Centre for Mining, Energy and Natural Resources Law

The Centre for Mining, Energy and Natural Resources Law (CMENRL) was established within the Law School at the University of Western Australia in 1990. The name was changed from the Centre for Commercial and Resources Law in 2002.

The Centre was initially established in recognition of the importance of both the resources and the commercial sectors to the Western Australia economy. But in recent years the focus and emphasis of the Centre has changed to that of mining, energy and natural resources law matters, and accordingly the name was changed to reflect that focus in 2002. Its purpose is to stimulate education and research on the legal issues that arise out of mining, energy and natural resources law.

More particularly, the aims are:

- to promote, encourage and publish research in mining, energy and natural resources law, with collaborative projects being undertaken between the Centre and professional and industry groups.

- to provide a forum for collaboration between the Law School, industry, government and the legal profession to facilitate research, education and the exchange of ideas and the development of legal principle.

- to organise conferences, seminars and short courses in mining, energy and natural resources law directed to the advancement of understanding and the development of the law and policy that informs legal principle. The Centre specialises in providing legal executive education and brings together scholars, policy makers and leaders in the legal resources community.

- to assist the development of postgraduate and undergraduate courses in mining, energy and natural resources law.
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2014 has been another successful year for the Centre. The Centre’s workshops and seminars have been well-attended, with the numbers attending this year’s mining law workshop being particular pleasing. A new workshop in Oil and Gas Project Development was run for the first time and was well attended.

The Centre continues to develop new units and workshops; next year Human Rights, Mining and Petroleum and Aviation Law will be offered for the first time. The research programme of the Centre has also been very successful. Of particular note has been Alex Gardner’s work on water law, Richard Bartlett’s work in native title and John Chandler and Terry Daintith’s work on offshore petroleum regulation.

Professor Richard Bartlett and Professor John Chandler
Co-Directors
People

John Chandler LLB S’ton.
John is Co-Director of the Faculty of Law’s Centre for Mining, Energy and Natural Resources Law. John has been a practising lawyer for over 40 years specialising in mining and petroleum development and brings a wealth of knowledge and experience to his teaching and research interests which include oil and gas law, corporate governance and resource investment.

Richard is Co-Director of the Centre for Mining, Energy and Natural Resources Law and teaches Mining and Energy Law. Richard has taught and practised in the area of native title, mining, oil and gas and natural resources law in Canada and Australia for over 35 years. Richard’s research interests include native title, water law and mining law, with particular reference to resource development and native title, and the law in relation to water resources of Western Australia.

Terence Daintith MA Oxon
Terence Daintith is the former director of the University of London’s Institute of Advanced Legal Studies, where he now holds a professorial fellowship. In addition to his work at UWA, he is also a visiting professor at the Universities of Melbourne and Sydney. His main research interests are in oil and gas law, constitutional law, and regulation. He is joint editor of Daintith, Willoughby, and Hill’s multivolume United Kingdom Oil and Gas Law, the basic reference in the field, and founding editor of the Journal of Energy and Natural Resources Law.

Alex Gardner BA LLB ANU, LLM Br.Col.
Since 1988, Alex has taught undergraduate and postgraduate students in public law, natural resources and environmental law. Alex’s research interests are in natural resources and environmental law, with a special interest in water resources law. A principal avenue for pursuing these research interests is through the National Centre for Groundwater Research and Training through which he holds a current grant.

Erika Techera (Dean of Law) LLB Grad Dip Leg Pract UTS., PG Cert in Higher Ed., MEnvLaw LLM PhD Macq.
Erika is Dean of the Faculty of Law. She researches and teaches in international and comparative environmental law. Her particular research interests include marine environmental governance; cultural heritage law; and environmental management in small island states. Erika teaches across a wide range of subjects and including Law of the Sea and International Environmental Law.

David Hodgkinson BA, LLB, MPhil.
David’s main research interests are, aviation law, climate change mitigation and adaptation, with a focus on climate change displacement - specifically legal and policy mechanisms such as guiding principles to address the displacement problem.
Ian Murray BSc LLB W.Aust., LLM(Taxation) NSW
Ian researches in the areas of Resources Taxation and the intersection between Not-for-profit Law, Tax and Corporate Governance. He has more than 10 years’ experience as a practitioner advising on not-for-profit tax issues and on resource industry tax issues, regulated and unregulated mergers and acquisitions, fundraising and inbound investment. In particular, he has been extensively involved in the taxation issues arising under native title agreements, including in relation to the benefits management structures established to hold native title payments.

Jared Clements B Com, LLB (Hons) Murdoch, Grad Dip Leg Prac
Jared's research interests focus upon oil and gas regulation and taxation law. He has previously practiced as a solicitor and advised key energy and resources corporations on matters such as restructuring, divestment of its mining interests and transfers of hybrid security interests, including advice on mining law issues, state agreements, stamp duty, GST and income tax. He has also advised on international tax issues to ensure tax efficient global mining operations.

Joe Fardin BA, LLB UWA, Grad Dip Leg Prac, Dip Govt (Man) U Canb, LLM Dundee
Joe has a range of expertise in the areas of mining law and native title. His research has focused upon a critical analysis of mining legislation and sector management. He has also been involved in drafting mining industry regulations, model land access agreements and procedural guidelines in support of reform process. He has provided legal advice and representation to Aboriginal landowners on all aspects of native title, including the statutory processes contained in the Native Title Act 1993 (Cth)(NTA).

John Southalan LLB UWA, CELTA, MBA (Mineral Resource Management) Dundee
John is an adjunct member of faculty, combined with his legal practice. He researches and teaches in mining regulation and human rights. He has practised in commercial and human rights areas since the early 1990s, initially with a national law firm working in areas of occupational health and safety matters in the resources sector, commercial disputes between gas & mining companies, and general commercial litigation. John writes on various topics including resource taxation, indigenous land rights law, and human rights.

Barbara Gordon LLB BJuris LLM W.Aust.
Barbara’s research interests include: Company Law; Corporate Insolvency and Secured Lending and the regulation of those in positions of trust in relation to other people’s money, particularly in the area of collective investments.
Executive Education Program

**Australian Oil and Gas Law**  
11-14 February 2014  

Lecturers: Professor Terence Daintith, John Chandler, Law School, UWA and legal experts from industry and private law firms.

**International Oil and Gas Law**  
4 - 6 March 2014  

Lecturer: Professors John Chandler and John Paterson (University of Aberdeen) and legal experts from industry and private law firms.

**Corporate Governance for Resource Companies**  
29 April – 2 May 2014  

Lecturers: Professor John Chandler and Barbara Gordon, Law School, UWA and legal experts from industry and private law firms.

**Current Developments in Offshore Petroleum Safety**  
3 July 2014  

Lecturer: Professor John Paterson (University of Aberdeen)

**Climate Change Law and Emissions Trading**  
16-18 July 2014  

Lecturer: Associate Professor David Hodgkinson

**Oil and Gas Agreements**  
1 - 3 October 2014  

Lecturers: Professor John Chandler, Law School, UWA and legal experts from industry and private law firms.

**Oil and Gas Project Development**  
4-7 November 2014  

Lecturers: Professors John Chandler and Phillip Loots, UWA and legal experts from industry and private law firms.

**Mining Law**  
26-28 November 2014  

Lecturers: Professor Richard Bartlett, Law School, UWA and legal experts from AMPLA, the Resources and Energy Law Association.

All the short courses are accredited for continuing legal education professional development purposes.
Australian Resources and Energy Law Journal (ARELJ)

The Centre, in conjunction with the Australian Mining and Petroleum Law Association (now the Australian Resources & Energy Law Association) and the Centre for Energy and Resources Law of the University of Melbourne (now the Centre for Resources, Energy and Environmental Law), commenced publishing the Australian Mining and Petroleum Law Journal in 1997.

In 2004 the Journal was renamed the Australian Resources and Energy Law Journal. In 2007 the Centre for Environmental, Resources and Energy Law of the University of Waikato, New Zealand, joined the academic team supporting the publication of the ARELJ.

The academic centres take turns to provide the ARELJ editor. The role of the editor is to chair the Editorial Board, collaborate with the Editorial Co-ordinator in the administration of the editorial functions, generate editorial policy for the ARELJ, and to chair the “Recent Developments” session of the annual conference. Professor Bartlett was the publication editor and editor for most of the period until the end of 2006, Professor Bartlett again assumed the duties of the editor of a special edition of the Australian Resources & Energy Law Journal on “Uranium” which was published in December 2007.

Professor Bartlett remained on the editorial board until 2009 when he was replaced by Professor Alex Gardner of the Centre.

Professor Alex Gardner of the Centre was appointed editor in 2012 and continued as editor through 2014. In 2013, Professor Gardner worked with the Editorial Board to revise the copyright policy for the ARELJ, to update it and prepare for on-line publication.

The Journal is usually published three times a year, with occasional special editions.

www.law.uwa.edu.au/research/cmenrl
Resources Law Programs

The activities of the Centre have facilitated the development of undergraduate and postgraduate units at the Law School of the University of Western Australia.

The School now offers undergraduate units:

- Environmental Law
- Mining and Energy Law

Postgraduate units:

- Australian Oil and Gas Law
- Aviation Law
- Climate Change Law
- Environmental Protection Law
- International Oil and Gas Law
- International Environmental Law
- Mining Law
- Oil and Gas Agreements
- Water Resources Law
- Corporate Governance for Resources Companies
- Oil and Gas Project Development

The Centre has organised and developed several courses for delivery at the University of Western Australia:

- Diploma in Commercial and Resources Law
- Master in Commercial and Resources Law
- Diploma in Energy Law.
- Master in Mining and Energy Law
Oil and Gas Law

Professor Terence Daintith, Professor John Chandler and Associate Professor Phillip Loots

Over the last several years oil and gas law has been taught at UWA’s Law School as a part of comprehensive courses on Mining and Energy Law.

In response to the steadily increasing profile of oil and gas exploration and production activity in the State, UWA appointed Terence Daintith in 2002 as Professor of Law on a part-time basis, developing and teaching specialised courses in the field both for graduating students and for those already in legal practice or in the oil industry, and also undertaking research.

Terence Daintith has an international reputation in research and teaching with respect to oil and gas law. In late 2010 he published a treatise entitled Finders Keepers: How the Rule of Capture Shaped the World Oil Industry. Professor Daintith’s appointment has been extended through 2014 and he taught Australian Oil and Gas Law in 2014.

In 2007 Professor Daintith was joined by Professor John Chandler, a senior practitioner in natural resources law, in teaching oil and gas Law courses. Since that time Professor John Chandler has assumed principal responsibility for teaching the oil and gas law courses. In 2012 Professor John Chandler became a full-time member of the faculty and Co-Director of Centre for Mining Energy and Natural Resources Law.

In 2011 at the instigation of Professor Chandler a new unit was introduced called ‘International Oil and Gas Law’ which has run annually since that time. The unit was part of an initiative to develop the international offerings of the Centre. It was offered in a special one day format in 2013 (not as a unit), and continued as a unit in 2014. This year also saw Professor Chandler appointed the General Editor of the LexisNexis service Energy and Resources Law.

In 2013 Philip Loots became an Adjunct Associate Professor. Philip was formerly the General Counsel at Clough Engineering. He has worked for Chevron on the Gorgon Project and is currently working for Bechtel on the Wheatstone Project. Associate Professor Loots and Professor Chandler have developed a new unit ‘Oil and Gas Project Development Law’ which offered for the first time in 2014.
Climate Change

Associate Professor David Hodgekinson

In 2008 David Hodgkinson was appointed a Visiting Fellow in the Law School at the University of Western Australia attached to the Centre.

Since 2010 he has been an Associate Professor in the Law School. He is also a member of The Hodgkinson Group (Aviation and Climate Change Advisors), and Executive Director of EcoCarbon Inc.

He is the co-author of Global Climate Change: Australian Law and Policy (LexisNexis/Butterworths, 2008), and was the general editor of the online climate change law service, Australian Climate Change Law and Policy (LexisNexis/Butterworths). He completed these publications while attached to the Centre and worked with Sharon Mascher in developing workshops on climate change.

A 3 day short course on the law relating to climate change organised by Associate Professor Hodgkinson was delivered for the first time in 2012.

The course draws on knowledge and contacts gained during David’s tenure as Director of Legal Services at IATA, the organisation of the world’s airlines, in Montreal and Geneva.

David represents the Law School at the International Energy Centre, a joint multi-disciplinary collaboration of The University of Western Australia, the University of Queensland and Newcastle University. The IEC delivers a Master of Energy Studies program. David has been involved in developing the IEC curriculum and its research program since the IEC’s establishment in 2011, as well as delivering courses for the IEC.

David also directs an international project team working on a draft treaty for persons displaced by climate change. His non-profit association, EcoCarbon Inc, is an accredited NGO under the aegis of the United Nations Framework Convention on Climate Change.
Professor Erika Techera

Erika Techera joined the University of Western Australia Faculty of Law in January 2012 and was appointed the Dean of the Faculty of Law in 2013.

Professor Techera has two Masters degrees in environmental law and international environmental law. Her PhD thesis explored the role of customary law in community-based marine management in the South Pacific. Before joining UWA she was Director of the Centre for International & Environmental Law and Co-Director of the Centre for Climate Futures at Macquarie University.

Erika is a member of the IUCN Commission on Environmental Law and World Commission on Protected Areas and in 2014 was appointed as a Fellow of the Australian Academy of Law.

Corporate Governance

The Honourable Neville Owen, Barbara Gordon and Professor John Chandler

In 2013 a new postgraduate unit ‘Corporate Governance for Resources Companies’ was run for the first time. It was delivered again in 2014.

The unit draws on the Honourable Professor Owen’s experience as a former Justice of the Supreme Court of Western Australia and the Royal Commissioner in the HIH Royal Commission, Barbara Gordon’s experience in practice and teaching company law and Professor Chandler’s experience in practice and as a company director.

Concepts such as governance, sustainability and social licence to operate are becoming increasingly important for the mining and energy industry, and this is a first move in developing teaching and courses in this area. Already a number of other opportunities have presented themselves to engage with company directors and others following on from the announcement of this unit.

Resource Industry Taxation

Assistant Professor Ian Murray

Ian Murray joined the Faculty of Law in late 2011 where he teaches in Taxation and Corporate Law and researches in the areas of Resource Taxation and the intersection between Not-for-profit Law, Tax and Corporate Governance.

He has a number of years’ experience as a practitioner in relation to corporate tax matters across resource taxes, income tax and stamp duty. Ian has advised on energy and resource industry tax issues, regulated and unregulated mergers and acquisitions, fundraising and inbound investment. In particular, he has been extensively involved in the taxation issues arising under native title agreements.

Ian’s current chief research project concerns the taxation and other restraints on the accumulation of income by not-for-profits, including in the context of benefits management structures established to receive benefits from resource development activities.
Mining Regulation and Human Rights

Associate Professor John Southalan

John Southalan is an adjunct member of UWA’s Law School and has worked with the Centre on various projects relating to mining regulation since 2012.

He researched and wrote the Centre’s Mining Regulation and Policy materials for the International Mining for Development Centre (IM4DC), and also practices and teaches in relation to mining law and related issues. In 2014, John’s activities in relation to mining and regulation included:

- taught Resources Law at an academy for Burmese lawyers and students run by the Burma Lawyers’ Council (Mae Sot, Thailand);
- co-taught (with Kanaga Dharmananda SC) the Law School course International Investment in Mineral Resources: Structures, Treaties and Disputes (Perth);
- counsel in the High Court, for Australian Lawyers for Human Rights who sought to make amicus submissions in the Western Australia v. Brown (Case P49/2013), dealing with mining, native title and human rights (Canberra);
- presented Mining policy and law: Natural Resource Nationalism and Joint Venture Negotiation, to the ‘University of Ghana – University of Western Australia Mining Law Executive Course Workshop’ (Perth);
- presented four half-day sessions on Legal Foundations of Mining Law at the Minerals Policy and Economics course organised by IM4DC for representatives of government, civil society and academia from 14 different countries (Perth);
- co-consultant (with Mike Rowe) in the research and writing of the IM4DC report Cambodia Mineral and Petroleum Legislation: Policy Scoping Mission (Phnom Penh, Cambodia); and
- ongoing research in the IM4DC project Parliaments and Mining agreements - the forgotten arm of Government (Perth);
The principal research projects conducted in 2014 were:

- The conclusion of five years of Alex Gardner’s work as a Chief Investigator in the inter-disciplinary National Centre for Groundwater Research and Training, established with funding from the Australia Research Council and the National Water Commission and based at Flinders University (www.groundwater.com.au/); Alex was joined in his work (www.law.uwa.edu.au/research/water-resources-reform) by:
  - Research Assistant Professor Michael Bennett, who concluded in June 2014 a one year project on ‘Groundwater Regulation in a Drying South-West’;
  - Madeleine Hartley, who completed her PhD thesis entitled ‘Regulating groundwater use efficiency for sustainable development: the experiences of Colorado, the Namoi Catchment, and the Gnangara Mound’, which was passed with minor revisions; and
  - Natalie Brown, who (with NCGRT and Centre support) continued a PhD project “Regulating the adverse effects of mining and unconventional gas production on groundwater and associated environmental values”.
- Two LLB Honours graduates, Sarah Robertson (2011) and Jessica Lee (2013) published revised versions of their Honours theses produced with NCGRT research funding – details below;
- Rachel Blakers (PhD candidate ANU) and Madeleine Hartley, to complete a four year project in association with an integrated modelling team led by Professor Tony Jakeman from the ANU and funded by the Cotton Research and Development Corporation, and published as “Legal Scenarios for Integrated Water Resources Modelling” (2014) 17(1) Australasian Journal of Natural Resources Law and Policy 1-42.
- The continuation of Alex Gardner’s four year research project on managed aquifer recharge with funding from the Co-operative Research Centre for Water Sensitive Cities, based at Monash University and involving participation by numerous academic institutions and industry partners in Australia and overseas, including the University of Western Australia. (watersensitivecities.org.au and www.law.uwa.edu.au/research/water-
The commencement in October 2014 of Alex Gardner’s six months “action research” project on “Mining and Water Law Reform for Ghana”, being undertaken with Mr Nick Duff, Goldfields Land and Sea Council, Perth, in collaboration with two colleagues from the University of Ghana Law School, which is funded by a grant from the International Mining for Development Centre.

Erika Techera was successful in securing an ARC Discovery grant to further research into the legal regimes respecting conservation and management of sharks: 2013-2015 ARC Discovery Project (DP13) – N Klein & E Techera - Improving the Global Governance of Sharks: Obstacles, Options and Opportunities $101,000

The continuation of David Hodgkinson’s (a) engagement in the project ‘Imagining a Warmer World: Using Scenario Planning to Create Fair and Equitable Adaptation Law and Policy’, Worldwide Universities Network WUN and (b) lead collaborator role in a UWA-UQ Bilateral Research Collaboration Award through which possible legal solutions to the aviation emissions problem are examined and assessed.

John Chandler and Barbara Gordon completed the first UWA/KPMG Corporate Governance Survey of Small and Mid-Tier Resources Companies.

Richard Bartlett completed preparation of a 3rd edition of his treatise on Native Title in Australia published by Lexis Nexis.

The continuation of John Southalan’s research (with Michael Bennett, U Thein Oo, Denis Kusaasira, and Leslie Gabriel) examining the role and use of parliamentary-approved agreements in mining regulation. This is occurring under a International Mining for Development Centre Action Research Grant; J Southalan & others - Parliaments and Mining agreements - the forgotten arm of Government $28,000
Grants

**Professor Erika Techera**

- Professor Andrew Mowbray, Professor Graham Greenleaf, Professor Andrew Byrnes, Dr Erika Techera, Professor Donald Rothwell, Professor Chester Brown, Associate Professor Anthony Cassimatis, Associate Professor Dan Svantesson, Winthrop Professor Michael Blakeney, Winthrop Professor Holly Cullen 2014, “The International Law Library on WorldLII - New Content & Facilities for the Leading Repository & Citator for International Law”, University of Technology Sydney ex ARC LIEF.

- Professor Erika Techera, Professor Natalie Klein 2013, “Improving the Global Governance of Sharks: Obstacles, Options and Opportunities”, Macquarie University ex ARC Discovery Project.

**Professor Alex Gardner**

- Alex Gardner “Managed aquifer recharge”, CRC for Water Sensitive Cities.

- Alex Gardner “Mining and Water Law Reform for Ghana”, being undertaken with Mr Nick Duff, Goldfields Land and Sea Council, Perth, in collaboration with two colleagues from the University of Ghana Law School, and is funded by a grant from the International Mining for Development Centre.

**Professors John Chandler and Terence Daintith**

Publications

Books

Professor Erika Techera

Professor Richard Bartlett
Bartlett R., 2015, Native Title in Australia, 3rd edition, LexisNexis Butterworths, New South Wales, Australia.

Professor John Chandler
Hunter, T., Chandler, J.A. 2013, Petroleum Law in Australia, LexisNexis Butterworths, New South Wales, Australia.

Associate Professor John Southalan

Book chapters

Professor Erika Techera


Associate Professor David Hodgkinson

Articles

Associate Professor David Hodgkinson


Professor Richard Bartlett


Assistant Professor Ian Murray


Professor Alex Gardner with co-authors and students


Two of Professor Gardner’s LLB honours students have had revised theses accepted for publication:


Professor John Chandler

Conference papers

Erika Techera


‘Inter-disciplinarity, Fragmentation and Contemporary Challenges for Oceans Governance’. Xiamen University, South China Sea Institute 24-25 April 2014.


David Hodgkinson

‘The Climate Change Problem: Is an LNG Sectoral Agreement Part of the Solution?’ APPEA 2013 Conference, 26-29 May 2013, Brisbane

Presentations and lectures

Alex Gardner


‘Mining Access to Water Resources – Traditions and Developing Principles’ [2013] AMPLA Yearbook 306, and the delivery of similar presentations at the University of New England Law School and the University of Southern Queensland (June 2014)

Other activities

Members of the Centre have continued to engage with relevant resource groups in the University, industry and the Legal Profession. Richard Bartlett, Alex Gardner and John Chandler were members of the Western Australian Committee of AMPLA and John Chandler is a member of the Educational Advisory Board of the AIPN.

Erika Techera was appointed a Fellow of the Australian Academy of Law.

In 2014, Jessica Lee won the Australian Mining and Petroleum Law (WA Branch) essay prize for her paper: ‘Theory to practice: Adaptive management of the groundwater impacts of Australian mining projects’
# CMENRL 2015 Program

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