

## Sir Harry Gibbs Lecture, University of Queensland

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I would like to knowledge the traditional owners of the land on which we meet and their elders past and present. Thank you so much to the organisers of this lecture, <sup>i</sup> the University of Queensland Law Society.

### *Reflections on student viewpoints*

When I was a law student, I did not know much compared to modern law students about the forces that shaped our society. I did not understand my fellow students who staged a sit-in at University of Sydney, to passionately demand that real world political economic theory courses be taught. To give you an idea, back in the 80's my favourite book was Jane Austen's *Pride and Prejudice*.

I loved snorkelling on the 2,300 km long Great Barrier Reef, without thinking too much about its protection. Many years later I read *A Coral Battleground* (1977) by Judith Wright. It tells the inside story of the crucial work by a small group who battled to protect the reef from limestone mining and oil drilling in the late 1960's and 70's. That battle included court proceedings. Later their group grew to include scientists, unionists, and politicians and led to a world-first in 1975 – the formation of the Great Barrier Reef Marine Park Authority, to guard and manage the Reef.

I did love bushwalking in national parks. Yet when a student, I was blind to the important truth that extended political and public advocacy was the pathway to creation of those public assets. Later I discovered that truth, reading *Myles and Milo* (1999) by Peter Meredith. It tells the inside story of early leadership by Myles Dunphy for protection of key wilderness areas in New South Wales.

Given my limited views as a student, it is a pleasure to meet so many sophisticated young lawyers who both know the urgent challenge to secure a safe climate and who are keen to help tackle that serious and severe problem. The UQ Pro Bono Centre does a wonderful job of connecting students to community legal centres like Environmental Defenders Office, enabling students to gain valuable experience and to directly support access to environmental justice for clients. As members of the legal profession, we all have choices and we all contribute to its culture.

### *Cultural Change in the Legal Profession*

It is so exciting that we are seeing leaders of the legal profession urging and creating cultural change. In January 2021, Chief Justice Brian Preston<sup>ii</sup> of the New South Wales Land and Environment Court urged lawyers generally to take a stand on climate change, to discuss the moral and ethical dilemmas with their clients as well as discussing climate risks to clients'

business interests. I recommend that you read that article and consider His Honour's suggestions.

And it's worth mentioning a landmark call for climate legislation by the Queensland Law Society. In 2020<sup>iii</sup> the Queensland Law Society released its pre-election call to all political parties. The call sought commitment to a climate act - an effective, evidence based legislative framework to respond to climate change. This is a first for Queensland and as far as I am aware, the first time any of our legal representative organisations across Australia have made that call at State or territory election time.

### *Growing momentum through the Courts*

The further good news is that while urgent and serious challenges must be met, over the last year there have been many hard fought and exciting Court wins in the public interest environmental field in Australia. I will highlight five of those.

#### 1. Galilee Coal and Human Rights

In August 2021, Clive Palmer's Waratah Coal failed in its bid to strike out human rights objections to its proposed Galilee Coal mine for Central Queensland.

This now allows EDO's two Clients, Youth Verdict and the Bimblebox Alliance, to continue to pursue a range of human rights objections in the Queensland Land Court to this mine. The human rights issues have particular reference to the impacts of climate change on the rights of young people and on the cultural rights of First Nations peoples in Queensland. The Land Court objection will also involve a range of expert and lay witnesses for EDO clients providing evidence of the impacts of the proposed mine.

Dr Justine Bell-James and then-student Briana Collins researched this new line of objection using the new *Human Rights Act 2019 (Qld)*<sup>iv</sup> and contributed to the human rights arguments developed by EDO.<sup>v</sup>

#### 2. Bushfires Survivors and statutory duty to address climate change

In August, 2021 for the first time, an Australian Court directed a government to take action to address climate change.<sup>vi</sup>

EDO's client, the Bushfire Survivors Against Climate Change, successfully argued in the New South Wales Land and Environment Court that the Environmental Protection Authority had a duty under legislation to address climate change. The Court ordered the EPA to develop environmental quality objectives, guidelines and policies to ensure protection from climate change.<sup>vii</sup>

This exciting decision will potentially apply to other Australian government agencies with similar legislative obligations.

#### 3. Sharma's case, an expansion of the duty of care towards children

This is a ground-breaking case. In May and July 2021, the Federal Court found the Federal Environment Minister owed a duty to take reasonable care to avoid harm to Australian

children from carbon dioxide emissions into the Earth's atmosphere, when deciding whether to approve a new coal mine.

Eight Australian children lead by Anjali Sharma, and by their litigation representative Sister Marie Brigid Arthur, sought an injunction to stop the Minister from approving the Vickery coal mine. Equity Generation lawyers represented the clients.

The Court found a duty while not granting the injunction. The court also found that climate change poses a real risk of death and personal injury to Australian children, and that 100Mt of additional greenhouse gas emissions from the Vickery Coal Mine increases that risk of harm.

Given this finding, logically the duty would apply to consideration of all proposed coal mines that increase the risk of harm. This is a powerful precedent case. <sup>viii</sup> The Minister has lodged an appeal.

#### 4. Oakey Coal Action Alliance wins in the High Court

In February 2021 was the first ever win by a community group against a mining company in the High Court.

In 2016, EDO's client, the Oakey Coal Action Alliance, an association of farmers and landholders, lodged an objection in the Queensland Land Court to the proposed Stage 3 thermal coal expansion of the New Acland mine. That mine expansion on the Darling Downs threatened some of the best agricultural land in Queensland.

The Alliance was represented by a team of EDO staff lawyers and volunteers and members of the Bar. That Land Court objections case involved the objectors and the mining company calling many expert and lay witnesses about the impacts of the existing mine and proposed mine. That first objections hearing took a record 99 days of hearings in the Land Court.

After Alliance success in the Land Court, appeals by the mining company against the Land Court's recommendation, appeals by the Alliance, and eventually the High Court decision on apprehended bias, the parties are back to the Land Court for a rehearing. <sup>ix</sup>

Above all, the landmark High Court win, the first for a community group against a mining company in the High Court, shows the tenacity of landholders faced with the threats posed by expansion of an existing controversial coal mine and how EDO lawyers and members of the Bar provide professional representation at the highest level.

#### 5. Applying the Water Trigger to the North Galilee Water Scheme

In May 2021 EDO's client the Australian Conservation Foundation won in the Federal Court. The Court found the Minister's decision not to apply the "water trigger" to water infrastructure integral to the Adani Carmichael coal mine was an error of law.

The North Galilee Water Scheme would see up to 12 billion of litres of water per year extracted from the Suttor River for the Carmichael coal mine. The Court held it was integral to that large coal mining development. The Minister must now consider if the North Galilee

Water Scheme is likely to have a significant impact on a water resource as required under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). Public comments are currently open on referral of the action.<sup>x</sup>

This fifth public interest environmental case is a powerful national precedent that major mining projects do include relevant water infrastructure.

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<sup>i</sup> <https://law.uq.edu.au/event/7761/uqls-sir-harry-gibbs-lecture>

<sup>ii</sup> <https://www.afr.com/policy/energy-and-climate/top-judge-urges-lawyers-to-take-stand-on-climate-change-20210115-p56uhc>

<sup>iii</sup> <https://www.qlsproctor.com.au/2020/10/call-to-parties-sustainability-climate-and-disaster-response/>

<sup>iv</sup> "Queensland's Human Rights Act: A New Frontier for Australian Climate Change Litigation?" [2020] UNSW LawJl 2; (2020) 43(1) UNSW Law Journal 3

<sup>v</sup> <https://www.edo.org.au/2020/08/28/young-australians-in-human-rights-win-over-clive-palmer-mine/>

<sup>vi</sup> <https://www.caselaw.nsw.gov.au/decision/17b7569b9b3625518b58fd99>

<sup>vii</sup> <https://www.edo.org.au/2021/08/26/bushfire-survivors-hail-landmark-legal-win-on-climate/>

<sup>viii</sup> <https://equitygenerationlawyers.com/cases/sharma-v-minister-for-environment/>

<sup>ix</sup> <https://www.edo.org.au/2021/02/03/high-court-victory-as-acland-mine-sent-back-for-fresh-hearing/>

<sup>x</sup> <https://www.edo.org.au/2021/05/25/adani-mines-water-plans-set-to-face-new-scrutiny-after-court-win/>