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Pro Bono Partnerships: Community Lawyering to Promote Environmental Justice

Abstract

Rural communities across Australia are increasingly being asked to shoulder the environmental and social impacts of intensive mining and gas projects. Escalating demand for coal seam gas (CSG)¹ is raising significant environmental justice issues for rural communities. Chief amongst environmental concerns are risks of contamination or depletion of vital underground aquifers as well as treatment and disposal of high-saline water close to high quality agricultural soils. Associated infrastructure such as pipelines, electricity lines, gas processing and port facilities can also adversely affect communities and ecosystems great distances from where the gas is originally extracted. Whilst community submission (and appeal) rights do exist, accessing expert independent information is challenging, legal terminology is complex and submission periods are short, leading ultimately to a lack of procedural justice for landholders and their communities. Since August 2012, Queensland University of Technology (QUT) has worked in partnership with not-for-profit legal centre - Queensland's Environmental Defenders Office (EDO) - to help better educate communities about mining and CSG assessment processes. The project, now entering its third semester, aims to empower communities to access relevant information and actively engage in legal processes on their own behalf. Students involved in the project so far have helped to research chapters of a comprehensive community guide to mining and CSG law² as well as organising multidisciplinary community forums³ and preparing information on land access and compensation rights for landholders. While environmental justice issues still exist without significant law reform, the project has led to greater awareness amongst the community of the laws relating the CSG. At the same time, it has led to a greater understanding by students and academics of real life environmental justice issues currently faced by rural communities.

Introduction

The Queensland University of Technology (QUT) is working in partnership with the Environmental Defenders Office (Qld) Ltd (EDO), a not for profit legal centre, to help educate communities about complex mining and coal seam gas (CSG) assessment and approval processes. EDO QLD assists individuals and communities to understand and access their legal rights to protect the environment in the public interest. The QUT/EDO project has provided QUT undergraduate students with a community lawyering experience involving examination of the impact of environmental and natural resource laws on communities and ecosystems in Queensland. The long term objective of this project is to increase interaction between QUT academics and students and the EDO to transition to a society in which we develop a greater understanding and appreciation of what is needed to restore

¹ In the United States and Canada, CSG is referred to as 'coal bed methane' or 'coal bed gas'.

² E. V. Hamman, *Mining and Coal Seam Gas Law in Queensland: a guide for the community* (EDO Qld, 2013). The guide is available from www.edoqld.org.au

³ The first QUT/EDO workshop was held in Cecil Plains (South of Dalby), in October 2012. The second workshop was held in Toowoomba in May 2013.

a balance in weighing economic, environmental and social considerations when making decisions about land and resource use and empowering the community to advocate on their own behalf.

The rapid expansion of CSG activities in Queensland is having a profound effect on communities and ecosystems, leaving environmental community legal organisations (CLOs) overworked and under-resourced to respond to increased demand for assistance and services. Environmental CLOs are generally time poor, with only a handful of specialist lawyers working across Queensland, and as such do not often have the staff or resources to dedicate to large scale research projects that would significantly assist them in contributions to policy and structural change and creating community resources. The project integrates the three core academic activities of teaching, research and service tasks within one project and provides benefits for the partner environmental CLOs, QUT students, and QUT environmental researchers. This model provides opportunities for future collaborations between QUT and the partner organisations and will assist in building QUT's reputation as a university with environmental expertise and engagement in clinical legal education.

Context – Coal Seam Gas in Australia

CSG is essentially methane gas which has been trapped within coal seams beneath the ground. The gas, often referred to as 'unconventional gas', is held in place by water pressure, which once released, allows the gas to be extracted to the surface.⁴ Depressurisation of the coal seam usually involves extracting large quantities of water sometimes up to 100m³/day.⁵ CSG water (sometimes called 'associated' or 'produced' water) contains very high quantities of salt⁶ making it unsuitable for agricultural use unless appropriately treated.⁷ One of the main challenges the industry faces is how to deal with the large quantities of residual salty water.⁸ Even though each individual CSG well occupies a relatively small area (about half the size of a tennis court), many hundreds of wells need to be drilled to make it commercially viable for export.⁹ The cumulative effect of this infrastructure on groundwater has caused communities as well as advisory agencies a great deal of concern.¹⁰

CSG, as an energy source, makes up close to 90% of Queensland's domestic gas supply and about 18% of Queensland's electricity (from gas fired power stations).¹¹ The gas is a highly sought after fuel as it is believed to be in abundance and contain up to 70% fewer emissions than coal.¹² CSG has been around since the 1960's but technological advances predominately in the United States have

⁴ Mauricio Taulis and Mark Milke (2013) 'Chemical variability of groundwater samples collected from a coal seam gas exploration well, Maramarua, New Zealand' *Water Research* Volume 47, Issue 3, pages 1021-1034 at 1021

⁵ Ibid.

⁶ Ibid at 1022

⁷ CSG water (associated water) is categorised as a 'waste' under the law. 'Beneficial Use Approvals' (BUAs) can be obtained upon request from the Government. See <http://www.ehp.qld.gov.au/waste/beneficial-use-approvals.html>.

⁸ An initial approach was to use 'evaporation dams', which have now been banned in Queensland, except in exceptional circumstances. See *Environmental Protection Act 1994* (Qld) section 126(2).

⁹ Committee for Economic Development of Australia (2012) 'Australia's unconventional energy options' at page 18 available at <http://ceda.com.au/media/263565/cedaunconventionalenergyfinal.pdf> (accessed 30 July 2013)

¹⁰ See for instance the National Water Commission's website: <http://nwc.gov.au/nwi/position-statements/coal-seam-gas> (accessed 30 July 2013). See also the advice of the Federal Government's Independent Expert Scientific Committee on CSG and Large Coal Mining Development (the 'IESC') in respect of the 'Surat Gas Project - Expansion' available at: <http://www.environment.gov.au/coal-seam-gas-mining/project-advice/> (accessed 30 July 2013)

¹¹ Queensland Government CSG factsheet- www.industry.qld.gov.au/lnq/documents/CSG-Householder-DERM-web.pdf (accessed 2 July 2013)

¹² Queensland Government CSG factsheet- www.industry.qld.gov.au/lnq/documents/CSG-Householder-DERM-web.pdf (accessed 2 July 2013) at page 3. It should however be noted that these figures are disputed and there is currently no science establishing this assumption to be true under Australian conditions.

spurred growth since the 1990s particularly in Queensland's Surat and Bowen basins.¹³ There are currently about 4,000 CSG wells drilled in Australia¹⁴ with an estimated 40,000 wells to be drilled over the next 30 years if the industry reaches its full extraction potential.¹⁵ Over 6,500 of those proposed wells relate to one project alone and are to be located in an area of approximately 8,000km².¹⁶ Queensland companies are in the process of building large scale Liquefied Natural Gas (LNG) facilities with a total investment of over \$60 billion.¹⁷

The proposed levels of CSG expansion in Queensland have raised concerns from a wide variety of stakeholders including: landholders, rural communities, environmental organisations, industry professionals, members of government and researchers. There is a common concern amongst these diverse stakeholders, that the short term economic benefits associated with CSG expansion are being prioritised, without due regard to the significant social and environmental implications of such approvals. Social and environmental implications include concerns linked to food production (possible loss of good quality agricultural land¹⁸); loss of environmental integrity (ramifications for biodiversity and other conservation programs); detrimental impacts of mining operations on local community culture and resilience; effect on the mental health of farmers and graziers many of whom are seeing their livelihoods and those of their children at stake¹⁹ and concerns about the impact of such operations on the quality and quantity of water sources in Queensland. There is hence an urgent and very real need to assess Queensland's environment and resource legislation and policy in order to understand the legal framework allowing for such approvals to take place.

Increased demands on Environmental CLOs

The increase in growth of CSG activities in rural areas has resulted in a significant demand for environmental CLO services – both legal and scientific. There is little capacity within environmental CLO's like the EDO to carry out large-scale holistic assessment of Resource and Land Use regulations in Queensland, nor are they able to act for each and every community or landholder dealing with the impacts of CSG (whether current or proposed). The QUT/EDO project contributes to solving this labour capacity issue by providing QUT staff and student capacity to assist in carrying out this ongoing and time consuming research work.

¹³ Committee for Economic Development of Australia (2012) 'Australia's unconventional energy options' at page 18 available at <http://ceda.com.au/media/263565/cedaunconventionalenergyfinal.pdf> at page 8

¹⁴ CSIRO 'Coal Seam Gas Developments - predicting impacts' (April 2012) at page 2. For more on the growth of the industry since the 1990s see Department of Natural Resources and Mines 'Queensland's coal seam gas overview' (February 2012) available at http://mines.industry.qld.gov.au/assets/coal-pdf/new_csg_cc.pdf (accessed 3 July 2013)

¹⁵ See <http://www.abc.net.au/news/specials/coal-seam-gas-by-the-numbers/#sources> also see raw data from <https://www.google.com/fusiontables/DataSource?docid=1mfMKYcetETt3YWQj7pvxKzZG5tcAkleTzp5Z1OM> (accessed 3 July 2013).

¹⁶ See details of Queensland's 'Bowen Gas Project' available from DEHP's website: www.ehp.qld.gov.au/management/impact-assessment/eis-processes/bowen-gas-project.html (accessed 2 July 2013)

¹⁷ Committee for Economic Development of Australia (2012) 'Australia's unconventional energy options' at page 21

¹⁸ The Queensland Government has attempted to overcome concerns with the extraction of CSG on good quality agricultural land by introducing the *Strategic Cropping Land Act 2011* (Qld). If the project is to take place on 'Strategic Cropping Land' ('SCL') then an additional level of assessment will be required. CSG activities can still take place, but a *SCL protection decision* must be obtained (for permanent impacts) or compliance with a *Standard Condition Code* (for temporary impacts). It may be for instance, that the CSG company is required to establish a non-vertical CSG well from an area outside SCL. For more information see E. V. Hamman, 'Mining and Coal Seam Gas Law in Queensland: A Guide for the Community' (EDO Qld, 2013) at 29.

¹⁹ D Hossain, D Gorman, B Chapelle, W Mann, R Saal and G Penton (2013) 'Impact of the mining industry on the mental health of landholders and rural communities in southwest Queensland' *Australas Psychiatry* Vol no. 1, 32-37

The project provides an avenue for the QUT law school to develop in students a commitment to justice and equal access to justice which is a fundamental aspect of lawyers' professional responsibility which is generally included in relevant professional conduct rules.²⁰ Parker argues that, regardless of motivation, there is a special obligation on lawyers to serve the community which arises from their ethical and social responsibility "because they are under a moral obligation arising from the work they have chosen to do".²¹ Given this professional obligation of lawyers law schools have an obligation to instil in students an understanding of that obligation; and ideally law schools should foster within their student cohorts a commitment to supporting and undertaking pro bono work in their future legal careers. Partnerships between universities and CLO's community legal organisations on projects to address social justice issues can provide a means for universities to fulfil their own service obligations at the same time as inculcating in students a pro bono ethos.

Environmental Justice

Environmental justice is the theory that links human and environmental harm to environmental regulatory decisions. It is commonly defined as involving three theories of justice: procedural justice, distributive justice and justice as recognition.²² Distributive justice focuses on identifying the benefits and burdens that arise as a result of environmental decisions. Burdens may include air pollution, flood risk, noise, waste²³ or industry access and interference with private land. While benefits might be defined as access to water, green space, energy consumption and services²⁴ uncontaminated air, water and lands and undisturbed rights to quiet enjoyment of private land. In the context of CSG activities, the *burden* of energy production is impacting upon rural landholder's private property rights (right to exclude, right to profit from land²⁵) while the *benefits* of increased CSG activities are largely felt by those living in cities through improved economic performance and secure energy access.

²⁰ For example, the preamble to the American Bar Association's Model Rules of Professional Conduct declares, "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." Further, rule 6.1 of the ABA's Model Rules of Professional Conduct asks that lawyers "aspire" to provide at least fifty hours of pro bono work each year or the financial equivalent. In Australia, there is no equivalent regulatory provision, however in 2009 the National Pro Bono Resource Centre introduced the National Pro Bono Aspirational Target. The Target is a voluntary target that law firms and individual lawyers can sign up to, agreeing to aspire to provide at least 35 hours of pro bono legal work per lawyer per year. As at 30 June 2012 the Target had 95 signatories, including 62 law firms. (National Pro Bono Resource Centre, 2012).

²¹ Parker, Stephen, Liffman, Michael, & McLeay, Fiona. (2001) 'Why lawyers should do pro bono work [Paper in: For the Public Good: Pro Bono and the Legal Profession in Australia, Arup, Christopher and Laster, Kathy (eds.)]. *Law in Context (Bundoora, Vic)*, 19, 5-20 at page 12

²² David Scholosberg (2009), 'Defining Environmental Justice: Theories, Movement and Nature' (Oxford).

²³ Gordon Walker (2012) 'Environmental Justice: concepts, evidence and politics' (Routledge) at page 43

²⁴ Ibid.

²⁵ Other generally accepted elements of property include; the right to possess, the right to manage, the right to use, the right to capital and the power of transmissibility. For a more detailed analysis of the elements of traditional common law property rights see A M Honoré, 'Ownership' in *Oxford Essays in Jurisprudence*, A G Guest (ed), (Clarendon Press, Oxford 1961) pp 107-47.

Procedural Justice

Procedural justice is associated with ‘access to justice’ type considerations including: meaningful involvement and participation of relevant stakeholders in decision making processes, access to information, access to affordable and quality legal advice, legal rights associated with due process including the rights of judicial and merit review, rights of standing and consideration of the potential liabilities associated with bringing court actions (costs and time). Procedural justice is very closely aligned with the concept of natural justice which has been defined as requiring: open hearings, a fair hearing; and an absence of bias of the hearing judge.²⁶ Access to courts in the mining and CSG arena raises a number of issues for both public interest cases²⁷ and private or individual cases.²⁸

Some of the challenges for bringing actions in respect of CSG activities relate to the relatively short notice periods in which very detailed and complex issues must be raised. For example in Queensland, if an Environmental Impact Statement (EIS) is undertaken for a CSG project, affected communities and landholders have just 30 business days to dissect hundreds of pages of technical science and compile their submissions.²⁹ The compilation of the EIS itself may have taken anywhere from a few months to a few years to compile by the resource company’s expert environmental consultants. They usually run into many hundreds if not thousands of pages. Making final submissions about the project (which is only allowed for higher risk projects³⁰) is equally technical. The time allowed under the legislation is 20 business days.³¹

Whilst these periods may seem reasonable on paper, in practice submitters (typically farmers, or graziers who are not academically trained) must tailor their submissions with respect to ‘environmental values’, the ‘character and resilience’ of the receiving environment, as well as certain ‘environmental objective and performance outcomes’.³² In addition, there are strict standing procedures that must be followed before any Court action (an ‘appeal’) can be pursued. Communities and landholders must make submissions about the impacts of a project when it is first

²⁶ Honourable Justice Brian J Preston (2012), ‘Natural justice by the courts: some recent examples’ (Speech delivered at the Land and Environment Court of NSW Annual Conference, 17 May 2012, Coogee Beach, Australia).

²⁷ Chris McGrath (2008), ‘Flying foxes, dams and whales: Using Federal Environmental Laws in the Public Interest’ 52 *Environmental and Planning Law Journal*, 324. For an international perspective see Saiful Karim, Okechukwu Benjamin Vincents, Mia Rahim (2012), ‘Legal Activism for Ensuring Environmental Justice’ 7 (1) *Asian Journal of Comparative Law*. For a Queensland ‘mining’ example, see the position of Friends of the Earth taken in the case of *Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth – Brisbane Co-Op Ltd & Ors* [2012] QLC 013. For a discussion of the public interest stance in that case (and costs issues) see *Xstrata Coal Queensland Pty Ltd & Ors v. Friends of the Earth - Brisbane Co-Op Ltd (No 2)* [2012] QLC 67.

²⁸ Whilst there have been a number of public interest cases against mining developments in Queensland, there has only been one appeal commenced against a CSG project. See www.theaustralian.com.au/national-affairs/fertile-grounds-for-coal-seam-test-case/story-fn59niix-1226059965718 (accessed 2 July 2013).

²⁹ There are generally two types of EISs associated with CSG projects. The first is for ‘regular’ CSG projects under the *Environmental Protection Act 1994* (Qld), the second is for ‘Coordinated Projects’ under the *State Development and Public Works Organisation Act 1971* (Qld). For the former the period must be 30 days (see section 52). For the latter, if an EIS is required, the State’s Coordinator-General sets the public submission period, but it is typically 30 business days (see section 33).

³⁰ Only certain ‘site-specific applications’ are advertised for public scrutiny and appeal rights. See the *Environmental Protection Act 1994* (Qld) section 149.

³¹ See the *Environmental Protection Act 1994* (Qld) section 155.

³² Whilst submissions can be made about any aspect of a proposed project (environmental, social or economic), to be effective and relevant, submissions should ideally focus on the factors that DEHP must consider when issuing final approval for the project. See the *Environmental Protection Act 1994* (Qld) section 176 (and the dictionary) as well as Schedule 5 to the *Environmental Protection Regulation 2008* (Qld). See also E. V. Hamman (2013), ‘Mining and Coal Seam Gas Law in Queensland: A Guide for the Community’ (EDO Qld) at pages 32-34. The guide is available from www.edoqld.org.au

advertised or they are not entitled to appeal to the Court.³³ Ultimately, few rural landholders have the resources or capabilities to research or scrutinise extensive scientific modelling within the short periods allowed by the legislation let alone take an action to Court.

Improving access to justice

One of the ways to improve justice outcomes in this area is to educate affected community about the key processes and main opportunities for making submissions and bringing appeals. The QUT/EDO environmental legal clinic allowed for the EDO to present two rural workshops which the QUT students were pivotal in organising. These workshops and the publication of the EDO's *Guide to Mining and Coal Seam Gas Law in Queensland* are practical measures which contribute to addressing some of the procedural injustices associated with challenging environmental decisions.

The majority of literature on access to justice focuses on access to courts and lawyers, which is grounded in the belief that justice is delivered by one 'having their day in court'. This paper does not deny that the judiciary has a strong role to play in respect of delivering justice, however it argued that delivering access to justice requires action from a broader range of stakeholders. Facilitating access to information is an essential activity to improve access to justice. There is a real need to provide more information and encourage debate on not only the predicated economic benefits associated with these developments, but also the social (community response and feedback) and environmental impacts of these decisions (information about the impact on terrestrial and hydrological landscapes). Environmental law is inherently interdisciplinary in nature, as implementation of it requires an understanding of economic, scientific and planning perspectives. In addition to executive action, academics and the community organisations play a large role in improving access to information. Information is needed not only on the legal frameworks, but also from science, economics and planning practitioners and experts.

Justice as recognition

Justice as recognition requires identification and recognition of the practices resulting in injustice. Practices of misrecognition include: "cultural dominance and oppression, being rendered invisible through non-recognition and being routinely maligned or disparaged in stereotypical and stigmatising public and cultural representations."³⁴ Individuals and groups promoting greater environmental consideration of mining developments are often stereotyped as being anti-economic development and in holding extreme left wing political views. As a result, State Governments such as Queensland and New South Wales have removed funding to these organisations.³⁵

The environment itself also lacks legal personality and is invisible to the law. This raises issues in respect of standing to protect environmental interests, but also means that the interest for the environment is largely ignored by decision makers.³⁶ Environmental laws are largely

³³ Only 'dissatisfied' submitters can appeal to Queensland's Land Court. See *Environmental Protection Act 1994* (Qld), ss 519-530 particularly sections 521(2) and 524.

³⁴ Gordon Walker (2012), 'Environmental Justice: concepts, evidence and politics' (Routledge) at 51.

³⁵ See <http://theconversation.com/environmental-defenders-under-attack-why-funding-must-be-restored-10484> (accessed 30 July 2013) and the response from the Federal Government at the time: <http://www.ministerhomeaffairs.gov.au/MediaReleases/Pages/2012/Third%20Quarter/7July2012-Newmanattacksenvironmentalprotections.aspx> (accessed 30 July 2013)

³⁶ Thomas Berry (2012) 'Rights of the Earth: We Need a New Legal Framework Which Recognises the Rights of All Living Beings in Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press)

anthropocentric in nature (human focused) and there are movements afoot to try and ensure that more eco-centric views are embedded into environmental regulatory frameworks.³⁷ Practical measures to address justice as recognition in a legal clinic environment include involving students in writing law reform submissions and proposals which address the power imbalance between communities and industry.³⁸

Community Legal Education

The access to justice issues raised in the previous section can be addressed through community or social change lawyering. Social change lawyering is the “practice of addressing the causes of entrenched legal problems”³⁹ rather than focussing on addressing the particular legal issues facing individual clients. Community lawyering is a model of social change lawyering and while different definitions have been provided, “the term is largely used to identify a social justice lawyering practice that places commitment to something called “community” at its core.”⁴⁰ In Australia, community lawyering “has focussed on empowering individuals about their legal rights through casework and community legal education whilst agitating for change to the law through law reform.”⁴¹ A useful definition is provided by Torkarz:

“community lawyering is an approach to the practice of law ... that centers on building and sustaining relationships with clients, over time, *in context*, as a part of and in conjunction *with* communities. It incorporates a respect for clients that empowers them and assists them in the larger economic, political, and social contexts of their lives, beyond their immediate legal problems.”⁴²

In addition to the emphasis on community empowerment, community lawyering also often involves multi-disciplinary responses to complex and multi-dimensional problems.⁴³ A community lawyering clinic adopts a community lawyering model and involves a commitment to a social justice mission on the scale of a particular community.⁴⁴ Community lawyering clinics are generally flexible “both in terms of subject area and modality of practice”⁴⁵ in order to respond to changing community conditions and priorities. Community legal education is a model that may be adopted by community lawyering clinics to enact social change; they involve “a form of systemic advocacy that aims to

³⁷ Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (2012, Wakefield Press)

³⁸ On the power imbalance see Christie Edward (2012), ‘Coal seam gas development, environmental legislation and power: Towards a pathway for conflict resolution and environmental justice’ *Queensland Lawyer* 32 (4), 225.

³⁹ Paula O’Brien (2011) ‘Changing Public Interest Law: Overcoming the Law’s barriers to Social Change Lawyering’. *Alternative Law Journal* 36, 82-86 at 82

⁴⁰ Juliet M. Brodie (2009) ‘Little cases on the middle ground: Teaching social justice lawyering in neighbourhood-based community lawyering clinics’ *Clinical Law Review*, 15, 333-385, at page 339.

⁴¹ Clutterbuck, Martin (2007). Multidisciplinary Approach to Community Law. *Alternative Law Journal* 32, 165-168 at 165

⁴² Tokarz, Karen, Cook, Nancy L., Brooks, Susan, & Blom, Brenda Bratton. (2008) ‘Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education.’ *Journal of Law and Policy*, 28, 359-402 at 364

⁴³ See Newman, Elizabeth. (2011). Bridging the Justice Gap: Building Community by Responding to Individual Need. *Clinical Law Review* 17, 615-669; and Clutterbuck, Martin (2007). Multidisciplinary Approach to Community Law. *Alternative Law Journal* 32, 165-168

⁴⁴ Juliet M. Brodie (2009) ‘Little cases on the middle ground: Teaching social justice lawyering in neighbourhood-based community lawyering clinics’ *Clinical Law Review*, 15, 333-385, at page 343.

⁴⁵ Juliet M. Brodie (2009) ‘Little cases on the middle ground: Teaching social justice lawyering in neighbourhood-based community lawyering clinics’ *Clinical Law Review*, 15, 333-385, at page 344.

educate a segment of the community about its rights in a particular legal context to advance the empowerment of that community.”⁴⁶

In a society where there is significant unmet legal need and traditional lawyering approaches are limited in their ability to address the underlying causes of injustice, the community lawyering model is a powerful vehicle to enact social change. It has been recognised that while community legal clinics are regularly involved in public interest lawyering and are in a position to recognise the need for social change, they generally lack the resources to pursue a social change agenda.⁴⁷ Accordingly, partnerships between community organisations and universities are crucial to developing strategies to address social change needs identified by community organisations. Community lawyering clinics facilitate collaboration between community, students and researchers, to address identified social needs. Through such collaboration, community lawyering clinics provide benefits to both the community and to the students who participate in them. They provide an opportunity to teach about social justice and instil a community service/pro bono ethos. Further, they have been found to improve law teaching and learning, raise social justice awareness of law students and enhance the role of law and lawyers in society by helping law students to develop their social justice consciousness and take on the challenges of addressing social issues in systematic ways.⁴⁸

In addition to the benefits for student learning, community lawyering clinics also provide significant benefits in addressing social justice issues by allowing students, academics and communities to work together to address social problems. Golden argues that complex social problems can more readily be solved by lawyers working collaboratively with community and with other disciplines.⁴⁹ The impact of community clinics on access to justice is amplified because rather than aiding individual clients, such clinics aim to empower communities through educating them about their rights and assisting with law reform advocacy. The community lawyering clinic “reaches segments of community not necessarily reached by traditional legal services, provides support for individuals not involved in litigation, responds to non-legal concerns or concerns unable to be redressed by the law, develops leadership skills within the community, and transfers knowledge and encourages collaboration within and among communities.”⁵⁰

The QUT/EDO clinic is innovative in seeking to educate students in relation to environmental and social justice issues through a community lawyering model. While there are many examples globally of environmental clinics, many of these focus on public interest environmental litigation rather than community legal education. The United States, often acknowledged as leaders in environmental jurisprudence and public interest environmental litigation, has a number of examples of specialist environmental legal clinics including Columbia Law School, Stanford Law School and the University of

⁴⁶ Barry, Margaret Martin, Camp, A. Rachel, Johnson, Margaret E., & Klein, Catherine F. (2011-2012). Teaching Social Justice Lawyering: Systematically including Community Legal Education in Law School Clinics *Clinical Law Review*, 18, 401-457 at 404.

⁴⁷ O'Brien, Paula. (2011). Changing Public Interest Law: Overcoming the Law's Barriers to Social Change Lawyering'. *Alternative Law Journal*, 36, 82-86.

⁴⁸ Tokarz, Karen, Cook, Nancy L., Brooks, Susan, & Blom, Brenda Bratton. (2008). Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education. *Journal of Law and Policy*, 28, 359-402

⁴⁹ Golden, Robin S. (2011-2012). Collaborative as Client: Lawyering for Effective Change *New York Law School Law Review*, 56 393-442.

⁵⁰ Barry, Margaret Martin, Camp, A. Rachel, Johnson, Margaret E., & Klein, Catherine F. (2011-2012). Teaching Social Justice Lawyering: Systematically including Community Legal Education in Law School Clinics *Clinical Law Review*, 18, 401-457 at 406

Chicago Law School.⁵¹ Vermont Law School, runs the Environmental and Natural Resources Clinic. The focus of the clinic, labelled as ‘an education of consequence’⁵² is on public interest litigation. The clinic invites students to assist in litigating cases which “present an opportunity to contribute to the resolution of a significant environmental problem or to enhance the protection and conservation of important natural resources.”⁵³ In 2012, the clinic advocated on behalf of their clients against a natural gas pipeline in Puerto Rico⁵⁴ arguing that it threatened fragile ecosystems.⁵⁵ The pipeline proposal was withdrawn as a result of the advocacy.⁵⁶

In Australia, the concept is less well entrenched although gathering momentum. The University of New South Wales (UNSW) offers students the chance to partake in a ‘Land and Environment Court Clinic’⁵⁷. The program is open to undergraduate students and involves “research, interviewing clients and assisting clients...in completing forms [and] finding resource...”⁵⁸ The program has completed its first semester but is Court and litigation focussed.

In addition to these instances of public interest litigation clinics, other models of environmental law clinics also exist. In China, Sun Yat-sen (Zhongshan) University operates the oldest environmental law clinic in China,⁵⁹ which is trying to “help cultivate a greater sense of social responsibility among Chinese students...”⁶⁰ The focus of the clinic is slightly different to the more traditional environmental litigation focused clinics. As a result of the limited opportunities for Chinese law graduates to work directly in Environmental Law, this clinic has a policy research and analysis focus.⁶¹ This approach, albeit perhaps forced by circumstance, fits with where some researchers argue the true focus of legal clinics should be. Peter Cashman from Sydney University argues that

⁵¹ At the time of writing, other environmental legal clinics also exist at University of Texas, University of Pittsburgh and the University of Colorado Law School to name a few.

⁵² Vermont Law School Environment and Natural Resources Clinic 5 year report available here: <http://www.vermontlaw.edu/Documents/ENRLC%205%20Year%20Report%20Hi%20Res.pdf> (accessed 3 July 2013)

⁵³ *Ibid.*, at 9.

⁵⁴ Puerto Rico is an ‘unincorporated territory’ of the United States (US). The US currently exercise sovereignty of Puerto Rico (as well as other territories like Guam and American Samoa). Puerto Rico was ceded to the US by treaty at the end of the Spanish-American War in 1898. As such US Federal Law applies to the territories and hence the clinic’s involvement. For more information see US General Accounting Office (‘GAO’) (1997) ‘U.S. Insular Areas Application of the U.S. Constitution’ available from: www.gao.gov/archive/1998/og98005.pdf (accessed 3 July 2013)

⁵⁵ See http://www.vermontlaw.edu/News_and_Events/News/2012_News_Archive/Environmental_Clinic_Prevails_in_Natural_Gas_Pipeline_Battle_in_Puerto_Rico.htm (accessed 3 July 2013)

⁵⁶ *Ibid.* See also http://www.huffingtonpost.com/2012/10/12/gas-pipeline-puerto-rico_n_1962027.html (accessed 3 July 2013)

⁵⁷ In New South Wales, the Land and Environment Court handles almost all matters concerning the environment including planning disputes, mining and gas objections/appeals and criminal prosecutions for pollution. Contrast this with Queensland, where the Planning and Environment Court hears predominately planning and development disputes. The Land Court, a specialist tribunal, hears compensation and mining objections and CSG (and water-related) appeals. Prosecutions for environmental crimes (pollution, illegal clearing, interfering with threatened wildlife etc.) are heard in Queensland’s general criminal system (predominately in the Magistrates Court).

⁵⁸ See UNSW Handbook Course – Land and Environment Court Clinic – LAWS3302: www.handbook.unsw.edu.au/undergraduate/courses/2013/LAWS3302.html (accessed 2 July 2013)

⁵⁹ The clinic is partly funded by the Rockefeller Brothers Fund: <http://www.rbf.org/close-up/zhongshan-universitys-environmental-law-clinic> (accessed 3 July 2013)

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

clinics should not be restricted to running cases or as he terms it; 'service delivery', but should aim to investigate broader issues such as policy and law reform.⁶²

The QUT/EDO Clinic has embraced the challenge of focusing on such broader issues and community legal education in relational to environmental legal issues. The clinic (now in its third semester) was first established in August 2012. In the first semester (August to November 2012), five undergraduate students from the QUT law school met with EDO representatives to help research a comprehensive guide to mining and CSG law – the first of its kind in Queensland. Across several weeks, students undertook detailed research on topics such as the growth of the CSG industry, accessing essential information about CSG projects, Court appeal processes and standing requirements and issues concerning compliance and enforcement. In addition, the students organised a workshop at Cecil Plains, an area four hours west of Brisbane in central Queensland over a weekend in October 2012 hardest hit by CSG developments. The workshop was attended by EDO and QUT staff with the aim of working with landholders to compile further research on issues facing them for the purposes of the proposed Guide. The students compiled key information and finalised their respective research memos and supplied them to EDO. At the end of semester (November 2012) the students presented their experiences to QUT and EDO staff.

In the second semester of the project (March to June 2013), 6 students from law and planning schools met with EDO to build on the momentum established in the previous semester. The students researched the law relating to private property rights (land access and compensation) an area not covered by the now complete Guide. They also coordinated a CSG information workshop in Toowoomba for landholders and community groups affected by CSG activities inviting groups, organising speakers and running the workshop.

Conclusion

The QUT/EDO partnership is continuing into its third term with a focus on improving access to information on coal seam gas developments in Qld. The project continues to evolve and lessons from one project team are passed to the next project team through student handover documents and facilitated collaboration between previous and current students involved in the project. The QUT and EDO staffs involved in the project have also remained stable, allowing for institutional knowledge and community networks to be transferred to each student team. The educational benefits of the project are currently being evaluated through surveys and focus groups of students and partner organisations. The social benefits of the project will also be measured by a surveys and focus groups of community partners and members of communities impacted by the student projects. The evaluation will include the usefulness of the materials and workshops generated by the project to affected communities. The results of the focus groups and surveys will be analysed to ascertain the impact of the project on the affected communities and on the students who participated in the project. While it is too early to reach firm conclusions initial feedback suggests that the project has assisted students to gain insight into the access to justice issues arising from coal-seam gas mining and to raise the level of understanding and awareness amongst community members of their legal rights.

⁶² See P Cashman, 'Clinical Legal Education: Social Justice, Social Experiment or Social Failure?' in P Keyser, A Kenworthy and G Watson (ed) 'Community Engagement in Contemporary legal education: Pro Bono, Clinical Legal Education and Service-Learning' (Halstead Press, ACT, 2007) at page 70.