

# Environmental Justice Australia report

Ubuntu Foundation November 2022

Thank you for your extraordinary support for environmental justice in Australia this year. Your generous support has provided access to justice for communities seeking justice for the natural places they love and a brighter future for all.

At EJA, we believe that regardless of your postcode or income, gender, abilities or the colour of your skin, all people should experience fair treatment and meaningful involvement in the development, implementation and enforcement of environmental laws, regulations, and policies. Environmental justice also means clean air and water, and healthy forests and ecosystems, and a stable climate.

Here are highlights from the last six months, made possible by your generous support.

## Climate Justice

In July, we launched the **Living Wonders** legal intervention on behalf of the Environment Council of Central Queensland (ECoCeQ). Our client is calling on the Environment Minister to consider the climate impacts on thousands of Australia's unique living wonders from fossil fuel proposals currently seeking approval. This matter is about protecting all the extraordinary animals, reptiles, birds, plants, heritage, and places we want our children and their children to know and love.

In November, the Minister accepted our client's request as valid and has invited public comment until 24 November. This is the first time in Australia's history a federal environment minister has agreed to reconsider the climate impact of new coal and gas projects. Our team have been working with campaign partners to promote the opportunity for the community to have their say on Australia's living wonders and we have hosted webinars to assist people to make comment to encourage the Minister to consider climate impacts in her assessment. We have made all the thousands of pieces of evidence publicly available at [livingwonders.org.au](https://livingwonders.org.au)



*Our Living Wonders team including our client, legal team, communications team, and 'Friends of Living Wonders,' October 2022.*

This year we also launched a completely new program to support people made vulnerable by climate change and embed climate justice in law and policy. The **Climate Justice Legal Project** works in partnership with the Federation of Community Legal Centres and the Climate Council, we will train and support forty-two community legal centers (CLCs) in Victoria to identify client issues linked to climate injustice.

Lawyers at CLCs work every day with people on the frontline of climate damage and represent over 1500 clients a year, of whom 55% are women and 85% are low-income earners. CLC clients experience magnified climate harm based on race, gender-identity, disability, age, and economic security. First Nations people are disproportionately further impacted when climate disasters disrupt ability to preserve culture. When people seek help at CLCs, what might initially look like an isolated legal issue – like housing issues due to extreme heat, or destruction of cultural artefacts during by emergency management during a bushfire – can often be driven by harm caused by climate change. We believe these links, between legal problems and climate impacts, can no longer be ignored.

With our partners, we are currently finalising a project plan and will begin training of CLC lawyers in the new year. EJA will also identify trends in individuals and communities' experiences of climate change through the project to inform litigation opportunities and shape legal and policy reform,

## Tackling coal pollution

In September EJA collaborated with community to **challenge energy producer Engie's current rehabilitation plan** to flood the Hazelwood coal mine without first removing toxic coal ash. This would release toxic coal ash pollution harming community health and the environment. Our two independent reports found that Engie is pursuing the cheapest plan to rehabilitate the mine pit, and that safer approaches are feasible.

The reports were [covered by ABC](#) and shared with local community groups. The findings of these reports will help us continue to push for a thorough process to consider all options for mine rehabilitation and account for the impacts to communities and the environment, not just mine operators' bottom line.

Last month we were in the Supreme Court of Victoria for our **Power station case** representing Environment Victoria against the Environmental Protection Authority and three of the largest coal fired power stations in Australia. Our hearing was held over 5 days in October where we challenged the EPA's March 2021 licensing failure to place limits on toxic air pollution.

This landmark case and the first to challenge the regulation of air pollution in Victoria and the first case to test Victoria's climate legislation, the Climate Change Act 2017. The media coverage of the hearings focused on the landmark nature of the case and on our key argument that the EPA failed to protect the community from coal pollution. Social media coverage of the case was also shared widely.

If we win, the EPA's decision to let power stations get away with emitting dangerous levels of greenhouse gases and toxic chemicals could be prevented. But, even if we do not get the big public

win in court, we know that community campaigns will continue to push government and regulators to do better.



*The EJA team with our barristers for the Power station case outside Victoria's Supreme Court, October 2022.*

## Thriving ecosystems

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

**Mountain Ash forests** – Alongside human rights, environmental, and legal advocates, we published an [open letter](#) calling on the Victorian government to withdraw a proposed **law to punish protestors** seeking to protect native forests. Despite huge public opposition, including four workers' unions, the law was passed and will come into force in May 2023.

The new laws mean people attempting to prevent or disrupt native forest logging in Victoria could face 12 months' jail, or \$21,000 in fines. For the clients we work with, the new laws could impact the citizen scientists conducting wildlife surveys and collecting evidence to challenge logging operations. We will continue to support forest protectors, activists and citizen scientists charged with these offences or fined in whatever way we can – that includes legal representation in court, challenging infringement notices and delivering legal education.

We have also continued three significant forest cases, each against the government-owned logging agency VicForests:

### **The Bushfire Case: Wildlife of the Central Highlands (WOTCH) v VicForests:**

This case pertains to 67 logging coupes, found to contain threatened species, including forest that were scheduled to be logged imminently after the fires. We attended the Supreme Court over three weeks in March representing WOTCH in their case to protect unburned habitat from logging by VicForests. Since then, the case has been reopened on a limited basis, to hear further

evidence and argue VicForests have not discharged their obligations under the precautionary principle. The trial is set for December, with closing arguments scheduled for early in 2023.

**The Possums Case: Friends of Leadbeater's Possum Inc. v VicForests:**

The case for our client Friends of Leadbeaters' Possum wrapped up in November 2022 with VicForests paying costs of \$1.65 million to our client, Friends of Leadbeater's Possum Inc. The group launched the case against the State-owned native forest logging corporation in the Federal Court in late 2017. This may be the end of the line for the possums case, but the case continues to have a far-reaching impact at both the state and federal level, not only for forests, but other ecosystems across Australia. Two other community groups recently won their forest cases against VicForests using the precedent set in the Possums case.

**The Old Growth Case: Fauna and Flora Research Collective Inc (FFRC) v The Secretary to Department of Environment, Land, Water and Planning (DELWP):**

Launched in 2017, this Supreme Court case on behalf of FFRC sort to protect the Kuark Forest and other areas of precious old-growth forest earmarked for logging. Thirty-three forest coupes containing old growth have been protected while this case has been underway. In 2019, the Victorian Government put about half of these logging coupes in protected areas and announced an immediate ban on old-growth logging state-wide in November 2019. Despite the positive headlines, detail then emerged that this is only where the logging agency finds and protects it following a new policy guide. We were back in court in November and December in 2020 to call expert witnesses about the effectiveness of the new policy guide at protecting old-growth forest, and to make final arguments. We await judgment.

**Murray Darling Basin** – we have made a submission on behalf of our client, Environment Victoria, in relation to several proposals to further engineer the Murray River floodplain. The proposed banks and pumps would allow more water to be extracted for irrigation and in turn, mean less water for environmental flows. in the system justify using less environmental water (and so enabling more water for irrigators in the system). We are arguing that each of the projects failed to properly assess the cumulative and indirect impacts.

**Northern Territory Savannas** – Alongside community groups, EJA is asking Northern Territory decision makers – the Pastoral Land Board and the Environment Protection Authority – to refer land clearing applications for environmental assessments or refuse to grant permits where there are real risks of harm to the plants and animals. Each time a new land clearing application becomes publicly available, we assist community groups to scrutinise them, and prepare submissions to ensure they can shape decisions.

EJA recently assisted the Environment Centre of the NT (ECNT) to request the Federal Environment Minister revoke an approval to clear savanna woodland at Lee Point in Darwin. The campaign is ongoing and supported by amazing grass roots groups.

We are also investigating potential legal challenges to land clearing applications, particularly for cotton cropping proposals. Many novel legal questions have arisen since we have started this work, and it is a steep learning curve in a new jurisdiction for our team.

**Gippsland Lakes** – EJA has a long history of collaborating with community groups to protect and restore the Gippsland Lakes in Victoria. Current work involves challenging the current dredging of

Lakes Entrance by Gippsland Ports, including by writing, on behalf of our client Gippsland Environment Group, government decision makers and relevant Ministers raising concerns about the unlawfulness of the current dredging regime. We have coordinated a Concerned Waterways Alliance to strengthen public advocacy during the Victorian government's Central and Gippsland Region Sustainable Water Strategy. In addition, we have provided legal analysis on the application of Ecologically Sustainable Development principles. We are currently awaiting response to letters to Victorian and Federal Environment Minister regarding our challenge to new applications to dredge entrance to Gippsland Lakes and/or decisions.

**Antarctica and the Southern Ocean** – our team is developing stakeholder relationships and legal strategies to find a collaborative campaign to protect this at-risk ecosystem. More to come in 2023!



*Our legal team visiting Murray River and its floodplains while attending River People's Forum in Swan Hill, September 2022.*

## Justice for First Nations communities

EJA has been supporting **Tati Tati Traditional Owners** along the Murray-Darling Basin to develop legal avenues to secure water justice through 'cultural flows.' Cultural flows return water, rights, and management to Traditional Owners to improve the spiritual, cultural, natural, environmental, social, and economic conditions of their Nations. Their hope is that this model can return healthy water flows to Tati Tati Country and provide a template for other First Nations communities seeking water justice. We continue to progress this work with our clients.

Our Aboriginal Engagement Officer, Jacob Peluso, has been collaborating with Traditional Owners and First Nations community to help identify opportunities to improve First Nations legal rights in managing Country. He recently shared a blog sharing his experience in becoming involved in environmental justice work – [you can read more from Jacob](#).

**Thank you for your incredible support this year Carolyn! We look forward to sharing more on how your generous funding is making a difference. Thank you for standing with us.**