

Case Study

Environmental justice for local communities

Melbourne Law School Clinics give students an opportunity to hone their skills while contributing to the work of Melbourne Law School's community law partners.

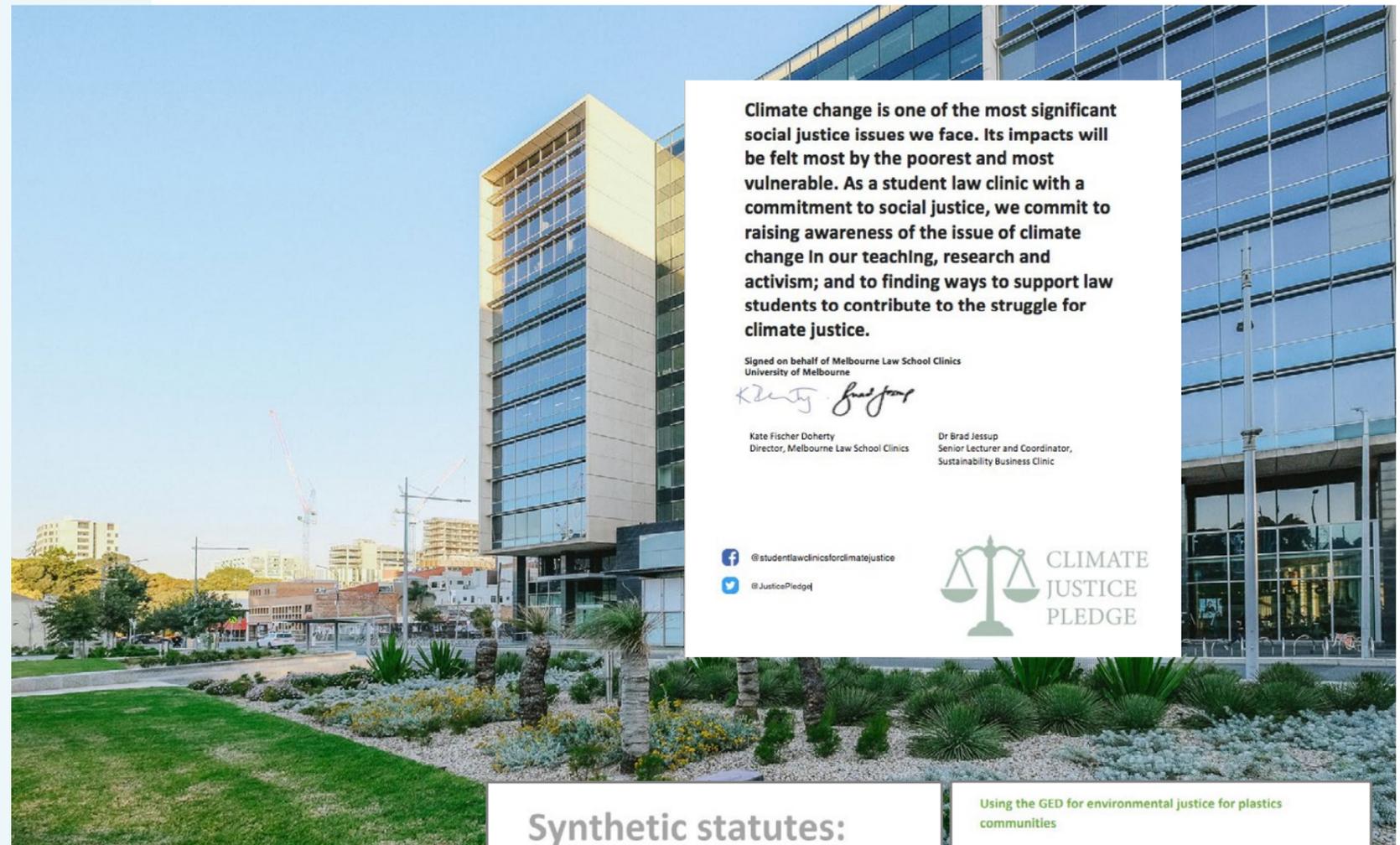
In September 2021, Kate Fischer Doherty (Director, Melbourne Law School Clinics) and Dr Brad Jessup (Senior Lecturer and Co-ordinator, Sustainability Business Clinic) signed the Climate Justice Pledge. In so doing, Melbourne Law School Clinics (MLS Clinics) joined other student law clinics around the world in committing to raise awareness of climate change and supporting law students to contribute to climate justice. In November, MLS Clinics introduced a student life, co-curricular initiative and joined the 2021 Student Law Clinic Global Day of Action for Climate Justice.

The focus for the Global Day of Action in 2021 was plastics. Dr Jessup and his students tested the limits and possible reach of the new Victorian Environment Protection Act on behalf of what they termed Victoria's 'plastics communities': people who live in Melbourne suburbs near sites of plastics manufacture, plastic waste storage and incineration.

Their report fills an information gap and includes a five-step guide to empower 'plastics communities' to use the law to demand that businesses dealing in plastics have the risk management measures in place to prevent environmental or health disasters.

"Our environmental justice project centred on the lives of people living in culturally and linguistically diverse communities. Providing legal information, we increased their capabilities to participate in environmental governance that affects their lives. By giving students the lead in this project we also increased their skills to advocate for communities confronting environmental harm."

Kate Fischer Doherty, Director, Melbourne Law School Clinics



Synthetic statutes:

Unwrapping the new environmental duty within Victoria's plastics communities



Cite as: Miranda Aprile, Hayley Byrne, Brad Jessup, Alexander Laurence, Shuai Liu and L. M. Shirley, Synthetic statutes: Unwrapping the new environmental duty within Victoria's plastics communities (The University of Melbourne, December 2021)

Using the GED for environmental justice for plastics communities

- STEP 1 – Identify a possible environmental or human health risk**
The risk doesn't need to be likely, just possible. Pollution does not yet have to have occurred. See our discussion on "Triggering the GED" for an explanation and examples.
- STEP 2 – Find out if the business that has created the risk is taking actions to minimise the occurrence or magnitude of the risk. Have they taken action?**
Examples of taking actions include: having an environmental management plan, monitoring and reporting emissions, and having systems or equipment to reduce the extent of emissions of degree of potential harm to the environment or human health.
- STEP 3a – If the business is taking no action, then there is likely a breach of the duty unless the risk is to the environment or human health is very small or the costs of taking action would cause the business to close.**
The EPA has specified a number of actions that must be taken, and not doing them may constitute a breach of the duty. We extract them in our discussion on "Triggering the GED".
- STEP 3b – If the business is taking some actions, then you will need to identify other or more reasonable and practicable steps that the business should also be taking to minimise risks. Move onto Step 4.**
- STEP 4 – Can you identify an additional action from the list below that the law has said are actions that businesses should take that the business has not taken? There might be other actions you think that the business should take, but this list provides a short-cut for you.**
Examples:
 - management plans with measures to prevent or minimise environmental harm;
 - use and upkeep of infrastructure that to monitor, prevent, or minimise harm;
 - relocation or upgrade of equipment to minimise risks;
 - regular monitoring and sampling of environmental quality;
- STEP 5 – To argue that the action is reasonably practicable you will need to engage with the following factors. As a rule of thumb, a likely risk with high levels of harms will require more or more expensive actions to minimise risk. But even unlikely risks will require some actions.**
 - the likelihood of risks eventuating;
 - the degree of harm that would result if those risks eventuated;
 - what is known by the business about the harm or risks;
 - the availability, cost and suitability of ways to eliminate or reduce those risks.