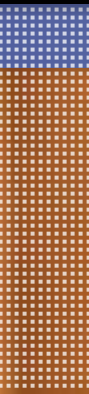




THE UNIVERSITY OF
WESTERN AUSTRALIA
Achieve International Excellence

FACULTY OF LAW

Research Report 2012



ACHIEVE INTERNATIONAL EXCELLENCE

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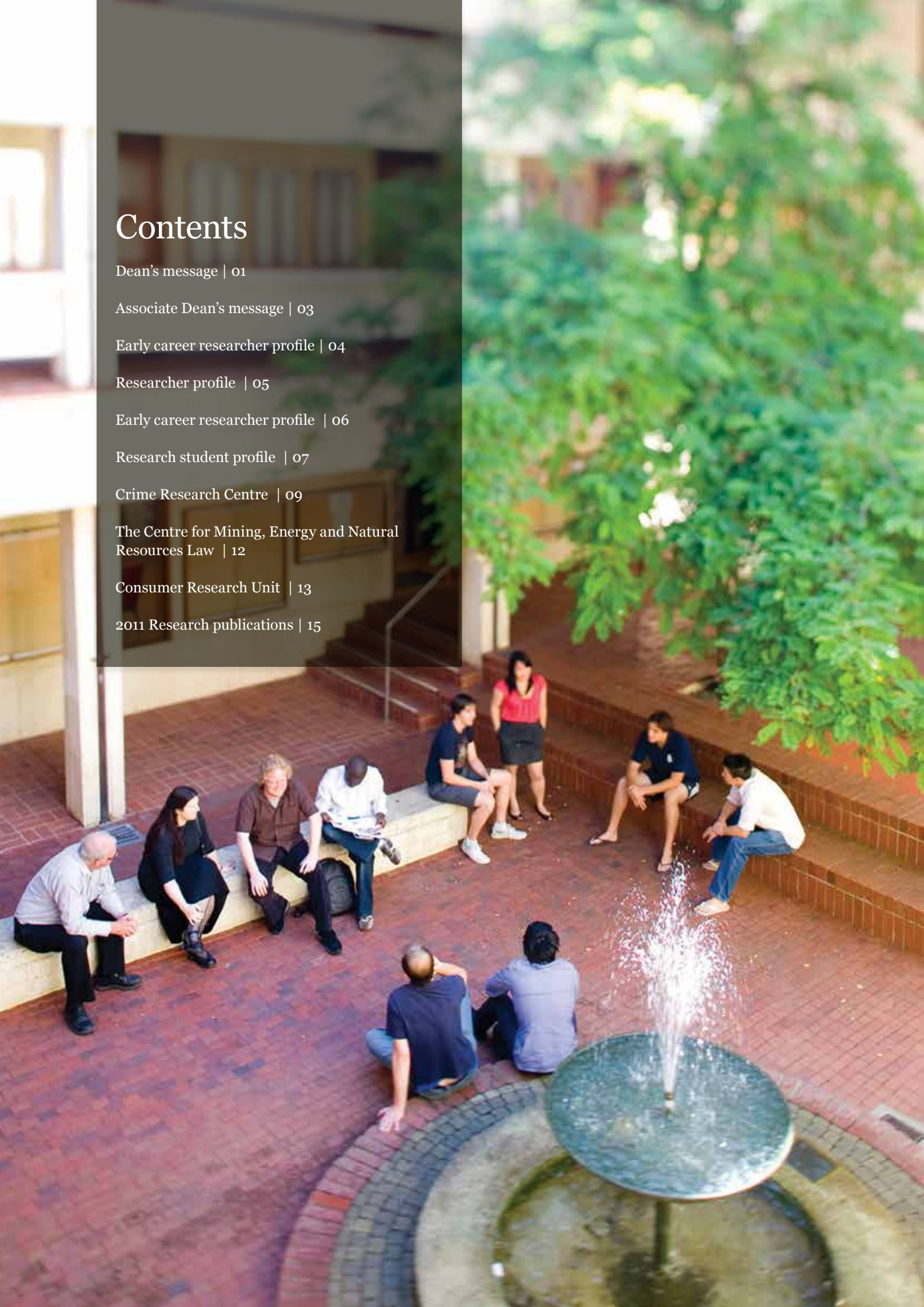
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Dean's message

The UWA Law School has a long tradition, extending over its 85 year history, of undertaking progressive research and scholarship. Academics in the Law School continue to research and publish in a wide variety of legal areas as well as contribute to inter-disciplinary projects and debates. The outputs of the Law School's research include scholarly books, legal journal articles and reports for policymakers, as well as conference presentations, public lectures, and community events. The Law School continues to produce the UWA Law Review, the oldest continuously published University law review in Australia.

The Faculty of Law is constantly building upon and expanding its areas of research strength. Our foci includes natural resources law, law and medicine, public law, intellectual property, international law and alternative dispute resolution. In each of these areas there are several researchers who work both independently and together in research clusters. The UWA New Courses programme has also resulted in the establishment of a further area of research strength – Law and Society. The researchers in this field have formed the *Law and Society Research and Teaching Network*, an interdisciplinary network that links academic staff, researchers and higher degree students who

engage with law in its theoretical, cultural, political or historical context. Law School staff also collaborate beyond the Faculty of Law, including with the UWA *Oceans Institute*, the *School of Indigenous Studies*, the *Centre for Ecohydrology*, and beyond the University with bodies such as the *National Centre for Groundwater Research and Training* (NCGRT).

The Faculty of Law is home to three research entities: the *Centre for Mining, Energy and Natural Resources Law*, the *Consumer Research Unit* and the *Crime Research Centre*. In 2012, the Law School had a number of successes in obtaining grant funding associated with these research groups. Amongst these was an Australia Research Council Discovery Grant for a project entitled the 'International Governance of Sharks: Options, Opportunities and Obstacles'. Professor Eileen Webb and Associate Professor Aviva Freilich, from the *Consumer Research Unit*, in collaboration with the *Council of the Ageing WA* (COTAWA) received funding from Lotteries WA to undertake research about security of tenure for the ageing population in Western Australia. In addition, the *Crime Research Centre* continues to host an Australia Research Council Future Fellow, Hilde Tübex, who is undertaking a project entitled 'Reducing imprisonment rates in Australia: international experiences, marginal populations and a focus on the overrepresentation of Indigenous people'.



This Research Report draws attention to current research projects, recent grant successes and key outputs of the UWA Law School. It demonstrates the commitment of Law School staff to legal research and academic scholarship which we hope is of interest to you.

Professor Erika J Techera
Dean, Faculty of Law



Associate Dean's message

The UWA Law Faculty has a longstanding commitment to improving the content and administration of the law at the local, national and international levels. This report shows that the Faculty's drive to ensure that the law serves as an instrument of positive social change remains undiminished. Moving forward, the Faculty is determined to remain true to its values even as it repositions itself to take account of the demands imposed by external measures of research performance.

This report showcases some of the areas in which the Faculty has long had a particular strength, including criminology, environmental and natural resources law, and consumer law. Significant work continues to be conducted in these fields. For example, the Consumer Research Unit recently obtained funding from Lotteries WA to examine issues around housing and accommodation for seniors in Western Australia. Against the backdrop of an ageing population the social importance of such work is obvious.

In the area of environmental law the Faculty continued to strengthen its links with other parts of UWA, in particular, its links with the Oceans Institute and the Centre for Ecohydrology. Also notable in this field was Professor Techera's success in winning a Discovery Grant from the Australian Research Council entitled 'Improving the Global Governance of Sharks: obstacles, options and opportunities'. This projects aims to make a significant contribution to shark conservation by identifying barriers to enforcement of existing laws and shortcomings in national and international regulatory frameworks.



The Faculty has also welcomed two outstanding early career researchers into its ranks over the past 12 months. Dr Catherine Kelly comes to UWA with an interesting and varied background. Prior to joining the academy Catherine worked at Freehills and the Australian Medical Association. She then undertook a doctorate in the history of medicine at Oxford, before returning to Australia. Catherine's research allows us to understand the legal regulation of the medical profession in its historical context, making us more sensitive to the historical contingency of the relationship between legal and medical claims to authority.

Theodore Bennett joins the Faculty having recently completed his PhD at UWA. Theodore has an outstanding academic record and an impressive string of publications behind him. His doctoral work concerned the mismatch between the ways in which the law and legal discourse regard bodily alterations and the subjective

experiences of those undergoing such alterations. Together Theodore and Catherine broaden and deepen the Faculty's already strong presence in the medical law and bioethics fields.

This is my last report as Associate Dean (Research) and I would also like to take this opportunity to thank those members of the professional staff who have provided invaluable support for the Faculty's research endeavours. Particular mention should be made of Dr Tim Pitman, the Faculty's Research Development Adviser, who continues to provide invaluable assistance with grant applications and of Jennifer Rhodes, who has done much of the work in preparing this report. I leave the Associate Dean's role confident that legal research at UWA has a bright future.

R. G. Burrell

Professor Robert Burrell
Associate Dean (Research)
Faculty of Law

Early career researcher profile

Catherine Kelly Law and Society, History of Law and Medicine

Dr Catherine Kelly is an Associate Professor in the Law School where she teaches on the Law and Society undergraduate major and researches on the history of medical regulation and lobbying. Prior to commencing as an academic, Catherine completed an honours degree in Law and Arts and worked as a commercial lawyer in Sydney and Canberra. She also worked at the Australian Medical Association.

Catherine undertook her MSc and DPhil at The University of Oxford under the supervision of Professor Mark Harrison. Catherine's DPhil was fully supported by a Wellcome Trust Doctoral Scholarship, and during her studies she was awarded the Clifford Norton Fellowship in the History of Science at The Queen's College, Oxford. In 2009, Catherine completed her doctorate on the impact of the Napoleonic Wars on British Military Medicine.

Catherine has a passionate interest in interdisciplinary approaches to the study of law and medicine. She has already an enviable publication record for someone so early in her career. Most recently, she published a monograph based on her doctoral thesis '*War and the Militarization of British Army Medicine, 1793-1830*' (Pickering & Chatto, 2011). In 2009 she edited a volume entitled *Lawyers' Medicine – The legislature, the courts, and medical practice, 1760–2000* (Hart Publishing, 2009). That volume has been recognised for bringing links between medical and legal history to the fore to illuminate a subject that remains under-researched – the relationship of medical professionals to development of law. She has also published several articles in international journals on the History



of Medicine. Catherine has recently been appointed to the editorial board of *Medical Humanities*, a leading international journal co-owned by the Institute of Medical Ethics and the British Medical Journal Group.

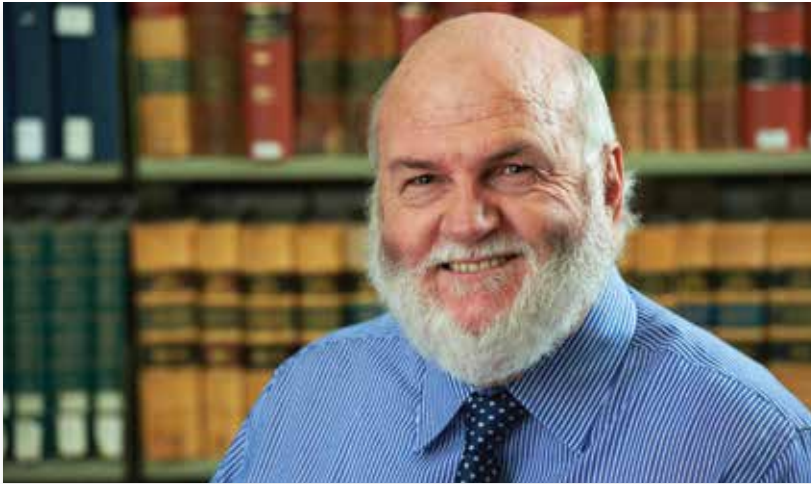
Catherine's ongoing research ties together three of her prime interests; the regulation of medicine, history of the professions and the interaction between legal and scientific knowledge systems. Her background as a solicitor and her research expertise in history, law and medical humanities, have influenced her approach to the study of history. She says 'in most of my work I have focused on how medical practitioners seek to persuade other practitioners and non-medical stakeholders. I am particularly interested in

the construction of argument and authority within the medical profession, and in the involvement of legislators in that process'.

In the next few years, Catherine intends to undertake further research on the relationship between medical practitioners and law makers in the early 19th century as well as broadening her research within modern Australia on the relationship between government regulation and medical innovation.

In 2014, Catherine will take up a Harold White Fellowship at the National Library of Australia for a research project titled 'Medicine, law and the lash: the experiences of military medical officers in Australasia 1800-1850'.

Researcher profile



Michael Gillooly Defamation and Remedies

Dr Michael Gillooly is a Professorial Fellow at the Law School of the University of Western Australia, and a former Associate Dean and Associate Dean (Research) of the Faculty.

After graduating with degrees in Arts and Laws from the University of Sydney, Michael spent a decade in practice before coming to UWA. He completed his Master of Laws degree there in 1991, and his PhD, with Distinction, in 2003. His thesis was entitled “The Third Man and the Australasian Defamation Defences”. After a term as Professor and Dean at the Law School at the University of Notre Dame Australia, Michael returned to UWA in 2009.

Over the years, Michael’s research interests have ranged over a variety of different areas. For example, he has written widely on commercial law topics – apart from numerous articles, he edited and contributed to both *The Law Relating to Corporate Groups* (The Federation Press, Sydney, 1993) and *Securities Over Personalty* (The Federation Press, Sydney, 1994). However, in recent times, Michael’s major research foci have been defamation and the law of remedies.

In the defamation field, his major works include *The Law of Defamation in Australia and New Zealand* (The Federation Press, Sydney, 1998) and *The Third Man – Reform of the Australasian Defamation Defences* (The Federation Press, Sydney, 2004). In a recent article in this area, Michael examined the phenomenon of libel tourism and the steps being taken in both the USA and the UK to control the practice: Gillooly M, “When Worlds Collide – Transatlantic Efforts to Curb Libel Tourism and Their Implications for Australia” (2012) 20 *Tort Law Review* 124. He was also recently invited to provide an expert report to the Special Inquiry set up to investigate allegations of child sexual abuse at various WA country hostels. The evidence at the inquiry revealed that the current law of defamation had provided a substantial disincentive to the reporting of such allegations. Michael’s advice and reform recommendations were appended by the Special Inquirer to his Final Report: Gillooly M, “Appropriate Reforms to Defamation and Protection Laws”, Appendix 7, Appendices pp 87-108, in Western Australia, Report of the Special Inquiry into the Responses of Government Agencies and Officials to Allegations of Sexual Abuse,

Legal coherence in the High Court: string theory for lawyers

For many years, the Holy Grail for theoretical physicists has been the formulation of one overarching theory that would explain and unite everything in the universe. At present, the most promising candidate for such an ultimate theory is one of the variants of superstring (or simply) string theory.

A parallel may be drawn between this quest for a master theory in physics and the recent jurisprudence of the High Court of Australia recognising the fundamental importance of the notion of legal coherence. Put simply, the law is not a disjointed grab bag of unconnected instances, bearing no relationship to each other. Rather it comprises a coherent and consistent whole. This concept of coherence provides the essential framework for developing, arranging and unifying the legal universe.

St Andrew’s Hostel Katanning: How the system and society failed our children (2012).

In the area of the law of remedies, Michael is co-author of the leading casebook in the area: Tilbury M, Gillooly M, Bant E & Witzleb N, *Remedies: Commentary and Materials*, 5th edition, Thomson Legal, Sydney, 2011. His recent researches have centred on the interplay and interconnection between different legal principles and areas of law: Gillooly M, “Legal Coherence in the High Court: String Theory for Lawyers” (2013) 87 *Australian Law Journal* 33 (see inset).

Early career researcher profile



Theodore Bennett Law and Society

Dr Theodore Bennett is an Assistant Professor in the Law School where he teaches in the Law and Society undergraduate major in the Bachelor of Arts program. He has completed a Bachelor of Arts (with a major in Philosophy), as well as a Bachelor of Laws with First Class Honours. Theodore received a Baillieu Research Scholarship to undertake his PhD full-time at UWA, which he completed in early 2013.

Theodore's PhD focused on critiquing the narrow and exclusionary ways that legal discourse works around bodies. In his research he found that the subjective meanings that people assign to their own bodies, bodily practices and body alterations do not always match up with the meanings attached to them by legal discourse and their subsequent legal treatment. For example, he explains that "some cuts and injuries that are understood

as beneficial, empowering or desirable by the people who undergo them may be sanctioned as harmful violence by the law, and vice versa". In his PhD thesis Theodore sought to give voice to these alternative accounts in order to make the law more reflective of the realities of embodied experience.

"We all share in common the fact that we are embodied, and our bodies constitute a significant part of who we are and how we live in the world."

Theodore's broader research interests centre around the legal limitations on, and effects of, what we can do with our bodies and the ways in which we alter them. He believes that the law in this area

is of importance to everyone. "We all share in common the fact that we are embodied, and our bodies constitute a significant part of who we are and how we live in the world", Theodore says, "thus the policies and practices of law that impact on our bodies raise core concerns that affect all of us". Whilst working on his PhD, he published a number of articles that address these concerns by engaging with a diverse range of bodily activities and body altering practices, including cosmetic surgery, female genital mutilation, healthy limb amputation, and sadomasochism.

Over the next few years, Theodore plans to work towards having his PhD thesis published as a monograph, as well as to continue his research into areas related to law and the body. Forthcoming articles (to be published later this year) extend his research into the topics of sex reassignment surgery and censorial restrictions on filmic depictions of bodily activities.

Research student profile

Madeleine Hartley, PhD Profile: Regulating for Groundwater Use Efficiency

Madeleine commenced her PhD in groundwater law at UWA in 2010, supervised by Associate Professor Alex Gardner. Her thesis hypothesises the existence of a crucial link between sustainable development and water use efficiency. It suggests that groundwater law frameworks will be most effective at regulating for its efficient use when founded on principles of sustainability.

“It’s about securing a water future,” explains Madeleine, who completed a Visiting Scholar post at Sturm College of Law, Denver University, between 2011 and 2012. “It’s great that we are exploring alternatives for our water supplies, but regardless, we need to be more efficient with our use.”

The premise of Madeleine’s research is that, given the drying climate and increasing population, we need to look at using water more efficiently in order to ensure a water-secure future. And because we’re looking to the future, we must necessarily incorporate principles of sustainability. While this is important for all water resources, it is particularly essential for groundwater resources, which recharge at a substantially slower rate than surface water resources, but are increasingly tapped as surface water supplies become less reliable.

Through focusing on sustainability, Madeleine is setting the objective of water use efficiency to ensure that there is sufficient water for present and future use. This includes sufficient water to preserve the ecosystem services that control the health and quality of our water supplies.





“The law can play a crucial role in regulating people’s behaviours and attitudes towards water use. Ultimately, however, we want the implementation of these suggestions to be coming from the users themselves, as they absorb the benefits of such a framework.”

“The law can play a crucial role in regulating people’s behaviours and attitudes towards water use.”

Madeleine’s research examines three jurisdictions: the Gnamptara Mound in Western Australia, the Namoi Valley in New South Wales, and Colorado, USA.

“By conducting comparative research, I am given the opportunity to examine this issue across disparate jurisdictions. What I have found is that, while Australian water law frameworks are generally premised on principles of sustainability, their counterpart in Colorado is not.

“But when unraveling the puzzle, we start to see that the sustainability aspects of Australian water law frameworks may be more procedural than substantive. And conversely, although Colorado’s water law framework may not be premised on principles of sustainability, it does seem to incorporate ideas of water use efficiency. This makes for a focused study of how legal frameworks can best regulate for this concept.”

Upon completion of her PhD in late 2013, Madeleine will practice water law in Sydney, and will one day return to Colorado to concentrate on international research.

Madeleine’s research contends that legal frameworks can help regulate for the efficient use of water by imposing both mandatory and non-obligatory measures. These can help ensure that water is put to its most productive use, that its use is metered against entitlement limits, and that water users are

equipped with plans to help them monitor their use and improve efficiency. Although it is important that water users be involved in implementing these measures, it is equally important that governments establish a strong compliance and enforcement strategy.

Crime Research Centre



The year 2012 was successful for the Crime Research Centre in terms of publications, research and postgraduate research training. Further publications flowed from the ARC Discovery Project grants received and reported on in previous years and the Centre's Australian Research Council Future Fellow, Dr Hilde Tubex, consolidated work on her project on reducing imprisonment rates in Australia. In total, Centre staff, students and associates published four book chapters, 11 refereed journal articles and 6 public policy reports.

Writing continued for the publication of national results for the ARC Discovery Project, *Challenges, possibilities and future directions: a national assessment of Australia's children's courts*. A book chapter by CRC researchers (Spiranovic, Clare, J, Clare M and Clare, B) was in press and was scheduled for release in early 2013. This followed the launch of the Western Australian research results in a report launched by the President of the Children's Court, Judge Denis Reynolds, in November 2011.

A second ARC Discovery Project, *Sentencing and public confidence: public perceptions and the role of the public in sentencing practice*

and policy led to the publication of a further two academic journal articles in 2012 published in the journals *Punishment and Society* (Indermaur, Roberts, Spiranovic, Mackenzie and Gelb) and the *International Journal of Criminal Justice* (Indermaur).

Work continued in 2012 in the second year of a three-year collaborative NHMRC project between the School of Psychiatry and Clinical Neurosciences and the Crime Research Centre (Morgan and Ferrante). The project is entitled *Life course trajectories and neuropsychiatric outcomes in an e-cohort of high-risk children of mothers with psychosis* and the total



amount of the grant is \$770,475. The project continues a productive long-term collaboration between these University of Western Australia researchers in conjunction with academics elsewhere in Australia and in Sweden. In 2012, the group published a paper in the high-impact journal *Psychological Medicine* on the patterns of criminal offending in people with schizophrenia and other mental illnesses (Morgan, V, Morgan F, Valuri, Ferrante, Castle, and Jablenski)

Other research publications provided evidence of both long-term research interests and forays into new areas. In the established areas were publications on private prisons and the regulation of prison conditions (Harding in *Punishment and Society* and the *Oxford Handbook of Sentencing and Corrections*), fear of crime (Indermaur with Roberts in a book chapter and Indermaur and Spiranovic with Roberts in *Psychiatry, Psychology and Law*), examining the distribution of crime (Morgan and Clare in a book chapter), data linkage

(Ferrante with others in two journal articles) and risk factors for Aboriginal Australians (Ferrante in *Race and Justice*). In new areas research published by Joe Clare in a series of publications with Plecas and Garis provided evidence of the transfer of known techniques for crime prevention and the spatial analysis of crime, to other areas of public safety (six separate publications).

Research continued on another project to assess the efficacy of the Static-99 and Static-99-R actuarial risk assessment tools to predict re-offending for Western Australian sex-offenders. In 2011, total funding of \$49,788 was obtained from the University and also the WA Department of Corrective Services for this project, which enabled a long-term follow-up of re-arrests in the Western Australia population of sex offenders. This research was described in a 2012 report by Caroline Spiranovic. The project investigated whether these actuarial risk assessment tools are cross-culturally valid as well as whether

indefinite periods of further detention or community supervision are warranted on the basis of empirical evidence. Building on the success of the Western Australian project, and great national interest in the reoffending risks of sex-offenders, national funding of \$46,000 from all Australian corrective services agencies was obtained to plan and develop a project to extend the research across Australia. The national project commenced in late 2012 and is expected to lay the groundwork for further funding applications by the end of 2013.

The Crime Research Centre's Future Fellow, Professor Hilde Tubex, continued to advance her project in 2012 and she consulted widely with researchers in Europe where many countries are exceptions to the rise in prison populations in the USA, the UK and Australia. Dr Tubex presented papers on the emerging results of her project in both Budapest and Amsterdam. The first presentation was *Driving forces of a (Punitive) Penal Policy* at the Summer School Program, Managing Social Vulnerability: The Welfare and Penal System in Comparative Perspective, organised by New York University and the Open Society Institute on July 18, 2012 in Budapest. The second presentation was entitled *Australian Prison Populations in the Light of International Explanatory Models*, at the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR), on August 29 in Amsterdam. NSCR is the major national institute in the Netherlands for the criminological and criminal justice research.

Preparations by Dr Tubex and CRC administrative staff were well advanced for the staging of an international seminar at Rottnest Island and an associated conference in Fremantle in January 2013. International and national experts agreed to present papers at the seminar and conference and to contribute to a publication

on the outcomes of the seminar presentations and critical responses to these presentations.

High levels of postgraduate research student enrolment were maintained in 2012 and two students (one PhD and one Masters by Research student successfully submitted their theses. These were respectively Anahita Movassagh Riegler (supervisors Frank Morgan and Robin Carroll, Law) and Jenny Turner-Walker (supervisors Harry Blagg and Frank Morgan). In total, eight postgraduate students (7 PhD and one SJD) were being supervised by CRC staff (Drs Morgan, Indermaur, Tubex and Spiranovic) along with co-supervision where appropriate with other areas of the Law School and with other University schools, including Psychiatry and Clinical Neurosciences, and Social Work.

Visitors to the Centre in 2012 included Professor Rob White from the University of Tasmania, Professor Thomas Crofts and Mr Garner Clancey from the University of Sydney and Dr Adriaan Denkers and Professor Henk Elffers from the Free University of Amsterdam. Associate Professor Crofts and Mr Clancey are respectively the Director and Deputy Directors of the Sydney Institute of Criminology. Dr Denkers presented a Master of Criminal Justice unit *Dealing with Victims* in March and also gave a presentation to the Faculty on March 21 on *Littering, tax fraud, academic misconduct and company defiance*. Professor Elffers visited the Centre in April to advance his collaborative research on repeat victimisation with Frank Morgan. Professor Elffers also gave a presentation to the Faculty on April 2 on the topic *Experiments in guardianship research*.

Centre staff also contributed to the academic criminological community in other ways. They continued to present papers at national and international conferences, including

the Australian and New Zealand Society of Criminology annual conference held in Auckland in 2012. They are represented on key criminal justice committees and advisory groups such as the National Crime Statistics Advisory Group (Professor Frank Morgan chairs this group), grant advisers to the Criminology Research Council (Professor David Indermaur) and the Management Committee of the Australian and New Zealand Society of Criminology (Professor Hilde Tubex is the representative for Western Australia). Professor Morgan is also an assistant editor for the Australian and New Zealand Journal of Criminology and Taruia Nicholls was appointed to the editorial board of the International Journal of Comparative and Applied Criminal Justice. Staff members are active contributors

to reviews of papers submitted to major national and international criminological journals. For example, in 2012, researchers contributed to reviews for the Journal of Quantitative Criminology, the Journal of Research in Crime and Delinquency, the Australian and New Zealand Journal of Criminology, Criminology and Criminal Justice, and Punishment and Society. Staff also contributed to reviews of grant applications for the Australian Research Council and National Health and Medical Research Council.

The Centre continued to offer units in its Master/Diploma of Criminal Justice courses and in February Dr Frank Morgan delivered a 2-day statistics short-course to clinical evaluation staff in the Department of Corrective Services.



The Centre for Mining, Energy and Natural Resources Law

The members of the Centre have a very active research programme covering mining, petroleum, water and other natural resources and related areas such as the environment. Current areas of focus are:

- ↘ Governance of mining and petroleum
- ↘ Shale Gas
- ↘ Native Title
- ↘ Water
- ↘ Oceans and marine life
- ↘ Climate change

Governance of Mining and Petroleum

During 2013 the Centre conducted a survey of corporate governance practices of small to medium-sized resources companies with KPMG. This was done by Professor John Chandler and Assistant Professor Barbara Gordon. This will lead into a further project in 2014 by Professor Chandler and Professor Terence Daintith researching how petroleum regulation looks at the competence of project operators and their governance practices. Operator competence has become even more critical since the Montara and Macondo oil spills.

Shale Gas

Shale gas is emerging as a very significant energy resource for Australia, with Western Australia's Canning Basin being amongst the most prospective. Simon Robb is currently researching the regulatory implications of developing shale gas.



Native Title

Professor Richard Bartlett is preparing the 3rd edition of his treatise on Native Title in Australia. The research and writing of the treatise will ensure a more detailed and contemporary understanding of Native Title, which continues to be highly significant for the resources industry.

Water

Water is critical to human society, but is also a key element in mining and shale gas development (it is used in huge quantities for hydraulic fracturing or "fracking"). Associate Professor Alex Gardner is a chief investigator for the National Centre for Groundwater Research and Training and is working on projects for sustainable water use and mine dewatering.

Oceans and marine life

Professor Erika Techera is working on projects on marine environmental governance and cultural heritage law and policy at global, regional and national levels. She is currently researching the legal protection of sharks and manta rays, whose migratory patterns extend throughout the Indian Ocean region.

Climate change

Climate change may well result in the displacement of tens of millions of people due to rising sea levels, drought, and more frequent and severe storms. Associate Professor David Hodgkinson is leading an international team working on a draft convention for persons displaced by climate change

Consumer Research Unit

The Consumer Research Unit (CRU) undertakes research that leads to a greater understanding of consumer markets, consumer protection frameworks and consumer rights. The CRU was established in 2011 as an independent unit within the Faculty of Law and has the continuing support of the Western Australian Department of Commerce. Eight basic consumer rights inform the research undertaken by the CRU:

- The right to satisfaction of basic needs
- The right to safety
- The right to be informed
- The right to choose
- The right to be heard
- The right to redress
- The right to consumer education
- The right to a healthy environment

2012 has been a busy period for the CRU with a flurry of publications and activities. The CRU's research continues to focus on the protection of consumer rights particularly in relation to vulnerable consumers.

Key personnel

The CRU is headed by Professor **Eileen Webb**. Eileen conducts research in three broad categories. First, her research on consumer rights and real property transactions has a particular focus on housing and tenancy law. Second, her research on vulnerable consumers pays particular attention to issues confronting senior consumers. Finally, her research on the nature and definition of a 'consumer' explores, for example, whether the traditional notion of a consumer should be extended to include small businesses. Eileen is a member of the Executive of the Western Australian Consumers Association, the Management Committee of the Consumer Credit Legal Service and the Editorial Boards of the Competition and Consumer Law Journal and the Property Law Review.



Associate Professor **Aviva Freilich's** research covers definitional issues in relation to the concept of consumer, consumer rights in post-sale transactions and the plight of seniors as consumers in particular in relation to housing. Aviva has been involved in consultancies for the Small Business Development Corporation, conducted seminars for the WA Law Society on consumer themes and is a member of the Management Committee of the Consumer Credit Legal Service of WA.

Professor **Nyuk Nahan nee Chin** has assisted with research on consumers rights. Her interests in relevant common law and equitable principles

complements the CRU's work and she continues to be an enthusiastic supporter of the CRU.

Published Research Consumer Law and Policy in Australia and New Zealand

Members of the CRU were involved in writing three chapters of a major research monograph *Consumer Law and Policy in Australia and New Zealand* edited by Professors Luke Nottage (University of Sydney) and Justin Malbon (Monash University). This book examines the 2010 'Australian Consumer Law' reform package in broader context. It considers parallel re-regulation of consumer credit and

other financial markets impacting on consumers. It also compares recent reform initiatives in New Zealand, Australia's closest economic and geo-political partner, as well as developments in other major economies including the European Union, Japan and the United States. In addition, the book examines policy considerations and market transformations, as well as the often complex legislative history associated with recent consumer law reform proposals in Australia and New Zealand. Aviva Freilich collaborated with Lynden Griggs (University of Tasmania) in writing Chapter 2, *Just Who is the Consumer? Policy Rationales and a Proposal for Change*. Nyuk Nahan nee Chin and Eileen Webb wrote Chapter 5: *Unfair Contract Terms in Consumer Contracts* and Chapter 6: *Unconscionable Conduct in Consumer and Business Transactions*.

The book has been the subject of excellent reviews, for example Professor Stephen Coronos' review in the *Australian Business Law Review* (2013) 41 ABLR 162: "very impressive work in terms of the breadth and depth of its scholarship [, which] fills a major gap in the academic literature on Consumer Protection Law in Australia and New Zealand in that it is the first comprehensive analysis of the 2010 *Australian Consumer Law* (ACL) reform package from a policy perspective."

International Responses to Issues of Credit and Over-indebtedness in the Wake of Crisis

Eileen Webb was invited to contribute a chapter to *International Responses to Issues of Credit and Over-indebtedness in the Wake of Crisis* edited by Dr Therese Wilson. The book explores the political, economic and regulatory context in which credit regulation is taking place following the global financial crisis. Eileen's chapter, *Extending Responsible Lending to Small Business: A 'Consumer Categorization examined whether it is appropriate for Australia's consumer credit legislation to apply to small businesses.*

Research Grants

Security of tenure for Western Australia's ageing population

In 2012, the Consumer Research Unit, in collaboration with the Council of the Ageing Western Australia (COTAWA), received funding from Lotteries WA to undertake research about security of tenure for the ageing population in Western Australia.

Specifically, the research examines whether the existing legal framework supports seniors in their on-going housing needs. The research team, comprised of Eileen Webb, Aviva Freilich and Pnina Levine, will be advised by a reference group appointed by COTAWA. The reference group is comprised of persons drawn from law, government, carers, agencies and the community with expertise in matters affecting seniors and seniors housing. Input from the public is an integral part of the project and community involvement is encouraged.

The CRU will identify legal issues affecting WA seniors in relation to housing and accommodation. Although some accommodation issues are shared by all ages of the population, such issues may impact on seniors in a different or more onerous way. Some are distinct to seniors while others are distinct to WA. Particular focus will be directed at housing options for seniors with disabilities, culturally and linguistically diverse backgrounds and low-income, low asset seniors. The study is state-wide with participation from seniors in rural and regional areas.

The research will take a similar approach to the 2004 Law and Justice Foundation's project on the Legal Needs of Older People in NSW (<http://www.lawfoundation.net.au/report/older>) but with a focus on the Western Australian law and the housing environment for seniors in Western Australia. The aim is to identify housing and accommodation related issues through engaging with seniors, carers, agencies and other stakeholders, give an account of laws relevant to these situations and expose

the shortcomings in or difficulties experienced by seniors in relation to the existing law. The research will identify issues which can be pursued later by university researchers, relevant agencies and/or government. It is envisaged the findings will ultimately lead to law reform in several highlighted areas.

Security of tenure for the ageing population in Western Australia and Alberta – Is the law keeping pace with housing and accommodation issues affecting seniors?

This project, funded through a UWA internal grant scheme, involves joint research between the CRU and the Department of Human Ecology at the University of Alberta, Canada under the auspices of Stage 2 of the World Universities Network project – The Global Social Initiative on Ageing. The research will catalogue, review and assess the effectiveness of housing and accommodation laws affecting Seniors in Western Australia and Alberta, two very similar jurisdictions in terms of society, economy and the legal system. It is anticipated the initial research will lead to a larger study of Australian and Canadian laws relevant to Seniors' housing and accommodation choices.

Telecommunications scams affecting humanitarian migrants

Graduate Law student, Alicia Snyders and Professor Eileen Webb, with the assistance of the Edmund Rice Centre, Mirrabooka, undertook research concerning alleged instances of misconduct engaged in by some telecommunications companies towards migrants and humanitarian entrants in Perth. The objectives of the research were to identify practices utilised by telecommunications corporations and their representatives that may contravene inter alia Australian consumer and telecommunications laws. The research was completed in December 2012 and will be published in 2013 in the *Competition and Consumer Law Journal*. Alicia and Eileen will also be presenting findings at the International Association of Consumer Law conference in Sydney in July 2013.

2012 Research publications

Books

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WESTERN AUSTRALIA
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Faculty of Law

The University of Western Australia
M253, 35 Stirling Highway
Crawley WA 6009
Tel: +61 8 6488 2995
Fax: +61 8 6488 1045
Email: jennifer.rhodes@uwa.edu.au
law.uwa.edu.au