

EXTINCTION BUSTERS

When Professor Tim Flannery spoke at an April fundraising dinner for the NSW EDO (Environmental Defenders Office), his description of the rate of extinctions in Australia brought a hushed silence to an audience of several hundred members of the legal community. Flannery's commitment to preventative action is matched by the EDO's Principal Solicitor and Chief Executive Officer, Sue Higginson. Higginson believes that, at a time when the NSW Government is engaged in "a once in a generation environmental law reform agenda", the EDO provides "a beacon of how to deliver public interest environmental legal services" with its integrated model of litigation, law reform, outreach and science.

JULIE MCCROSSIN finds out more.

PHOTOGRAPH: JASON MCCORMACK

When I arrive at the EDO's office in a bland building in central Sydney near Town Hall railway station, it seems an oddly sterile place to fight for biodiversity and the habitat of endangered species. But it only takes a few moments of exposure to the intense advocacy and vision of Sue Higginson to fill the room with images of rare birds threatened with extinction and dugongs searching for ever-diminishing marine grasses to feed on.

In fact, when Higginson enters the room, she is holding a copy of a judgment that has just been handed down that morning. It is a decision that illustrates the value of the 10 to 12 public interest cases they litigate each year. She proudly shows me a picture of the bird at the centre of the case, the Regent Honeyeater.

The seed of Higginson's fervour for the law was planted in her teen years. She arrived in Melbourne in the early 1980s with her parents, brother and sister from Lancashire in the United Kingdom when she was 10, having grown up in the north of England in Preston (where the industrial revolution is claimed to have begun).

"Shortly after I arrived, I saw the campaign around the Franklin River on the TV news," she recalls. "I watched with absolute intrigue. I watched these incredible people on the ground from across the country giving their heart and soul and crying out for environmental justice, to protect a place of such beauty and importance. It planted a seed deep down in me about the law. Ultimately the High Court made a ruling that was a game changer for those people and for that part of the planet."

After high school, she moved to northern NSW and became an environmental campaigner for the North East Forest Alliance, working strategically to protect the last remaining old growth forests of NSW.

"A mentor said to me, 'You'll burn out as a campaigner. You have a legal mind. Go to university and see what you think'. I fell in love with the study of law at Southern Cross University. I finished with first class honours and the university medal.

"I worked initially in a general regional practice. It was the most fantastic start; you walk into your office and you could have any matter thrown on your desk. You're running a serious criminal matter. You're doing a conveyance or a will. Or you are asked to advise someone on a development application. I spent two years there as well as lecturing in environmental law at the university. Then I began with the EDO."

There is a deeper drive that underpins 44-year-old Higginson's formidable energy for her work. It is the complex inspiration of her late father, Robert.

"My father had a massive influence on me in two ways," Higginson says. "He absolutely loved the natural environment. Whenever he was not at work, we were off hiking somewhere and visiting beautiful areas. But the converse was that he was driven to manufacture, first rubber and then plastics. And that was something that, as I grew up, I had too many questions about. I started asking questions about sustainability. How can we continually make plastic things out of finite resources, pollute the environment and think everything is going to be okay?"

"Time has taught me it is not always about what we do, but how we do

it. We need to manage our resources sustainably. We need good laws to protect our environment for future generations."

Higginson is Sydney-based, but maintains a home in the northern rivers area near Casino with her partner, Adam, a stock and station agent with four children. Higginson has two children herself – Lani, 23, and Hannah, 15.

"Until recently, I've been commuting the distance to work," she says. "My partner and I have a farm where we harvest native grasses for mulch production and we have a mob of horses. Most of them are rescue horses and some are brumbies taken out of national parks where they are considered a pest. We both love horses and see the need to get horses out of national parks."

Is riding horses how she gains release from the pressures of work?

"I do love riding, but my real release is knowing there are places on this planet that are protected for future generations and I have played a role, with many others, in protecting them. Places such as the Chaelundi Wilderness that was protected by law after large protests and a number of court cases. It is beautiful, never touched, old growth forest in a remote area west of Grafton. It was described by the court as 'a veritable forest-dependent zoo, probably unparalleled in south-eastern Australia'.

"When I visit it now, I realise that sometimes it is really important just to act. We could have lost it, but we didn't. It's protected."



Higginson has worked at the EDO for 10 years and recently became CEO. She believes the organisation's success is the result of "the very masterpiece of its design". "It is a multidisciplinary approach to the law," she explains. "It is the complete integration of advice and litigation, which is your traditional legal practice, coupled with outreach and then lacquered with the law reform and policy work that is all rooted in the evidence-based science.

"The law reform work is so important because it is about good laws. The perfect example at the moment is the once-in-a-generation environmental law reform agenda of the NSW Government. They are seeking to completely overhaul our biodiversity laws including our native vegetation and threatened species laws. A lot of people in the community and the peak environmental organisations want to have a say. Our role is fundamental. We can interpret what is being proposed and how the proposed laws will apply in the future. We offer access to expert legal and scientific advice. We also make submissions in our own right to assist government."

The case of the *Regent Honeyeater, Friends of Tumblebee v ATB Morton Pty Limited (No.2)*, was heard in Class 4 Land and Environment Court NSW.

"A council made a decision to approve a development," Higginson explains excitedly. "We have had that approval invalidated and overturned. This was Cessnock Council and the area is in the Hunter Economic Zone, which is a very important ecological area in the Hunter Valley. Our client, Friends of Tumblebee, a voluntary group that has been working to protect this area for decades, came to us and said, 'This is going to have terrible consequences for the environment, for the Regent Honeyeater and for the law'. In this case, the Regent Honeyeater is a bird in a lot of trouble. It's a bird on the brink of extinction. It just so happened that this development is proposed to take place in



The Regent Honeyeater.

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known habitat, and potentially breeding habitat, which is a very important concept for a bird on the brink of extinction.

"In this case the council made a significant error of law. It approved a development beyond its power. The law says to a decision maker, if you are going to approve a development that is likely to significantly impact a threatened species, you can't approve it unless you have before you a Species Impact Statement (SIS). The statement must analyse the impacts of your decision. The council made a decision and said they don't need a SIS."

In her judgment, Justice Rachel Pepper, accepted the submissions of the Friends of Tumblebee, stating: "...in the absence of a SIS, the council was not empowered to grant the development consent".

Higginson explains that this creates an important precedent.

"When we run cases like this, we are showing how the law ought to be applied. Most of our litigation involves us asking, 'Does this case have a broader application for environmental laws?' That is what we are looking for in public interest cases."

The opening remarks of Justice Pepper in the Tumblebee judgment are particularly evocative: "In a gloomily lit room in the Tasmanian Museum and Art Gallery patrons can watch silent black and white footage of the last known living thylacine, or Tasmanian Tiger, taken in 1933 by naturalist Mr David Fleay. In a profoundly sad grainy 62-second clip, the animal, seemingly agitated, repeatedly paces backwards and forwards in its enclosure at Beaumaris Zoo in Hobart. Captured in 1933, the thylacine, named 'Benjamin', died three years later on 7 September 1936. There have been no officially recorded sightings of the species since. It is considered extinct ... The subject matter of these proceedings, the Regent Honeyeater, is a bird in grave peril ... It is no exaggeration to describe the species as perched on the brink of extinction."

For Higginson, the Tumblebee case also demonstrates the benefit of the extensive

outreach work that the EDO conducts, producing legal fact sheets and running regular community workshops on environmental law.

“We are constantly engaging with the community to help them understand the laws that are governing the interactions they have with the environment on a daily basis,” she says.

“As a community legal centre, we offer access to justice for those who otherwise could not afford legal services. Quite a few years ago we delivered a community legal workshop in the Hunter Valley and we met the Friends of Tumblebee. They began asking questions and understanding the law.”

When the threat to the habitat of the Regent Honeyeater arose years later, they knew where they could access legal and scientific advice.

“We have an invaluable resource,” Higginson explains. “It is a register of scientists willing to assist the community and the EDO’s work. One of these experts gave evidence about the plight of the Regent Honeyeater and was recognised in the Court’s judgment as a ‘model expert witness’. This witness would not have been part of the case without the EDO’s scientific advisory service.

“We have an in-house scientist. She will work with solicitors who are assisting a community group and she will engage independent expert scientists to assist our clients. We know how to brief experts to get an independent, expert opinion on a development and what the impacts are going to be.”

Sometimes community workshops are offered in response to a request for help. “A community at Soldiers Point near Port Stephens got in touch with us a couple of years ago in relation to proposal for a development in a natural marine environment,” Higginson says.

“The proposal for a new 50-berth marina was on public exhibition. In that case we assisted the community to feel confident and gave them the tools they needed to prepare their submissions and lodge them with council. We also assisted them to access information from council that they needed to make informed and effective submissions.

“The Soldiers Point community group also had a lot of local knowledge. They told us about sea grasses and dugongs and rare birds on that part of the beach, the Beach Stone curlew, and other animals. Ultimately, the council recommended that the project be refused because it wasn’t justified in terms of the impact it was going to have on the environment.” **LSJ**



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