

The Gunns 20 Case: A Brief History

By Adam Beeson¹

Introduction

On the 13 December 2004 Gunns Ltd, Australia's largest export wood-chipper, sued 17 individuals and three groups in the Victorian Supreme Court. Gunns was seeking financial compensation of \$6.3 million for "ongoing damaging campaigns and activities" by environmental activists against the company's operations. The activities in question included media statements, so-called unlawful lobbying of shareholders and customers and disruption of Gunns' logging operations. The writ was issued two days before Gunns referred its controversial Pulp Mill to the Federal Government for assessment.

The people sued – who came to be known collectively as The Gunns20 – were: Alec Marr, Geoff Law, Russell Hanson, Leanne Minshull, Heidi Douglas, The Wilderness Society Inc., Adam Burling, Louise Morris, Simon Brown, Green's Senator Bob Brown, Greens MHA Peg Putt, Helen Gee, Lou Geraghty, Neal Funnell, Brian Dimmick, Huon Valley Environment Centre Inc., Dr Peter Pullinger, Dr Frank Nicklason and Doctors For Native Forests.

Senator Bob Brown immediately went public with the news:

This is a broad scale attack on our Australian right to protest for the nation's heritage. It is a US-style writ to hector the strongholds of the popular environment movement into silence and submission as Gunns' chainsaws and poison destroys the Tasmanian forests and their wildlife at the greatest rate in history. I, for one, will never be cowed by John Gay, Robin Gray, their wealth or their power of destruction. They will not stop me from campaigning to save Australia's heritage even if it means losing every penny, every home comfort, every peaceful night's sleep life offers. www.news-tasmania.com/gunnsfolly.html

The news of the case brought waves of public support and outcry. Donations poured in as did words of support from around the country. Well-known author Richard Flanagan condemned the case at the first Gunns20 rally in Hobart and later wrote:

The perversity of the action was staggering: with the immense fortune it had made out of destroying Tasmania's forests, Gunns had launched an action that would, if successful, have redefined the practice of democracy as the crime of conspiracy.

The Monthly, May 2007, No. 23 www.themonthly.com.au

Notwithstanding the public support, the claim placed enormous pressure on the defendants many of whom had family homes which they immediately thought might be at risk. There was also an allegation of conspiracy in the Gunns' claim which meant that defendants were unsure as to whether they ought to communicate with one another in order to come to grips with the 221 pages of legal language that comprised the original writ.

To the credit of the Victorian legal community and the Public Interest Law Clearing House the defendants were able to find high calibre lawyers to act on their behalf. No doubt Gunns would have been taken aback when they discovered the defendants' legal team comprised six law firms and 14 barristers. There were four QCs in the team including Julian Burnside QC, Brian Walters SC, Jennifer Batrouney SC and Mark Dreyfus QC (now the Federal Member for Isaacs).

The Gunns20 legal teams set about demolishing the first three versions of Gunns statement of claim. Justice Bongiorno struck out the claims on the basis that the manner in which they had been written meant it was not possible to determine of what precisely the defendants were accused.

¹ Legal Coordinator for the Gunns20 for the duration of the case. The legal coordinator position was created by the Gunns20 support organization – Friends of Forests and Free Speech. The legal coordinator provided support to defendants and their legal teams. www.gunns20.org contains further information, including contact details for the author.

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The claim came in for ridicule throughout, with His Honour stating at the first strike out hearing:

As someone who has tried to understand this pleading [the statement of claim] over the weekend and in the last two days I can tell you it is a tortuous course. It would make Burke and Wills, and explorers like them quake in their boots...

The failure of their case to get to first base was a public relations disaster for Gunns and set the tone for the rest of the case. The court also ordered Gunns to pay costs for the strike out hearings. These costs amounted to \$585,000.

Having changed from their first law firm, EMA Legal, and engaged firm Hunt & Hunt in July 2006, Gunns again changed legal firms in October 2006 this time engaging Clayton Utz.

In December 2006 Gunns' case against the Gunns20 really began to fall apart.

Firstly, Gunns dropped major parts of their case. Claims that defendants had interfered with contracts with Japanese customers, financiers, banks and the Banksia Awards foundation were dropped. They also abandoned the claim that there was a "campaign against Gunns" in which it was claimed there was a massive conspiracy between defendants and others to damage Gunns.

Secondly, Gunns dropped the claims made against Dr Peter Pullinger, Doctors for Native Forests, Senator Bob Brown, Peg Putt MHA and Helen Gee. This was a unilateral decision by Gunns and not a settlement, so Gunns had to pay the costs of those defendants. Unfortunately those costs did not cover all legal expenses, let alone personal costs. In short these defendants were dragged through court for two years and made to pay tens of thousands of dollars in costs only to be dropped without explanation. This raises the question of how company directors or managers can use shareholder resources to apparently punish community members for their attempts to protect Tasmania's forests.

In April 2007 Gunns dropped the original claims against Dr Frank Nicklason but then sued Dr Nicklason again in relation to comments he made about potential health risks associated with Gunns woodchip piles in Burnie, northern Tasmania.

Over the next two years, the radically altered Gunns20 claim went through the legal steps towards trial. A large part of the process was 'discovery' where the parties to a legal dispute are required to disclose all documents in their possession that relate to the claim.

Not satisfied with the documents produced by several of the individual defendants and The Wilderness Society (TWS) Gunns went to court. The court upheld the defendant's refusal to provide some information that Gunns sought. Gunns appealed, trying to force The Wilderness Society to release records connecting it with 128 individual conservationists. The appeal was dismissed with the judge describing Gunns' attempts as a having the "hallmarks of a fishing expedition". TWS spent around \$200,000 in legal fees on the discovery process alone.

The end of the discovery process was followed by court ordered mediation in April 2009. In another remarkable capitulation, at mediation Gunns agreed to settle with The Wilderness Society (TWS) by paying TWS \$350,000 in return for a damages payment of just \$25,000. Virginia Young, TWS Strategic Campaigns Coordinator, said at the time:

This has been the biggest legal fiasco since the McLibel case, which taught every other corporation that suing community groups was a bad idea. After spending probably \$3m of shareholders' money claiming that The Wilderness Society organised a grand conspiracy against them, Gunns has now had to drop the claims against The Wilderness Society and pay us money. The legal action was rubbish from the start, and we are proud not only to have won the case today, but also to have continued to campaign for the protection of forests and against Gunns' environmentally destructive pulp mill. www.wilderness.org.au/regions/tasmania/a-great-day-for-our-forests

Following court mediation Ben Morrow was also dropped from the case with Gunns being ordered to pay his costs. Tragically in July that year Ben passed away, aged 34, after a battle with cancer. He was a courageous forest defender and terrific Australian who continues to be sadly missed.

Dr Nicklason's case was also settled at mediation. This happened in August 2009 with Dr Nicklason agreeing to send a letter to Gunns chairman John Gay in which he apologised for making the statement. Dr Nicklason stated the apology related to him having gone public with his concerns before approaching Gunns. Dr Nicklason paid no damages or legal costs to Gunns although the case cost him over \$80,000 in legal fees. Since then an expert report obtained by Dr Nicklason in the course of preparing his defence has been released publicly and sparked further investigation into the health impacts of the woodchip piles.

On 10 August 2009 nearly five years since the case began, a trial date was set for 2 February 2010. At that stage only six of the original Gunns20 remained. These defendants rearranged their legal representation shortly thereafter with four of the individuals deciding to represent themselves in court. The Huon Valley Environment Centre engaged Bleyer Lawyers and ultimately Julian Bursnide QC to run their defence at trial.

Neal Funnell and Louise Morris settled with Gunns in late November 2009. Both agreed to very limited undertakings not to enter two and three Gunns sites (respectively) until the end of 2012; they paid no damages or legal costs. Neal said after the settlement that "if you stand up against Gunns, and if you refuse to be intimidated and bullied, Gunns will capitulate".

The remaining four defendants were not prepared to provide Gunns with any form of undertaking and so began the stressful and time-consuming process of trial preparation. This continued through December 2009 and January 2010.

Just days before trial Gunns agreed to pay these four defendants a total of \$155,088 and drop the case. This was a massive victory and huge relief to the four who, whilst prepared and ready for trial, were not looking forward to spending a month in court in Melbourne.

On the 2 February 2010, the day the trial was to begin, the Gunns20 defendants gathered at the Supreme Court to celebrate the end of the case. Adam Burling one of the final four defendants said:

"The result in the Gunns20 case was a victory for free speech and Tasmania's forests". Gunns ought to take this opportunity to improve their corporate image by immediately dropping their case against the Triabunna 13".

All defendants called on Gunns to drop their court case against 13 forest activists ('the Triabunna 13') in Tasmania.

Throughout the case, the defendants were supported by an organisation set up specifically for the purpose: Friends of Forests and Free Speech, usually known as Gunns20. Crucially, this enabled a lawyer (legal coordinator) to be employed to support and advise all the defendants. Administrative and fundraising assistance was also provided – fundraising during the long periods where not much was happening legally was challenging! Thousands of supporters from across Australia and some from overseas gave vital moral and financial support.

In parallel with the five year saga of the Gunns20 case, moves have been underway to prevent others from having to face a similar situation. In August 2008 the ACT Parliament passed legislation to protect public participation. This is Australia's first "anti-SLAPP" legislation. SLAPP refers to Strategic Lawsuits Against Public Participation where companies bring legal charges to intimidate and discourage public opposition to their activities. The committee process which led to the drafting and passing of the anti-SLAPP bill in the ACT heard submissions from members of the public including submissions in relation to the Gunns20 case. The defendants have also written to the Victorian Attorney-General requesting that he implement anti-SLAPP legislation in that state.

The important role of the Gunns20 was recognized on 30 November 2008, when Senator Bob Brown attended the Free Speech Victoria Awards night to receive the "The Voltaire Award" on behalf of the Gunns20. It is a tribute to the defendants, their legal teams and friends of forests and free speech across the country that this five-year saga has ended successfully.