

## Australian Centre for Climate and Environmental Law

Sydney Law School F10, Faculty of Law, University of Sydney NSW 2006 Australia  
Phone: +61 2 9351 0324 Fax: + 61 2 9351 0200 Email: [Law.Accel@usyd.edu.au](mailto:Law.Accel@usyd.edu.au)  
ABN 15211 513 464

### 2009 Highlights

Four members of ACCEL – Rosemary Lyster, Tim Stephens, Simon Butt and Celeste Black – have been awarded 2009 ARC Discovery Grants for climate law research, bringing in funding of \$441,000.

ACCEL has made a strategic decision to focus its collaborative research efforts in two key areas of climate law: Reducing Emissions from Deforestation and Degradation (REDD) and Carbon Finance. Building on the establishment of the Climate Law and Policy Group at the Law School, these projects involve a number of researchers with diverse areas of specialisation including taxation law, contract law and Indonesian law.

The decision to collaborate on REDD was motivated by a growing international consensus that REDD is a priority in negotiations on a successor to the Kyoto Protocol. The research focuses on Indonesia, which is the third highest emitter of greenhouse gases in the world, 85% of which are attributed to deforestation. In December 2007, Nicola Franklin and Tim Stephens visited Jakarta and Bogor to meet with relevant government officials. In February 2009, Rosemary Lyster and Simon Butt, an expert in Indonesian Law at the Law School, followed up with another visit to meet with key stakeholders. They were accompanied by Mark Adams, Dean of the Faculty of Agriculture, Food and Natural Resources, University of Sydney, and an expert in forest carbon.

In July and August 2009, while an invited 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.

Members of ACCEL have been very successful in raising REDD research funding. In 2009, Rosemary Lyster and Tim 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. 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.

ACCEL is a member of a consortium of researchers, drawn together by the University's Research Institute for the Asia Pacific (RIAP), which has applied for \$3.2 million in funding for REDD in Indonesia under the Commonwealth Department of Agriculture, Fisheries and Forests' Asia Pacific Forestry Program Phase II.

ACCEL's Carbon Finance initiative is being led by Kate Miles who is an expert on international investment law. Celeste Black, Rosemary Lyster and Tim Stephens are also members of this initiative. ACCEL will be co-hosting a side event at the Copenhagen climate change negotiations with the Montreal-based Centre for International Sustainable Development Law (CISDL), the International Development Law Organization (IDLO) and NYU. The topic of the panel is *Legal Aspects of Technology Transfer and Carbon Financing*. Kate will be presenting a paper entitled 'Investing in Adaptation: Financing Climate Change Adaptation Measures in Developing Countries'. Kate has also been invited to participate in a University of Wisconsin research project on 'Adapting to Climate Change' and has been asked to provide research on the climate finance aspect of adaptation needs.

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.

ACCEL  
focuses  
its  
research  
on  
REDD  
and  
Carbon  
Finance

Is it too late to do anything about climate change?

### Open Day Event

On 30 April 2009 Sydney Law School held an Open Day to celebrate the opening of the magnificent new law building on the Camperdown campus.

A highlight of the day was ACCEL's interdisciplinary debate as to whether "It is too late to do anything about Climate Change" moderated by Adam Spencer, ABC radio presenter.

Supporting the proposition were Kate Miles, International and Environmental Law Lecturer, ACCEL; Professor Tony Vassallo, Delta Electricity Chair in Sustainable Energy; and Tom Kaldor, Sydney University debater. Opposing the proposition were Professor Mark Adams, Dean of Agriculture, Food and Natural Resources; Sara Haghdoosti, Sydney University debater; and Adriana Edmeads, Sydney University debater. The debate was decided by public acclamation in favour of climate change adaptation.



*Kate Miles supports the proposition at the Open Day debate speaking in favour of adaptation*

## 2009 Highlights



*ACCEL's Tim Stephens takes to the soapbox on Open Day to talk about whales*

### Retirement of Ben Boer and appointment as Emeritus Professor

Ben Boer retired from full-time work at the University and was appointed Emeritus Professor in late 2008. At his retirement function in May, Ben thanked all of his colleagues over the years both at the University of Sydney and elsewhere. As Emeritus Professor, Ben will undertake research, supervision and teaching activities on a part-time basis.



*Emeritus Professor Ben Boer at his Official Retirement Function*

### New Climate Law units in 2009

Two new Climate Law units were established at Sydney Law School in 2009, complementing the existing Energy and Climate Law unit. They are Comparative Climate Law which was taught in July this year under the auspices of the Sydney Law School in Europe program at Cambridge University. This unit was co-taught by Rosemary Lyster and Professor Kurt Deketelaere from Leuven University.

The other unit, Carbon trading, derivatives and taxation was taught at the Law School in October. Rosemary Lyster and Tim Stephens taught the International aspects of Climate Law while Petrea Bradford from Origin Energy covered the practical aspects of trading carbon. Scott Farrell from Mallesons Stephen Jaques, who is General Counsel for the International Swaps and Derivatives Association in Australia, took students through the requirements of trading in carbon derivatives. Celeste Black, an expert on Environmental Taxation at the Law School, discussed the tax implications of the proposed Carbon Pollution Reduction Scheme.

## ACCEL Seminar: Federal Environmental Regulation

Mallesons Stephen Jaques sponsored a seminar at Sydney Law School on 27 October. Professor Deketelaere, Secretary-General of the League of European Research Universities and Professor of Law at the Universities of Leuven and Dundee, presented a paper on 'Refederalisation of Environmental Law'. Jeff Smith, Director of the Environmental Defender's Office NSW, discussed ways in which the Environment Protection and Biodiversity Conservation Act 1999 (Cth) might better respond to the need for Australia's biodiversity to adapt to climate change. Rebecca Dixon and David O'Donnell from Mallesons Stephen Jaques, discussed "Dual Approval Processes: The Gorgon Project".



*Jeff Smith, Rosemary Lyster, Kurt Deketelaere, Rebecca Dixon and David O'Donnell at ACCEL's Federal Environmental Regulation Seminar.*

### 1 Million Women Campaign

Rosemary Lyster represented the University of Sydney's Institute for Sustainable Solutions at the launch of the 1 Million Women Campaign on 19 May.

The campaign, supported by USISS and initiated by Natalie Isaacs, co-founder of Climate Coolers, aims to encourage one million women in Australia to take action on climate change by personally cutting 1 million tonnes of carbon dioxide. The launch was both well attended and inspiring.

Join their campaign at:

<http://www.1millionwomen.com.au/>

### Distinguished Visiting Professor - Kurt Deketelaere

#### The EU Emissions Trading Scheme: What Can Australia Learn?

**Professor Dr. Kurt Deketelaere** is one of the EU's leading energy and climate change lawyers. As ACCEL's 2009 Distinguished Visiting Professor, Kurt participated in the Law School's **Distinguished Speakers Program**. Kurt presented a lecture, in conjunction with the University's Institute for Sustainable Solutions on 28 October. He surveyed the main elements of the EU Emission Trading Scheme (ETS) which has been in force since 2005 and has applied in 30 countries.

Kurt proposed that Australia, in developing its own ETS, can learn from the EU experiences and develop a system that can be linked to the EU ETS.

Dr Tim Stephens' new book *International Courts and Environmental Protection*, was launched on 18 November by the Honourable Justice Arthur Emmett. The book, published by Cambridge University Press, is described by the series' editors as

**"the first comprehensive examination of international environmental litigation."**

*James Crawford and John S. Bell (eds) Cambridge Studies in International and Comparative Law.*

## ACCEL Seminars

On 23 September, ACCEL presented a seminar on “The Institutional Design of the NSW Planning System - Councils, Panels and the Minister.”

John Roseth, Chair of the Sydney East Joint Regional Planning Panel, and John Mant, retired lawyer and planner, assessed the Planning Assessment Commission and Joint Regional Planning Panels which were introduced as part of the most recent reforms to the NSW planning system.

John Roseth discussed five systems for determining development applications: local councils, the Minister, the Planning Assessment Commission, Joint Regional Planning Panels and the Land and Environment Court.

John Mant argued that the policy role of JRPPs is a denial of democracy and that panel members face multiple conflicts of interest. An alternative model was presented as a means of addressing the issues supposedly addressed by JRPPs.

The seminar was chaired by Dr Andrew Edgar of Sydney Law School.

On 30 September, Dr Tim Stephens of Sydney Law School presented “Ocean Acidification: A litmus test for international law”. Dr Stephens’ presentation sought to understand how one of the most significant global environmental challenges, that of ocean acidification, has so far avoided international regulation.

Drawing on analyses that have examined the challenges associated with regulating cross-cutting global environmental problems where there

exists a 'regime complex' of partially-overlapping and non-hierarchical international legal regimes, this paper offered some preliminary thoughts in terms of strengthening and harmonising the climate and pollution regimes to address the ocean acidification phenomenon.

The commentator for this seminar was Professor Gillian Triggs, Dean of Sydney Law School.



Andrew Edgar, John Roseth and John Mant

How has one of the most significant global environmental challenges, that of ocean acidification, so far avoided international regulation?

## Asia Pacific Journal of Environmental Law

Volume 12, issue 1 of *Asia Pacific Journal of Environmental Law* has been published and distributed to subscribers. The journal is edited by Tim Stephens and Nicola Franklin.

This issue includes articles on Cambodia’s new water law; Hydro-Climate legal management of the Hindu-Kush-Himalayas; environmental standards and India’s market access concerns; environmental accountability in Bangladesh; Chinese and Indian

emissions targets; litigation and climate change in Pacific Island nations; and international law relating to genetic diversity.

APJEL is an international, biannual journal. Volume 12, Issue 2, is currently in production. A subscription form for APJEL is available online at the following link:

<http://www.law.usyd.edu.au/acc/el/docs/APJELSubscription.pdf>

# Recent and Forthcoming Publications by Centre Members

## 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*.

## Rebecca Bates

- 'The Trade in Water Services: How does GATS apply to the water and sanitation services sector?' (2009) 31(1) *Sydney Law Review* 121-142

## Celeste Black

- 'Australia's Proposed Emissions Trading Scheme: Aligning Tax Policy with the Goals of the CPRS' in *Critical Issues in Environmental Taxation, Volume VII*, Oxford University Press (forthcoming 2009)

## Chester Brown

- '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* (2009) forthcoming.

## Ben Boer

- "Human Rights and Heritage Conservation Law" in Blake, J. (ed) *Human Rights and Environment*, UNESCO, Tehran 2009 (with Stefan Gruber,) (forthcoming)
- Three chapters in Francioni, F (ed), *The World Heritage Convention: A Commentary*, Oxford 2008: 'Article 3: Identification and delineation of World Heritage Properties'; 'Article 29: Reports'; 'Article 34: The Federal Clause'
- 'Drafting Legislation for Sustainable Soils: Judicative principles towards sustainable land use and protection of the soil quality' *European Land and Soil Alliance Bulletin* November 2008 (with Ian Hannam)
- "Heritage Conservation Law", in *Local Government Planning and Environment Service*, Butterworths, 2008 (With Stefan Gruber).

## Simon Butt

- 'The People's Prosperity? Indonesian Constitutional Interpretation, Economic Reform and Globalisation', with Tim Lindsey, in John Gillespie and Randall Perrenboom eds., *Pushing Back on Globalization: Asian Regulatory Perspectives*, London: RoutledgeCurzon (2009)

## Andrew Edgar

- 'Participation and Responsiveness in Merits Review of Polycentric Decisions: a comparison of development assessment appeals' (2009) *EPLJ* (forthcoming).
- 'Tribunals and administrative policies: does the high or low policy distinction help? *Australian Journal*

of *Administrative Law* (2009) 16 *AJ Admin L* 143.

## Nicola Franklin

- Rosemary Lyster, Zada Lipman, Nicola Franklin, Graeme Wiffen, Linda Pearson *Environmental and Planning Law in New South Wales* 2nd edition (Federation Press: 2009).

## 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, Zada Lipman, Nicola Franklin, Graeme Wiffen, Linda Pearson *Environmental and Planning Law in New South Wales* 2nd edition (Federation Press: 2009).

## Rosemary Lyster

- 'The New Frontier of Climate Law: Reducing Emissions from Deforestation (and Degradation)' 26 *EPLJ* 417.
- Lyster (ed) *Revelling in the Wilds of Climate Law* (Australian Academic Press: 2009).
- Rosemary Lyster, Zada Lipman, Nicola Franklin, Graeme Wiffen, Linda Pearson *Environmental and Planning Law in New South Wales* 2nd edition (Federation Press: 2009).
- 'The precautionary principle: a thrill ride on the roller coaster of Energy and Climate Law' (2009) *RECEIL* (forthcoming)

## Kate Miles

- 'Sustainable Development, National Treatment and Like Circumstances in Investment Law' in Markus Gehring, Marie-Claire Cordonnier-Seger, and Andrew Newcombe (eds), *Sustainable Development in World Investment Law* (forthcoming 2009).
- '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 (forthcoming 2009).
- 'International Investment Law: Origins, Imperialism and Conceptualizing the Environment' (2009) 21(1) *Colorado Journal of International Environmental Law and Policy* (forthcoming).

## Brian Preston

- "Climate change litigation" (2009) 9 *TJR* 1
- "Climate change litigation" (2009) 26 *EPLJ* 169
- "Sustainable Development Law in the Courts: The polluter pays principle" (2009) 26 *EPLJ* 257
- "Avenues for litigating the effects of

climate change" (2009) 21 *Judicial Officers' Bulletin* 55

## Susan Shearing

- Chapter in *Future of International Environmental Law and its Role in Development*, Leary D and Pisupati B (Eds), (forthcoming 2010), UNU Press: "Biodiversity".
- "Climate Governance and Corporations – Changing the way Business does Business?" in R. Lyster (Ed), *Revelling in the Wilds of Climate Law* (Australian Academic Press: 2009).
- Shearing, S & Wiffen, G, "Conserving Biodiversity" in R. Lyster, Z. Lipman, N.Franklin, G. Wiffen, L. Pearson, *Environmental and Planning Law in New South Wales* (2nd edition, Federation Press, Sydney, 2009)

## Tim Stephens

- Donald R Rothwell and Tim Stephens, *The International Law of the Sea* (Hart Publishing, forthcoming 2010).
- Alan D. Hemmings & Tim Stephens, "Reconciling Regional and Global Dispensations: The Implications of Subantarctic Extended Continental Shelf Penetration of the Antarctic Treaty Area" (2010) *New Zealand Year Book of International Law* (forthcoming). 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* (forthcoming 2010).
- Donald R Rothwell and Tim Stephens, "The Regulation of Southern Ocean Whaling: What Role for the Antarctic Treaty System?" *Michigan State University Public Policy Journal* (forthcoming 2010)
- Tim Stephens, *International Courts and Environmental Protection* (Cambridge University Press, 2009).
- "International Courts and Climate Change: Progression, Regression and Administration" in Rosemary Lyster (ed), *Revelling in the Wilds of Climate Change Law* (Australian Academic Press, 2009).
- "A Slow Burn: The Emergence of Climate Change Law in Australia" in Gavin Birch (ed), *Water, Wind, Art and Debate: How Environmental Concerns Impact on Disciplinary Research* (Sydney University Press, 2007) 1-22. Reprinted in Rajitha Tadikonda (ed), *Global Warming: Fostering Solutions* (Amicus Books, 2009) 146-165.

## ACCEL'S NETWORK

ACCEL has a considerable network of contacts and affiliations, especially in the Asia Pacific Region, and increasingly in Europe and North America.

A recent initiative is an agreement between ACCEL and Emory University to co-host the second annual meeting of the Society for Environmental Law and Economics at Emory University Atlanta, Georgia in March 2010.

## Members of ACCEL

ACCEL comprises the following full-time members:

Associate Professor Rosemary Lyster, *Director*  
Ms Nicola Franklin, *Deputy Director*

Ms Rebecca Bates  
Ms Celeste Black  
Dr Chester Brown  
Dr Simon Butt  
Mr Bernard Dunne  
Dr Andrew Edgar  
Ms Kate Miles  
Ms Susan Shearing  
Dr Tim Stephens

ACCEL comprises the following Emeritus and Adjunct Professors:

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

## ACCEL Advisory Board

Mr John Connor, CEO, Climate Institute  
Dr Nicholas Brunton, *Partner, Henry Davis York*  
Dr 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*

# ACCEL

Australian Centre for Climate  
and Environmental Law



The University of Sydney