

Mr. Trevor O'Hoy
CEO
Foster's Group Limited
77 Southbank Boulevard
SOUTHBANK VIC 3006

4TH April 2007

Dear Mr. O'Hoy,

I have written to The Law Society of NSW and have asked them to discipline a member of the Society, Ms Christine Covington and the legal firm, Corrs Chambers Westgarth, and to counsel them about their obligations to society and the rule of law.

In particular I have asked The Law Society of NSW to consider what options the Society has to ensure this law firm does not act to coerce, lobby or pressure the Legal Aid Commission about the exercise of its discretion to grant legal aid in matters involving the public interest.

Since 1979 the Environmental Planning and Assessment Act has empowered citizens to take legal proceedings to enforce duties and obligations created by the Act and thereby protect the public interest and the environment. Several hundred such court cases have been undertaken by a range of citizens or citizens groups, and often against the state and large development corporations.

Until the Act created it, there was almost no legal right for a citizen to take legal proceedings to protect an interest in which they had no property or other legal interest. The Act directed the courts to recognise citizens seeking to enforce a law or matter in which they had no property right.

In this case I have no financial interest in the CUB site and without the Act I would not be able to sue to protect the environment.

In addition to creating a new legal right for citizens to protect the environment by conferring legal standing to sue the Act abolished the prohibition on 'maintenance or champerty', the old law which prevented citizens using their common funds to support litigation by one person or a group of persons.

Thus, the Act empowered citizens with limited funds to take actions against corporations or state bodies with far larger financial resources. This makes sense as the Act is the instrument that allows large projects to be built, whether they are coal mines, aluminium smelters, shopping complexes and so on, and where the proponents will typically have far superior financial resources to an ordinary citizen.

The relevant Sections 123 says:

123 Restraint etc of breaches of this Act

- (1) Any person may bring proceedings in the Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on his or her own behalf or on behalf of himself or herself and on behalf of other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (4) Proceedings under this section may not be brought in connection with development, or an activity, carried out by, for or on behalf of the Olympic Co-ordination Authority in accordance with the *Olympic Co-ordination Authority Act 1995*.

In this litigation a citizen of limited financial means (myself) is suing the State government, and one of Australia's larger corporations, Foster's and CUB, which last year had a turnover of \$4.9 billion, and a profit of \$1.16 billion.

Assuming the litigation is run simply and in a timely and professional way, the legal costs might be in the range \$30,000 to \$80,000. That is an average of around .004% of Foster's consolidated net profit in 2006.

The land was publicly recorded as worth \$200 million. The litigation is .025% of the land value.

Aware of my rights, and conscious of the economic resource imbalance between myself and the state government and Foster's, I wrote to both the respondents when I commenced the proceedings, saying:

"I am writing to ask you to meet with me prior to the filing of Points of Claim in the Land and Environment Court to discuss how the project could be made more sustainable so that it causes far less climate change, uses only rainwater and recycled sewage, and has minimal parking for privately owned cars. If such a solution was agreed upon, this may avoid the need for further litigation."

Further, I have appealed to local community groups and others to assist me and I have applied for legal aid.

In the circumstances, until the NSW Law Society has determined the complaint I have made, I am writing to ask you to instruct another firm of solicitors to act for you who have a demonstrated record of accepting the changes to the law made in 1979 and the rights of the community to take public interest litigation. You may obtain recommendations about such firms as some are listed with the Law Society, or if you wish, the Environmental Defenders Office may make recommendations as they commonly litigate with such firms in this field.

Yours sincerely



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