



DEAKIN UNIVERSITY

DEAKIN LAW SCHOOL RESEARCH REPORT No 13

17 November 2014

PUBLICATIONS AND RESEARCH ACTIVITIES

Congratulations to the following staff on recent publications and research or profiling activities:

Associate Professor Dan Meagher

‘The Principle of Legality as Clear Statement Rule: Significance and Problems’
(2014) 36 *Sydney Law Review* 413

Associate Professor Pieter Badenhorst

‘Expropriation of ‘old order’ mineral rights in South Africa: The Constitutional Court has its say (Twice)

(2014) 3 *Property Law Review* 53

Margaret Brock

‘Commonwealth v Australian Capital Territory’
(2014) 25 *Public Law Review* 157.

Associate Professor Ken Arenson

‘When Some People are More Equal Than Others: The Impact of Radical Feminism in Our Adversarial System of Criminal Justice’
(2014) 5 *The Western Australian Jurist* 213

Associate Professor Cindy Davids and Associate Professor Marilyn McMahon

“Police Misconduct as a Breach of Public Trust: The Offence of Misconduct in Public Office”
(2014) 19/1 *Deakin Law Review* 89

Associate Professor Marilyn McMahon and J. Willis

‘Mandatory Jury Directions in Sexual Assault Cases in Victoria: Less a Model Than a Cautionary Tale?’
(2014) 38 *Criminal Law Journal* 287-306.

Associate Professor Marilyn McMahon

“Retrials of Persons Acquitted of Indictable Offences in England and Australia”
(2014) 38 *Criminal Law Journal* 159-184.

Professor Jean Du Plessis and Stephen Alevras (PhD Candidate)

“A shareholder’s contractual right to a dividend and a company’s oppressive conduct in withholding dividend payments: *Sumiseki Materials Co Ltd v Wambo Coal Pty Ltd*”
(2014) 32 *Companies and Securities Law Journal* 552.

Professor Mirko Bagaric and Lidia Xynas

‘The Senseless War: The Sentencing Drug Offences Arms Race’ (2014) 16 *Oregon Review of International Law* 101.

Lidia Xynas

‘Allowable deductions, cost base of CGT assets and the GAAR: a minefield for taxpayers and their advisers’

(2014) 1.5 *Australian Tax Law Bulletin* 94.

Lidia Xynas

‘Self-education expenses: some thoughts for taxpayers and their advisers’

(2014) 1.4 *Australian Tax Bulletin*.

Lidia Xynas

‘Chapter 13, Entities’ , in Paul Kenny, *Australian Tax 2014*, pp. 447-488, (Lexis Nexis 2014)

Dr Dominique Allen

‘In Defense of Settlement - Resolving Discrimination Complaints by Agreement’

(2014) *International Journal of Discrimination and the Law*

<http://jdi.sagepub.com/content/early/2014/08/26/1358229114548145> a

Dr John Morss

‘Governance, Representation and the "Monstrous Regiment": Is the Collective Feminine?’

(2014) 19/1 *Deakin Law Review* 163—186.

Dr John Morss

‘Riddle of the Sands: Time, Power and Legitimacy in International Law’ in *Critical International Law: Postrealism, Postcolonialism, and Transnationalism*

2014 (Prabhakar Singh and Benoît Mayer eds) (Oxford University Press)
<http://ukcatalogue.oup.com/product/9780199450633.do>

Dr John Morss

‘Resources for a future: Towards an Articulation of Global Governance’

(2014) Melbourne Journal of International Law

Congratulations to Professor Louis de Koker and Professor Mendelson

The D2D CRC board approved the first joint Deakin-UNSW research project in the Law and Policy program of the D2D CRC. Danuta Mendelson and I will be participating as key researchers in a comparative legal study valued at more than \$1,3 million (cash and in-kind), led by Professor Janet Chan of UNSW. The Deakin School of Law will receive \$215,712.68 over the next 18 months:

DEAKIN LAW SCHOOL – FORTHCOMING EXTERNAL RESEARCH SEMINAR PROGRAM FOR THE REST OF THE YEAR

Federal Shadow Attorney-General Mark Dreyfus, Thursday December 11th, 6-8pm, Deakin Prime, CBD

Topic – “Justice and Law Reform”

**** All staff are urged to attend this important seminar, which is the final external seminar for 2014. Please register early as the venue can only accommodate about 150 guests.**

Reflections on the Recent Seminar by Professor Ross Garnaut: Climate Change Policy in Australia, China and Indonesia

This was a stellar event for the Deakin School of Law. Professor Ross Garnaut presented a seminar evaluating the trajectory of emission reduction policy in China and the United States and if timing is everything, we had it last Thursday. The seminar was delivered the very day that the U.S and China announced their momentous deal to reduce emissions. Attendees included: judges, the Chairman of the Productivity Commission, the CEO of Infigen Energy, Rob Gell, Professor Simon Molesworth AO, QC, the Head of Economics and Sustainability at AGL, and the VC. Professor Garnaut delivered a powerful presentation on the current global state of climate change policy with a number of quotable quotes including ‘Great powers do not bind themselves to agreements’ and Australia’s current ‘voluntary’ approach to climate change is ‘grotesque’. The following is an extract of my introduction to the seminar. Professor Garnaut spoke without a digital or written presentation – so this hopefully encapsulates a little of the mood of the night:

Garnaut Seminar Intro

Distinguished guests, Vice Chancellor, dignitaries, members of staff - Good evening. My name is Samantha Hepburn and I am the Associate Head of Research at the Deakin School of Law. It is an absolute privilege to welcome you here tonight. I begin tonight’s seminar by acknowledging the Wurundjeri people of the Kulin Nation, as custodians of this land. I pay my respects to their Elders.

Tonight’s seminar is presented to you by the Faculty of Business and Law at Deakin University in association with its industry sponsor, Sladen Legal.

A few weeks ago my 14 year old son Skype me from Nanjing where he was on a school exchange 6 weeks. I asked him what he was up to. He said ‘mum, we were going to play soccer but we have to stay inside because the pollution is so bad.’ Having been brought up in Australia, where fresh air is a way of life, he actually found it difficult to comprehend that he was unable to go outside. This could be our future.

Human induced climate change has been rather famously described as a diabolical policy problem with many demanding dimensions, any one of which raises the prospect that it is unlikely that the human species will be up to the challenge. The most difficult of all is that any effective mitigation can only be achieved through global contribution. But free riding is a deep and pervasive

concern. The climate change problem requires the mutual cooperation of the entire world. It is not amenable to a local solution. Today we heard of the momentous decision of the U.S and China to reach a climate change deal. Both countries will curb their GHG emissions over the next two decades – the U.S cutting emissions by 26-28% by 2025 and China will peak its carbon emissions by 2030 and aim to get 20% of energy from zero-carbon emission.

This will be an extraordinary challenge. Breaking what has become an inextricable connection between growth in living standards and an increase in greenhouse gas emissions will require great determination, commitment and fortitude. What we do know, however, is that it is possible. We can reconcile decarbonization pathways with continued economic growth. Understanding this provides incentive.

Tonight it is an honour to present a person who probably knows more about this topic than just about anyone in the country. Professor Ross Garnaut, is a distinguished economist, and a Vice Chancellor Fellow at the University of Melbourne. Professor Garnaut has worked as an advisor to the Hawke government, he has served as Australia's Ambassador to China, and he wrote the Garnaut Climate Change Review. In its latest iteration, the Garnaut review highlights current scientific knowledge, focusing steadfastly upon a post-Kyoto response to climate change – retaining the infrastructure of the emissions trading scheme with a flexible price and the removal of limits on clean development mechanisms. Focusing upon what must be done. On the need for collaborative effort.

As Professor Garnaut himself stated:

It is a simple fact of life on earth that there is going to be no successful mitigation of the climate change problem without a truly global effort.

Tonight Professor Garnaut will present his paper: '*The Challenge of Climate Change to Political Systems: Examples of Australia, China and Indonesia*'. Please join me in welcoming Professor Ross Garnaut.

DEAKIN LAW SCHOOL – FORTHCOMING INTERNAL RESEARCH SEMINAR

Professor Peter Yu. Kern Family Chair in Intellectual Property Law.

Director, Intellectual Property Law Center. Drake University Law School, U.S.A

Topic: ‘Digital Copyright Reform in Hong Kong’

This timely presentation will discuss the efforts by the Hong Kong government to transplant copyright laws from abroad and its recent public consultation on the treatment of parody under the copyright regime. It further discusses the exception for predominantly noncommercial user-generated content the presenter proposed to the Hong Kong government based on the Canadian model. This proposal seeks to strike the balance between copyright protection and the need for greater protection of free speech, free press and other civil liberties.

**Monday, 24th November, 12 noon. Burwood Building BC, North 4.
Voicepointed to Waterfront and Geelong.**

DEAKIN LAW SCHOOL – INTERNATIONAL VISITORS FOR NOVEMBER

Professor Anna DeVita, University of Florence Law School is visiting Deakin Law School. Anna M. De Vita is tenured Professor of Private Comparative Law at the University of Florence Law School; she also teaches at Paris I Panthéon Sorbonne.

Professor De Vita will present a seminar for the Private Law and Medical Research Hub on Wednesday December 3rd, 2014 at 5pm. The seminar will be voicepointed from Deakin: CBD, Boardroom; Burwood Moot Court, C4.05; Waterfront AD Level 2, AD2.308. Voicepoint is: 52236933

Topic: ‘Contemporary Developments of French and Italian Law from the Perspective of the Protected Persons (rights of the person)

This seminar will discuss significant developments in the French approach towards a more complex vision of the *responsabilité civile*, where traditionally damage was linked to fault rather than to mere violation of a right. As in the Italian approach of art.2043 cc founded on the (objective) notion of "danno ingiusto" , action contra jus, i.e. violation of an interest deemed worthy of protection by the legal system (in general). The new trend in French law stems from the progressive re-appraisal/interpretation of Book 1, "Des personnes" , of the civil code, which expressly guarantees primary rights of the person, such as the right to privacy (art.9), and the respect of human being and human body (art.16 and following). This enlarged normative basis strengthens the scope of French tort law.

DEAKIN LAW SCHOOL HDR CONFIRMATIONS SCHEDULED FOR NOVEMBER:

Athula Pathinayake

Research Reports Now Online

Looking for a past Research Report. Please visit the revamped Deakin Law School Research website where you will now find a repository of all of the Deakin Law School Research Reports dating back to their inception at the start of 2012.

Centre for Rural and Regional Justice Update

Congratulations to the CRRJ has just released two reports:

1. 'Landscapes of Violence: Women Surviving Violence in Regional and Rural Victoria'

2. 'Linking Law: Practical Guidelines for Delivering Law to Rural Victoria Using E-learning Technologies'

- Appointment of Dr Rose Carnes to the position of Research Fellow to the Centre (a brief bio was sent 14 Sept)
- Dr Bridget Harris Research Fellow with the Centre presented a paper on findings of her report *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria* to the Violence Prevention - It's Everybody's Business Conference Bendigo
- Richard Coverdale was the keynote Speaker at the Geelong *Homelessness and the Law Forum*, Geelong Town Hall presented by Justice Connect.
- A 'Meet the Ombudsman' Forum was run as part of the Centres calendar of forums which included the Victorian Ombudsman - Deborah Glass, Energy and Water Ombudsman - Cynthia Gebert, Banking and Financial Services Ombudsman - Philip Field, Deputy Telecommunications Ombudsman - Diane Carmody. 60 attended across 11 Victorian locations
- The 3rd National Rural Law and Justice Conference being organised by the National Rural Law and Justice Alliance, will be held at Charles Sturt University Orange

Campus on the 3rd and 4th of July 2015 – Notice of Keynotes and Call for Papers available early 2015

- The Centre for Rural Regional Law and Justice is running *National Awards for Innovation in Rural and Regional Justice* to be presented at the National Conference. Two categories are *Innovation in Rural and Regional Legal Practice* and *Innovation in Rural and Regional Community Justice*.

ARC Centre of Excellence: Update

Professor Christoph Antons

Professor Antons is a CI in the ARC Centre of Excellence for Creative Industries and Innovation (CCI) since 2005. Together with Prof. Deb Verhoeven (Arts) he formed the Deakin node of CCI since 2011. The ARC has now approved the continuation of CCI for a post-funding period of three years with three new Deakin node projects in Arts and Law respectively. The two law projects are 'Intellectual and cultural property: From authorship to cultural capital' (involving Christoph Antons, Elizabeth Adeney and Abeba Gebreselassie) and 'Internet freedom and freedom of speech' (involving Christoph Antons, Elizabeth Adeney and Claudio Bozzi). Prof. Antons and Prof. Verhoeven will represent the Deakin node on the CCI Management Committee. Inquiries from law school researchers interested in joining either or both of the law projects are most welcome.

Faculty of Business and Law Twitter

Lincolm.James@deakin.edu.au is managing the twitter feed @DeakinBusLaw

Could all staff please direct media output to him.

Update: Journal Ranking, Points and CALD

The Faculty REM is in the process of being finalised. Here are the law proposals for journal articles, book chapters, research books and grant income.

Law: Journal Publications: A = 12; A* = 6; A = 3; B = 1; C = 0**

Law: Book Publications: (Ranked According to the Sense List)

Research Book: A = 7; B = 5; C = 3

Research Book Chapters: A = 2; B = 1; C = 0

Research Income: NCG = 0.1 x \$k; cat 2-4 = 0.08 x \$k

Professor Mirko Bagaric attended the Council of Australian Legal Deans last week to discuss the ranking list put forward for the Deakin Law School for journal publications and to consider the suitability of using this list for Law/CALD.

Australian Law A* Journal Submission Dates:

Forthcoming Melbourne University Law Review:

31 December 2014 for issue 39(1).

Submissions decisions for issue 39(1) will be made by the 2015 Editors, who will be elected at the end of September. Submissions received before September will be held on file for the 2015 Editors' consideration.

Issue 38(3) will be a special issue. It will be comprised of the papers presented at a conference held in honour of Sir Zelman Cowen at Melbourne Law School on 26–27 March 2014. **The *Review* will not be accepting submissions for issue 38(3).**

Forthcoming Sydney Law Review

The Sydney Law Review accepts submissions on a rolling basis.

I contacted the SLR and at the date of writing this report the December and March

edition of the SLR were both full. Submissions are now being accepted for the June, 2015 edition. Submissions should be in before Xmas at the very latest (although as soon as possible) as there is a large number of papers to be reviewed by the editors and board.

Forthcoming University of New South Wales Law Journal

Issue 38(1) thematic component, on rethinking detention in Australia. Submissions are due by 20 December 2014.

Issue 38(2) general component. For the general component the editors will consider any articles on any topic. Submissions are due by 1 February 2015.

Issue 38(2) thematic component, on non-judicial inquiries. Submissions are due by 8 March 2015.

Forthcoming Griffith Law Review

Opportunity exists for manuscripts encompassing inter-disciplinary, socio-legal, critical and theoretical legal scholarship to be considered for the following issues.

The deadlines for consideration for each issue are:

- 24(2) (June 2015) – 30th November 2014
- 24(3) (September 2015) - 28th February 2015 (Special Issue – To Be Confirmed)
- 24(4) (December 2015) – 31st May 2015

Forthcoming Public Law Review

Submissions are accepted on a rolling basis. Submissions for all editions of 2015 currently being accepted.

Forthcoming Federal Law Review

Submissions are accepted on a rolling basis. Submissions for all editions of 2015 currently being accepted.

Forthcoming Journal of Contract Law

Submissions are accepted on a rolling basis. Submissions for all editions of 2015 currently being accepted.

Please send any submissions directly to the General Editor, Professor J W Carter,
john.carter@freehills.com

Forthcoming Torts Law Journal

Submissions are accepted on a rolling basis. Submissions for all editions of 2015 currently being accepted.

Interested in contributing to the Torts Law Journal? Contact Alice Eddowes
Alice.Eddowes@LexisNexis.com.au

Deakin Law School: Forthcoming Conference

“The Principle of Legality in Australia and New Zealand”

Friday 2nd February, 2015, 9am – 5pm

Venue: State Library of Victoria

See Agenda below:



Deakin University CRICOS Provider Code: 00113B

School of Law
Faculty of Business and Law
Melbourne Burwood Campus, 221 Burwood Highway, Burwood, VIC 3125
Tel 03 5227 7215 natalie.ward@deakin.edu.au www.deakin.edu.au

FRIDAY 20 FEBRUARY

9 am-5 pm

State Library of Victoria

A ONE DAY CONFERENCE BRINGING TOGETHER JUDGES, PRACTITIONERS AND SCHOLARS TO CONSIDER WHAT THE PRINCIPLE OF LEGAL EQUALITY MEANS, WHEN AND WHY ANTIPODEAN COUNTRIES INVOKE IT, ITS IMPACT ON DRAFTING LEGISLATION AND WHERE IT IS LEADING OUR PUBLIC

CPD UNITS - 4

PARTICIPANTS:

Justice John Basten (*Court of Appeal, Supreme Court of New South Wales*)

Justice Stephen Gageler (*High Court of Australia*)

Professor Jeremy Gans (*University of Melbourne*)

Professor Jeffrey Goldsworthy (*Monash University*)

Dr Kirsty Gover (*University of Melbourne*)

Professor Matthew Groves (*Monash University*)

Professor Philip Joseph (*University of Canberra*)

Dr Brendan Lim (*Wentworth Chambers, Sydney, New South Wales*)

Dr Dan Meagher (*Deakin University*)

Peter Quiggin PSM (*First Parliamentary Secretary, Office of Parliamentary Counsel*)

Hanna Wilberg (*University of Auckland*)

For all queries, please email or call:

[Dr Dan Meagher](#) - Tel 3 5227 2075

[Ms Sarah Miodini](#) - Tel 3 5227 8463

Registration fees: \$175 full and \$100 concession.

Full details and [registration here](#).

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