

CENTRE FOR COMPARATIVE AND PUBLIC LAW
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ASIAN INSTITUTE OF INTERNATIONAL FINANCIAL LAW
FACULTY OF LAW, THE UNIVERSITY OF HONG KONG

Seminar

**Preserving the ‘Analytic Framework’ of Law:
The Challenge of Industry Rulemaking**

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Friday, 8 November 2013, 12:30 - 1:30 pm
New Venue: Room 920, 9/F Cheng Yu Tung Tower
The University of Hong Kong

Australia, like a number of Western countries, continues to emphasise direct participation in rulemaking by the ‘targets of regulation’ in an attempt to find solutions to a variety of regulatory problems. However, permitting industry to engage in rulemaking, a task historically seen as the responsibility of the state, is a starting point that raises a ‘new set of questions’. One such question is whether the process of industry rulemaking and the rules that industry produces are ‘too responsive’ to those involved, such that the integrity of ‘law’ is undermined. This paper explores this question in the context of Part 6 of the Telecommunications Act 1997 (Cth), which permits ‘sections of the telecommunications industry’ to formulate and seek the registration of codes of practice dealing with a variety of matters, including consumer protection, with the Australian Communications and Media Authority (ACMA). It seeks to answer the question by posing a legal question – to what extent is Part 6 rulemaking procedurally and institutionally legitimate. This issue, one of a larger range of questions concerning the compatibility of Part 6 rulemaking with the values and principles of Australian law, centres on the conformity of Part 6 rulemaking with the procedural and institutional aspects of the rule of law. Drawing on the experience of the Communications Alliance (the Australian telecommunications sector’s ‘peak’ self-regulatory body) formulating codes of practice, this paper argues that while Part 6 rulemaking may push the boundaries of ‘traditional’ procedural and institutional legitimacy, it is nevertheless consistent with them in many (and perhaps surprising) ways.

Karen Lee rejoined the School of Law at the University of New England as a lecturer in January 2013 following two years at the ANU where she was a lecturer at the ANU College of Law (2011) and a Departmental Visitor at ANU’s internationally acclaimed Regulatory Institutions Network (2012). She has also taught at University of Technology, Sydney, and Queen Mary, University of London. Prior to becoming an academic, she worked for Denton Wilde Sapte (London) in its TMT practice, where she specialised in telecommunications regulation. She was seconded to the Office of Telecommunications in 1998-1999 and to the Department of Trade and Industry in 2002. She is a graduate of the Indiana University Maurer School of Law and a qualified lawyer in New South Wales, Illinois and England and Wales. She is a contributor (with Jamison Prime of the US Federal Communications Commission) to *Telecommunications Law and Regulation*, edited by Professor Ian Walden, Queen Mary, University of London, and published by Oxford University Press. She is also a contributor to *Australian Telecommunications Regulation*, edited by Alasdair Grant and David Howarth, and has published in the *Federal Law Review*.

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