

# Environmental Justice Australia report

Ubuntu Foundation

May 2023

We are grateful for your generous support and belief in the vision of a legal system that delivers environmental justice for communities while nurturing nature. Your generous support has built community power, held governments to account, and helped improve the justice system.

Here are some highlights from the six months since our previous report.

## Tackling coal pollution

Communities who live near coal-fired power stations suffer an enormous health burden from pollution and are often left in the dark about the threats to their health. Our team brings together community groups, experts, and advocates to ensure laws and regulations reduce the health and environmental burden of coal pollution.

### Better rehabilitation of coal mines

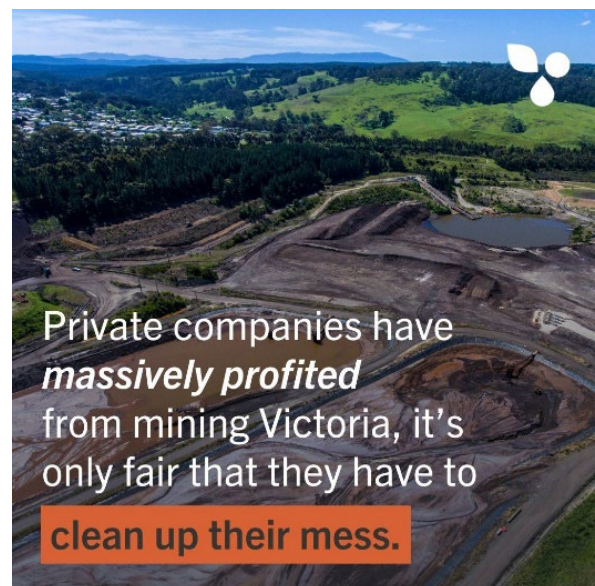
The Hazelwood mine and adjacent power station in the Latrobe Valley ceased operating in 2017 and its owner — French energy giant Engie — wants to rehabilitate the site by turning the mine pit into a lake.

The proposal would take more than 20 years and use a whopping 638 billion litres of water to fill the lake, plus an extra five billion litres of water per year would be needed just to offset evaporation.

Our clients from the local community are worried about the potential for contamination of local waterways if the proposal goes ahead. Of particular concern is the site's ash landfill, which stores the toxic by-products of coal-fired power generation. In addition, the lake will take water from local waterways, which are already stressed from overextraction and climate change.

To ensure Engie's plan was thoroughly scrutinised, EJA made submission on behalf of Environment Victoria and Friends of Latrobe Water last July arguing that the water trigger should be applied and require federal oversight. We also provided legal and campaigns support to local groups and mobilised EJA supporters to make public comments. We pushed for [media coverage](#) to add to public pressure.

We are pleased to report that in late February, the federal government announced they would apply the "water trigger" alongside other provisions in the Environment Protection and Biodiversity Conservation (EPBC). Applying the water trigger means that Engie's proposed water use will be



scrutinised at both the State and Federal level, with review by an Independent Expert Scientific Committee.

This is first time we've seen the water trigger applied to a coal mine rehabilitation project and could result in better rehabilitation outcomes across Australia. The additional federal scrutiny will make the Environment Effects Statement process for Hazelwood's rehabilitation more thorough and help ensure a better precedent for the remaining Latrobe Valley mines, and we hope safer outcomes for local communities.

### **Keeping an eye on toxic air pollution**

Australia's power stations, mines and manufacturing plants are required to report on how much toxic pollution they are emitting into the air we breathe, the water we drink and the soil that grows our food.

Each year after the National Pollution Inventory (NPI) is released, EJA does a deep analysis of pollution from the coal-fired power stations in Victoria and NSW. This year, we uncovered that although power stations are producing less electricity, the release of most toxic pollutants is getting worse. This includes higher levels of mercury, PM2.5 and PM10 particle pollution, and sulfur dioxide. Breathing in these invisible killers – or eating food contaminated with them – can lead to a lifetime of health complications.

We make our analysis available to the public and use the data to inform our advocacy and legal campaigns. The NPI data is another indictment against a coal-fired power industry that already stands on shaky grounds. But it's also a critical reminder of the very real, ongoing consequences for community health – and an unmissable call for all of us to act.

### **Power Station Case**

In September 2021, we represented Environment Victoria and took the Victorian Environmental Protection Authority (EPA) and three energy companies to court over their failure to reduce climate and air pollution from the three coal-burning power stations in the Latrobe Valley.

Unfortunately, in December, the Supreme Court ruled that Victoria's Environment Protection Authority (EPA) acted within the law when it failed to impose limits on greenhouse gas emissions from Victoria's coal power stations and set very weak limits on toxic air pollutants. Whilst the case failed in court, it brought widespread media coverage to the harm being done by Victorian coal power stations, contributing to public pressure that ultimately led the Victorian government to bring forward the end of coal burning in Victoria by over a decade. This is significant and a legacy we can be proud of having contributed to.

The case also sent an important message to business and government regulators that their decisions will be scrutinised and challenged by community groups, now and into the future. In response to the verdict, EPA CEO Lee Meizis acknowledged this point, saying "scrutiny from organisations like Environment Victoria can only make us better."



## Thriving ecosystems

Our ecosystems team have been developing legal strategies to curb the collapse of four critical ecosystems across Australia.

### Mountain Ash forests

We now have two forest cases awaiting decision, including a lengthy three-and-a-half-year Bushfires case that wrapped in March. Our lawyers argued that logging in forests that were unburnt by the devastating 2019/20 bushfires is unlawful where bushfire-impacted threatened animals have been sighted or their habitat exists. We sought greater protection for the Smoky Mouse, the Powerful and Sooty Owls, and the Greater Glider, with the latter losing one-third of its habitat in the bushfires. Approximately 1,200 hectares of native forest habitat is protected while the case is being decided.



*THE EJA TEAM WITH BARRISTERS AND CLIENT OUTSIDE VICTORIA'S SUPREME COURT FOR THE FINAL HEARING OF THE BUSHFIRES CASE (MARCH 2023)*

While we wait for the judges' decisions, our legal has several prospective forest and wildlife matters in the pipeline. The team are developing litigation strategies and seeking advice from barristers on the strength of potential legal challenges to protect Mountain Ash forests and wildlife. We are exploring and seeking advice from barristers on using legislation that has not been applied in forest protection cases before with the aim of establishing legal precedents that impact the way regulators act.

EJA is also poised to defend concerned citizens seeking native forests as a new law comes into effect in Victoria this month. This new law will impose much harsher and disproportionate penalties for protesting logging, including entering logging areas to survey for threatened species. New penalties include fines of up to \$21,000- or 12-months jail. We will continue to provide legal representation in court and deliver legal education for forest protectors, activists, and citizen scientists.

### Murray Darling Basin

In January we attended hearings and called evidence from expert witnesses on the potential illegality and flawed science of nine infrastructure projects along the Murray river. The Victorian government proposed further manipulation of the natural floodplain through levees and regulators,

banks, and pumps. We are acting for Environment Victoria and prepared the first of four written submissions to challenge the projects. We are arguing that the projects justify less water for the environment, fail to assess the impact of the project on the function of the ecosystem, and neglect the impacts of climate change. In April we celebrated a significant win with the government pulling the plug on four of these proposals.

Our aim now is to make sure that the environmental effects panel assessing the remaining projects makes a recommendation to the Minister that properly engages with the project in the context of the whole of the Basin Plan and its flaws. Once the Environmental Effect Statements are available for the other projects, we will collaborate with our client to push for the projects to be accurately assessed. Throughout this process, we will also be calling for the public to engage with and learn more about these issues and to make submissions and support better outcomes for the river system.

### **Northern Territory Savannas**

In February, EJA filed a new case in the NT Supreme Court on behalf of our client, the Environment Centre of Northern Territory (ECNT). ECNT are challenging a decision of the Pastoral Land Board to grant a permit to a multinational company to clear 923 hectares of savanna woodlands at Auvergne Station, including for cotton cropping trials.

Pastoral leaseholders can currently apply for a permit to clear up to 5,000 hectares of land for pastoral purposes without biodiversity surveys or Environmental Impact Assessments (EIA). Our client is arguing that cotton cropping is not a pastoral activity and therefore the permit should be revoked. This would establish a precedent for higher levels of environmental scrutiny on the cotton industry.

The NT's savanna woodlands are a little known but critical ecosystem home to rare birds, lizards, insects, and mammals on the brink of extinction. Despite this, the cotton industry is primed to take advantage of the NT's weak environmental laws, earmarking an industry capable of sustaining 200,000 hectares of crops.

You can see our client on ABC's 7:30 Report which aired in January -

<https://www.abc.net.au/news/2023-01-11/land-cleared-for-cotton-farming-northern-territory/101651092>



**NORTHERN TERRITORY SAVANNAH WOODLANDS**



## Antarctica and the Southern Ocean

Our team has been developing stakeholder relationships and plotting out legal strategies for a collaborative campaign to protect this at-risk ecosystem. Despite being an important ecosystem, legal action to protect Antarctica and the Southern Oceans from development and over extraction is under resourced. More to come soon!

## Climate Justice

In July last year, we launched the [Living Wonders](#) legal intervention on behalf of the Environment Council of Central Queensland (ECoCeQ). Our client called upon the Federal Environment Minister, Tanya Plibersek, to consider the climate impacts on thousands of Australia's unique living wonders from 19 fossil fuel proposals currently seeking approval.

In November, the Minister accepted our client's request as valid and invited public comment. This was the first time in Australia's history a federal environment minister has agreed to reconsider the climate impact of new coal and gas projects.

Since then, two proposals have been withdrawn, two have been shelved after the companies failed to provide enough information, and one has been refused by the Minister. The refused project was Clive Palmer's Central Queensland Coal Project, but the reasons were that it posed an unacceptable risk to the Great Barrier Reef, not because of the climate harm.

In early May, the Environment Minister provided her decision on three large coal mine proposals named in our client's request: the gigantic Mount Pleasant Coal Mine in the Upper Hunter Valley, the huge Narrabri Coal Mine in northwestern NSW, and the Ensham Coal Mine in Queensland's Bowen Basin. This is despite 3,500 public comments being received about these three projects, with 98% of submissions in support of the Living Wonders requests to consider the climate impact.

In legal terms, she decided the climate harms identified in thousands of pages of evidence are not relevant to her risk assessment of these proposed mines. What's clear is that the decision is fundamentally out of step with the global scientific consensus that the digging up and burning of any new coal and gas is the single biggest cause of further climate change, with catastrophic risks to our environment.

ECoCeQ is considering all legal options, including a Federal Court challenge. ECoCeQ President Christine Carlisle said this:

*"Minister Plibersek joins a long line of Federal Environment Ministers who have said it's not their job to consider the climate risk of new coal and gas mines. ... Australians who voted in favour of climate action have a right to feel betrayed by these decisions. We want our kids and our grandkids to be able to experience our natural wonders."*



## Justice for First Nations communities

Our First Nations Justice program uses environmental and resources law to support, embolden, and empower First Nations individuals and communities to regain rights, agency, and authority over Country.

By supporting Traditional Owners, we hope to lay the legal foundations to restore their authority over Country.

We are currently providing legal support for

**Water authority** – supporting Tati Tati Kaejin to progress a cultural flows management plan to restore Tol Tol (Margooya Lagoon), a culturally significant wetland on the Murray River. We also providing legal services to Murray and Lower Darling Rivers Indigenous Nations (MLDRIN) who are advocating for the implementation Aboriginal water-holding functions.

**Cultural burning** - supporting Djaara in Central Victoria to secure clearer and more effective Aboriginal involvement in fire and landscape management, including Djandak Wi, or cultural burning.

**First Nations justice** - supporting the Yorta Yorta in their bid to protect threatened species and culturally significant sites at Barmah National Park from destruction by feral brumbies. Additionally, we have lodged a complaint at the Victorian Civil and Administrative Tribunal (VCAT), representing Monica Morgan, CEO of the Yorta Yorta Nation Aboriginal Corporation, to stop racial vilification against her from a pro-brumby group.



**TATI TATI ELDER, BRENDAN KENNEDY AT  
MARGOoya LAGOON**

**Thank you for your incredible support, Carolyn!**

**We look forward to sharing more with you and hope you can  
continue to stand with us in our struggle for justice.**