

Public interest environmental litigation in the ACT

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Abstract

This paper reflects on the role of environmental lawyers in a prolonged dispute over the proposal to build a four lane freeway through native bush in four of Canberra's Nature Parks. Lawyers acting pro bono for a community group Save the Ridge Inc. initiated litigation in the ACT Supreme Court, AAT, as well as the Federal Court. Several of these actions were successful in a number of respects. Government reactions to the litigation initiated by Save the Ridge Inc. included the special recall of the Legislative Assembly in order to enact of special projects legislation to override the Supreme Court's decision and to render pointless two separate review actions that were before the AAT. They also involved allegations that STR was engaging in abuse of the law by exercising its appeal rights. This paper argues that environmental law is in danger of becoming a symbolic façade if activists and lawyers do not take action to ensure that legislation is complied with by reluctant government agencies. The inevitable political implications of litigation are highlighted by (1) enactment of special projects legislation and (2) attempts to use various interlocutory applications and motions to defeat PIEL. In the ACT, as elsewhere they have included contesting standing, motions for security for costs, applications to strike out proceedings, and demands for undertakings as to damages. In seeking to understand such tactics and the related enactment of special projects legislation to close off appeal rights, environmental lawyers and activists must not be deluded into thinking the law is above politics.

Bio: James Prest

James is the sole solicitor at the ACT branch of the Environmental Defender's Office Inc where he practices in ACT, Commonwealth and NSW environmental law. He also works for the Legal Aid Commission ACT. He has a long-standing interest in environmental law and environmental activism. He has worked in both private practice and government legal practice, the latter being at the Department of Prime Minister and Cabinet and the Legal Group at the Commonwealth Parliamentary Library. He submitted a PhD thesis in law at the Centre for Natural Resources Law and Policy, Faculty of Law, University of Wollongong, in 2004 under the supervision of Professor David Farrier. He is admitted to legal practice in the ACT, NSW, SA and the High Court.