



Environmental  
Defenders Office

# Emerging Norms in Climate Change Litigation in Australia

**Matt Floro**

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# Outline

*Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* [2021] NSWLEC 92

Australasian Centre for Corporate Responsibility (ACCR) v Santos (“greenwashing” claim)

*Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33

*Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2)* [2021] FCA 774

*Vanderstock & Davies v State of Victoria*





Bush fire at Captain Creek central Queensland Australia.



# ***Bushfire Survivors for Climate Action Inc v Environment Protection Authority [2021]***

- For the first time, an Australian court has allowed evidence on climate change to be heard in a case involving an alleged failure by a government agency to perform a statutory duty
- The LEC recognised that the NSW Environment Protection Authority (EPA) has a duty under section 9(1)(a) of the *Protection of the Environment Act 1991* (NSW) (*POEA Act*) to develop environmental quality objectives, guidelines, and policies to ensure environment protection from climate change
- The EPA has a duty to take serious action on greenhouse gas emissions, signalling a major change in climate policy for the state
- The Court held that the EPA had not fulfilled this duty to develop instruments to ensure the protection of the environment from climate change
- The New South Wales Environment and Energy Minister Matt Kean has announced there will be no appeal of the landmark court ruling



Santos' Moomba petroleum and natural gas plant in South Australia's Cooper Basin. *CREDIT: BRENDAN ESPOSITO*

# ***Australasian Centre for Corporate Responsibility*** **v Santos**

- The Environmental Defenders Office, acting on behalf of the Australasian Centre for Corporate Responsibility (ACCR), has filed a Federal Court case against gas giant Santos over its claims natural gas is “clean fuel” and that it has a credible pathway to net zero emissions by 2040
- This is the first court case in the world to challenge the veracity of a company’s net zero emissions target, as well as the first in Australia raising the issue of climate greenwashing against the oil and gas industry
- Two claims against the company; the first concerning statements Santos made in its 2020 annual report where it claimed natural gas is a “clean fuel” that provides “clean energy,” the second takes aim at statements by Santos that it had a “clear and credible” plan to achieve net zero emissions by 2040 by relying on carbon capture and storage (CCS)



RenewEconomy, "Environmental Groups Try To Stop Clive Palmer's Massive Galilee Coal Mine."

# Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors [2020]



- In May 2020, Youth Verdict lodged an objection to challenge the proposed Galilee Coal Project in the Land Court of Queensland
- Waratah sought to 'strike out' the objections that relied upon the *Human Rights Act 2019* (Qld) or obtain a 'declaration that the Court does not have jurisdiction to consider those objections'
- In September 2020, President Kingham determined that the Court has jurisdiction to consider human rights issues during an objection hearing to a planning application. The application to strike out the objections was dismissed, and Waratah ordered to pay costs



## ***Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2) [2021] FCA 774.***

- Applicants claimed that the Federal Minister for the Environment owed them a duty of care when exercising her power under s 130 and s 133 of the EPBC Act to decide whether to approve an extension to a coal mine in northern NSW; Vickery Coal Project
- Court held that a reasonable person in the Minister's position would foresee that the children are exposed to a real risk of death or personal injury due to climate change threats; Minister has direct control over the risk; relationship between applicant (children) and Minister answers criteria for intervention by law of negligence
- Injunction should be refused
- The minister appealed the decision on 16 July 2021. Appeal before Full Court of the Federal Court will be heard this month



CarExpert, "Victorian Electric Car Tax Facing High Court Challenge."

# ***Vanderstock & Davies v State of Victoria***

- Chris Vanderstock and Kath Davies are bringing a claim in the High Court of Australia against the State of Victoria to challenge the *Zero and Low Emission Vehicle Distance-based Charge Act 2021* (Vic)
- They argue that the State of Victoria lacks the constitutional authority to impose such a charge
- The basis of their claim is section 90 of the Commonwealth Constitution, which the plaintiffs argue reserves the exclusive power to levy such charges for the Commonwealth
- The claim was filed in the Melbourne Registry of the High Court of Australia on 16 September 2021



# REFERENCES

- *Bushfire Survivors for Climate Action Inc v Environment Protection Authority* [2021] NSWLEC 92.
- World-first Federal Court case over Santos' 'clean energy' & net zero claims, Environmental Defenders Office <<https://www.edo.org.au/2021/08/26/world-first-federal-court-case-over-santos-clean-energy-net-zero-claims/>>.
- Australasian Centre for Corporate Responsibility files landmark case against Santos in Federal Court (ACCR, 26th August 2021) <<https://www.accr.org.au/news/australasian-centre-for-corporate-responsibility-files-landmark-case-against-santos-in-federal-court/>>.
- *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33.
- *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2)* [2021] FCA 774.
- Christopher Vanderstock & Kathleen Davies v State of Victoria, Equity Generation Lawyers, <<https://equitygenerationlawyers.com/cases/vanderstock-v-victoria/>>.

The background image is a composite. The top half shows a city skyline with various skyscrapers. The sky is split: the left side is dark and stormy with orange and yellow light, while the right side is bright blue with white clouds. A beam of light shines down from the center of the sky onto the city. The bottom half of the image is divided into two sections. The left section shows a close-up of a cracked, reddish-brown stone path. The right section shows a lush green field of grass.

# Concluding Thoughts





**THANK YOU**