



# 2012 Rural and Regional Law and Justice Conference



## 2<sup>ND</sup> NATIONAL RURAL AND REGIONAL LAW AND JUSTICE CONFERENCE 18-20 MAY 2012 - AANUKA BEACH RESORT - COFFS HARBOUR PROGRAMME

FRIDAY 18 MAY			
From 5pm	REGISTRATION		
5.30-6.45	DRINKS AND CANAPÉS		
6.45	WELCOME TO COUNTRY - Followed by Indigenous dance team. Guja Murra perform 'Gumbaynggiirr' (Deadly Moves)		
7.00	LAUNCH OF THE RURAL REGIONAL LAW AND JUSTICE ALLIANCE		
7.15-8.30	FURTHER DRINKS AND CANAPÉS		
SATURDAY 19 MAY			
8.30-9.30	LAGOON ROOM <b>KEYNOTE: PROFESSOR KIM ECONOMIDES, (Director, University of Otago Legal Issues Centre)</b> <i>Centre-Periphery Tensions in Legal Theory and Practice: Can Law and Lawyers Resist Urban Imperialism?</i> - Chair: Richard Coverdale		
9.30-10	MORNING TEA - Lower Casay Deck		
	PARALLEL SESSIONS 1		
	LAGOON ROOM	BREAKERS ROOM	NORMAN JAMES ROOM
	Legal Services & Legal Practice	Managing Rural Conflict	Legal Education
10.00-11.30	<p><b>CHAIR: Helen McGowan</b></p> <p><b>Tahlia Gordon &amp; Steve Mark</b> <i>Technology, The Legal Profession and Rural Practitioners: Practising Law in a Digital World</i></p> <p><b>Peter Long &amp; Andy Munro (Slater &amp; Gordon)</b> <i>Practicing Law In, and Providing Legal Services To, Rural and Regional Communities</i></p> <p><b>Suzie Forell (Law and Justice Foundation of NSW)</b> <i>Video technology and legal practice in rural communities</i></p>	<p><b>CHAIR: Aileen Kennedy</b></p> <p><b>Elaine Barclay &amp; Robyn Bartel (UNE)</b> <i>Defining environmental crime: the perspective of farmers</i></p> <p><b>Michael McShane (Deakin)</b> <i>The role of state sanctioned mediation in promoting a neo-liberal agenda beyond metropolitan Australia</i></p> <p><b>Brian Simpson (UNE)</b> <i>Breaking the boundaries: the right of children and young people to be active participants in constructing rural and regional communities</i></p>	<p><b>CHAIR: Reid Mortensen</b></p> <p><b>Trish Mundy (UWollongong)</b> <i>Legal practice in RRR communities: the 'imagined' experience of final year law students</i></p> <p><b>Sher Campbell &amp; Katherine Lindsay (UNewcastle)</b> <i>Lawyers of the future: creating aspirations, forging connections and facilitating links in rural and regional contexts</i></p> <p><b>Amanda Kennedy, Richard Coverdale, Caroline Hart, Claire Macken, Reid Mortensen, Trish Mundy, Jennifer Nielsen, Theresa Smith-Ruig</b> <i>Curriculum in context: Reconceptualising undergraduate law teaching to prepare graduates for legal practice in rural and regional areas</i></p>
11.30-12.30	LAGOON ROOM <b>KEYNOTE: JACK BEETSON - An Aboriginal Perspective on Rural Law and Justice - Chair: Paul Martin</b>		
12.30-1.30	LUNCH - Lower Casay Decks/Finz Restuarant		
1.30-2.30	LAGOON ROOM <b>KEYNOTE: PAUL CLEARY - Is the mining boom a case of too much luck? - Chair: Russell Hogg</b>		
	PARALLEL SESSIONS 2		
	LAGOON ROOM	BREAKERS ROOM	NORMAN JAMES ROOM
	Rural Services & Rural Opportunity	Indigenous Inclusion	Legal Services & Legal Practice
2.30-4.00	<p><b>CHAIR: Michael Cain</b></p> <p><b>Catherine Gale (President Law Council of Australia)</b> <i>RRR Law – rewarding legal careers in rural, regional and remote Australia</i></p> <p><b>Helen McGowan, Andrew Boog &amp; Sharon Tomas (NACLC &amp; Orana Law Society)</b> <i>'We're not dead yet': Strengthening the regional legal profession</i></p> <p><b>FM Bauman (Federal Magistrates Court)</b> <i>The Federal Magistrates Court providing access to justice in rural and regional Australia</i></p>	<p><b>CHAIR: Kerry Carrington</b></p> <p><b>Kylie Lingard (UNE)</b> <i>The impact of the law on consultation practices and purposes: a case study of Aboriginal cultural heritage consultation in NSW</i></p> <p><b>Laura Boseley &amp; Melanie Schwartz (UNSW)</b> <i>Justice Reinvestment in the Australian Context</i></p> <p><b>John Scott &amp; Elaine Barclay (UNE)</b> <i>Community Policing in Australia's Aboriginal Communities</i></p>	<p><b>CHAIR: Adam Edwards</b></p> <p><b>Richard Coverdale (Deakin)</b> <i>Legal Services Needs of Small Business in Regional Victoria – Research Report</i></p> <p><b>Geoff Bowyer &amp; Joy Acquaro (Law Institute of Victoria)</b> <i>Succession Planning for Legal Practitioners</i></p> <p><b>Karen Keegan &amp; Sarah Rodgers (Hume Riverina Community Legal Service),</b> <i>Practical legal experience for students in rural Australia: how to live, work and play in Albury-Wodongal</i></p>
4.00-4.30	AFTERNOON TEA - Lower Casay Decks		

PARALLEL SESSIONS 3			
	LAGOON ROOM	BREAKERS ROOM	NORMAN JAMES ROOM
4.30-6.00	Special Session: Hypothetical	Law & Rural Social Licence	Managing Rural Conflict
	<p><b>CHAIR: Michael Cain</b></p> <p><b>Tahlia Gordon &amp; Steve Mark</b> (<i>Legal Services Commission, NSW</i>)</p> <p><i>Ethics &amp; Moral Philosophy: challenges from within</i></p> <p>What would you do if your professional duties require you to take or condone an action that you would otherwise consider immoral? Would you act? Would you refrain from acting? If so, on what basis? What are the ethical implications of conflicts of interest, duty and loyalty?</p> <p>These and other questions are explored in this facilitated hypothetical which will take you through some of the most common yet complex ethical challenges facing rural lawyers today.</p>	<p><b>CHAIR: John Scott</b></p> <p><b>Jacqueline Williams (UNE)</b> <i>Mining: coming to a farm near you</i></p> <p><b>Kerry Carrington (QUT)</b> <i>The social and criminological impact of mining development on rural communities</i></p> <p><b>Adam Edwards (UNE)</b> <i>Grass v Gas: the role of private nuisance in agriculture/mining land use conflict</i></p>	<p><b>CHAIR: Adam Edwards</b></p> <p><b>Karen Wilcox (UNSW)</b> <i>Collaborative Practice in Family Violence and Family Law Work: the AVERT Experience</i></p> <p><b>Catherine Davies (Youth Justice Group Conferencing Convener, Centacare Ballarat)</b> <i>'The young and the Restless' Restorative Practices in Rural Communities</i></p> <p><b>Lucinda Jordan (Deakin)</b> <i>Diversions schemes and the Children's Court: Issues for rural and regional Victoria</i></p>
7.00pm	<p><b>LOWER CASAY DECKS</b></p> <p><b>CONFERENCE DINNER: GUEST SPEAKER - JIM HIGHTOWER</b></p>		

SUNDAY 20 MAY			
PARALLEL SESSIONS 4			
	LAGOON ROOM	BREAKERS ROOM	NORMAN JAMES ROOM
9.00-10.30	Legal Services & Legal Practice	Rural Services & Rural Opportunity/ Indigenous Inclusion	Borders, Boundaries & Rural Law
	<p><b>CHAIR: Richard Coverdale</b></p> <p><b>Caroline Hart (School of Law &amp; Business, USQ)</b> <i>Business Structures &amp; Sustainable Regional Legal practice: use of incorporated legal practices &amp; multi-disciplinary partnerships by regional, rural &amp; remote legal practitioners</i></p> <p><b>Judith Levitan (Law Foundation NSW), Jenny Lovric (Legal Aid NSW) &amp; Helen McGowan (NACLC)</b> <i>Collaboration and innovation in NSW RRR legal services</i></p> <p><b>Helen McGowan (ANU College of Law)</b> <i>Recognizing and resolving conflicting interests in small scale regional practice</i></p>	<p><b>CHAIR: Aileen Kennedy</b></p> <p><b>Daniela Stehlik (CDU) et al</b> <i>'Service' Networks, the current &amp; future of interagency committees</i></p> <p><b>Janet Hammill (UQ)</b> <i>Fetal Alcohol Spectrum Disorders (FASD) in the Criminal Justice System</i></p>	<p><b>CHAIR: Jacky Williams</b></p> <p><b>Tony Meacham (USQ)</b> <i>20 years after Mabo- Is there any more certainty for pastoralists, miners, and Indigenous people?</i></p> <p><b>Robyn Bartel (UNE)</b> <i>Rising Tides and Taking Sides: Harmonisation and Localisation in Environmental Law and Policy</i></p>
10.30-11.00	MORNING TEA - Lower Casay Decks		
PARALLEL SESSIONS 5			
	BREAKERS ROOM	NORMAN JAMES ROOM	
11.00-1200	Managing Rural Conflict	Law & Rural Social License	
	<p><b>CHAIR: Elaine Barclay</b></p> <p><b>Skye Saunders and Professor Patricia Easteal</b> <i>'Fit in or F&amp;%' Off!': The (non) Reporting of Sexual Harassment in Rural Workplaces</i></p> <p><b>Xanth Mallet (UNE)</b> <i>Forensic Identification of Perpetrators of Child Abuse</i></p>	<p><b>CHAIR: Amanda Kennedy</b></p> <p><b>Keely Boom (UTS)</b> <i>Kangaroo Court: enforcement of the law governing kangaroo killing</i></p> <p><b>Mary Howard (Women's Industry Network Seafood Community)</b> <i>The Challenges of Wild Harvesting Fish for Food</i></p>	
12.00-1.00	<p><b>LAGOON ROOM</b></p> <p><b>WORKSHOP - Michael Cain (Law and Justice Foundation of NSW) and Wind Up - CHAIR: Paul Martin</b></p>		
1.00-2.00	LUNCH		

# 2012 RURAL AND REGIONAL LAW AND JUSTICE CONFERENCE ABSTRACTS

2<sup>nd</sup> National Rural and Regional Law and Justice Conference 18-20 May  
2012 - Aanuka Beach Resort - Coffs Harbour Programme



## GUEST SPEAKER

### Jim Hightower

Author of five popular books, twice Texas Agriculture Commissioner, and one of the most informative and entertaining commentators on rural affairs in the USA. Jim talked about the challenges faced by rural communities in Australia and the USA: 'fracking' and farming, and the power games that impact on farming communities. Jim brought a hard-hitting viewpoint that made everyone think.

In the USA Jim broadcasts daily radio commentaries that are carried in more than 150 commercial and public stations, on the web and on Radio for Peace International. Always entertaining and provocative, memorable quotes from Jim include: 'The opposite of courage is conformity'; 'Even a dead fish can go with the flow'; and 'The water won't clear up until we get the hogs out of the creek'. His newsletter, *The Hightower Lowdown*, has more than 135 000 subscribers and is the fastest growing political publication in America. The hard-hitting *Lowdown* has received both the Alternative Press Award and the Independent Press Association Award for best national newsletter.

#### Publication details:

Jim Hightower, *There's Nothing in the Middle of the Road but Yellow Stripes and Dead Armadillos; A Work of Political Subversion* (Harper Collins, 1997).

Jim Hightower, *If the Gods Had Meant Us to Vote They Would Have Given Us Candidates* (Harper Collins, 2000).

Jim Hightower, *Thieves in High Places: They've Stolen Our Country - and it's Time to Take It Back* (Plume, 2004).

Jim Hightower, *Let's Stop Beating Around the Bush* (Viking, 2004).

Jim Hightower and Susan DeMarco, *Swim Against the Current* (John Wiley & Sons, 2008).



## Keynote speakers

### Kim Economides

(Dean, Flinders Law School, Flinders University)

#### Centre-periphery tensions in legal theory and practice: can law and lawyers resist urban imperialism?

This paper questioned some basic assumptions of legal theory, education and practice from the perspective of rural, remote and regional (RRR) legal communities beyond the metropolis. Legal ideologies and values fundamental to the legitimacy of the modern state, such as the Rule of Law, are embedded in most law curricula and reinforced at every stage of the educational continuum, and commonly assert that law, legal rights and access to courts of law apply equally regardless of physical location or social status. Despite this, indigenous and other excluded groups living in peripheral communities frequently experience law differently from their urban counterparts, as do legal professionals living and working outside the city. Law, at least in its practical application, is subject to the 'friction of distance' and dependent on institutional support, while the impact of legal norms - including those governing professional conduct - may also vary according to 'local legal cultures' and the nature of client communities being served. Adversarial ethics, another basic premise



of the legal process, may no longer capture accurately how lawyers actually practice in rural and remote settings. But what does?

The key issue examined in the presentation concerned how centre-periphery tension should best be managed in the future regulation of law and lawyers. Will centripetal or centrifugal forces prevail and how should these best be balanced, and particularly within a federal constitution? In the past dirigiste policies originating in centralised courts and parliaments, even at state level, were blind to the distinctive and diverse needs of RRR communities, though, increasingly, policymakers operating at the centre are becoming more aware of, if not flexible and responsive to, the needs of diverse communities that comprise modern Australian society.

Looking to the future, what kind of policies and strategies may genuinely assist social inclusion and to what extent should law and legal practice accommodate diversity? How and to what extent should lawyers and paralegals represent the interests of communities rather than private individuals in RRR areas of Australia? What kind of training and technological support do they require? The presentation aimed to set out some choices that confront policymakers while drawing upon international experience that may offer some guidance.

**Full paper available at:**

Kim Economides, 'Centre-Periphery: Tensions in Legal Theory and Practice: Can Law and Lawyers Resist Urban Imperialism' [2012] (2) International Journal of Rural Law and Policy <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp>>.

## Jack Beetson

### An Aboriginal perspective on rural law and justice

Jack Beetson is a Ngembaa Aboriginal man from western NSW who, over the past thirty years, has played an active role in Aboriginal affairs in NSW, Australia and internationally. He is a qualified adult educator, with a Diploma of Aboriginal and Community Adult Education and a Bachelor of Adult Education from UTS. He has also completed the Certificate course run by the Australian Institute of Company Directors (AICD), recognised as the definitive program for company directors in Australia. Currently, he is a partner in a three-year Australian Research Council Project working with the University of New England and the Government of Timor-Leste in the development of their adult education system. He is also currently a consultant to two international projects, run by the University of Lancashire in the UK, on benefit sharing and Indigenous people's rights in relation to the commercial exploitation of traditional environmental knowledge.

Jack Beetson's long history of public service includes membership of the following councils boards and committees: National Aboriginal Environment Trust, NSW Northern Rivers Catchments Management Authority, NSW Commission for Children and Young People Expert Advisory Panel, Australian National Training Authority Indigenous Advisory Council, Council of Southern Cross University, Sydney ATSIC Regional Council, MCEETYA Task Force on Aboriginal Education, Council of University of Technology Sydney, and the Executive Committee of Adult Learning Australia 1991-1994.

## Paul Cleary

(Australian National University)

### Is the mining boom a case of too much luck?

This session examined the current mining boom in Australia with particular reference to its implications for rural and regional Australia. The presentation drew on two of Paul Cleary's books: *Too Much Luck, the Mining Boom and Australia Future* (2011) and *Mine-Field - the Dark Side of Australia's Resources Rush*.

**Publication details:**

Paul Cleary, *Too Much Luck: The Mining Boom and Australia's Future* (Black Inc, 2011).

Paul Cleary, *Mine-Field: The Dark Side of Australia's Resources Rush* (Black Inc, 2012).

See also: Paul Cleary, 'Mining, Regional Australia and the Development Multiplier' [2-12] (2) International Journal of Rural Law and Policy <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp>>.





## Theme: Legal services and legal practice

### Peter Long and Andy Munro

(Slater & Gordon, Gunnedah and Coffs Harbour)

#### Practicing law in and providing legal services to rural and regional communities

This discussion explored the good and bad aspects of practicing law in rural and regional communities, highlighting the dearth of practitioners in those areas. The discussion also outlined the philosophy behind Slater & Gordon setting up offices in rural and regional Australia as a mechanism to allow communities ready access to legal services in their region without the need to travel to the city, as well as the pleasures and problems of practicing law in the bush and ensuring the delivery of prompt, efficient and competent legal services. The speakers touched on the barriers to the provision of legal services in the bush, including resource and technology issues, and the importance of knowing and understanding the needs of clients in rural and regional areas.

### Suzie Forell

(Law and Justice foundation of NSW)

#### Video technology for rural legal assistance: what the research tells us

In recent years there has been an increasing drive to improve access to legal services through the use of video conferencing and web-based technology. This presentation reported on an extensive search for and systematic review of existing research into and evaluation of the use of video conferencing (including web-based video technology) to deliver legal assistance - particularly to disadvantaged clients, clients in regional, rural and remote areas and clients in custody. Due to the limited research and evaluation on this topic, the review also included insights from a selection of service providers who have used video technology for legal assistance, and a small number of methodologically rigorous studies and systematic reviews of use of video conferencing for health services. Drawing upon this available research and previous experience, this presentation:

- Discussed factors which need to be taken into account when considering this (or alternative) modes of communication for the provision of legal assistance in rural locations, including convenience, privacy issues and the willingness of lawyers, clients and intermediaries (such as host agencies at the client end) to embrace the technology; and
- Recommended a more considered approach to the widespread roll-out of video technology for legal assistance.

Full paper available at:

<http://www.lawfoundation.net.au/ljf/app/&id=B0A936D88AF64726CA2579660008A3A>



## Theme: Managing rural conflict

### Michael McShane

(Deakin University)

#### The role of state-sanctioned mediation in promoting a neo-liberal agenda beyond metropolitan Australia

The paper explores the role of state-sanctioned mediation in furthering a metropolitan and neo-liberal agenda in rural and regional Australia. In a recent paper, Iain Ross (President, VCAT), discusses the strategic mission of Victorian Civil and Administrative Tribunal (VCAT) in terms of 'excellence'; this language and related terms such as 'excellence', 'innovation' and 'flexibility' is the reigning language of the public sector. This is apparent not only from VCAT's website but from the language shaping the way in which judicial actors construct their understanding of their roles at both the state and Commonwealth levels. For example, the Victorian Magistrates' Court's website discusses the importance of being the best provider of justice in the world; no doubt intent upon establishing itself as the benchmark against which all providers of justice in the



world can be assessed against as performing (in)competently. ‘Competency’, too, is a key term in the neo-liberal lexicon, as are ‘standards’ and ‘measurements’. Indeed, performance and performers must always be framed in measurable and auditable qualities; after all, absent such terms of reference, it is not possible to demonstrate the effective and efficient delivery of justice.

The presentation defended the claim that the approach to mediation adopted by the various instrumentalities of the state - that is, interest-based negotiation and facilitative forms of mediation: (i) embodies features that are compatible with the discourse of the market; (ii) is articulated within an institutional context that reinforces those tendencies and (iii) that, in expanding their influence beyond the borders of metropolitan Australia, is effectively colonising modes of dispute in terms that further the needs of global capitalism. The paper considers the enthusiastic embrace of mediation by administrative tribunals and courts over the past 20 years or so as paralleling the ascendancy of market discourses. It is true that mediation is seen as a response to a failure of traditional conflict resolution institutions to cope with demands to which they are subject. But those demands could be met by a different response and reflect the commitments and values on which the welfare, rather than the marketised state, was constructed.

### Brian Simpson

(Law School, University of New England)

#### Breaking the boundaries: the right of children and young people to be active participants in constructing rural and regional communities

A child-friendly city is a city that includes children in all aspects of the planning and governance of a city. If the global child-friendly city movement has gained little traction in urban areas of Australia, there would seem to be little hope for children and young people in non-urban Australia. Yet, perhaps ironically, the only UNESCO accredited child friendly city in Australia is the regional Victorian city of Bendigo. This might suggest that regional communities that are built upon local networks might actually embrace the notion of inclusion of children in all aspects of the planning of their communities. Yet, how then do we explain that other regional and rural centres in Australia have not pursued becoming child-friendly cities? In part this can be explained by Australian perceptions of rural and regional youth as ‘disadvantaged’ or eager to leave such communities. Such labels suggest that children and young people have little ability or stake in such communities and so little to contribute. It is also possible that those with power in rural and regional communities tend to impose their own boundaries on who are worthy of being contributors to the planning and governance of those communities. In this paradigm children and young people may be the subjects of schooling, skilling and employment debates but they do not possess a right to a share of the power in such communities. This presentation explored the boundaries of children’s rights to actively participate in the construction of rural and regional life and how official discourses have inhibited such rights in regional and rural Australia.



## Theme: Legal education

### Trish Mundy

(University of Wollongong)

#### Legal practice in RRR communities: the ‘imagined’ experience’ of final year law students

This presentation discussed the partial findings from a research study involving a narrative analysis of in-depth interviews with twelve final-year law students. The research explored student attitudes to and perceptions of legal practice in rural, regional and remote (RRR) communities - that is, their ‘imagined’ experience. The research findings suggest that, at least in the context of the non-regional law school, the rural/regional issue is both absent and ‘other’, revealing the ‘urban-centric’ nature of legal education and its failure to adequately expose students to rural and regional practice contexts that can help to positively shape students’ ‘imagined’ experience. This paper argues that all law schools must take up the challenge of rural inclusiveness by integrating a sense of ‘place-consciousness’ into the law curriculum.

#### Full paper available at:

Trish Mundy, “Placing” the Other: Final Year Law Students’ “Imagined” Experience of Rural and Regional Practice within the Law School Context’ [2012] (2) *International Journal of Rural Law and Policy* <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp>>.





## Sher Campbell and Katherine Lindsay

(University of Newcastle) with consultation from

### Doug McKay

(Lovett & Green, Warren NSW)

#### Lawyers of the future: creating aspirations, forging connections and facilitating links in rural and regional contexts

In recent years, the Australian legal profession, government policymakers and the nation's law schools have evinced concern about the future of legal practice beyond metropolitan areas. The issues and suggested responses have been debated in various fora among stakeholders. This presentation explored the way in which one regional law school, Newcastle Law School, with a distinctive approach to legal education has responded to these issues from an educational and pastoral perspective. Newcastle Law School established its lawyers of the future program in 2009. Lawyers of the future is a multi-faceted initiative which promotes professional partnerships with the secondary education sector through the schools' visit program and partnerships with rural and regional professionals through active connections in those areas. The third phase of the Lawyers of the future program, commencing in 2012, will be the development of rural and regional legal placement sites for senior law students enrolled in Newcastle's professional program.

While the lawyers of the future program has three distinctive and interrelated elements and objectives, it is the placement program which will provide the lynchpin. Such a placement program, which is innovative in itself, has a greater educational purpose. The experience of practice in rural and regional areas, together with the process of subsequent engaged and critical reflection, will contribute meaningfully to the development of students' professional personae in ways that will support an ethos of professional service beyond the narrow confines of practice in the metropolis for the legal conglomerates.

## Amanda Kennedy, Richard Coverdale, Caroline Hart, Claire Macken, Reid Mortensen, Trish Mundy, Jennifer Nielsen and Theresa Smith-Ruig

(University of New England, Deakin University, University of Southern Queensland, La Trobe University, University of Wollongong, Southern Cross University & University of New England)

#### Curriculum in context: reconceptualising undergraduate law teaching to prepare graduates for legal practice in rural and regional areas

Universities are increasingly recognising their role in the preparation of graduates for employment and there has been a growing acknowledgement in some disciplines that this includes preparation for employment in certain contexts, such as in rural and regional communities. The typical law school curriculum does not, however, take account of a student's eventual employment context and, where it does, it usually presupposes career placement in an urban environment. Overall, this results in a failure to adequately prepare graduates for work in rural and regional areas, contributing to the reported recruitment and retention issues within the rural and regional legal profession.

This presentation explored strategies which may be implemented within the law school curriculum to better prepare, attract and retain legal professionals for careers in rural and regional areas. Specifically, it focused upon ways in which theoretical components of the legal education curriculum may be redeveloped to 'sensitise' law students to the contextual realities of rural and regional legal practice. Rural and regional legal practice is characterised by unique professional and personal challenges, yet it also presents a broad range of opportunities rarely experienced in an urban context. Through exposure to learning modules such as: the rural context and the concept of the rural and regional lawyer; ethical dimensions of rural and regional legal practice; personal, interpersonal and professional skill requirements; career development and methods of innovation adoptions, students will be better placed to deal with the challenges of rural and regional practice as well as to take advantage of opportunities and innovation.

#### For more information:

<http://rrlen.net.au>. Those interested can also email [feedback@rrlen.net.au](mailto:feedback@rrlen.net.au)





## Theme: Rural services and rural opportunity

### Catherine Gale

(Law Council of Australia)

#### RRR Law - rewarding legal careers in rural, regional and remote Australia

In 2009 the Law Council conducted the nationwide 'Rural, Regional and Remote Areas Lawyers Survey'. The main finding of the survey is that an alarming number of practices did not have enough lawyers to service their client base and the problem would increase over the next several years as experienced RRR practitioners retire. In 2010, in response to Law Council advocacy, the former Commonwealth Attorney-General (Robert McClelland) announced \$1.1 million in funding to boost the recruitment and retention of lawyers in RRR areas. This funding included the allocation of \$250 000 in one-off funding for the Law Council through the National Association of Community Legal Centres to develop a national campaign. RRR Law was launched by the Attorney-General and former Law Council of Australia President, Mr Alexander Ward, during Law Week in May 2011. The campaign included the development of an informational DVD, containing interviews with RRR practitioners of their experiences, and a national website, [rrrlaw.com.au](http://rrrlaw.com.au), which links people interested in practicing law in RRR Australia to available job opportunities. This presentation discussed the Law Council's work in relation to recruitment and retention issues in RRR Australia and highlighted the current work being undertaken to raise awareness of employment opportunities in RRR Australia.

#### Further information at:

<http://rrrlaw.com.au>

### Helen McGowan, Andrew Boog and Sharon Tomas

(ANU College of Law, NALC & Orana Law Society)

#### 'We're not dead yet': strengthening the regional legal profession

The perception that there are insufficient lawyers to service the legal needs of regional, rural and remote Australian communities was validated by research conducted by the Law Council of Australia (2009) and the NSW Law and Justice Foundation (2010). In response, the Australian Attorney General funded a range of projects seeking to create solutions to the issue of recruitment and retention of regional lawyers. This paper tells the story of the western NSW legal community which has hosted a Regional Recruitment and Retention Coordinator employed by the National Association of Community Legal Centres who has been working closely with the Dubbo based Orana Law Society. Although the focus of the role was initially on the public/community legal profession, the experience is that a holistic integrated approach is needed to redress the issues which are shared across the legal profession. Through the use of established networks and infrastructure, including the Orana Law Society, the profession has collaborated on recruitment and retention initiatives, continuing professional development, mentoring and social events. The paper suggests that this model resources both the demand and supply side, by providing a consistent and committed point of contact responsible for the sustained health of the local legal profession and through that commitment to the legal health of regional communities.

#### For more information refer to:

[www.rrrlaw.com.au](http://www.rrrlaw.com.au)







## Theme: Indigenous inclusion

### Kylie Lingard

(University of New England)

#### The impact of the law on consultation practices and purposes: a case study of Aboriginal cultural heritage consultation in NSW

Consultation research to date has largely concentrated on how consultation practices generally serve only the purpose of procedural compliance. This presentation identified and explored the gap in existing research on the impact of law on consultation practices and purposes. To explore current practices and the potential contribution of law to the nature of consultation practices, the presentation focused on the NSW duty to consult Aboriginal people before permitting harm to Aboriginal cultural heritage.

Conventional regulatory approaches to consultation assume that Aboriginal interests are accommodated by the same consultation strategies applied to other stakeholders in rural law and policy. This presentation was based on research that used an administrative law doctrinal research approach to identify the specific issues and requirements for Aboriginal consultation relating to cultural heritage. Consideration was given to the effectiveness of the case study consultation requirements, the duty design, and the recent Land and Environment Court judgment of *Ashton Coal Operations Pty Limited v Director-General, Department of Environment, Climate Change and Water*.

The presentation argued that statutory consultation requirements and purposes can and should be taken more seriously. The law reform discussion highlighted in the presentation considered how identified consultation requirements can be incorporated into Australian Cultural Heritage legislation and the possible impact of such incorporation on the purpose of the consultation. More broadly, the law reform discussion indicated that when consultation requirements are tailored to suit the purpose of the consultation and the consultation parties, the law can play a positive role in consultation, engagement and capacity building.

#### Full paper available at:

Kylie Lingard, 'The Impact of the Law on Consultation Practices and Purposes: A Case Study of Aboriginal Cultural Heritage Consultation in NSW' [2012] (Occasional Papers) *International Journal of Rural Law and Policy* <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp>>.

### Laura Boseley and Melanie Schwartz

(University of New South Wales)

#### Justice reinvestment in the Australian Context

Justice Reinvestment (JR) is a policy initiative that aims to reduce imprisonment rates by diverting funds from corrections budgets into building community capacity in neighbourhoods that produce large numbers of offenders. It is argued by proponents of JR that investing in community-specific, place-based programs and services not only makes economic sense (as compared to the cost of imprisoning residents from those places) but also has the potential to divert individuals away from the criminal justice system by strengthening the community as a whole. This progressive concept has been implemented in several states across the USA with promising results and is currently being explored in the UK and elsewhere. This presentation outlined the key features of JR and discussed its potential (and potential challenges) in the Australian rural and regional context, particularly in relation to the over-imprisonment of Australian Aboriginal and Torres Strait Islander people. We argue that JR's focus on community and individual capacity building, community buy-in, and tackling social and economic disadvantage provides an approach particularly suited to Indigenous communities.

#### Relevant paper available at:

Melanie Schwartz, David Bentley Brown and Laura Boseley, 'The Promise of Justice Reinvestment' (2012) *Social Science Research Network* <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2078715](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2078715)>.



## John Scott and Elaine Barclay

(University of New England)

### Community Policing in Australia's Aboriginal Communities

The policing of Australia's Aboriginal Indigenous people has a long and troubled history, reflected in the perpetual over-representation of Aboriginal people within the criminal justice system. However, over the past two decades, community policing initiatives have been developed by Aboriginal people to enable their communities to be more effective in preventing crime and providing effective models of sanctioning and rehabilitating offenders. These initiatives are often grounded in models of restorative justice. This presentation discussed three of these initiatives: circle sentencing, Aboriginal community liaison officers and community night patrols. In particular, we critically examined community night patrols, drawing on data from an evaluation of night patrols in New South Wales. We argued community policing can be successful in reducing crime because it draws on one of the most important (and overlooked) forms of social capital among rural Aboriginal people - strong social and kinship networks. However, we also highlight the different capacity of communities to regulate conflicts, support victims and offenders and resource reintegration, noting that communities are not a natural set of relations, but constructed on broad terrain of history and politics.

#### Full paper:

To be published as a report for the Commonwealth Attorney General's Department in mid 2013.



## Theme: Legal services and legal practices

### Richard Coverdale

(Deakin University)

#### Legal services needs of small business in regional Victoria - a research report

The provision of effective legal services to rural and regional Australia is of strategic importance to the future of these communities and to state and national economies. The 'debt crisis', the spectre of climate change and the growing competitiveness of local and export markets, have impacted significantly on rural and regional Australia.

Additionally, more innovative business structures are now required to respond to changing business needs; increasing regulation of natural resource management and additional layering of planning laws together with increasingly sophisticated contractual arrangements between suppliers and processors, all add further complexity to the flux of change underway. While these activities are creating a dramatic growth in the regulation of business activity nationwide and, as a consequence, increasing demands on small business and their legal advisors, there is a growing gap in the availability of legal services for regional communities and commerce.

Drawing on interviews and surveys of small business and law firms in regional communities, conducted by the Centre for Rural Regional Law & Justice, this presentation discussed the nature and extent of legal service provision to small businesses operating in regional Victoria. The presentation highlighted emerging needs and potential areas of growth and identified areas in which regional law firms can improve, expand and refine their services in response to the current and emerging demands on them and the communities they serve. The presentation made a number of recommendations which included taking a lead role in establishing a formalised practitioner referral process to help build specialist legal expertise in regional Victoria and greater promotion of the important benefits localised legal knowledge and practice provides to regional communities and industry.

#### More information at:

*Providing Legal Services to Small Business in Regional Victoria*, Faculty of Business and Law - School of Law  
<<http://www.deakin.edu.au/buslaw/law/crrlj/regionalsmallbus.php>>.



## Geoff Bowyer and Joy Acquaro

(Law Institute of Victoria)

### Succession Planning for Legal Practitioners

The Law Institute of Victoria (LIV) is undertaking a number of projects to assist legal practitioners in regional and rural areas. The Report into the Rural, Regional and Remote Areas Lawyers Survey conducted by the LIV on behalf of the Law Council of Australia found 35 per cent of the 1185 respondents were aged 50+, while 17 per cent were in the 40-49 age bracket. Results also indicated that attracting and retaining employees was of great concern to legal practitioners.

In 2009, the LIV completed a survey questioning legal practitioners on their 'succession readiness'. Alarming, they found 42 per cent of practitioners indicated an intention to leave the practice within six to ten years. Despite this, 87 per cent indicated they did not have a documented succession plan.

As a result of identifying these gaps in the profession, the LIV has highlighted the need to assist practitioners to develop succession plans for their practices. To this end, a suite of resources have been developed to assist practitioners develop an implementation plan. After completing an online diagnostic tool, practitioners attended workshops, where they worked through a detailed information book which is available for sale at the LIV Bookshop.

Further, the LIV is working closely with Regional Development Victoria to establish a 'Young Professionals Provincial Cadetship Program' for law students in conjunction with country law associations and firms, which will provide an opportunity for law students to undertake regionally-based clerkships. The terms of this program are still under development.

A third initiative of the LIV is the development of a one-day conference program, 'Life After Law', to provide guidance and assistance to those practitioners seeking to transition away from legal practice and consider other career options with their given skill set. This program is still under development.

The LIV has also established the Vic Lawyers Health Line, launched in April 2012, which provides a unique combination of services including - counselling, debriefing and Manager's Hotline. This service is specifically suited to regional/rural practitioners as the service is available by phone or in the practitioner's local area if face-to-face counselling is required.

The presentation made by Geoff Bowyer, LIV Councillor and Joy Acquaro, LIV General Manager, discussed the four projects to date, including some insights from the pilot succession planning workshop.

#### More information available at:

Law Institute Victoria, *Succession Planning* <[www.liv.asn.au/succession](http://www.liv.asn.au/succession)>.

## Karen Keegan and Sarah Rodgers

(Hume Riverina Community Legal Service)

### Practical legal experience for students in rural Australia: how to live, work and play in Albury Wodonga

The Hume Riverina Community Legal Service (HRCLS) has a successful partnership with Charles Darwin University (CDU) in Darwin to deliver a Clinical Legal Education program. The partnership is unique because of the distance between the two services of approximately 3600 kilometres and the university, CDU, being located in a different jurisdiction to the clinical legal services provider, HRCLS. The aim of the project is to expose undergraduate students to the many benefits of practising law in a rural setting, help raise an awareness of the justice issues unique to rural, regional and remote (RRR) areas, and encourage students to consider a legal career in the bush, in particular in a community legal centre. In addition, HRCLS also takes practical legal training (PLT) students from any Australian University. This presentation gave an overview of the program developed by the HRCLS and discussed the current funding model and suggestions for the future.





## Theme: Law and rural social licence

### Jacqueline Williams and Sue Higginson

(University of New England & Environmental Defenders Office)

#### Mining: coming to a farm near you

This discussion explored the justice and equity issues of mining developments in NSW and the perversity of the law. The current legal instruments including those for mining, planning and environmental laws, perpetuate an inequitable and unjust competition between mining companies and rural communities over use of natural resources and enjoyment of rural lifestyles. These issues were exemplified through two case study regions of NSW: Dorrigo and Boggabri. The social licence of rural communities is threatened by the expansion of mining across regional and rural Australia. In particular, the discussion questioned whether the mining industry holds the claimed trust of the community that has enabled their ease of access to the natural resources gifted by government for many years when compared to other industries such as timber, seafood and farming (irrigation and native vegetation), and the government policy and legal reforms undertaken since the 1990s to ensure sustainable natural resource management. Why has mining escaped the types of reform other sectors have faced where 'no go zones' are an acceptable norm as part of sustainable practice? This predicament indicates that the current protectionist relationship between government and the mining sector needs to be revisited and reformed. The paper proposes reforms to policies and laws to create a more just and equitable approach to sustaining communities and natural resources in rural regions.

#### Full paper to be published:

Jacqueline Williams, 'Mining: coming to a farm near you' in *IUCN Academy of Environmental Law 10th Annual Colloquium held at Maryland July 2012* (Forthcoming).

### Kerry Carrington

(Queensland University of Technology)

#### The social and criminological impact of mining development on rural communities

Australia is experiencing an unparalleled resource boom due to intense demand from Asian economies thirsty for Australia's non-renewable fossil fuels. In this global context - and with the backing of state governments eager to generate revenue through royalties - mining companies have launched a \$174 billion investment stampede to extract Australia's natural resources. The haste of this extraction process has become increasingly reliant on non-resident, fly-in, fly-out (FIFO) or drive-in, drive-out (non-resident) (DIDO) workers who typically work block rosters and reside in work camps adjacent to existing rural communities. There are estimated to be around 150 000 non-resident workers directly employed by the resources sector. This is anticipated to rise to around 200 000 by 2015. The rapid growth of non-resident workers in the resources sector carries significant impacts for individual workers, their families and host communities, as evidenced by the many submissions to the Australian Parliament House inquiry into FIFO/DIDO work practices. Many of those submissions highlight just how much this issue is fanning widespread rural conflict. Given the collision of self-interest between state governments and mining companies - both profiting handsomely from the speedy extraction of resources - the attention by state regulators to managing this conflict has often been too little or too late. This paper examines this growing social justice issue, concluding there is an urgent need for a national policy and regulatory framework for guiding sustainable mining development and better managing rural conflict generated by the mining boom.

#### Publications that relate to this presentation:

Kerry Carrington, Russell Hogg, Alison McIntosh and John Scott, 'Crime Talk, FIFO Workers and Cultural Conflict on the Mining Boom Frontier' (2012) 53 *Australian Humanities Review* 1.

K Carrington, R Hogg and A McIntosh, (2011) 'The Resource Boom's Underbelly: Criminological Impacts of Mining Development', (2011) 44(3) *Australian and New Zealand Journal of Criminology* 335.



## Adam Edwards

(University of New England)

### *Grass v Gas: the role of private nuisance in agriculture/mining land use conflict*

This presentation concerned the topical issue of mining expansion and the potential for actual or perceived conflict with existing agricultural land use. The discussion follows from the author's earlier research into tort law and rural land use conflict (in that case, private nuisance and superfine wool contamination).

At first blush, the law of private nuisance seems an ideal fit for the agriculturalist suffering actual interference from adjacent or concomitant mining operations. For example, the English case of *Cambridge Water Co v Eastern Counties Leather* [1994] 2 AC 264 (tanning chemicals polluting groundwater) shows clear parallels with the aquifer contamination alleged of coal seam gas extraction. Less clear is whether the case suggests a cause of action for agriculture or a defence for mining.

The author's earlier work shows the potential for some divergence of Australian jurisprudence on private nuisance as compared with the English case law. In applying this work to the mining industry in Australia, the Canadian position is also examined. The extent of government regulation of such conflict and the interplay of legislation with the common law also inform this inquiry.

The conclusion suggests that private nuisance will provide a remedy for agricultural landholders in some circumstances. At the very least, it is an area of law that the mining industry can ill-afford to ignore.



## Theme: Managing rural conflict

## Karen Wilcox

(University of New South Wales)

### *Collaborative practice in family violence and family law work: the AVERT experience*

The intersection of the family law system with families living with family violence has been the subject of several reviews and reports over recent years. Numerous recommendations have emerged from these reports, and the *Family Law Act* has recently been amended, partly on the basis of some of these recommendations. A common theme of these reviews has been concern with the disjointed and often inconsistent nature of responses to families where there is domestic and family violence. In rural and regional Australia, where service provision across sectors engaging with family violence is patchy, the challenge of managing safety across the intersection of family violence and family law is significantly greater. The role of legal general practice within a poorly serviced region can be an underestimated but vital one in the promotion of family and community safety.

The challenge of enhancing collaborative practice in family law across regional Australia, in order to enhance responses to domestic and family violence, provided the focus of this presentation. The presentation showcased an example of 'evidence to practice'-based work, by outlining the delivery of a training program undertaken by the presenter, as part of a cross-disciplinary team (other members of the *AVERT Collaborative Training Partnership* are Libby Watson and Jon Graham). The program, based in part on the Commonwealth Attorney General's AVERT package, has been delivered throughout 2012 across a number of regions in NSW, including Tamworth, the Northern Rivers and Tweed, Nowra, Singleton, Albury, the Southern Highlands and Newcastle.

The training program brought together experienced trainers from UNSW, the family dispute resolution sector and social work practice to provide a diversity of input, delivered to equally multi-disciplinary audiences including legal practitioners, police, counsellors, probation and parole staff, Aboriginal service providers, health professionals and FDRPs. Avenues for sharing understandings of domestic violence and for sharing responsibilities for managing risks and enhancing safety, were creatively explored within each region, building on the region's pre-existing strengths and capacity. Excerpts of the program, along with the team's successes and learnings, were shared. The experience of bringing an AVERT-based family violence training program to regional NSW has highlighted the value of maintaining an ongoing focus on multi-disciplinary practice in order to achieve effective and holistic responses to family violence and safe parenting arrangements.



## Catherine Davies

(Centacare Ballarat)

### 'The young and the restless' restorative practices in rural communities

The Youth Justice Group Conferencing program is a Victorian Government legislated pre-sentence option offered in the Children's court. It is funded by the Department of Human Services and delivered by NGOs throughout Victoria. Service providers and conveners in rural and regional areas experience issues particular to and distinct from their metropolitan colleagues.

These distinctions have both positive and negative aspects for service delivery and the implementation of restorative justice. The presentation teased out these particularities and explored the benefits and challenges of implementing restorative practices for young offenders, their families, victims and the wider community.

Further, the presentation examined rural implications in general and the geographical, socio-economic and indigenous factors specific to the Grampians region and how they affect service delivery.

Working in small communities creates unique opportunities and challenges for convenors in supporting young people. The presentation looked at how restorative justice is able to reintegrate young people into their communities and help them move on from their offending behaviour.

#### Full paper available at:

Catherine Davies, *'The Young and the Restless' restorative practice in rural communities* (2012) Centacare  
<<http://www.centacareballarat.org.au/index.php?p=8&t=publications>>

## Lucinda Jordan

(Deakin University)

### Diversionary schemes and the Children's Court: issues for rural and regional Victoria

The Victorian Government has committed to reducing crime by young people by creating clearer pathways to prevention and rehabilitation programs. However, unlike many other jurisdictions (in Australia and internationally), Victoria has not adopted a legislative court-based diversion scheme for addressing criminal behaviour by children and young people. Furthermore, despite government interest in early intervention strategies, there has been limited investment in diversionary programs. For young people in rural and regional Victoria, access to these services is especially limited. This paper examines the limited diversionary options available in the current Victorian youth justice system, identifying strengths and opportunities in these programs. It also explores the use of similar schemes in comparable jurisdictions, concluding that court-based diversion schemes for young people are an effective and cost efficient way of addressing criminal behaviour in cases where they are supported by community programs that provide appropriate intervention and support to young people at risk of re-offending. Drawing on comparable schemes, the presentation proposes a number of elements for the implementation of a new diversion scheme, including recommendations to ensure young people from regional Victoria are not disadvantaged.



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## Theme: Legal services and legal practice

## Caroline Hart

(University of Southern Queensland)

### Business structures and sustainable regional legal practice: use of incorporated legal practices and multidisciplinary partnerships by regional, rural and remote legal practitioners

Since 2007, the *Legal Profession Act 2007* (Qld) has offered legal practitioners a wider choice of business structures including sole practitioner, partnership, incorporated legal practice (ILP) and multidisciplinary partnership. In particular, the use of ILPs offers legal practitioners a range of benefits in terms of operating a law firm consistent with business management practices. The status of ILPs, however, comes at the cost of putting in place 'appropriate management systems'. This presentation discussed the legislation and literature on the range of business structures, then provided an insight into decisions by Queensland regional, rural and





remote legal practitioners about what business structures to use. It discusses awareness of the new business structures and the factors inhibiting their use by regional, rural and remote legal practitioners. The presentation drew from over 30 interviews with sole practitioners, partners and directors about their choice of business structure.

**Full paper available at:**

Caroline Hart, 'Business Structures and Sustainable Regional legal Practice: Use of Incorporated Legal Practices and Multi-disciplinary Partnerships by Regional, Rural and Remote Legal Practitioners' [2012] (2) *International Journal of Rural Law and Policy* <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp>>

## Judith Levitan, Jenny Lovric and Helen McGowan

(NSW Legal Assistance Forum, Legal Aid NSW, Australian National University)

### Collaboration and innovation in NSW rural, regional and remote legal services

This presentation showcased current research, practical strategies and initiatives underway in rural, regional and remote (RRR) NSW to address:

- recruitment and retention of lawyers;
- professional development and support for lawyers; and
- increased access to legal services for disadvantaged communities.

The presentation demonstrated that common elements of these initiatives include:

- cooperative arrangements and collaboration between different legal service providers within the justice sector; and
- arrangements informed by evidence-based research and identified gaps in existing legal services.

The presentation outlined features of innovative projects such as:

- use of video conferencing technology across justice sector agencies to provide increased access to legal services and professional development opportunities for lawyers;
- local regional networks of legal and non-legal services that facilitate opportunities to collaborate on projects aimed at increasing access to legal services for disadvantaged communities (Cooperative Legal Service Delivery Networks);
- regular legal outreach services (through the Regional Outreach Clinic Program) to communities identified as at risk of social exclusion; and
- ad-hoc, responsive legal outreach that responds to environmental or social events (for example floods and factory closures).

The presentation highlighted the significance of interagency forums (for example NSW Legal Assistance Forum and CLSD Networks) in facilitating the development and implementation of these initiatives.

#### Information

- More about the NSW Legal Assistance Forum (NLAF) can be found at [www.nlaf.org.au](http://www.nlaf.org.au).
- More about Cooperative Legal Service Delivery Networks can be found at [www.legalaid.nsw.gov.au/what-we-do/community-partnerships/cooperative-legal-services-delivery-clsd-program](http://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/cooperative-legal-services-delivery-clsd-program).
- About RRR Law can be found at [rrrlaw.com.au](http://rrrlaw.com.au).

## Helen McGowan

(Australian National University)

### Recognising and resolving conflicting interests in small scale regional practice

This presentation examined how regional lawyers endeavour to act ethically, while managing their various professional and personal roles, duties and interests. A principle of ethical legal practice is that lawyers must avoid 'conflicts of interests' although some suggest that conflicts can be 'managed'. The literature reveals that conflicts of interests and duties are difficult to avoid within regional legal practice due to the limited ability to refer clients elsewhere combined with a higher likelihood that the lawyer will have a pre-existing relationship with their clients or their clients' opponents. The presentation explored proposed empirical research into the ethical world of lawyers in small-scale regional legal practice. The hypothesis is that regional lawyers have developed a unique ethical approach to managing 'conflicts' which reconciles their specialist advocacy role with their contextualised practice within the regional communities in which they live. The research occurs alongside the proposed national alignment of regulatory functions, which aims (inter alia) to relieve practitioners' regulatory burden whilst maintaining a focus on professional excellence.



It has been suggested that the adoption of 'principles based regulation' will reduce the plethora of rules, whilst encouraging ethical practice wisdom. The discussion combines the two elements by arguing that a nuanced understanding of what actually happens when regional lawyers exercise their 'ethical instinct' may assist in two ways: firstly, the encouragement of a discourse approach to continuing professional development informed by an appreciation of applied ethics; and secondly, the promotion of ethical legal practice in the acculturation of new lawyers to regional practice.



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## Theme: Rural services and rural opportunity/ indigenous inclusion

**Daniela Stehlik, Lesley Chenoweth, Clare Tilbury, Donna McAuliffe, Ros Aitchison and Maree Collins**

(Charles Darwin University, Griffith University, Griffith University, Griffith University, Griffith University, Australian National University)

### 'Service' networks: the current and future of interagency committees

This paper explored a question which emerged at the first National Rural Law and Justice Conference in 2010: how can we attract the future legal and allied legal practitioners into rural and remote Australia? It was also a key issue in the recently released report from the Deakin Law School - Postcode Justice.

This is an important question not just for the Australian legal profession but more generally for all the professions.

The presentation described how the past decade has seen the 'normalisation' of what we have come to understand as FIFO (fly in - fly out) as a response to this demand for professionals. It has become normalised in the resources sector but, increasingly, it has become standard practice in the allied health professions - a fact which is yet to really 'hit' all the professions.

Drawing on national research, including an ARC Linkage Grant, the presentation described how such recruitment and retention strategies mean that practitioners spend minimal time with their peers in place. These peer relationships are critical to our understanding of the communities and the people practitioners are there to serve.

The presentation noted how Australia has experienced this kind of 'dystopian' relationship with place historically and suggested that while balancing the tensions associated with such a dichotomy may be manageable if one is working in the resources sector; for the human service professions it creates additional pressures and stresses on the practitioner. A further aspect to this challenge is the whole issue of mobility and needing to be able to spend time away from 'home'. The question, therefore, remains; is this a worthwhile compromise to actually living in place?

The presentation suggested that the professional inter-agency framework which has now been well-established in place for many decades is under threat as a result of this change in the mobility of professionals. Our current research has highlighted how fragile the inter-agency framework has become in communities, where practitioners are increasingly under pressure to meet their targets and KPIs and it highlights recent research in Queensland which has identified two different approaches to the inter-agency forums. In one of our study sites (a so-called 'hard to recruit to site'), none of the front line workers, or case-workers attended. Instead, membership was reserved for the senior practitioners. In another case study site, the inter-agency was highly valued among all practitioners as a place where they found out who was working and what the key issues were and how they were being managed and dealt with.

Our research has highlighted that a community that has an active and healthy inter-agency framework is one that has high social capital, invests time in its people and can, therefore, meet the challenges it faces with some resourcefulness. It becomes a community that welcomes newcomers, encourages them to contribute at a high level to their 'new' home and acts to promote recruitment and retention opportunities. We would



argue that there is a direct link between the health of an inter-agency framework and the health of the community.

**More information on this topic is available at:**

R Coverdale, Postcode Justice. Rural and Regional Disadvantage in the Administration of the Law in Victoria (Centre for Rural Regional Law and Justice. Deakin University, July 2011).

D Stehlik, "'Out there": Spaces, places and border crossings' in S Lockie and L Bourke (eds), *Rurality Bites. The social and Environmental Transformation of Rural Australia* (Pluto Pres, 2001), 30.

## Janet Hammill

(University of Queensland)

### Foetal Alcohol Spectrum Disorders (FASD) in the Criminal Justice System

Exposure to alcohol before birth can cause a sometimes invisible but lifelong, brain-based disability referred to as foetal alcohol spectrum disorder (FASD). Australia has been slow to recognise the possibility that FASD might be influencing the incidence of criminal offending despite common denominators such as illiteracy, early school dropout, lack of empathy and impulse control, inability to learn from experience and committing the same crimes repeatedly. This presentation is based on a Queensland study of FASD in the criminal justice system which surveyed the judiciary, legal fraternity and Indigenous community justice groups. The latter requested a model of care that could be used as a reference point for all services involved especially for prison staff and parole officers. The judiciary and legal fraternity asked for qualified experts to assess the ability of offenders in 'the exercise of judgement, planning, memory and ability to cope independently with everyday life'. While prevention of FASD is paramount, those already affected deserve a human rights approach based on best practice initiatives such as the neurobehavioural accommodation model (NAM).

**An adjunct publication from the same research study based on lawyer opinions can be found at:**

Heather Douglas, Jan Hammill, Anne Russell and Wayne Hall, 'The importance of foetal alcohol spectrum disorder for criminal law in practice: views of Queensland lawyers' (2012 forthcoming) *Queensland Lawyer*



## Theme: Managing rural conflict

### Skye Saunders and Patricia Easteal

(University of New England & Environmental Defenders Office)

#### 'Fit in or F&%\$ off!': The (non)reporting of sexual harassment in rural workplaces'

This presentation considered the complexities associated with the internal workplace disclosure of sexual harassment for rural employees. The presentation acknowledged the existence of certain accompanying 'special issues' for rural women and predicts that these elements (such as the traditionally conservative bush attitudes about violence against women, the added cultural dimensions of small-town gossip and self-reliance and the impact of isolation) would have some impact on the inclination of rural women to report workplace sexual harassment. To test that hypothesis, a sample of female employees and a sample of employers from different areas considered as 'rural' were interviewed. In defining 'rural' for this purpose the study discussed in this presentation adopted a social constructionist approach. The study showed the barriers to disclosure that respondents perceive and identified the types of rural workplaces (occupation, rurality, gender ratios) which tend to utilise sexual harassment policies and offer training as well as the impact of these on the likelihood of reporting. The study also investigated whether other variables, such as the type of harassment experienced, employees' attitude about what constitutes sexual harassment and reporting, age, seniority and/or education affects reporting. The presentation concluded that reporting practices could be improved by the implementation of visiting sexual harassment consultants/officers - who would visit rural communities to educate, hear complaints, help with the development of policies, provide advice/referral to counseling/mediation - and provide follow up.

**Full paper available at:**

Skye Saunders and Patricia Easteal, "'Fit in or F&%\$ off!": The (Non)reporting of Sexual Harassment in Rural Workplaces' *International Journal of Rural Law and Policy* [2012] (2) <<http://epress.lib.uts.edu.au/journals/index.php/ijrlp>>.



## Xanth Mallett

(University of New England)

### Forensic identification of perpetrators of child abuse

The societal impact of cases of child sexual exploitation is becoming ever more serious, with the number of perpetrators increasing significantly as new methods of dissemination become accessible with advances in technology. This has meant that indecent or abusive images of children taken, for example, in Australia, may be retrieved from hardware in the UK, or Far East - making this a truly world-wide crime and one, therefore, that does not observe conventional geographical, social and cultural boundaries between urban and rural. The Internet is a major source of traffic in terms of image dissemination and identifying the perpetrators has become more difficult as data is distributed across international networks. This has led to considerable problems for investigative agencies, as pedophile networks are not restricted by inter-organisational or territorial boundaries. New avenues have been sought to identify these predators, including one focusing on analysis of features of the hand (including scars, moles, freckles, knuckle patterns) which strives to offer reliable and repeatable evidence; available through evidential recovery - including computer hard-drives and mobile telephones. Case requirements relating to offender/suspect comparison have exploded in the UK, with numbers set to continue to rise. The results of the cases which have already been through the judicial process demonstrate the significant impact that the evidence produced has had on the prosecution of these types of crimes: seven offenders subsequently changed their plea from innocent to guilty when presented with the hand comparison evidence and a further four offenders have been found guilty by jury - partially as a result of the evidence provided by the identification team at the University of Dundee. To date, this is a potential, untapped mechanism in Australia.



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## Theme: Borders, boundaries and rural law

## Tony Meacham

(University of Southern Queensland)

### 20 years after Mabo - is there any more certainty for pastoralists, miners, and Indigenous people?

In June 1992 the Australian High Court brought down a decision in *Mabo and Others v Queensland (No. 2)* 175 CLR 1 that had a wide ranging impact upon those who lived and worked in rural and regional Australia - and has continued to do so. The decision upheld the claims of five plaintiffs from Murray Island that Australia was occupied by Aboriginal and Torres Strait Islander peoples who had their own laws and customs and whose 'native title' to land survived the Crown's annexation. Thus the Court recognised the existence of native title as part of Australian common law.

The Mabo decision presented many legal and political questions, including the validity of titles issued after the commencement of the *Racial Discrimination Act 1975* (Cth) and the permissibility of future development of land affected by native title.

Despite the progress in cases of the last 20 years, Justice French (when in the Federal Court) said it is 'the nature of native title litigation under the substantive law that it imposes heavy burdens on the human and financial resources of the principal parties involved'. It took the Mabo plaintiffs ten years for resolution. The *Native Title Act 1993* (Cth) will itself be 20 years old next year. Has there really been any substantive progress for affected parties?

## Robyn Bartel

(University of New England)

### Rising tides and taking sides: harmonisation and localisation in environmental law and policy

How can harmonisation successfully achieve the objective of being a 'rising tide that lifts all boats' rather than a race to the bottom of regulatory protection in response to industry pressures to reduce 'red tape' and the threat of forum shopping? The presentation briefly mapped the harmonisation concept, identifying the primary arguments for and against harmonisation in its various forms, before describing several case studies



from which recommendations were drawn to enhance the potential for best practice in the area of harmonisation. It appears that harmonisation depends on significant commitment by agencies involved, not only towards harmonisation as an objective, but to best practice harmonisation. Harmonisation may achieve appropriate goals if it reduces compliance costs and prioritises the achievement of environmental objectives, making them easier to attain. There remains the question of how harmonisation may be sensitive to a heterogeneous world, varying in both social and environmental phenomena. This is important, because there is evidence-based support for moving to more 'localised' and participatory governance in order to raise compliance and the success of environmental policies. Harmonisation may risk cementing the rural-urban divide and rural land use and water conflicts if it reduces rather than raises the influence of the vernacular in law and policy.



## Theme: Law and rural social license

### Keely Boom

(University of Technology, Sydney)

#### Kangaroo Court - enforcement of the law governing kangaroo killing

This paper sought to provide a fresh and independent analysis of compliance and enforcement in the commercial kangaroo industry. The presentation highlighted major problems in enforcement of the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies (Code). The key problem is that government agencies do not inspect shooters at the point of kill. The commercial killing of kangaroos occurs in remote locations and is largely hidden from the public. It is recommended that a national feasibility study be undertaken as a matter of priority to determine whether such inspections could be introduced and the costs that would be associated with such a program. In addition, there are no standards for inspections of the industry, nor are there standards for reporting by government agencies. As a result there is significant variety among the jurisdictions both in terms of practices and reporting. This presentation recommended the introduction of national standards for reporting offences. Finally, the welfare standards contained in the Code are problematic (particularly in terms of joeys and injured kangaroos) and the standards themselves need to be better integrated into state regulations. It is recommended that the Code and its integration in state regulations be improved.

### Mary Howard

(NSW Women's Industry Network Seafood Community)

#### The challenges with wild harvesting fish for food

The Australian Government's mandate to meet its World commitments is challenging all wild-harvest fishers' historic rights as they lose access to traditional fishing grounds: individual state governments legislate in an attempt to provide a whole community access right to fishing by balancing recreational fishing and the environment; communities are demanding sustainable fishing practices; retailers are endeavouring to capitalise from the sustainability debate by introducing sustainable marketing labels based primarily on the sustainable practices of the wild harvest fishery; environmentalists are demanding expansion of protected grounds for specific biodiversity and species protection; and recreational fishing communities are demanding exclusive access rights. In NSW, the politics of these competing demands can be demonstrated by looking at the management of NSW Fisheries over the past decade, noting the resource allocation changes and the productivity of the commercial fisheries over time. There have been significant impacts from boundary changes, with cross-over fishing when grounds are lost and technological changes are introduced; these impacts are not understood by the media and community. The presentation argued that there is a failure of government to: a) properly and fairly evaluate the whole of community impacts to Aquatic ecosystems; b) determine their rights to access locally harvested sustainably fished product; c) evaluate the impacts to the existing industry from increasing imports; and d) identify the biased standards in new legislation.

#### Full paper available at:

Hawkesbury River Commercial Fishing Association Inc, *Submission to the Independent Scientific Audit of NSW Marine Parks*, (2011) <http://www.marineparksaudit.nsw.gov.au/imagesDB/submissions/submission-s193/HowardHawkesburyCommercialFishingAssoc.pdf>

