rosemary Lyster)
- Water Law (Professor Rosemary Lyster)

We are also intending to have additional CLEs in first semester that are not given by ACCEL members. The topics for these CLE's have intentionally been left undefined so that we can respond to developments as they occur.

## ASIA PACIFIC JOURNAL OF ENVIRONMENTAL

The *Asia Pacific Journal of Environmental Law* is an international, biannual journal published by ACCEL. The journal is edited by Tim Stephens and Susan Shearing. Volume 13 Issue 1 of the journal has been published and distributed to subscribers. This issue includes articles on Australia's National Heritage Law Framework; The Corporatisation of International Response to Climate Change; International Involvement in the Preservation of the Brazilian Amazon Rainforest; Emission Reduction and Policies and the WTO; Climate Change Mitigation Down Under; Environmental Impact Assessment in Hong Kong; Notes and comments on the New Provincial Environmental Legislation in New Caledonia; and a book review on 'The Principle of Sustainability'.

Volume 13, Issue 2 and Volume 14, issue 1 are currently in production.

## AFFILIATIONS

### ***University of Sydney Institute for Sustainable Solutions***

From 1 January-30 June 2009, Rosemary Lyster acted as the interim Co-Director of the Institute for Sustainable Solutions – an interdisciplinary Institute established to encourage research, teaching and public advocacy directed towards sustainable solutions. She resigned from the position on 30 June in order to undertake her Special Studies Program in second semester.

### ***IUCN Academy of Environmental Law***

ACCEL continues to contribute to the activities of the IUCN Academy of Environmental Law which has over 100 institutional members, a range of teaching initiatives and research projects with universities around the world.

## FINANCIAL PERFORMANCE

(See 2010 Budget Statement attached)

**Australian Centre For Climate And Environmental Law (ACCEL)  
J0004 11111**

**Statement of Financial Performance as at 31 Dec 2010**

	<b>Actuals Dec 2010</b>
<b>Revenue</b>	
Faculty contribution	24,315
Business and Commercial Income	738
Interest & Investment Income	2,621
Internal Income (LPD profit share)	11,254
Other Income (Membershi/subscription)	3,234
<b>Total Revenue</b>	<b>42,162</b>
<b>Salary Expenditure</b>	
<b>Academic Salary costs</b>	
General Salary Costs	30,381
Casual Salary Costs	1,600
Annual leave	(2)
<b>Total Salary Expenditure</b>	<b>31,979</b>
<b>Non Salary Expenditure</b>	
Employee Related Costs (Travel, Meal/entertainment)	7,018
Consumables	450
<b>Repairs and Maintenance</b>	
Equip Purchases & Lease <\$10,000	1,020
Utilities and Communications (Catering, Int/charge Communicaiton)	593
Consultants and Contractors (Rodda Publication)	
Insurance, Legal, Motor, Admin (M/ship fee, Prior yr adjust. General Exp, Internal charge)	818
Student, Printing, Library (Print, Ref Material, Photocopying charges)	285
<b>Total Non Salary Expenditure</b>	<b>10,184</b>
<b>Total Expenditure</b>	<b>42,163</b>
<b>Operating Margin</b>	<b>0</b>
<b>Net Operating Margin</b>	<b>0</b>