

THE WAGERUP 23, THE GOVERNMENT AGREEMENTS ACT 1979 (WA) AND PUBLIC INTEREST LITIGATION

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PETER JOHNSTON

Tom: At my wedding last year, my wife and I were lucky enough to have my godfather, Peter, organise a 12 person choir, of which he was a member, to sing during the ceremony. I remember on the day being struck by the angelic beauty of the choir, as they joyously sung, and I am especially grateful to Peter for making our day that much more special.

My lasting impression of Peter is of an exotic man that would join our family at the dinner table from time to time where he would entertain us with interesting tales of music and fine wine. I particularly remember Peter joking at a family dinner one evening that he kept a flask of his favourite vintage close to him at all times in case of an 'emergency' that would require its immediate consumption. It was his quirky sense of humour and great lust for the finer things in life (that seemed incredibly sophisticated to my unrefined teenage palate) that will stay in my memory.

Peter has taken a keen interest in my career since I commenced practicing law and would always enquire whenever he saw me about the cases I happened to be involved in at the time. In this respect, I always found his intellectual curiosity to be stimulating and engaging. I am honoured to be invited to participate in this tribute to Peter: a great lawyer, legal scholar and teacher.

Anthony: I was fortunate to meet Peter, or "PJ" as he was affectionately known at the UWA Law School, when I was an undergraduate student there and had been lectured by him in constitutional law. I specifically remember feeling chuffed when he sought me out to express his pleasure in reading a note that I had co-authored with another student in the *Australian Law Journal*¹ on

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¹ With CK Pearce 'Unconstitutional Electoral Distributions in Western Australia' (2004) 78 *Australian Law Journal* 235 (at 240), as to the potentially unconstitutional conferral of a non-judicial function on the Chief Justice of the Supreme Court of Western Australia, who would (under s 2(1)(a)) act as an Electoral Commissioner for electoral boundary re-distribution for the then *Electoral Distribution Act 1947* (WA) (repealed in 2005). Now see: *Electoral Act 1907* (WA), s 16B(1)(a).

a topic of particular interest to him² - being the separation of powers and “Kable doctrine”³. He discussed the note with me at length there and then. He showed such interest then, even as I infelicitously rushed through my analysis of the issue and the leading cases (with youthful naivety). He listened carefully, complimented me on my involvement in that area of legal discourse and encouraged me to further scholarship.

PJ’s kind approach was the same in all the years that followed when I had the pleasure of his company at Law School as a student and later as a member of staff, at WA Bar Association events and other social engagements. When we caught up at Tom’s wedding last year, PJ’s first question after exchanging pleasantries was: “what are you litigating and what are you writing?” It revealed again PJ’s characteristic interest in those he had taught and, importantly, his passion for the law and its rational and organised development by connecting practice with scholarship.

Peter Johnston made a significant contribution to the development of laws concerning civil and political rights in Western Australia, having acted in numerous leading cases in the High Court of Australia⁴ and writing extensively in these areas.

He took a genuine interest in the professional and academic development of many young Western Australian lawyers, particularly those in public law fields and concerned with civil and political rights.

Peter left a lasting legacy and he will be sorely missed.

I INTRODUCTION

This short article is to mark one of Peter’s cases, *Margetts v Campbell-Foulkes*.⁵ In that case, with R S French (as his Honour then was), Peter defended 23 persons prosecuted for offences against s 67 of the *Police Act 1892* (WA)

² See particularly: Peter Johnston and Rohan Hardcastle ‘State Courts: The Limits of Kable’ (1998) 20(2) *Sydney Law Review* 216, Peter Johnston ‘State Courts and Chapter III of the Commonwealth Constitution: Is Kable’s Case Still Relevant?’ (2005) 32(2) *University of Western Australia Law Review* 211 and Peter Johnston “State Courts and Kable Limitations: The Validity of the *Criminal Investigation (Special Powers) and Fortification Removal Bill* (2001) (WA)” (2002) 4 *Constitutional Law and Policy Review* 1.

³ Emanating from *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51.

⁴ These include *Attorney-General (NSW) (Ex rel McKellar) v Commonwealth* (1977) 139 CLR 527, *Western Australia v Wilsmore* (1982) 149 CLR 79, *Fencott v Muller* (1983) 152 CLR 570, *Western Australia v Commonwealth (Native Title Act Case)* (1995) 183 CLR 373, *McGinty v Western Australia* (1996) 186 CLR 140 and *Yougarla v Western Australia* (2001) 207 CLR 344.

⁵ (Unreported, 29 November 1979, Full Court of the Supreme Court of Western Australia, Library Number 2764) (*Margetts*).

(hereafter, known as “the Wagerup 23”). The essence of the charges was that the Wagerup 23 were protesting and obstructing the bulldozers of American mining giant, Alcoa, at its mine in Wagerup in Western Australia. The case was controversial in 1979, and the implications of the decision are of great importance to energy and resources law in Western Australia and also to environmental lawyering and public interest litigation.

This article outlines the circumstances leading up to that decision by the Full Court of the Supreme Court of Western Australia, as it then was known. The paper explores two effects that the successful appeal decision had. First, the legislative response to the decision, being the enactment of the *Government Agreements Act 1979* – a statute of great importance to the development of the mineral wealth of Western Australia. Secondly, the influence of the case on environmental lawyers and the litigation of test cases.

II MARGETTS’ CASE

Alcoa of Australia Limited (Alcoa) and the State of Western Australia entered into an Agreement on 19 April 1978 in respect to the construction by Alcoa of an alumina refinery at a site in Wagerup, Western Australia (Wagerup Agreement). Under the Wagerup Agreement, prior to the commencement of construction, Alcoa was required to submit an environmental review and management program for approval by the State. Alcoa submitted the program pursuant to the Wagerup Agreement, and the Premier wrote to Alcoa on 18 October 1978, advising it that the program had been approved.

On 28 May 1979 at Wagerup, the Appellants, without lawful authority, obstructed Alcoa from the construction of the alumina refinery, by standing in front of an earth-moving machine at the site. A complaint was subsequently laid against each Appellant under s67 of the *Police Act 1892*.

In each case the complaint read:

[t]hat on the 28th of May 1979 at Wagerup (the defendant) without lawful authority and with intent to obstruct another person namely Alcoa of Australia Limited from carrying on an activity namely the establishment of an alumina refinery, which pursuant to the Alumina Refinery (Wagerup) Agreement and Acts Amendment Act 1978, a law of the State, and by virtue of an authorisation issued thereunder the said Alcoa of Australia Limited is empowered to do, manifested that intention by standing in front of an earth moving machine.

The complaint was as to an offence against s 67 of the *Police Act 1892*. The

relevant provision was s 67(4) which provided as follows:

67. Every person who shall commit any of the next following offences shall, on conviction before two or more Justices, be liable to a fine not exceeding one thousand five hundred dollars or to imprisonment for any term not exceeding eighteen calendar months, with hard labour:

...

- (4) Every person who, without lawful authority and with intent –
- (a) to compel another person to abstain from carrying on any activity which pursuant to any law of the State or of the Commonwealth that person is by virtue of a licence, permit or authorisation issued thereunder empowered to do; or
 - (b) to prevent such an activity being carried out on; or
 - (c) to obstruct any such activity, manifests that intention by doing any act in relation to that other person, the property of that other person or the activity so empowered, or by failing or omitting to do any act in relation thereto which he is lawfully required to do.

The Wagerup 23 came before a Court of Petty Sessions.

A Magistrate convicted them all of the offences charged and issued fines.

On 15 and 16 November 1979, a review in the Full Court of the Supreme Court of Western Australia was argued. R S French appeared with P W Johnston on instructions from the firm Warren McDonald French and Harrison. Their opposing counsel were K H Parker QC appearing with J R McKechnie, on instructions from the State Crown Solicitor.

The appellants' first submission relied upon *Sankey v Whitlam* (1978) 142 CLR 1, and was to the effect that the activities of Alcoa were not authorised by a law of Western Australia because the *Alumina Refinery (Wagerup) and Acts Amendment Act 1978* only 'ratified' an agreement without providing that it had force of law⁶. The appellants' second submission was that the Premier's letter did not constitute a 'licence permit or authorisation' for the purposes of the *Police Act*, to empower Alcoa to proceed with construction.⁷

The respondents submitted that the letter from the Premier of 18 October 1978 was the authorisation issued under a law of the State for Alcoa to carry on the activity of the construction of the Wagerup refinery, which empowered Alcoa to undertake the activity within the meaning of s 67(4) of the *Police Act*.

⁶ Peter Johnston "Litigating Human Rights in Western Australia: Lessons from the Past" (2013) 15 *University of Notre Dame Australia Law Review* 111, 136.

⁷ Peter Johnston "Litigating Human Rights in Western Australia: Lessons from the Past" (2013) 15 *University of Notre Dame Australia Law Review* 111, 136.

On 29 November 1979, the Full Court handed down its decision. The Court made each of the orders absolute, allowed each appeal, quashed each conviction and set aside each penalty. Wickham J gave the lead decision. Jones J agreed and provided some additional remarks.

Wickham J's reasons reveal that multiple grounds of appeal were advanced by the appellants, but by reason of his decision on the first ground it was unnecessary to set out or to consider the other grounds.⁸

Wickham J found that, on the construction of the agreement, it was plain that the approval by the State of the environmental programme was a condition precedent to the obligation imposed upon Alcoa by the Wagerup Agreement to commence to perform the work, which it was required to perform under the Wagerup Agreement. His Honour found that the letter from the State informing Alcoa that the program was approved was merely advice of the fact. It did not "authorise" anything; neither was it necessary to do so. Upon receipt of the approval, Alcoa was then obliged to proceed with the work under the Wagerup Agreement.

Jones J agreed with the reasoning of Wickham J and provided some analysis in respect to the interpretation of s 67(4) of the *Police Act*. Jones J opined that, if the words 'by virtue of a license, permit or authorisation' were not in s 67(4), then the Court would have had to decide whether the Wagerup Agreement was 'a law of the State'. Jones J observed that this question was 'debatable', and since the words were there, it was not necessary to resolve the question. Jones J concluded that "perhaps the very fact that [the words] are there points to the legislative intention to strike by the sub-section at interference with activities which normally require a licence or a permit".⁹

Jones J concluded that the Premier's letter to the respondent was not a license, permit or authorisation. It was simply a notification to the respondent that a condition precedent to the commencement of its activities under the Wagerup Agreement had been fulfilled.

In effect, the Full Court was able to allow the appeal and dispose of the matter without addressing the appellants' primary argument. The Court avoided the argument about the Wagerup Agreement being merely ratified, but

⁸ This is not consistent with the more modern requirement that intermediate appellate courts must, as a general rule, deal with all grounds of appeal: *Kuru v New South Wales* (2008) 236 CLR 1, 6 [12]; *Australian Securities and Investments Commission (ASIC) v Lanepoint Enterprises Pty Ltd (recs and mgrs apptd)* (2011) 244 CLR 1, [56]. Cf: *Westpac Banking Corporation v Bell Group Ltd (in liq) (No 3)* [2012] WASCA 157; (2012) 44 WAR 1, [3053]-[3059].

⁹ *Margetts* per Smith J at page 2.

not otherwise

The whole affair was not received well by the press of the day. *The West Australian* newspaper reported that the decision had overlooked “common sense” and the outcome was “too silly to be true”.¹⁰ The article pre-empted the legislative action that followed when it opined “the State Government would be well advised to legislate immediately to get round the problem”.

III THE GOVERNMENT AGREEMENTS ACT 1979 (WA) WAS ENACTED

There is perhaps no greater compliment for good lawyering than the intervention of the legislature to prevent one’s success being repeated. That compliment came from the Western Australian Parliament in response to *Margetts* and it came in the form of the enactment of the *Government Agreements Act 1979*.

On 21 December 1979, the *Government Agreements Act* received royal assent and commenced operation.

The Minister for Industrial Development, Mr Mensaros, when moving that the *Government Agreements Bill* be read a second time, had identified the problem of government agreements being at risk. He said:¹¹

[t]he member for Welshpool referred to the North West Gas Development (Woodside) Agreement Bill which we dealt with yesterday. If members look at clause 3 of the Bill they will see it says the provisions of the agreement shall operate notwithstanding any other Act or law. Therefore, there would be no problem with that. However, a number of other agreement Acts contain clauses which say only that the agreement shall be ratified and that is where the problem occurs.

I should like to point out also that this matter is of great importance. The Member for Swan said that it had never been challenged and he might be right; but once it is flagged – and it has been flagged not only in the decision of the High Court [in *Sankey v Whitlam*], but also in regard to the present Wagerup case [*Margetts*] – a number of people are reminded and they will challenge the situation.

The question arises as to how this would occur and I should like to give members an example. Usually mineral development agreements consolidate the mining tenements and the provisions of the Mining Act do not apply; therefore, the company can work some of these ex-mining tenements, but choose not to work others. However, if the agreement is

¹⁰ West Australia, 1 December 1979

¹¹ See Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 5 December 1979, pp 5846-7.

not the law of the land, we revert to the Mining Act which says that a company has to have an exemption of labour conditions for each tenement. Therefore, a smart aleck can come along, whether or not it is in regard to Agnew Nickel Mine or any other large iron ore project, and say that, despite the fact that Mt. Newman Mining Co. Pty. Ltd. is working busily with two dozen haulage trucks and shovels, some tenements are not being worked and the Warden can be asked to forfeit those tenements.

This is why it is important that all agreements be covered by the legislation.

Almost the entirety of the *Government Agreements Act* as it presently stands, can be quoted and its effect sharply demonstrated.

By s 2 of the *Act*, two principal definitions are provided:

2. Interpretation

In this Act —

Government agreement means —

- (a) an agreement scheduled to, incorporated in, or appearing in, an Act the administration of which is for the time being committed by the Governor to, or approved by the Governor to be placed under the control of, the Minister, and any other agreement scheduled to, incorporated in, or appearing in, an Act and declared by proclamation to be a Government agreement for the purposes of this Act,

and includes —

- (b) any variation of that agreement —
 - (i) which is or has been entered into pursuant to that agreement; or
 - (ii) the signing or implementation, or both, of which has been ratified, approved, or authorised by Parliament; and
- (c) any document or instrument, including any grant, lease, licence, permit, approval, authorisation, right, concession, or exemption, or any other thing made, executed, issued, or obtained for the purposes of that agreement or its implementation;

subject land means —

- (a) land that is set aside, or is being used, for the purposes of or incidental to implementing a Government agreement; or
- (b) land where activity is being, or is about to be, carried on pursuant to, or for the purposes of or incidental to implementing, a Government agreement.

Section 2 defines “Government agreement” in wide terms. The definition includes any agreement scheduled to an Act the administration of which is for

the time being committed by the Governor to, or approved by the Governor to be placed under the control of, the Minister.

Many of the largest development and resources and energy projects in Australia are operating on agreements with the State which constitute “Government agreements” for the purposes of the *Government Agreements Act*.¹²

Moreover, mining tenements and other leasehold interests for such projects, operating for the purposes of a Government agreement or its implementation, are also Government agreements: s 2 [definition of “Government agreement” (c)].

By s 3, there is some validation and entrenchment of state agreements:

3. Operation and effect of Government agreements

For the removal of doubt, it is hereby expressly declared that —

- (a) each provision of a Government agreement shall operate and take effect, and shall be deemed to have operated and taken effect from its inception, according to its terms notwithstanding any other Act or law; and
- (b) any purported modification of any other Act or law contained, or provided for, in such a provision shall operate and take effect so as to modify that other Act or law for the purposes of the Government agreement, and shall be deemed to have so operated and taken effect from its inception, according to its terms notwithstanding any other Act or law.

The effect of s 3(a) of the *Government Agreements Act* is to make clear beyond doubt that each provision of a Government agreement is to operate and take effect in spite of any other Act or law.

Indeed, the speech made by the Minister made it clear that the purpose or object of s 3 of the *Government Agreements Act* was to ensure that other legislation or law did not affect rights, obligations and entitlements under Government agreements.¹³

Finally, by s 4, a specific offence was created so as to apply to land the subject of state agreements:

¹² See, eg: *Iron Ore (Hamersley Range) Agreement Act* 1963 (WA), *Iron Ore (Robe River) Agreement Act* 1964, *Iron Ore (Mount Newman) Agreement Act* 1964 and *Iron Ore (FMG Chichester Pty Ltd) Agreement Act* 2006.

¹³ Specifically, with respect to the *Mining Act* 1978 (WA), which was passed at a similar time, Parliament’s aim was to protect the State’s mineral agreements: Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 24 October 1978, p 2621. Parliament’s aim was not to require parties to State agreements to be regulated simultaneously by two regimes; it was not to impose superadded burdens on parties to a government agreement. This is explained in some detail by the Warden in *Genbow Pty Ltd v The Griffin Coal Mining Company Pty Ltd* [2013] WAMW 11.

4. Offences

(1) A person shall not without lawful authority remain on any subject land after being warned to leave it by —

- (a) the owner or occupier, or a person authorised by or on behalf of the owner or occupier, of that subject land; or
- (b) a member of the Police Force.

Penalty: \$5 000 or 12 months' imprisonment.

(2) A person shall not without lawful authority prevent, obstruct, or hinder any activity which is being, or is about to be, carried on pursuant to, or for the purposes of or incidental to implementing, a Government agreement, or attempt to do so.

Penalty: \$5 000 or 12 months' imprisonment.

(3) For the purposes of any proceedings for an offence under this Act an averment in the prosecution notice —

- (a) that an agreement is scheduled to, incorporated in, or appearing in, an Act the administration of which is for the time being committed by the Governor to, or approved by the Governor to be placed under the control of, the Minister; or
- (b) that an agreement is scheduled to, incorporated in, or appearing in, an Act and declared by proclamation to be a Government agreement for the purposes of this Act,

shall, in the absence of proof to the contrary, be deemed to be proved.

In the second reading speech, the Minister referred to the proposed s 4 and noted that *Margetts* focussed attention on the inadequacy of existing legislation to deal with protestors who seek to disrupt industrial projects. He also noted that the Government and the majority of Western Australians who recognise the benefits of controlled sensible development of resources would not allow the *Margetts* situation to continue.

The Minister said that the penalties provided in s 4 were severe, but that was a reflection of the seriousness in which the government viewed deliberate acts of obstruction, and that the government cannot allow projects to be delayed by 'minority groups' who seek to enforce their views on the majority of people who support the ventures. He also noted that the exhaustive environmental regulations that many of the projects are subject to are designed to provide maximum long-term benefits for residents in Western Australia.

Environmental advocacy has significantly progressed in Western Australia since 1979 and comments such as "the government cannot allow projects to be delayed by 'minority groups' who seek to enforce their views on the majority of people who support the ventures" may not be popular today. However,

environmental and occupational health and safety regulation in Western Australia has also advanced.

The operation of s 4 of the *Government Agreements Act* is critical to encourage the development of the resources of the State to generate economic benefits by providing protection to developers from obstruction of their operations, which can have a devastating economic impact on a project.

Of course the enactment of the *Government Agreements Act* does not resolve all problems and issues. There is still much scope for litigation concerning the application of the Act. For example, it has been emphasised in this State's highest court that an agreement, ratified by statute, ordinarily does not take effect *as law* and the *Government Agreements Act* does not take those agreements so far.¹⁴ But the point does not yet appear to have been argued that by reason of s 31(1) of the *Interpretation Act* 1984, which provides that a schedule to a written law forms part of the written law, that an agreement found in the schedule of an act is law.

From an economic point of view, state agreements are considered to be of critical importance to the State of Western Australia. They provide a statutory framework to facilitate large projects of State significance.¹⁵ A State Government review conducted in 2002 found that around 70% of the total value of production from the Western Australian resources sector came from state agreement projects.¹⁶ The figure would probably have been higher through the resources boom of the late 2000s.

State agreements balance the three objectives of government mineral policies, namely, to encourage development of the State's resources to generate economic benefits, to control development and to tax developers.¹⁷ Also, as the current Premier of Western Australia has noted, security of tenure is an important benefit conferred by state agreements.¹⁸

While a civil right to protest, exercised by the Wagerup 23 on State agreement land in the *Margetts* case, was lawfully exercised in that case but later impeached following the litigation, the case served to bring about a statute of significant economic importance to the State.

¹⁴ *Re Michael; Ex Parte WMC Resources Ltd* [2003] WASCA 288; (2003) 27 WAR 574, 581 [29]-[30], 587 [47] (Parker J, with Templeman and Miller JJ agreeing).

¹⁵ Noted in *BHP Coal Pty Ltd v Minister for Natural Resources, Mines, Energy and Minister for Trade* [2011] QSC 246, [45].

¹⁶ Richard Hillman "The Future Role for State Agreements in Western Australia" (2006) 25 *Australian Resources and Energy Law Journal* 293, 293.

¹⁷ Leigh Warnick "State agreements" (1988) 62 *Australian Law Journal* 878, 878-9.

¹⁸ The Hon Colin Barnett "State Agreements" (1996) *AMPLA Yearbook* 314, 317-8, 321.

State agreements continue to generate new legal issues. A recent example arose in relation to the State of Western Australia's intervention in the current proceedings between Chinese owned Citic Pacific and Australian owned, Mineralogy (substantially owned by Mr Clive Palmer). Citic Pacific acquired the right to develop and mine its approximately \$8 billion Sino Iron mine project from Mineralogy in exchange for upfront payments and royalties. Since then, Mineralogy has launched a bid to have Citic Pacific removed from the project which has resulted in the intervention of the State. The State Solicitor, Mr Paul Evans, announced after he sought to intervene on behalf of that State, that the State has an interest in making sure the project was developed according to the terms of a state agreement governing the project, contained in the *Iron Ore Processing (Mineralogy Pty Ltd) Agreement Act 2002 (WA)*. The application for intervention was successful,¹⁹ and the matter awaits final determination.

IV PROMOTION OF PUBLIC INTEREST LITIGATION

Although *Margetts* was an unreported decision and has not been given much consideration since, it was a significant part of the genesis of environmental lawyering and public interest cases in Western Australia in the late 1970s.

The fact that the *Government Agreements Act* was rushed through parliament in response to a challenge to important principles underpinning State legislation, demonstrates the significance of the action (perhaps more so than the decision itself).

Peter Johnson refers to the *Margetts* decision in his paper 'Litigating Human Rights in Western Australia: Lessons from the Past', and points out how a strict approach to statutory construction could yield a successful outcome in a case where the central constitutional issue did not need to be decided.²⁰

Peter also refers to the *Margetts* decision in his paper 'Environmental Advocacy: The Role of Lawyers in Western Australia', and poses the question, "whether apart from gaining temporary breathing space, and attracting media attention, there is much utility pursuing a path of litigation in environmental

¹⁹ *Mineralogy Pty Ltd v Sino Iron Pty Ltd (No 3)* [2015] FCA 542.

²⁰ Peter Johnston "Litigating Human Rights in Western Australia: Lessons from the Past" (2013) 15 *University of Notre Dame Australia Law Review* 111, at 137.

matters”.²¹

This last statement is particularly relevant given the development of environmental law since the 1970s. Now, numerous mechanisms are available, including public environmental review pursuant to the *Environmental Protection Act 1986*, and the substantial requirements of the *Mining Act 1978* on tenement holders to have remediation plans and to assess environmental impact when applying for tenements (including the effect of *Re Calder; Ex parte Cable Sands (WA) Pty Ltd* (1998) 20 WAR 343, that s 82 of the *Mining Act 1978* now requires state agreement holders (for the most part) to comply with modern environmental legislation).²²

The development of environmental law has seen the Environmental Defender’s Office, established with the help of Commonwealth funding in every State and Territory in Australia²³. The Environmental Defender’s Office’s common objectives include:

- protecting the environment through law;
- ensuring that the community receives prompt advice and professional legal representation in public interest environmental matters;
- identifying deficiencies in the law and working for reform of these areas;
- empowering the wider community, including indigenous peoples to understand the law and to participate in the environmental decision making; and
- assisting the growth of the nation EDO network across Australia²⁴.

These objectives are indeed a more sophisticated and effective way of achieving environmental reform than militantly chaining oneself to project machinery.

It had been commented in the *West Australian* in 1979 that “what needs to be established beyond doubt is the right of people – companies and individuals – to go about their business without hindrance or threat of physical confrontation. Those who seek to challenge that business have recourse to law

²¹ Peter W Johnston “Environmental Advocacy: The Role of Lawyers in Western Australia” (1991) 8 *Environment and Planning Law Journal* 158, at 162.

²² And, similarly, the reality that a Warden can recommend refusal of an exploration licence or mining lease on, essentially, environmental grounds and that Wardens have done so in particular cases: *Finesky Holdings Pty Ltd v Australian Speleological Federation (Inc)* [2001] WAMW 1, *Darling Range South Pty Ltd v Ferrell* [2012] WAMW 12 and *Forrest & Forrest Pty Ltd v Cauldron Energy Ltd* [2014] WAMW 3.

²³ Hon Chief Justice Robert French “Pest or Protector – The Environmental Defence Lawyer in 2010” (28 May 2010, Sydney, Speech at the Environmental Defender’s Office 25th Anniversary Dinner).

²⁴ Above, n 21.

but not violence... if it takes an Act of Parliament to guarantee that basic protection, the sooner we get it the better”.

The developments in environmental regulation have certainly created proper forums and formal mechanisms for environmental issues to be raised and addressed, to lessen the need for direct action. Further, there continues to be prominent examples of success for environmental activism through formal legal channels.²⁵

V CONCLUSION

The *Wagerup 23* case was a landmark piece of environmental litigation in Western Australia. It brought about significant legislative change for energy and resources projects in the form of the *Government Agreements Act*. The case can also be said to be the forerunner to much environmental litigation in Western Australia that followed, as the appellants had enjoyed resounding public success in the Full Court.

Peter could be rightly proud of his contribution to these areas of the law.

²⁵ See for example: *Wilderness Society of WA (Inc) v Minister for Environment* [2013] WASC 307; (2013) 45 WAR 471. See earlier: *Hunter v the Minister for Planning* [2012] WASC 247.