

## NATIONAL AFFAIRS

### Australia

## Access to Environmental Justice – A National Perspective –

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This article reviews access to environmental justice in Australia, with specific reference to its specialised environmental courts and to the Land and Environment Court in the State of New South Wales in particular.<sup>1</sup>

### Constitutional Framework

Under its 1901 Constitution, Australia became a federation of six constituent States and two Territories (the Northern Territory (now a State)) and the Australian Capital Territory governed by the new federal (or Commonwealth) Parliament – nine separate parliaments or legislatures, most of which have lower and upper houses. Covering seven and a half million square kilometres with a coastline some 36,800km in length, Australia lies almost 39% within the tropics although much of this is not fertile land due to its lack of great waterways and consistent rainfall. Despite its immense size, Australia's population has been slow to grow and is still today only a little over 20 million people, including an indigenous population of 160,000 aborigines. Nonetheless, it is one of the most urbanised countries in the world with an estimated 86% of urbanisation.

The national or Commonwealth Government is responsible for defence, foreign affairs, customs, income tax, post and telegraphs. The State or Territory Governments have primary responsibility for health, education and criminal justice, although the Commonwealth Government is also influential in these areas. Local governments are responsible for municipal functions such as town planning and the provision of civic amenities.

There exists a level of tension between the governments at the State or Territory level and the Government of the Commonwealth. This tension is almost exclusively concerned with the issue of the allocation of monies raised from income tax and the appropriate distribution of power. Since the 1970s, there has been a noticeable shift of power toward the Commonwealth Government.

No express reference to the "environment" is to be found in the Constitution<sup>2</sup> and no specific powers were conferred on the Commonwealth to legislate in order to protect the environment.<sup>3</sup> This, therefore, meant that initially the majority of environmental legislation in Australia was enacted by the States. However, in recent years, there has been a growing trend for the High Court

(Australia's Constitutional Court) to widely interpret the Commonwealth's power to regulate the environment as incidental to several of its specific legislative powers.<sup>4</sup> These include the power to legislate on matters relating to overseas and interstate trade and commerce, corporations, aboriginal cultural heritage and the implementation of Australia's international obligations.

Moreover, when State and Commonwealth legislation conflict, the Constitution declares that Commonwealth law prevails.

### Legal System

The structure of the Australian legal system is derived from, and still closely follows, that of the United Kingdom. In addition to parliament-made law, the "common law" or precedent-based case law was inherited from the English courts and has since been developed and refined by the Australian courts to suit Australian conditions. In fact, since 1963, Australian courts have no longer regarded English decisions as superior or even equal in authority to those made by Australian courts.

The legal system is adversarial in nature and, due to the federalist system of government, there are nine separate legal systems in operation. Although there are some differences between these systems, they are essentially similar in structure and operation.

### Judicial System

#### Administration

Australia has a hierarchical system of courts with the High Court of Australia operating at the top. The High Court of Australia is the final court of appeal for all other courts. It is also the court that has sole responsibility for interpreting the Australian Constitution.

Within each State and Territory, there is a Supreme Court and, in the larger jurisdictions, an intermediate court below it, known as the District Court or County Court. Below the intermediate courts, there are Magistrates Courts where virtually all civil and criminal proceedings commence. Approximately 95% of criminal cases in Australia are resolved at Magistrates Court level.

Parallel to the Supreme Courts in the States and Territories there is a Federal Court that is primarily concerned with the enforcement of Commonwealth law but it also hears appeals from the Supreme Courts of the Territories.

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### Specialist Courts

All States and Territories have specialist courts such as juvenile courts and coroner's courts. There are also other courts in various States like industrial courts, small claims tribunals, licensing courts, mining courts and environmental courts.

### Observations on Access to Justice

Just before beginning a review of Australian environmental courts, it is worth taking a brief look at what a justice system should aspire to in order to "ensure access to justice".<sup>5</sup> In preparing his Interim Report on Access to Justice to the Lord Chancellor on the Civil Justice System in England and Wales in June 1995, Lord Woolf concluded that:

*"[The] present system ... is too expensive in that the costs often exceed the value of the claim; too slow in bringing cases to a conclusion and too unequal: there is a lack of equality between the powerful, wealthy litigant and the under-resourced litigant. It is too uncertain: the difficulty of forecasting what litigation will cost and how long it will last induces the fear of the unknown; and it is incomprehensible to many litigants"*.

In his view, the system needed to aspire to being: i) just in the results it delivers; ii) fair in the way it treats litigants; iii) able to offer appropriate procedures at a reasonable cost; iv) able to deal with cases with reasonable speed; v) understandable to those who use it; vi) responsive to the needs of those who use it; vii) able to provide as much certainty as possible in relation to the particular cases; and viii) effective as well as adequately resourced and organised.<sup>6</sup>

At about the same time, the Australian Law Reform Commission<sup>7</sup> in its proposals set out in *The Access to Justice Report* had, likewise, formulated lofty aspirations as a guide to a national strategy for improving "access to justice". It identified three principal objectives that had to be pursued. The first was equality of access, meaning that:

*"[a]ll Australians, regardless of means, should have access to high quality legal services or effective dispute resolution mechanisms necessary to protect their rights and interests"*.

The second objective was "national equity", in the sense that:

*"Australians should enjoy, as nearly as possible, equal access to legal services and to legal services markets that operate consistently with the dictates of competition policy"*.

The final objective was equality before the law, meaning that positive measures were required to overcome discriminatory attitudes and practices within the justice system, in particular, towards women and indigenous people.

In keeping with these broad objectives, the Australian Report, unlike the Woolf Report that concentrated on case management mechanisms, chose not to focus exclusively

on reforms to court procedures. The national strategy proposed in the Report addressed a diverse range of issues such as the regulation of the legal services market in the light of competition policy, as already mentioned, the restructuring of legal aid, alternative sources of funding for litigation, the promotion of alternative dispute resolution mechanisms and consumer complaint schemes. Some of these recommendations, as we shall see, had already been successfully applied in the environmental courts and others would be adopted subsequently.

### Environmental Courts and Access to Justice

Several States in Australia have established specific courts or tribunals (or special divisions of existing courts or tribunals) that deal primarily or exclusively with environmental matters. These include specialist Planning and Environmental Courts in New South Wales, Queensland and South Australia while in Victoria a special division of the Administrative Appeals Tribunal handles environmental matters and in Tasmania, the Resources Management and Planning Appeal Tribunal has jurisdiction.



Uluru at sunset

Courtesy: Wikipedia

Given the particular characteristics of environmental disputes,<sup>8</sup> the idea behind setting up a single specialist jurisdiction for all environmental issues was to use available resources more rationally and to minimise costs and delay. The concept was that of a "one stop shop".

These "environmental" courts normally permit judicial review on a merits basis and, therefore, appeals from them may only be brought on questions of law and not on findings of fact.

### The Land and Environment Court in New South Wales

The Land and Environment Court (LEC) in New South Wales is the oldest and most established specialist environmental court in Australia. It was set up in 1980 and has been responsible for many important environmental decisions.

The LEC is a superior court of record and its personnel is composed of the Chief Judge and five other Judges; the Senior Commissioner, eight full-time Commissioners and 16 Acting Commissioners who are part-time; the

Registrar, Assistant Registrar and registry staff. The Judges have the same status, entitlements and remuneration as Judges of the State Supreme Court.

### Jurisdiction

The Court has exclusive jurisdiction under various statutes, relating to environmental law in the broad sense and to land law.<sup>9</sup> Civil enforcement and judicial review are the most important functions of the Court.<sup>10</sup> However, it has no jurisdiction in tort or contract matters. As a result, it cannot hear claims for damages for negligence, nuisance or trespass, even by virtue of its ancillary or pendant jurisdiction. Therefore, no toxic tort remedies are available in the Court.

In its civil enforcement jurisdiction, the Court has the same jurisdiction as the Supreme Court to hear and decide proceedings by way of judicial review and it can hear appeals from statutory and local authorities with its decisions on such appeals being final and binding on both parties.

Although the criminal jurisdiction of the LEC tends to be considered a “last resort” and is usually directed towards repeating offenders,<sup>11</sup> the Environmental Protection Authority (EPA) is not slow to prosecute government departments and agencies as well as local councils where they consider environmental offences have occurred.<sup>12</sup>

### Locus Standi

Generally speaking, the common law test for standing in Australia has undergone interesting developments. In 1980, in a case called *Australian Conservation Foundation v. Commonwealth*,<sup>13</sup> the High Court dismissed the petition on the ground that the environmental organisation that filed the lawsuit had only an “emotional or intellectual concern in the matter” and no private right or special interest. However, in the following year, the same court<sup>14</sup> recognised the right of aboriginal people to sue an extraction company to protect their sacred sites, even though the plaintiffs did not own the land. In the Court’s view, their relationship to the matter was so intimate that it gave them legal standing because the sites had “truly a great cultural and spiritual significance” for them. Therefore, in the first case, an “emotional” concern in the matter was not enough but a “spiritual relationship” in the second was.

The statutory test<sup>15</sup> is that the applicant be a “person aggrieved”. This test has usually been interpreted in line with the common law.

The removal of barriers to access caused by rules on standing was seen as fundamental when the LEC was constituted and open standing provisions were included in most environmental legislation. This meant that any person could go to the Court to seek to enforce any breach or perceived breach of the law. Leave of the court was unnecessary and no interest had to be established.

The open standing provisions have been a success over the years in which the Court has been in operation because they have given citizens as well as environmental and resident groups access to the Court to seek remedies that were never before possible. And they have done this

without opening the floodgates of litigation or encouraging abuse of the system.<sup>16</sup>

Now, numerous local government and planning and environmental statutes have open standing provisions and they have been adopted in Queensland, South Australia and Tasmania. Open standing provisions have, of course, long been available in the consumer protection area in Australia.

Under the *Protection of the Environment Operations Act 1997*, any person may bring proceedings in the LEC to restrain a breach or threatened breach of any Act if the breach is causing or is likely to cause harm to the environment. All that is required is that the Environmental Protection Authority (the EPA) be served with the application and may become a party to the proceedings. Therefore, open standing applies where there is alleged to be a breach of any legislation involving harm or likely harm to the environment.<sup>17</sup>

Furthermore, if the LEC grants leave, any person may bring *criminal proceedings* for a breach of pollution legislation. This is usually granted when the EPA decides not to take action itself and where there is a *prima facie* case based on the details of the offence.

### Other Barriers to Access to Justice

There is, however, little sense in liberalising standing, if other barriers stand in the way of litigants bringing actions.<sup>18</sup> The most important amongst these barriers are:

**Costs.** To prevent individuals or NGOs from not bringing litigation for fear that they could be ordered to pay high costs, especially in cases against the government or multi-national corporations, the LEC established that, from 1994, in genuine public interest litigation, costs should not automatically follow the event. The exercise of the Court’s discretion regarding costs depends on the quality of the applicant’s case and the public interest involved.

**Security for costs.** The Court has also taken a hard line on applications for security for costs, again stressing the importance of the public interest nature of the litigation.

**Pleadings.** Brief points of claim and points of defence only are required in order to avoid unnecessary technicality, increased costs and delay.

**Discovery and inspection and interrogatories.** As public interest environmental cases usually call for more open access to documents than other cases, the Court has taken a firm stance against arguments relating to secrecy, privilege, confidential information and Crown privilege. Freedom of information legislation also assists.<sup>19</sup>

**Time standards.** As prolonged proceedings can effectively be a barrier to access to justice, the LEC was one of the first courts in Australia to introduce time standards for disposal of cases and for reserved judgments.<sup>20</sup>

### Mechanisms to Assist the Court

**Court Users Group.** Interestingly, the LEC was also one of the first courts in Australia to form a Court

Users Group to liaise with the Court. It was established in 1996 as a consultative committee comprising of representatives from interested organisations.<sup>21</sup> The Group meets three times a year and makes recommendations to the Chief Judge about: i) improving the functions and services provided by the Court and ii) ensuring services and facilities of the Court are adapted to the needs of litigants and their representatives.

**LEC on-line.** In 2002, a new Internet-based eCourt computer system was set up that enables parties in Classes 1 to 4 matters to access a range of electronic services including: i) the electronic lodgement and service of initiating documents and other court documents; ii) remote electronic access to e-lodged documents; iii) remote matter management for court users; and iv) a record of activity in each matter.

Another benefit of the eCourt system is that it has what is called a "public user" facility. This means that frequent respondents in the Court, such as local councils, can register as a public user and electronically be served with all new on-line applications where they are the respondent.

### Alternative Dispute Resolution

From the beginnings of the LEC, importance was placed on alternatives to adjudication.<sup>22</sup> Therefore, litigation is neither seen as inevitable nor necessarily the best solution. Other dispute resolution mechanisms may be used to end disputes. These include:

**Conciliation.** At the end of 2006, the *Land and Environment Court Act 1979* was amended to extend conciliation to all matters in Classes 1, 2 and 3 of the Court's jurisdiction. Its success rate is high and even where it does not succeed, issues are reduced and better defined, saving costs and court time.

**Mediation.** The LEC was one of the first courts in Australia to have a mediation scheme. It began in 1991. It is carried out by highly qualified and experienced Registrars and it usually takes between one quarter and one third of the time of a hearing, with obvious savings in time and money.

### Legal Aid and the Environmental Defender's Office

Legal aid is, of course, crucial to access to the courts but it depends very much on government policy and funding. There are eight independent Legal Aid Commissions, one in each of the States and Territories that provide services to approximately 750,000 Australians a year. Nonetheless, the system is frequently criticised as being too little for too few.

However, other independent organisations providing legal assistance also exist:

#### *Community Legal Centres*

These are independent organisations that provide legal advice and advocacy for a wide range of people on low incomes or otherwise disadvantaged in their access to justice. As well as providing direct legal advice and assistance, the Legal Centres carry out a range of related activi-

ties aimed at law reform, test case litigation, referrals and community legal education.

#### *Public Interest Advocacy Centre*

This independent, non profit legal and policy centre was established in Sydney in 1982.<sup>23</sup> It provides legal advice and representation in public interest litigation, focuses on research, policy development and campaigning, promotes community legal education and advocacy skills training, and assesses and refers cases through the Public Interest Law Clearing House<sup>24</sup> through which private law firms provide their services free of charge for public interest causes.

#### *Environmental Defenders Offices*

Public interest environmental law in Australia, in fact, commenced with the passage of the *Environmental Planning and Assessment Act 1979* and with the advent of the LEC. The first Environmental Defender's Office (EDO) officially opened its doors in Sydney on 30 May 1985.

Today, there is an Australian-wide Network of Environmental Defenders Offices (ANEDO), made up of nine independently constituted and managed community environmental law centres located in each individual State and Territory.

The EDO provides legal advice, conducts litigation, contributes to the law reform process and provides community legal education in public interest environmental matters. Its mission is to empower the community to protect the environment through laws recognising i) the importance of public participation in environmental decision making in order to achieve environmental protection, ii) the importance of fostering close links with the community, iii) its obligation to provide representation in important matters in response to community needs as well as areas the EDO itself considers to be important for law reform and iv) the importance of indigenous involvement in protection of the environment.

As the EDO only acts on matters involving a public interest environmental issue,<sup>25</sup> in order to determine this, it must be satisfied that the issue has significance beyond the material or financial interests of a particular individual or group. To do this, it looks at whether the issue involves a real threat to the environment,<sup>26</sup> whether the issue could result in good environmental outcomes, whether the issue concerns the manner in which the environment is regulated, now and in the future and across all areas of government or, finally, whether the issue raises matters regarding the interpretation and future administration of statutory provisions.

Having determined there is a public interest environmental issue, the EDO will act if it has reasonable prospects of success, if it has the human and financial resources to act properly in the case and if there is utility or value in commencing proceedings. The financial resources available to the applicant are also taken into consideration.

In 2003, an interesting new development occurred at the EDO in NSW. Realising there was a gap in the provision of adequate technical advice, it established a Scientific Advisory Service. This was deemed necessary because



tests or thresholds in environmental law very often contain a technical, scientific component – for example, in just deciding if something is likely to have a significant environmental impact. Therefore, for the first time in Australia, an in-house scientific adviser position was established within the EDO. Today, there are two such scientific advisers who work with and co-ordinate a Register



Grey Kangaroo with joey

Courtesy: Wikipedia

of experts operating on a *pro bono* or reduced cost basis. There are over 50 experts from around NSW already on the Register. Register participants assist in advising where litigation is contemplated, allowing for a better understanding of the issues at the primary decision-making level.

However, the one major flaw in the EDO system is its lack of adequate funding. This can result in ineffective participation or hamper the ability of the public to exercise their rights to participate in environmental proceedings. Core funding for the activities of the EDOs, in fact, depends on the Commonwealth Attorney-General's Department and the State Government Attorney-General's Department.

## Conclusion

If this article had been completed before the recent change in government in Australia, there would have been some justification in being pessimistic when looking at Australia's environmental future. This was because the previous government had drastically reduced funding, capping its allocation to around 40–50 key environment groups around Australia to \$10,000. Programmes were cut and it appeared that certain sectors within Government were ready to step back from the principles of public participation and strong environmental laws. In some

cases, special legislation was being passed to overturn the Courts' decisions in controversial environmental cases and attempts were made in other legislation to include private clauses ousting environmental laws.<sup>27</sup>

With regards to the private sector, environmental groups were faced with a worrying increase in the use of Strategic Lawsuits Against Public Participation (SLAPPs) against them in order to discourage them from participating in specified protest activities.<sup>28</sup> An example of this is the writ numbering over 200 pages issued in 2004 by Gunns, the huge Tasmanian timber and wood chip conglomerate, in which it sued 20 environmentalists and environmental groups for \$6.36 million for alleged damage to the company's business activities and interests.<sup>29</sup>

But, on 24 November 2007, one of the first climate-change elections in the world was held in Australia.<sup>30</sup> During the previous nine years, Australia had been governed by a Conservative Party. Although the economy was strong, the nation was in the grip of one of the worst droughts the country had ever seen. Voters, therefore, saw for themselves at first hand the impact of climate change. The Leader of the Opposition, representing the Labour Party, made this a defining point of difference in his election campaign. If elected, he promised to sign the Kyoto protocol as his first act of government.<sup>31</sup> For a car-addicted nation that had been named as the world's biggest *per-capita* emitter of greenhouse gases – in fact, Australians produce 27% more tonnes of carbon dioxide per head than Americans – it would be a significant moment. In contrast, the then Prime Minister, John Howard, stuck to his position of not ratifying the Kyoto protocol.<sup>32</sup> It would cost him and his Party the election.

Keeping his word, on 3 December 2007, Kevin Rudd signed the instrument of ratification of the Kyoto Protocol as his first act after being sworn in that morning as the new Prime Minister.<sup>33</sup> We can, therefore, hopefully be optimistic that environmental protection will continue to be a key policy for the new government.<sup>34</sup> Only time will tell.

## Notes

1 This article is a revised and updated version of the paper presented at the Conference on "Access to Justice in Environmental Matters in a Comparative Perspective", organised by Professor Eckard Reh binder of the University of Frankfurt am Main and Professor Demetrio Loperena of the University of San Sebastián, held in Benediktbeuern, Germany with the support of the Thyssen Foundation.

2 See, Crawford, J., 1991, "The Constitution and the Environment", *Sydney Law Review* 13: 11–30.

3 See, for a general overview of environmental law in Australia, Ramsay, R. and Rowe, G.C., 1995, *Environmental Law and Policy in Australia: Text and Materials* (Sydney: Butterworths); Bates, G.M., 2002, *Environmental Law in Australia*, 5th ed., (Sydney: Butterworths); Fogg, A., 2003, *Australian Environmental Law* (Lawbook Co.); and, with specific reference to NSW, Farrier, D., 1999, *The Environmental Law Handbook: Planning and Land Use in New South Wales*, 3rd ed., (Redfern Legal Centre Publishing).

4 Since 2004, in a series of important decisions, known as the Japanese Whaling case, the Federal Court declared Japanese whaling in Australia's Antarctic waters unlawful under the major Commonwealth legislation on the environment, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), and granted an injunction restraining it. The complex and important issues relating to both Australia's domestic law and international law are analysed in detail in McGrath, C., "Australia can Lawfully Stop Whaling within its Antarctic EEZ" at [www.envirlaw.com.au/whale24.pdf](http://www.envirlaw.com.au/whale24.pdf).

5 See, Redgwell, C., 2007, "Access to Environmental Justice", in Francioni, F. (Ed.), *Access to Justice as a Human Right*, pp. 153–175. Collected Courses of the Academy of European Law (Oxford: Oxford University Press).

6 Published in 1996, Lord Woolf's report *Access to Justice* was adopted by the UK Government and implemented in a number of measures, notably the Civil Procedure Act 1997. This Act established the Civil Procedure Rules Committee with authority to define rules for all civil litigation (except family proceedings). The first official Civil Procedure Rules were published in January 1999, and substantially modified the way that civil actions are processed.

7 Access to Justice Advisory Committee, 1994, *Access to Justice: an Action Plan* (Canberra: Commonwealth of Australia). See also, Sackville, R., 2004, "Some Thoughts on Access to Justice", 2 *NZJPI* 85.

8 The Chief Judge of the Land and Environment Court of NSW, Justice Brian J. Preston, has described the characteristics of these disputes as follows: "environmental disputes are grounded in conflict; environmental disputes involve value conflicts; environmental disputes involve uncertainty and irreversible ecological effects; the nature and scope of environmental disputes are difficult to determine because of the large number of issues involved, the nature of the issues may involve the public interest and the issues may be interconnected; cost benefit analysis is difficult to apply to environmental disputes; there is an unquestioning reliance on experts in resolving environmental disputes; and the identity and number of participants may involve difficulties". See, Preston, B.J., 1995, "Limits of Environmental Dispute Resolution Mechanisms", 13 *Australian Bar Review* 148.

9 Some of the main pieces of legislation granting the Court jurisdiction are the *Environmental Planning & Assessment Act 1979*; *Local Government Act 1993*; *Protection of the Environment Operations Act 1997*; *Heritage Act 1977*; *Threatened Species Conservation Act 1995*; *Native Vegetation Conservation Act 1997*; *Contaminated Land Management Act 1997*; *Roads Act 1993*; *Land Acquisition (Just Terms Compensation) Act 1991*.

10 The Court's jurisdiction is, in fact, divided into the following seven classes: Class 1 comprises merit appeals relating to environmental planning and protection including pollution, heritage, threatened species and contaminated lands; Class 2 relates to local government and miscellaneous appeals and applications; Class 3 covers land tenure, valuation, rating and compensation matters including Aboriginal land rights. In each of these classes the Court may be constituted by a lay commissioner, or a panel of them, or a judge sitting with a commissioner(s). In Aboriginal land rights cases, a judge is assisted by two Aboriginal assessors. Class 4 involves environmental planning and protection and development contract civil enforcement by the granting declarations and injunctions, including mandatory orders and by judicial review; Class 5 concerns criminal summary enforcement for environmental planning and protection, and includes, for example, all pollution prosecutions and waste disposal, heritage, planning, contaminated land and other offences; Class 6 deals with appeals from convictions from local courts relating to environmental offences; Class 7 deals with other appeals relating to environmental offences which previously would have been heard by the Supreme Court.

11 Crimes before the Court usually relate to water pollution, the cutting down of trees subject to tree preservation orders or carrying out a development without consent or breaching the terms of a development consent under the Act.

12 For more information, see Stein, P., 1995, "The Role of the NSW Land and Environment Court in Environmental Crime", in Gunningham, N., Norberry, J. and McKillop, S. (Eds), *Environmental Crime: Proceedings of a Conference held 1-3 September 1993*, Hobart. AIC Conference Proceedings; no. 26 (Canberra: Australian Institute of Criminology).

13 High Court of Australia, (1980) 146 CLR 493, 28 ALR 257.

14 In *Onus v. Alcoa*, High Court of Australia, (1981) 149 CLR 27, 36 ALR 425.

15 Under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

16 Stein, P., 2000, "Downunder Perspective of the Environment Court Project", paper presented at the United Kingdom Environmental Law Association Seminar on the Final Report on the Environmental Court Project, London, 27 June 2000.

17 Chief Justice Street in *F Hannan Pty Ltd v Elcom* (1985) 66 LGRA 306 at 313 said that the Court's role was to administer social justice and not simply administer justice between the parties.

18 See, Stein, *op. cit.*, note 12.

19 *Freedom of Information Act (NSW) 1989*.

20 The time standards were initiated in 1996 and they are articulated as follows: i) Classes 1, 2 and 3, 95% of applications to be disposed of within six months of filing; ii) Classes 4, 5, 6 and 7, 95% of applications to be disposed of within eight months of filing. The time standard applied for handing down reserved judgments is determined from the date of the last day of hearing to the delivery date of the judgment. It dictates that 50% of reserved judgments in all classes are to be delivered within 14 days of the hearing; 75% are to be delivered within 30 days of the hearing and 100% are to be delivered within 90 days of the hearing.

21 Member organisations of the Court Users Group include bodies such as the Australian Institute of Building Surveyors & Australian Institute of Environmental Health, the Australian Planning Institute, The Bar Association of NSW, the Environment Protection Authority, the Environmental Defenders Office, the Nature Conservation Council of NSW Inc and others.

22 See, Wooten H., 1993, "Environmental Dispute Resolution", *Adelaide Law Review* 15: 33-77.

23 Currently, Public Interest Advocacy Centre (PIAC) litigation is focused on actions in the areas of access to justice, detention, government and democracy and

human rights (including privacy and discrimination). The PIAC's programme regarding access to justice aims at: i) identifying and addressing unmet legal needs, ii) promoting the development and funding of community legal centres and legal aid provision in Australia, iii) engaging the private legal profession in *pro bono* and public interest work and iv) identifying, challenging and preventing systemic barriers to justice.

24 The first of its kind in Australia, the Public Interest Law Clearing House (PILCH) is a major *pro bono* project. It is an assessment and referral service for *pro bono* legal matters which meet certain public interest criteria including the development and use of public interest procedures, such as *amicus curiae* interventions and class actions to increase the impact of public interest litigation, ensuring greater access to justice for indigenous people and creating an outreach legal service to provide legal information, advice and representation for people without secure housing.

25 Significantly, the Environmental Defenders' Office (NSW) acted for the Humane Society International Inc. against Kyodo Senpaku Kaisha Ltd. in the Japanese Whaling Case. See, note 4.

26 In an interesting recent case, the EDO (NSW) successfully represented the Blue Mountains Conservation Society Inc in its attempts to prevent filming of the \$130 million war movie "Stealth" in the Grose Wilderness area of the Blue Mountains National Park. The Court set aside the State's approval of the film project and ruled that the proposed commercial filming of scenes in the area was unlawful and that the wilderness areas were "sacrosanct".

27 An example of this is the *Snowy Mountains Cloudseeding Trial Act 2004*. This legislation specifically authorises rain-making activity and allows Snowy Hydro



A mother koala and baby

Courtesy: National Geographic

to undertake the research project without seeking permission under NSW legislation.

28 See, among others, Keim, S., 1994, "Dealing with SLAPP Suits", *Australian Environmental Law News* 2 (June): 44; Ogle, G., 2005, "Chilling the Environment Movement", *Australian Options* Spring issue; Ogle, G., 2007, "Beating a SLAPP Suit", *Alternative Law Journal* 32(2): 71-74.

29 As of 20 August 2007, after more than two and half years in the case, three of Gunns' claims had been thrown out of court as overly complex and incomprehensible but it had been allowed to proceed with Version 4. However, Gunns have already paid over \$500,000 for costs incurred - a figure which exceeds the financial losses they allege resulted from the actions they are suing over - and of the original claims brought against 20 defendants for 10 actions in total, there are now only six claims against 14 defendants spread across two cases remaining.

30 The 2007 Report of the UN's Intergovernmental Panel on Climate Change (IPCC) gave the most alarming forecast yet about the consequences of climate change for the world. It predicted worsening drought conditions and water shortages for Australia over the next 20-50 years with the loss of the Great Barrier Reef within the next two decades. It also warned that as many as 711,000 Australian homes will be in peril from rising sea levels, and says vulnerable wildlife species could begin to disappear by 2030.

31 The survey of more than 1000 people, conducted by Auspoll on behalf of the farmer-funded policy institute, found: i) 78% of Australians believe that ratifying Kyoto was just the start, and that urgent action is required to deal with climate change. Only 5% said urgent action was not required; ii) 74% believe new electricity generation should come from clean energy; and iii) about half (46%) are unsure about the effect tackling climate change will have on the economy and jobs.

32 He was in favour of setting "voluntary aspirational emission reduction targets" and introducing a carbon emissions trading scheme by 2012.

33 Ratification came into force after 90 days.

34 On 3 December 2007, Senator Penny Wong was appointed the first Australian Government Minister for Climate Change and Water.

