



Environmental
Defenders Office

Annual Report

2020/2021

Acknowledgement of Country

The Environmental Defenders Office recognises the traditional owners and custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander elders past and present, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through law.

Thank You for Supporting EDO!

As a not-for-profit organisation, EDO relies on philanthropy and donations from people like you. A heartfelt thanks from all of us for your generous support this year.

Total donors to end of year

19/20 12736

20/21 14699

15% increase

Our Impact

2020/21 has been another successful year for the Environmental Defenders Office Ltd, with significant legal wins against environmentally destructive projects including a victory in the High Court of Australia.

An expanded and restructured national team has increased collaboration and innovation, working in new areas of law and exploring ways to improve our services to vulnerable clients and First Nations peoples around Australia and the Pacific Region.

We have also been at the forefront of environmental policy and law reform this year, appearing before a number of parliamentary committees and taking part in the hugely important 10-year review of the EPBC Act.

Through this outstanding legal work, we've seen amazing growth in EDO's public profile and a strong increase in donors to our organisation, with a 15% increase in our donor base.

This annual report provides an overview of the impactful work from our team of lawyers, policy experts, scientists, fundraisers, communicators and support staff around Australia. We hope you enjoy reading it.



Contents

A Word from the Chair	06
Word from the CEO	08
Our Year – Key Stats	10
A gas-led Climate Crisis?	14
Keeping Coal in the Ground	18
Defending Culture and Country	30
Protecting Water, Protecting Life	36
Defending Wildlife and Wilderness	40
Improving the Law	46
Defending the defenders	53
Our International Program	54
The EDO Board	58
Our People	60
Acknowledgements	64

**Our vision is a world where nature thrives;
where robust laws protect our plants,
animals and climate; and where communities
across Australia are empowered to fight for
environmental justice.**



A Word from the Chair



The amazing achievements outlined in this annual report are inspiring, marking the first full year as a merged entity. It was a year of consolidation during an ongoing pandemic. The coming together of people continued to be virtual and our engagement with funders and

supporters had to be more creative, and at times less personal, than we would have liked.

As One EDO, geographic borders truly did disappear into single Teams screens and the Board, like the whole organisation, became more adept at engaging this way. Clearly, like Covid, it wasn't going away as fast as we had thought!

From a Board point of view, this year's focus was ensuring our ambitious EDO vision was underpinned by the right governance, the right strategy, and the right resources. However, the Board was clear that determining the course of action for the future, beyond the current strategic plan (2020-23), will be the most critical issue for the

Board to address going forward. As organisations evolve, boards must also and to ensure we did that with as much clarity as possible we undertook an independent review of the EDO Board – it's performance, structure, culture, and activities.

The review found that the Board is:

1. Involved – it has a wealth of skills and experience, and directors would like to bring this 'to the table' as much as possible,
2. Supportive – management feels supported and appreciated,
3. Collaborative – this is how the Board operates, both within itself and with management, and
4. Focused – on EDO's best interests.

The report also found that the merger had been a resounding success and that the board has the culture, values, and characteristics of **high performing boards**. It noted that the Board is **highly** ambitious for its contribution. It is a skilled and engaged Board.



In the 'work to do' basket, there was recognition we need to:

1. pursue greater diversity on the Board,
2. restructure our committees and Board agenda to facilitate a greater focus on strategy at Board meetings,
3. articulate our risk appetite more formally and thoroughly,
4. revise our Board skills matrix to match the organisation as it evolves and grows.

All these are now being actioned.

In my mind, 2020-21 was a springboard year. You will see the most amazing achievements in this report which are testament to the power of coming together but also of the skills and determination of our staff, but in particular of the tenacity of our CEO, David Morris.

I would like to thank David and his staff for their extraordinary commitment to EDO during home schooling, isolation, and personal health challenges. You have creatively cared for one another in new and virtual ways – fostering a culture I am proud to be part of.

Thank you also to the Board of EDO who have again worked tirelessly, drawing on their knowledge, networks, and capacity to progress EDO.

Finally, to our supporters and funders. **One EDO** is very much about you. You have enabled the impacts outlined in this report. Whether you are a monthly or major donor – your contribution matters. Thank you.

Dr Bronwyn Darlington
EDO Limited Chair



A Word from the CEO

Disruption, change and impact – all writ large!



To our supporters and friends,
I begin by acknowledging the Gadigal People of the Eora Nation and paying my respects to their elders, past, present, and emerging. It is their traditional lands on which I live and work. I also acknowledge

and pay my respects to the traditional custodians of land right across this continent and the indigenous peoples of the Pacific.

The 12 months that this report spans will go down in history as among the most disruptive. The combination of a global pandemic, the spectre of racial and gender inequality, devastating climate impacts and the overt destruction of our First Nations peoples' cultural heritage, made for a uniquely challenging year. What we achieved during this period is made considerably more remarkable because of the circumstances we endured. This report is testament to the abilities and commitment of our team, the potential of our new single entity and the steadfast commitment of our supporters who ensured we could continue to be bold in the face of enormous external disruption, change and uncertainty.

We've made major changes in our strategy and structure, and I believe our first strides post-merger have been ambitious and sure footed. Everyone associated with this organisation should feel exceedingly proud of our first year. Among the things I am most proud of this year is the way we've come together as one team. We've supported one another and advocated powerfully for our clients, for the environment, for democracy and for justice.

In spite of the challenges referred to above, our momentum was not diminished one iota. As you read through the pages of this report, I hope you'll feel as proud as I do about the extraordinary impact of our work. Impact that is only possible because of the generosity and spirit of our supporters. A supporter based which, encouragingly, is growing to meet the needs of our new EDO.

Our work has achieved abatement of over 400 Mt of CO₂e in the past 18 months, we've prevented developments that would have destroyed precious ecosystems and critical species habitats and we've ensured that a great number of communities are armed with the powerful tool of law to respond to threats to their environment and their right to a healthy environment. We've also increased our focus on work in partnership with First Nations communities and are intent on deepening and maturing our skill set in this area.



We continue to assist communities across the country to take on powerful interests and damaging projects. For courageous clients, we've filed cases against Woodside's massive Burrup Hub Gas Facility, Adani's Carmichael Coal Mine and Glencore's McArthur River Mine – just to name a few.

In the Pacific we do the same, working with our exceptional partners, to help them oppose projects that risk their very livelihoods. Projects like the Wagina Mine in Solomon Islands, the Frieda River Mine in Papua New Guinea and the countless examples of illegal logging destroying the world's third largest intact rainforest in PNG.

Our lawyers are standing up for our most precious areas of biodiversity - helping clients to stop tourism facilities in the Tasmanian World Heritage Area, to prevent water mining near the Gondwana Rainforests of Australia World Heritage Area and to prevent the Toondah Harbour Development proposed for the Morton Bay Ramsar Listed Wetlands.

This is a moment of rare opportunity. The interlinking crises facing our climate, freshwater and biodiversity have been laid bare over the last decade. The covid-19 pandemic has now helped to highlight the dramatic inequality in the world and to link it to the environmental challenges we need to face. Right across our society there is

a determination to overcome this triumvirate of environmental challenges. EDO is uniquely placed to play a crucial role in finding solutions. From our landmark cases and our new areas of practice, to our constructive engagement with communities (much of it online during this year) our partnerships and behind-the-scenes advocacy, EDO is making a big mark across this country and the region.

We now set our sights on the future of this organisation and the opportunity to build a globally significant force for the defence of peoples, nature, and our climate. There is much to do, but together, I'm confident this organisation will help accelerate the changes needed to achieve a liveable planet and a more just world.

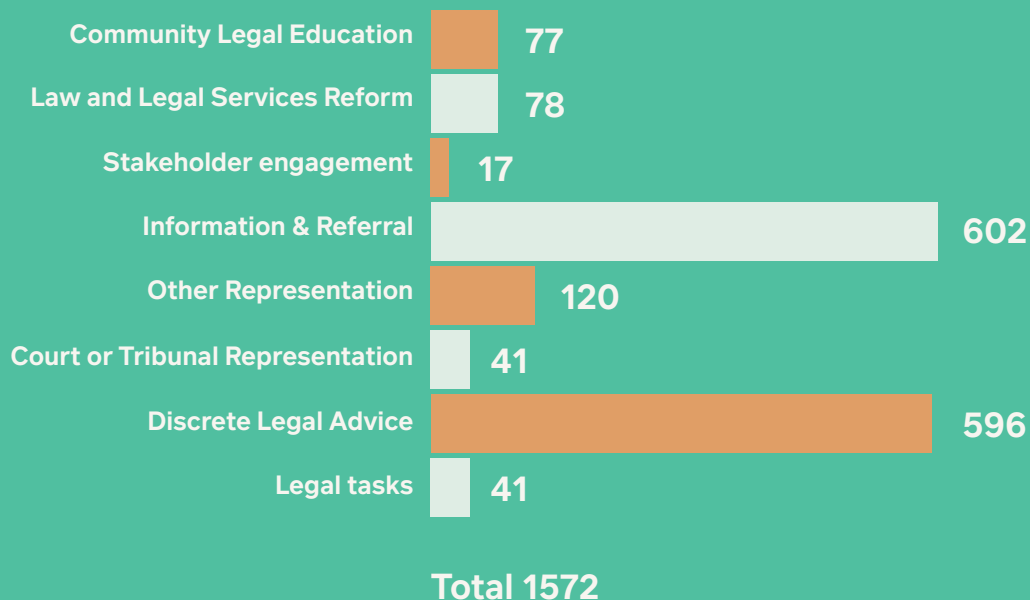
Stay safe and well,

David Morris, CEO

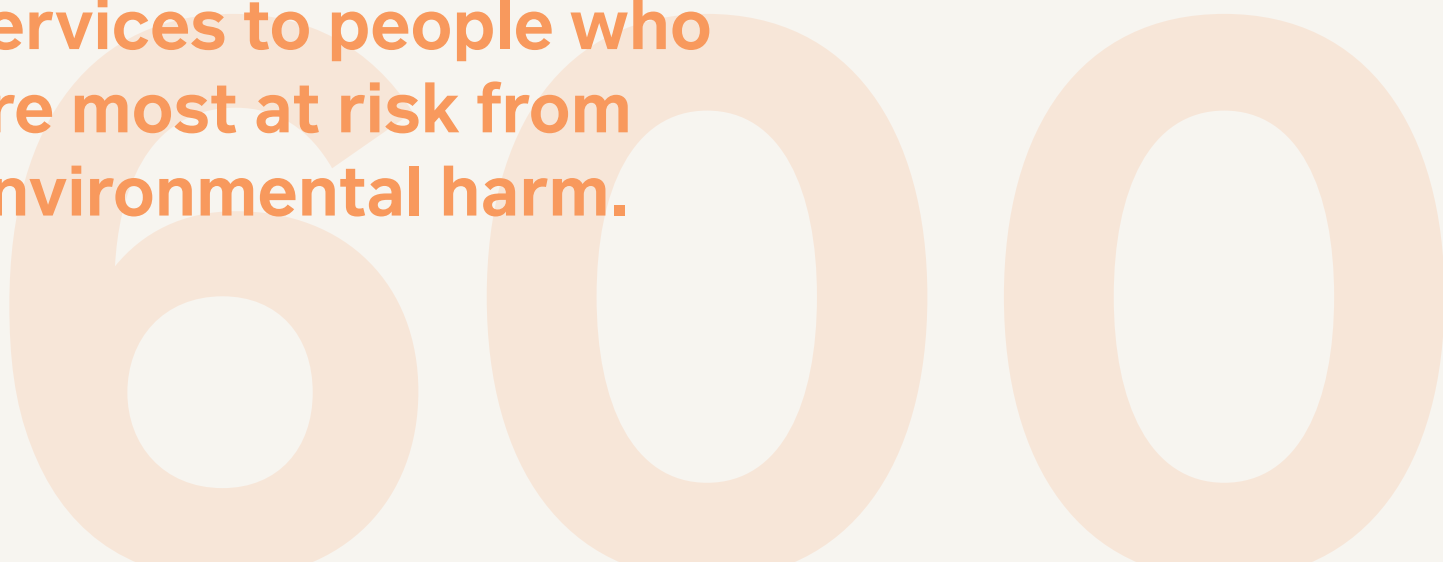
Our Year

Key statistics

Legal services
files opened in
2020/21



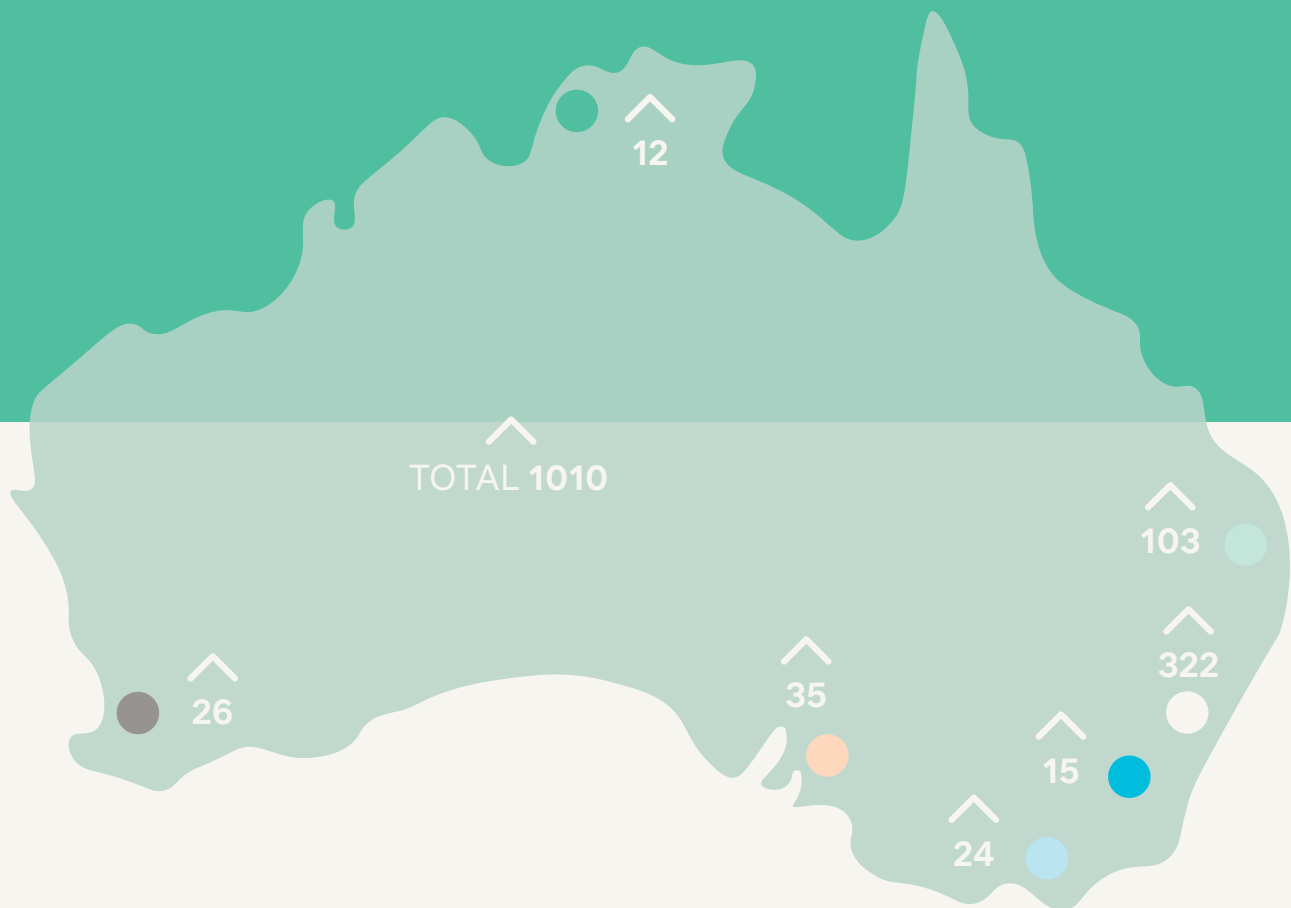
In the last financial, year
EDO invested over 600
hours per month providing
services to people who
are most at risk from
environmental harm.





Number of clients we provided
services to in 2020/21

1010



Clients by state or territory

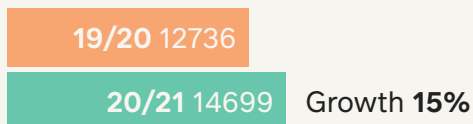
● ACT 15 1.4%	● SA 35 3.5%
○ NSW 322 32%	● TAS 130 12.9%
● NT 12 1.2%	● VIC 24 2.6%
● QLD 103 10.2%	● WA 26 2.6%

Unspecified* 343 33.9%

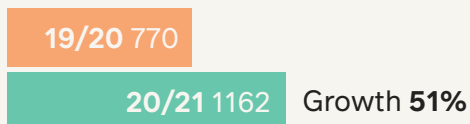
Total 1010

*Reporting of client location was standardised during the year, post restructure.

Total all time donors to end:

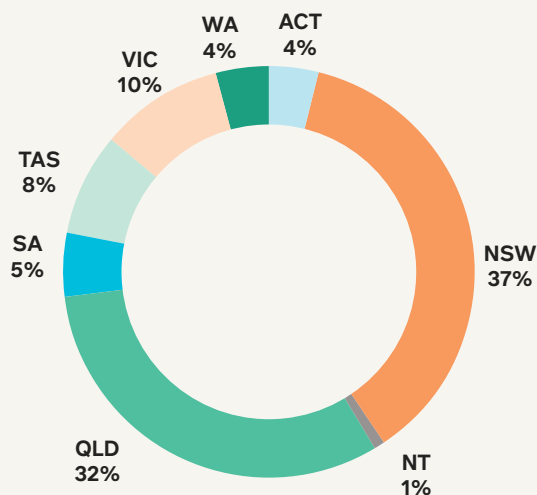


Total monthly donors at end:

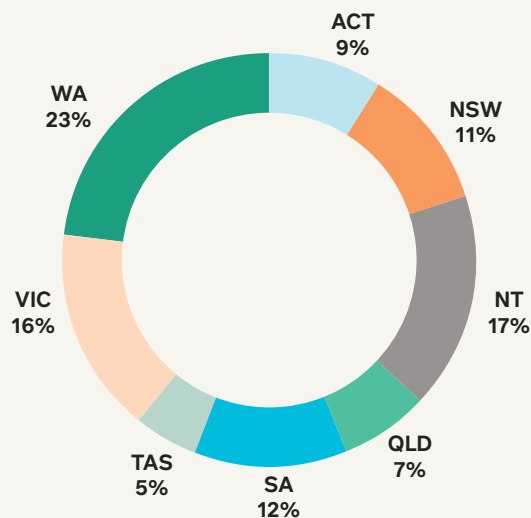


“We have increased the number of regular monthly donors to EDO by 51%. This growth is critical for the income stream most important for financial forecasting in the fluctuating nature of our work.”

Proportion of Donors by state or territory 20/21:



Growth of Donor-Base by State/Territory 20/21:



**Social media
followers at
June 30**

Instagram:

3484  **55%**
on June 30 2020

Law Reform
Submissions
Written

54

Mentions in
Australian
Parliament
Hansard

15

Media Mentions in F/Y 20/21*

*EDO's work was discussed in a number of major Australian and international news outlets, including the ABC, the Guardian, Sydney Morning Herald/Age, The Australian, Australian Financial Review, Reuters, Daily Mail and Nasdaq.com.

559

Online media
mentions

444

Broadcast
mentions

1920

Social Media
mentions

LinkedIn:

3090  48%
on June 30 2020

Facebook:

33,856  5%
on June 30 2020



A gas-led Climate Crisis?

In 2020, the Australian Government declared a gas-led COVID-19 recovery. But the opening of new gas fields, and new sources of fossil fuel pollution, is at odds with the action needed to address the urgent climate crisis.

Coal seam gas from fracking also risks polluting precious water sources and puts wildlife, ecosystems and communities at risk.

EDO stands with these communities to oppose some of the most dangerous gas proposals in Australia today.

Supreme Court challenge over Australia's biggest gas project (*Murujuga*)

The Burrup Hub is the biggest fossil fuel project in Australia's history.

If it goes ahead, Woodside's project would unlock two major new gas fields leading to the equivalent of an estimated 6 billion tonnes of carbon pollution, with annual emissions equal to those of New Zealand, Ireland, Norway and Bolivia combined.

In December EDO lodged a case on behalf of the Conservation Council of WA, arguing changes to approvals for two Burrup Hub gas facilities were made unlawfully, without a full assessment of their impacts on our climate.

These changes mean the facilities are now approved to process unlimited quantities of gas overall, helping unlock two major new basins off the coast of Western Australia which would send Australia's emissions skyrocketing.



Community Case Against Approval of Santos' Narrabri Gas Project (Gomerioi/Kamilaroi Land)

Just before the end of 2020, a community group lodged an application seeking judicial review of the NSW Independent Planning Commission's (IPC's) approval of the controversial Narrabri Gas Project.

The 25-year project would contribute greenhouse gas emissions in the order of 127 million tonnes (CO2 equivalent), at a time when the scientific consensus says there is an urgent need for rapid emissions reductions.

In September 2020, the IPC granted staged approval for the Santos-owned project, involving hundreds of CSG wells spread over a 95,000-hectare area near Narrabri.

The judicial review proceedings were lodged in the NSW Land and Environment Court by EDO's clients, the Mullaley Gas and Pipeline Accord (MGPA) - a group of around 100 local residents and primary producers. MGPA is concerned about the Project's impacts on the climate, agriculture and natural resources.

The case broadly related to two aspects of the IPC's approval of the project. First, MGPA argued that the IPC failed to consider the likely environmental impacts of the transmission pipeline, which will be

necessary for the project to proceed to production. Second, MGPA argued that the IPC failed to properly assess the downstream greenhouse gas emissions from the project, and their consequent impact on climate change and the environment.

Providing On-the-Ground Support for Beetaloo Basin First Nations Communities

This year we have continued to focus our efforts in the Northern Territory on the development of fracking in the Beetaloo Basin.

We have provided advice and assistance to clients, including First Nations Communities, concerned with the environmental risks associated with the unconventional gas industry to help them understand and participate in regulatory and approvals processes, and to ensure compliance of gas companies and the NT Government with the legal framework.

The Beetaloo Basin is home to species including the greater bilby, the emu, the Australian bustard and the Australian painted snipe, which may be put at risk from gas developments.

Leigh Creek Underground Coal Gasification Proposal

Our clients the Adnyamathanha Traditional Lands Association (ATLA) want to defend their cultural heritage and ancestral lands from a controversial coal gasification project within the Leigh Creek Coalfields, in the Flinders Ranges, about 500km north of Adelaide.

The project involves converting coal into a gas within the coal seam. The gas is then extracted from the underground seam via wells. It's a controversial process that is already banned in Queensland.

ATLA has consistently opposed the project because of the importance of the site to Adnyamathanha people.

In May 2021 Leigh Creek Energy (LCE) submitted assessment documentation seeking approval for stage 1 of the project from the Minister for Mining and Energy. LCE also applied for authorisation under the *Aboriginal Heritage Act 1988* (SA) in respect of the project.

The EDO assisted ATLA with a submission in response, however the decision is still pending. In June 2021 the project was referred under the *Environment, Protection and Biodiversity Conservation Act 1999* (Cth). The EDO prepared a submission on behalf of ATLA arguing that the referral should be considered a controlled action. The project was subsequently declared a controlled action.

Supporting NSW Coastal Communities in the fight against offshore drilling

EDO has provided legal support to community group Save Our Coast in their fight against offshore drilling slated for PEP11, which covers the offshore Sydney basin.

Proposed amendments to PEP11 could see offshore drilling commence in a world-renowned whale migration route and dolphin habitat, risking devastating impacts to the marine ecosystem and exposing locals from Newcastle to Manly to the risk of petroleum spills from gas rigs only a handful of kilometres from the coast.

Proposed gas exploration in the Simpson Desert (*Munga- Thirri*)

The Simpson Desert is one of the last great desert wilderness areas left in the world and home to an incredible array of biodiversity.

In September 2020 Tri-Star submitted their assessment documentation to undertake petroleum exploration activities in the Simpson and Pedirka regions.

The EDO assisted various clients with providing responses to the assessment documentation.



Keeping Coal in the Ground

EDO has seen some crucial wins against dangerous coal mine proposals this year, building on years of work in this area.

Our landmark Rocky Hill judgement in 2019 continues to reverberate, with courts hearing further evidence on the global carbon budget and the goals of the Paris Climate agreement.

Our Safe Climate (Coal and Human Rights) team represents a wide range of clients – from organisations to community groups and Traditional Owners against these climate-wrecking projects.

Second Bylong Coal Project Appeal Win

In December 2020, the Bylong Coal Project was rejected for a second time, in a significant win for our client, the Bylong Valley Protection Alliance.

The NSW Land and Environment court upheld the NSW Independent Planning Commission (IPC) decision in 2019 to refuse the open cut and underground thermal mine, which would have generated over 200 million tonnes of GHG emissions.

Acting for the Bylong Valley Protection Alliance, EDO had presented the IPC with expert evidence, including on the mine's climate change impacts. In its Statement of Reasons, the commission said that the greenhouse gas aspects of the project were 'problematical'.

KEPCO applied for judicial review of the decision in December 2019.

While the IPC declined to defend its decision on the basis it may compromise its impartiality, in May 2020 the Bylong Valley Protection Alliance successfully applied to become a full party to the judicial review case. In doing so, EDO lawyers set new precedent for public interest groups joining judicial review proceedings.

That judicial review was heard in the NSW Land and Environment Court in August 2020, with the decision being handed down in December 2020.

Following our client's latest success, KEPCO filed a second appeal against the mine's refusal in March 2021. That appeal will be heard by the Court of Appeal in August 2021.

High Court Win Sends New Acland Mine back to Land Court

EDO clients secured a crucial win in their case before the High Court of Australia, which in February ordered a fresh Queensland Land Court hearing over the New Acland Coal Mine.

The Oakey Coal Action Alliance (OCAA), has been in an epic six year legal battle to defend some of the best farming land in Queensland from New Acland Coal's (NAC) stage 3 expansion of its thermal coal mine on the Darling Downs.

Proposals to expand the mine were first rejected in 2012 and a revised application was rejected in 2018 following a recommendation of refusal by the Land Court in 2017.

The mining company appealed the 2017 Land Court recommendation to the Supreme Court which, in 2018, found parts of the recommendation to be in error and ordered the Land Court to rehear the case, but bound by most of the original findings from 2017.

In November 2018, the Land Court recommended the project be approved and, in 2019, the environmental approval was granted.

Further appeals to the Court of Appeal in 2019 then found the 2017 Land Court decision to be affected by apprehended bias, but the court did not order a fresh hearing.

The Court of Appeal decision caused doubts regarding the validity of the 2018 Land Court rehearing decision (and later environmental approval) which relied heavily on the 2017 Land Court decision.

OCAA was granted leave to appeal to the High Court in August 2020, arguing that the matter should have been sent back for fresh hearing, unconstrained by the earlier 2017 decision, which was found to be affected by bias.

The High Court allowed the appeal and ordered a fresh hearing in the Land Court, finding that "it cannot be said that Oakey Coal Action has 'had its day in court' or had lost all of its grounds before an independent and impartial tribunal."

It also ordered that New Acland Coal pay OCAA's legal costs of the High Court appeal and struck out an earlier costs order of approximately \$736,000 against OCAA.

"It's my pleasure to support EDO in this epic case. It blows me away that this community has had to fight every millimetre of the way, it's disgraceful. Thank you again for being their rock and their sword in this critical time."

Mary Maher, EDO Donor.



Success in Adani 'Water Trigger' Case *(Wangan and Jagalingou land)*

In May, our clients the Australian Conservation Foundation (ACF) were successful in arguing that the approval for Adani's North Galilee Water Scheme was unlawful.

The Adani Infrastructure Pty Ltd scheme is designed to extract 12.5 billion litres of water per year from Suttor River to service the proposed Carmichael Coal Mine, in central Queensland.

In approving the scheme, the Federal Environment Minister did not apply the water trigger, which is designed to subject large coal mines and coal seam gas projects to more rigorous assessment for their impacts on surface and ground water under the EPBC Act.

ACF successfully challenged that approval, meaning the scheme is set to face more rigorous assessment.

This is our client ACF's second successful challenge to the North Galilee Water Scheme assessment process.

In July 2019, the Federal Government conceded it had failed to consider some of the thousands of valid public submissions about if, and how, Adani's project should be assessed – in breach of the EPBC Act.

It meant the assessment was re-opened for public comment and the minister was compelled to consider each submission.

While welcome, the 2019 concession did not deal with the water trigger issue, prompting the further legal action by EDO on behalf of ACF.

Shenhua Coal Mine is Cancelled *(Gomeroi Land)*

In April, we welcomed the news that the NSW Government was cancelling the Shenhua coal mining licence in the state's north-west.

EDO has been supporting the Liverpool Plains community and Traditional Custodians against the mine proposal for many years.

EDO acted for Veronica "Dolly" Talbott, as a member of the Gomeroi Traditional Custodians, in a challenge under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) to the lawfulness of the Federal Environment Minister's decision not to grant protection to several Significant Areas of Aboriginal cultural heritage on the Liverpool Plains. That case was determined in July 2020.

Our lawyers acted for Upper Mooki Landcare in 2015 in a case against the NSW Planning Assessment Commission over koala habitat at the site of the proposed mine.

And on behalf of Lock the Gate we also went to the NSW Civil and Administrative Tribunal in 2018 in relation to a freedom of information request for documents relating to government negotiations about the mine.

In cancelling the mine, the NSW Government announced it will pay the mine's Chinese owner to withdraw its mining lease application and surrender its development consent.





Denbrobium Coal Mine Refused after Hearing (Dharawal/Tharawal)

In a win for EDO clients, Protect Our Water Alliance (POWA), the Dendrobium coal mine expansion was refused by NSW's Independent Planning Commission (IPC) in February.

South32 had sought planning approval to extend the life of its Dendrobium mine, near Wollongong, until the end of 2048 and extract an additional 78 million tonnes of coal which would have resulted in over 250 million tonnes of greenhouse gas emissions over the life of the project.

Experts engaged by EDO on behalf of POWA, made submissions to the IPC including that the mine would significantly deplete an already impacted groundwater regime and that groundwater levels will not return to pre-mining levels.

The IPC rejected expansion plans for the coal mine finding that the proposed mine risks long-term and irreversible damage to the Greater Sydney and the Illawarra's drinking water catchment.

The IPC also found that the greenhouse gas emissions from the project would be significant, although it refused the project on other grounds.

The mining company has appealed the IPC decision to the NSW Land and Environment Court and our client has joined that appeal represented by EDO. The appeal is expected to be heard later this year.

Young Australians in Human Rights Win Over Clive Palmer Mine

In August, Clive Palmer's Waratah Coal failed in a legal bid to strike out landmark human rights objections to its Galilee Coal Project, clearing the way for young Queenslanders and landholders to argue in the Queensland Land Court that climate change caused by the mine will impact their rights to life and culture.

Waratah Coal made the strike out application in relation to objections to its proposed thermal coal mine from EDO clients The Bimblebox Alliance and Youth Verdict – a group of young Queenslanders fighting the mine over climate impacts.

The groups are arguing under Queensland's new Human Rights Act that the mine would impact their human rights by fuelling climate change that puts the futures, lives and cultures of Queenslanders at risk.

In May, members of the EDO legal team and Youth Verdict travelled to the Torres Strait to gather expert witness testimony from First Nations People about how climate change impacts their culture and country.

A full hearing of the case is expected in 2022.



Whitehaven Coal Prosecuted over Water Take at Maules Creek (*Gomerioi/Kamilaroi Country*)

The Natural Resources Access Regulator (NRAR), the NSW independent water regulator, commenced prosecution in July, in the Land and Environment Court, against Whitehaven Coal over two alleged breaches of the Water Management Act at its Maules Creek coalmine in the northwest of the state.

EDO, on behalf of Lock the Gate, had made complaints in relation to Whitehaven Coal's water use at the Maules Creek site over several years, alleging the taking of significant quantities of surface water without appropriate water licences.

NRAR is charging the Whitehaven Coal-owned Maules Creek Coal Pty Ltd with two alleged breaches of section 60A(2) of the *Water Management Act 2000* for taking water without an access licence over a three-year period between 2016 and 2019, or in the alternative section 60C(2) at the mine near Boggabri.

The maximum penalty for a breach of section 60A(2) for a company is \$2,002,000.

Opposite, Left: EDO lawyers attend the High Court for a hearing into the Acland coal mine. Right: Our Safe Climate (Coal & Human Rights) Team. Above, Left: the Bylong Valley, NSW. Right: the Suttor River, Qld by Christine Carlisle.

Using the Law in New Ways

A new national EDO has given us the opportunity to innovate our practice and use new areas of law to protect the environment.

Our Safe Climate (Corporate and Gas) team was formed at the beginning of this financial year. This team is looking at the legal levers available to hold corporations to account for their environmental record.

HSBC and Barclays Challenged Over Finance for Vietnamese Coal Plant

In one of our Safe Climate Team's latest contributions to the growing use of corporate and commercial law, EDO challenged two of the world's biggest banks over the financing of a proposed huge new coal power plant in central Vietnam.


Acting on behalf of the Sweden-based Anthropocene Fixed Income Institute (AFII), in March the EDO's Safe Climate Team wrote to HSBC Holdings PLC (HSBC) and Barclays Bank PLC (Barclays) in relation to the financing of the 2 x 600MW Vung Ang II power plant.

The banks acted as underwriters for a £250 million bond issued by the Japan Bank for International Cooperation, which contributed to a pool of money from which it appeared funding for the Vietnamese coal project may have been drawn.

This came less than a year after both banks publicly committed to not finance new coal-fired power plants.

Japan Bank for International Cooperation (JBIC) has now confirmed it will stop funding overseas coal power projects.

The matter represents the increasingly international nature of the team's work, which is committed to challenging those elements of the global finance industry that are fuelling the climate crisis by financing fossil fuel projects.

A vibrant pink cockatoo is captured in mid-flight against a clear blue sky. The bird's wings are spread wide, revealing a mix of pink, orange, and white feathers. Its crest is raised, showing a colorful pattern of red, yellow, and white. The bird is positioned on the right side of the frame, facing left. In the bottom left corner, a portion of a dark, textured tree trunk is visible.

“Working with you all has been an incredible and deeply inspiring journey, and we continue to be moved by the impact you create in your communities. It’s a privilege to engage with you all.”

Planet Wheeler Foundation.



After Black Summer

Our response to the 2019/20 Black Summer bushfires this year with both law reform and litigation to defend unburnt areas of forest and ensure decision makers take steps to protect communities in the future.

With millions of hectares burnt and billions of animals dead, the long recovery for communities and ecosystems is still underway.

EDO proudly represents a number of clients who are undertaking this work, on the front lines of the climate crisis in Australia.

Court Rules Bushfire Survivors Can Present Climate Evidence in Case Against NSW EPA

In November, there was welcome news for EDO clients the Bushfire Survivors for Climate Action when a court ruled the group could present expert scientific evidence on climate change in their landmark case against the NSW Environmental Protection Authority (EPA).

It's the first time an Australian court has ruled on whether evidence on climate change can be allowed to be heard in a case involving an alleged failure by a Government agency to perform a statutory duty.

EDO's clients Bushfire Survivors for Climate Action (BSCA), a group of people who have experienced first-hand the devastation caused by major bushfires, launched the legal action against the NSW EPA in April, over its lack of greenhouse gas emissions policy.

BSCA are seeking to encourage and, if necessary, compel the NSW statutory authority to develop policies to measure and regulate greenhouse gases in the state.



BSCA argues that the EPA is not only explicitly empowered by its legislation to take strong action on climate by controlling the emission of greenhouse gases, it is also required to do this under its own laws.

This latest court ruling means that evidence from former Australian Chief Scientist Professor Penny Sackett will be presented in the case.

Importantly, this ruling permits evidence on whether the emissions trajectories for New South Wales, Australia, and the world, are in line with Paris Climate Agreement goals to limit global warming to 1.5 degrees Celsius, and to examine the link between climate change and bushfire risk.

EPA to Prevent Climate Pollution

EDO's report, *Empowering the EPA to prevent climate pollution*, was released in November. In it we examine how the NSW EPA can put in place mechanisms to reduce greenhouse gas emissions using its existing powers to control pollution and waste.

The report argues the EPA can and should regulate GHG emissions using its existing powers to control pollution and waste, recognising the catastrophic consequences of uncontrolled emissions on all aspects of the environment and on human health.

Recommendations in the report include putting a price on carbon and setting a goal to reduce emissions consistent with efforts to limit global average temperature rise to 1.5°C above pre-industrial levels.

Legal Action Launched Against Consent for Eden Chip Mill Development After Bushfires (Yuin country)

Fierce bushfires swept through forests around Eden on the far south coast of New South Wales during the devastating Black Summer bushfires.

With the forests still in recovery, the Eden Chip Mill was granted development consent to expand facilities to include a sawmill, to build a factory that intends to make pallets, and 'briquettes' to be burned in heaters, from native forest trees. The mill had not previously been able to produce sawlogs.

In response, the conservation group South East Forest Rescue (SEFR) served summons on both mill owner Australian Natural Wood Exports and the Bega Valley Shire Council.

Above: Bushfire Survivors for Climate Action President Jo Dodds.

The summons commenced judicial review proceedings in the New South Wales Land and Environment Court, with SEFR seeking an order that the development consent be declared invalid.

The group argues that the development consent process was unlawful in a number of ways. Primarily, that the council failed to consider the 'upstream' impacts of harvesting native forests to supply the mill, including the effects of the Black Summer bushfires, as well as the development's impacts on climate change, sedimentation of local waterways and future increased bushfire risk. It also argues that the council failed to consider submissions on the development made during its public exhibition.

The proposed development, if approved will be one of the largest native forest.

Unburnt Manyana Bushland Habitat Faces Federal Assessment (*Yuin Country*)

Clearing of unburnt native forest for a proposed housing development on the NSW South Coast was referred for Federal Government assessment in August 2020 for its impacts on threatened species, including a colony of vulnerable grey-headed flying foxes, in a win for community campaigners.

People in Manyana have been fighting to preserve the 20-hectare site, which was spared from the devastating Black Summer bushfires of 2019/20 and has become a critical refuge for native plants and animals.

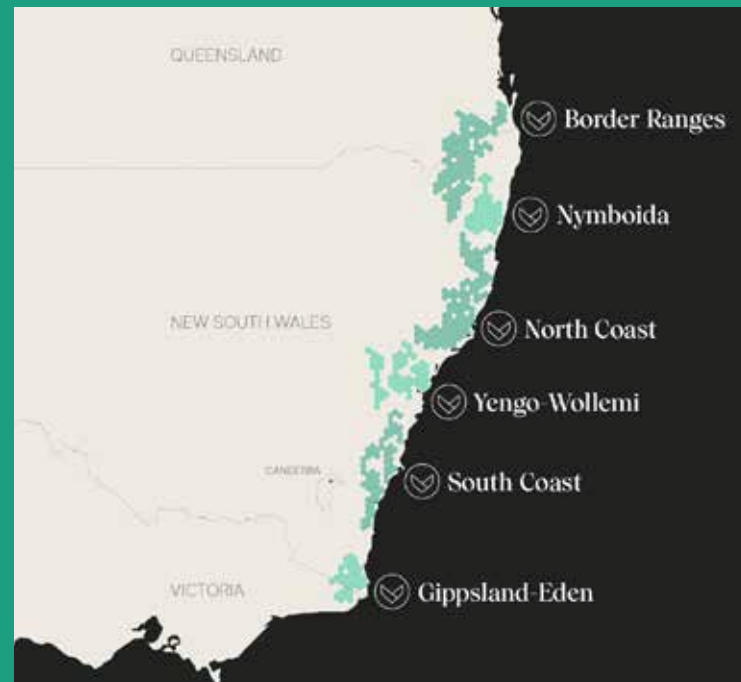
Earlier in 2020, EDO represented Manyana Matters Environmental Association in court proceedings to protect the bushland.



Defending the Unburnt – A landmark legal initiative

In the wake of Australia's 2019-2020 bushfires, the protection of unburnt habitat has become an urgent priority. Much of the land that survived the bushfires intact is now a vital refuge for biodiversity, particularly threatened species. Six priority landscapes have been identified in QLD, NSW and Victoria as requiring immediate protection because they will be the key to securing the future of many threatened species and ensuring important ecosystem services are sustained while impacted landscapes recover.

In collaboration with WWF-Australia, the Environmental Defenders Office is working to ensure that our laws are used to adequately protect these priority areas from further impacts, including impacts from inappropriate development, land clearing and forestry.



14
publications



3
letters



123
online news articles

13
advices



26
radio broadcasts



20
meetings with
decision-makers

Defending Culture and Country

EDO works with First Nations clients as they protect and promote their Country, culture and heritage through the law.

This year, we have advocated for improvements in the law to better protect cultural heritage and worked with First Nations clients to write a joint submission to the United Nations over Aboriginal water dispossession.

Over the coming year, our First Nations and Indigenous Peoples' Program will transform how we work with Indigenous clients as we recruit a new First Nations Director.

Legal Action over Glencore's McArthur River Mine Bond (*Yanyuwa, Marra, Garawa and Gudanji lands*)

Gudanji Traditional owner Josephine Davey Green, Garawa senior elder Jack Green and the Northern Territory's peak environment group are taking the NT Government to the Supreme Court over its decision to slash the environmental bond of Glencore's controversial McArthur River Mine by almost \$120 million.

Situated on the McArthur River a mere 45km from the predominantly Aboriginal town of Borroloola, Glencore's mine has been dogged by numerous environmental incidents, as well as criticism over its impact on the rich First Nations cultural heritage found in the area.

The mine will operate until 2038, however Glencore estimates – and both the NT and Commonwealth Government accepted that – the site will need to be monitored and maintained for 1000 years after mining activities cease.

The EDO will argue on behalf of its clients that the NT Minister for Mining & Industry's decision to reduce the mine's environmental bond from around \$520 million to around \$400 million was made unlawfully, and the decision is thus invalid.

EDO's legal team travelled to Borroloola in February and May 2021 to meet with traditional owners and speak with them about the impact of the mine on the community.

EDO and clients lodge joint submission with UN Special Rapporteur on Aboriginal Water Dispossession

Walgett's Dharriwaa Elders Group, Murray Lower Darling Rivers Indigenous Nations and the Environmental Defenders Office collaborated to make a joint submission responding to a call by the UN Special Rapporteur on Human Rights and the Environment for input to a report on "Too Dirty, Too Little, Too Much: The Global Water Crisis and Human Rights".

The health of the Murray-Darling Basin is in decline due to the ongoing over-extraction of water and climate change, with some catchments and wetlands facing ecosystem collapse. This decline has had a particular impact on Aboriginal communities who have experienced multiple waves of water dispossession since colonisation. Our joint submission focuses on two case studies; one explored water scarcity and salinity in the Baawan (Barwon) and Ngamaay (Namoi) Rivers at Walgett; while the other looked at water infrastructure projects destroying Aboriginal cultural heritage in the southern Murray-Darling Basin.

The issue of Aboriginal water dispossession in the Murray-Darling was also examined in an ABC 7:30 Report.



Top: Josephine Davey Green & Jack Green on the McArthur River by Rebecca Parker. Middle: Borroloola Bottom: EDO's Darwin office visits Borroloola.



Housing development threat to Butterfly Cave Aboriginal Women's site (*Awabakal Country*)

This year, EDO has continued assisting a group of Aboriginal women at Lake Macquarie NSW, have continued their appeal to the Federal Environment Minister to step in and enforce legal protections on the ancient Butterfly Cave site, which is under threat from a housing development.

The Butterfly Cave – a sacred women's site for the local Awabakal people – was declared a protected site in 2019 under the Federal Aboriginal and Torres Strait Islander Heritage Protection (ATSIHP) Act, in an historic move that attracted widespread community support. It was only the second time since 1999 that the Federal Environment Minister protected a site under the Act.

While the cave and its immediate surrounds are protected from bulldozers, the housing development would cut off important generations-old access routes to the site.

The development will also remove vital privacy at the site, in contravention of section 6 of the Minister's ATSIHP Act declaration.

Represented by the Environmental Defenders Office, the group has written to the Hon. Sussan Ley, asking her to stop Stage 7 and 9 of the development using her powers under the ATSIHP Act.

The Juukan Gorge Inquiry and First Nations cultural heritage

EDO has made an extensive submission to the federal inquiry into the destruction of caves at the Juukan Gorge in the Pilbara region of Western Australia which showed evidence of human habitation dating back 46,000 years, detailing the problems we have witnessed as lawyers assisting First Nations peoples around Australia as they work to protect their cultural heritage under ineffective state, territory and Commonwealth legal frameworks.

The Inquiry followed the tragic destruction of the Juukan Gorge caves – cultural heritage of the Puutu Kunti Kurrama and Pinikura peoples – by Rio Tinto mining corporation. Last year, EDO offered a statement by CEO David Morris and EDO Board Member Joe Morrison in response to this terrible incident.

The destruction of the Juukan Gorge caves was shocking, yet it is just one of innumerable actions which have caused destruction of First Nations cultural heritage – legally – under Australian law. Sadly, the incident was not a surprise to the EDO, as the inadequacy of cultural heritage laws around Australia at a Commonwealth and state/territory level has been raised over many years by Traditional Owners, First Nations organisations, legal academics and lawyers. EDO will continue to work with First Nations peoples to seek changes to support law reforms which put their voices first in the protection of their cultural heritage and which fully implement Australia's international obligations to require free, prior and informed consent in decision-making that impacts First Nations cultural heritage.



Once in a generation opportunity – WA Aboriginal Cultural Heritage Bill

EDO has been closely following the progress of Western Australia's Aboriginal Cultural Heritage Bill, working to respond to the draft bill in partnership with First Nations stakeholders.

It is beyond doubt that the WA Aboriginal cultural heritage legislation needs a major overhaul. The system has been widely criticised; allowing destruction of heritage sites without decision-making or input from Aboriginal people, favouring Ministerial discretion, and lacking independent merits appeal rights for Aboriginal people.

There is an urgent need to reset the balance in favour of Aboriginal people.

However, EDO and our partners have raised a number of shortcomings with the proposed bill. In the next year, we will continue to work closely with stakeholders to improve the proposed legislation.

Working with Traditional Owners and First Law on the Martuwarra-Fitzroy River

EDO has been working in collaboration with the Martuwarra Fitzroy River Council to further their governance aspirations with respect to the Martuwarra-Fitzroy River. An important part of our collaboration with the Martuwarra Council is understanding their relationship to country and their First Law, and to provide assistance that considers and explores the relationship between First Law and settler-state legal systems. Initially, EDO and the Martuwarra Council went through a scoping exercise where we decided on projects that the Martuwarra Council felt would benefit from EDO's expertise. This led to us undertaking our first major project where we co-authored, along with the ANU Water Justice Hub two comprehensive submissions to the WA Government on the Derby Groundwater Allocation Plan and the Managing Water in the Fitzroy River Catchment: Discussion Paper for Stakeholder Consultation. As part of the preparation for this we attended multiple meetings with the Martuwarra Council, and our Special Counsel, Dr Lauren Butterly, and paralegal, Marlikka Perdrisat, attended a week long 'Circle of Wisdom' where they were able to speak to all the members of the Martuwarra Council about the submissions and get official sign off. We are now in the process of scoping our next major project which will likely be work around the strategic options for Traditional Owner governance models of the Martuwarra-Fitzroy.

“I don’t see any other legal body doing this type of work, both in terms of pushing the boundaries and combining first law, with common law and crown law, and looking at legal pluralism. EDO is a great good news story. More Indigenous people in this country and Oceania need to know about this good work. We are totally together with the EDO. We really believe in the work of EDO that is going to happen and is already happening”.

Dr Anne Poelina, Chair, Martuwarra Fitzroy River Council,
Adjunct Professor, Nulungu Research Institute, University of
Notre Dame, Research Fellow, Australian National University.



NSW Aboriginal Land Council Book

NSW Aboriginal Land Council commissioned EDO to co-author a manual on the laws relating to Aboriginal cultural heritage.

The manual is intended to help land councils throughout the state to protect and defend their heritage and their rights to practice their cultures.

It covers the laws for the protection and management of Aboriginal cultural heritage as well as laws regulating land, water and biodiversity.

It includes templates to help facilitate effective engagement in various legal processes to achieve positive outcomes for Aboriginal peoples.

This partnership continues a long tradition of working collaboratively with NSWALC and represents an important component of EDO's healthy environment and justice work in NSW.

Putting First Nations and Indigenous Peoples at the Heart of our Work

The 2019 merger of eight EDOs into one presented our organisation with an opportunity to rethink the way we work with First Nations and peoples Indigenous to the Pacific, including whether we had pathways to bring First Nations and Pasifika lawyers into our organisation. EDO committed itself to incorporating and respecting Indigenous knowledges and perspectives within the organisation.

In both Australia and the Pacific region, First Nations and peoples Indigenous to the Pacific are leaders in defending the environment and are also at the frontlines of the threats posed by global heating, biodiversity loss and degraded water sources.

This year, EDO established a working group to establish a First Nations and Indigenous Peoples Program, which will be led by a First Nations' Director.

The working group has brought on board two consultancies with different focus areas to help us design the program and ensure our organisation can properly support a First Nations-led program.

The consultancies are due to report back in the next financial year, when a First Nations Director will be sought to lead and develop the programmatic focus of the program and EDO's engagement with First Nation's communities.



Protecting Water, Protecting Life

EDO is a leading organisation for the protection of Australia's precious water resources.

With an expanded dedicated Freshwater team, we have worked with clients from the Murray-Darling Basin to the top end to defend water from over-extraction and pollution.

Our work increasingly intersects with our work on climate change, as global warming fuels a hotter, drier climate and longer more severe droughts.

Defending World Heritage Springbrook National Park from water mining (Yugambeh Country)

Springbrook is a World Heritage listed National Park in South-East Queensland. It is part of the ancient Gondwana Rainforests of Australia, and home to the iconic Twin Falls waterfall and the Natural Bridge, a popular viewing site for one of Australia's largest population of glow worms. It is a globally important rainforest ecosystem and locally treasured.

EDO is representing our client in the Queensland Planning and Environment Court to defend the Springbrook World Heritage Area from adjacent groundwater mining, which could see 16 million litres of water a year taken from the ecosystem likely be bottled and sold as spring water.

The proponent, Hoffmann Drilling, had its application to mine the water refused by the Gold Coast City Council in 2019.

The company filed an appeal in the Queensland Planning and Environment Court and several concerned Springbrook residents along with the Gecko Environment Council and EDO's clients the Australian Rainforest Conservation Society (ARCS) joined the appeal as co-respondents.

“EDO provided us with invaluable advice behind the scenes before intervening on our behalf. There is no doubt that they were instrumental in helping us to secure this outcome.”

Garry Hall – Farmer and private Ramsar site manager.

On behalf of ARCS, EDO argues extracting water from the aquifer could have devastating impacts on the local ecology of the area, including to the critically endangered smooth scrub turpentine, the endangered ravine orchid and the near threatened Albert's lyrebird, all found within 1 km of the proposed site.

The cascade treefrog, pouched frog and masked mountain frog are also threatened by this development; these species only inhabit South East Queensland and Northern NSW.

The Queensland Government has recognised that water mining is a threat to the area, having introduced a moratorium on groundwater extraction for Springbrook and Mount Tamborine.

However, Hoffman Drilling's application was made prior to the moratorium being in place.

The trial is scheduled for February 2022.

Saving a Ramsar Wetland from Gold Exploration (*Wailwan Country*)

In early 2021, EDO's Freshwater Team helped save an internationally significant wetland after a copper and gold mining company applied to drill exploration holes.

Garry and Leanne Hall are the owners of “The Mole”, a 5,000-hectare grazing property located 114km from Warren in north-western New South Wales.

In addition to being an intergenerational family farm, The Mole is home to part of the Macquarie Marshes, a wetland of international significance listed under the Ramsar Convention on Wetlands.

The Halls sought assistance from the Freshwater team who provided advice and wrote legal letters on their behalf.

Shortly after EDO became involved, the Halls were advised by the Resources Regulator that Inflection Resources had withdrawn its application to drill the exploration holes.

Alarm over the Northern Territory's Largest Ever Water Licence (*Kaytetye country*)

In April 2021 the NT water controller granted a licence to Fortune Agribusiness that permits the extraction of up to 40 billion litres of groundwater per year.

The proposed Singleton horticultural project would be one of Australia's largest fruit and vegetable farms in arid Central Australia.

The licence permits the annual extraction of water for 30 years to irrigate perennial export crops at Singleton Station, a large cattle station around 120kms south of Tennant Creek.

To put this 40 billion litre licence in perspective, the largest groundwater licence in all of NSW allows extraction of up to 15 billion litres per year.

The unprecedented move concerned the community, a number of community groups and Traditional Owners.

EDO has been providing advice to the Environment Centre Northern Territory and the Arid Lands Environment Centre in relation to the licence.

The EDO is advising both clients as to next steps.

Farmers Fight Gold Mine Proposal to Protect Water (*Wiradjuri Country*)

Farmers and community members will head to the NSW IPC to oppose a proposed gold mine in central-western NSW over its impacts on water.

EDO lawyers are providing expert legal advice to the local community and will brief scientific experts to appear before the NSW IPC on behalf of our clients, the Belubula Headwaters Protection Group.

Mining company Regis Resources wants to develop an open-cut pit, tailings dam and processing facility at the site, known as the McPhillamys Gold Project, about 8km north-east of the town. The mine would extract up to 8.5 million tonnes per annum of ore over its 15-year project life.

But the mine and its tailings dam will sit on headwaters of the Belubula River and impact groundwater and surface water resources in the area. On top of that, Regis Resources wants to build a 90km pipeline to pump wastewater from coal facilities near the Blue Mountains to the site.

Perhaps most concerning of all is the fact that the catchment is predicted to be severely impacted by climate change, so much so that the majority of farmers in the area could lose, on average, up to 60 per cent of their yearly access to water.

As well as opposition from the Belubula Headwaters Protection Group, local Wiradjuri elders have raised concerns about the mine's potential impacts on Aboriginal heritage.

Sustainable Water Sharing in the Murray-Darling

This year our newly formed and growing Freshwater Team has continued its efforts to advocate for sustainable water sharing in the Murray-Darling Basin, our nation's food bowl.

We have analysed and written a number of submissions on NSW's long delayed Water Resource Plans and made strong contributions to the debate about the regulation of floodplain harvesting.

Our team continues to build strong links with Aboriginal people, landholders and communities in the basin whose future is threatened by the continued over-extraction of this resource in the face of worsening climate change.





Defending Wildlife and Wilderness

With some of the most iconic and unique wildlife and landscapes in the world, Australia needs a strong legal response to the biodiversity crisis.

From protecting World Heritage wilderness from development, to working with traditional owners to conserve threatened species, EDO's Biodiversity Team, has seen some significant wins this year for our clients and the ecosystems they are fighting to protect.

Proposed Heli-tourism in Tasmanian wilderness at Lake Malbena

This year, our cases concerning a proposed helicopter-accessed tourism development at Lake Malbena continued to examine what role the public has in decisions about development of Tasmania's wild places.

Halls Island, is within Lake Malbena and the Walls of Jerusalem National Park – part of the Tasmanian Wilderness World Heritage Area and the Tasmanian Wilderness National Heritage place.

Tourism company Wild Drake Pty Ltd proposes to exclusively use and develop Halls Island for luxury accommodation, with guests accessing the site by helicopter.

In September 2020, the project was referred by the Federal Environment Minister for assessment of its environmental impacts following a successful legal challenge by EDO in the Federal Court in 2019.

In a separate case, EDO is representing clients in an appeal to the Full Court of the Supreme Court of Tasmania over the planning permit for the proposal.

The planning permit was initially refused by the local council, and proponent lodged an appeal to the Resource Management and Planning Appeal Tribunal in 2019.



Our clients joined the appeal to argue that the Council's refusal of a permit should be upheld. After an intensive seven days of hearing, the Tribunal decided in December 2019 that a permit should be granted to the proposal.

In January 2020, EDO appealed against the Tribunal's decision on behalf of our clients to the Tasmanian Supreme Court. The appeal to the Supreme Court was limited to points of law. On 6 July 2020, the Tasmanian Supreme Court upheld the Tribunal's decision to grant a planning permit. That decision was appealed by EDO's clients, with a hearing in the Full Court of the Supreme Court in October 2020.

A decision by the Full Court of the Supreme Court on the latest appeal is expected soon.

Win for nyinggulu/Ningaloo Marine Park as Subsea 7 scraps plans

In a huge win for marine life and the community, in December Norwegian company Subsea 7 abandoned its controversial plans to construct 10km-long pipelines and drag them through nyinggulu/Ningaloo Marine Park for use at offshore oil rigs.

The proposal threatened vital humpback whale nursery areas and marine ecosystems off the Western Australian coast.

EDO worked closely with community groups including the Australian Marine Conservation Society to challenge the plan through its environmental approvals process, including its assessment by WA's Environmental Protection Authority.

The proposal was put on hold in August while the EPA conducted a study of cumulative environmental impacts on the Gulf, with Subsea 7 officially abandoning the project a few months later.



Protecting Tasmanian devils in takayna/the Tarkine

EDO has been representing the Tarkine National Coalition (TNC) with respect to a mine in takayna / the Tarkine region in Tasmania's north west.

In September 2013, Venture Minerals Ltd was granted a planning permit to mine hematite, the principal component of iron ore, at a mining lease west of Tullah known as the Riley Creek Mine. The permit contained strict conditions limiting ore transport to daylight hours aimed at mitigating the mine's impact on the endangered Tasmanian devils (*Sarcophilus harrissi*) population.

Under Tasmania's planning laws, a planning permit will lapse if the development and use has not substantially commenced within a maximum period of six years following the grant of the permit, however, Venture Minerals only started mining ore at the Riley Creek Mine on or around August 2020, nearly seven years after the permit was granted.

Before it commenced mining ore at the mine, Venture Minerals proposed variations to its state permit and Commonwealth approval conditions so that it could transport ore at night, potentially putting the Tasmanian devil population at risk of becoming roadkill. TNC only became aware of this proposal through lodging right to information and freedom of information requests with EDO's assistance.

Once TNC became aware of the proposed changes, EDO made a detailed submission to both the State and Commonwealth Governments outlining the

TNC's concerns about the lack of scientific evidence to justify the changes to the permit and approval conditions that would put Tasmanian Devils at risk of becoming roadkill. EDO also advised and assisted the TNC concerning the mine's alleged non-compliances with permit and approval conditions.

Advocating for Endangered Spectacled Flying Foxes (*Yirrganydji and Yidinji Country*)

This year, our Cairns office, has continued to work to protect endangered spectacled flying foxes in far North Queensland.

Despite opposition from members of the community and conservationists, Cairns Regional Council received approval to use noise and lights to try to disperse about 5,000 spectacled flying foxes from roosting trees near the city's library.

With Cairns Regional Council pressing ahead with its plans to relocate the camp in July 2020, EDO worked closely with individual clients and the conservation sector providing advice on the legal framework under which the council was permitted to relocate the camp. We engaged with both the State and Federal governments challenging the permitted activities.

EDO also produced a factsheet on the regulation of flying-foxes in Queensland and the application to the Cairns dispersal.

More broadly, we drafted a report into the legal framework and the 'as of right' powers devolved



to local councils to disperse and deter flying foxes with the view to providing a modern management approach to protect and conserve the species as they continue to experience significant impacts from urban encroachment and climate change.

Land Clearing in GBR Catchment Refused after EDO Legal Challenge

In a win for the fragile ecosystems of the Great Barrier Reef, in November, the Federal Environment Minister refused approval for an application to clear approximately 2,000 hectares of native vegetation at Kingvale Station in far north Queensland.

The proposed clearing would have occurred in a catchment area flowing directly into the Reef.

EDO has represented the Environment Council of Central Queensland (ECoCeQ) since 2018, with a successful Federal Court challenge of the Minister's decision to apply the least rigorous form of environmental assessment under Commonwealth environmental law.

The Minister conceded that that decision was not made lawfully and decided to apply a stronger method of assessment.

During that assessment process, EDO continued to assist ECoCeQ to engage with the Minister and met with her department.

Minister Ley eventually refused approval because of the proposal's likely significant impacts on threatened species and ecological communities.

“While staying in the Daintree for a couple of months this year and last year I have met many of the great (old) timers who fought and won the fight for the Daintree in the 70s. I asked one of them how to best support the environment through philanthropy and he said “make sure you leverage every dollar for maximum impact”. I’ve taken his advice to heart and hence my backing of this case. Thanks for your great contribution to defending Mother Earth,”

Angela Whitbread, EDO Supporter

Protecting Toondah Harbour *(Quandamooka Country)*

Our work to protect the Ramsar wetlands site Toondah Harbour, in Brisbane's Moreton Bay, has continued this year.

EDO has been working with the local community and environment groups since a large marina, retail, residential and tourist waterfront development was first proposed in 2015.

Moreton Bay is an internationally significant wetland and a Ramsar site, protected under the EPBC Act. It is also habitat for many vulnerable species such as dugongs and turtles.

This year, we went to the Queensland Civil and Administrative Tribunal seeking access to a key development agreement between the State Government, the developer and Redland Council on behalf of Redlands 2030. While this case was not successful, we continue to advise clients around the development. The next key step is scrutiny of the pending draft environmental impact statement under the Commonwealth assessment process.

Welcome Win as Northern Territory Bans Seabed Mining

In what's being hailed as a win for marine life, fishing and culture, in February the Northern Territory announced it would permanently ban seabed mining in its waters.

A three-year moratorium on seabed mining was first declared in 2012 and was then extended twice.

EDO lawyers in the NT made recent submissions to the government during the 2020 consultation, but our work on the seabed mining moratorium and making those changes permanent spans many years.

kunanyi/Mount Wellington Cable Car

EDO assisted Residents Opposed to the Cable Car (ROCC) to respond to Mount Wellington Cableway Company's proposal to build a cable car to the summit of kunanyi/Mount Wellington. In conjunction with other groups opposed to the cable car, EDO and ROCC assisted nearly 17,000 people to make representations to the Hobart City Council detailing why the proposal should not be granted a planning permit under the planning scheme and management plan for the park. The council is expected to make a decision soon.





Improving the Law

This year, EDO's Law Reform solicitors, have again been at the forefront of advocating for urgent and necessary law reform to improve our environment.

We have appeared before numerous parliamentary inquiries including the committee looking at Australia's faunal extinction crisis, and the Management and Execution of the Murray-Darling Basin Plan.


Our policy experts have also produced impactful reports and run webinars involving a wide range of stakeholders across policy at both federal and state/territory level.

Shaping the future of our nation's biodiversity laws

EDO was heavily involved in the 10-year independent Review of the *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act). The review was an opportunity to recommend comprehensive reform of the 20-year-old Act and EDO made a suite of recommendations for an Act designed to address the environmental challenges we face and achieve environmental outcomes for our unique biodiversity and heritage.

Our submissions, legal updates and outreach events helped a wide range of clients, practitioners and community groups engage in the review process. On the strength of our submissions and expertise, EDO was appointed to an expert stakeholder group to advise Professor Graeme Samuel AC on reform options, and provided law reform advice to national environmental organisations through the Places You Love alliance, eminent scientists, and the community.

We appeared at three parliamentary inquiries on interim EPBC Act amendments and our evidence helped ensure that legislation designed to hand over environmental approval powers to states and territories has not progressed in the absence of strong legally enforceable national environmental standards and accountability.



“I have been a proud supporter of EDO since 2014. Without the work of EDO, many campaigns to protect Australia’s unique environment would have been lost. This is why I fund them. Their legal expertise is vital in continuing to prevent further loss of habitat for endangered species, to mitigate against negative climate-related impacts, and to protect life-giving waterways and marine environments. I’m in awe of their uncompromising efforts and commitment to safeguard our precious ecosystems for the benefit of all.”

Josette Wunder



EDO was instrumental in ensuring regressive EPBC Act amendments have not been pushed through the Senate, and in highlighting the need for strong national environmental law. We continue to work with a range of experts on implementing the review recommendations and advocating for the comprehensive national reform that is needed to address the extinction and climate crises.

NSW's Koala Crisis – An Australian Icon on the Brink of Extinction

Following decades of habitat loss and accelerated by the devastation of the Black Summer bushfires, the fate of koalas in NSW hangs in the balance.

In September the future of these iconic animals became the subject of a tense political standoff between the NSW Government coalition partners the Liberals and the Nationals, with the Nationals leader threatening to resign. The cause of the tension was a long overdue update to koala planning policy that had commenced in March 2020.

EDO was a go-to source for media commentary throughout the political crisis and has produced a series of law reform submissions and analysis pieces, advocating for better protections for koala habitat and measures to ensure this iconic animal is not lost forever.

A Climate Act for Queensland Report

Real action on climate needs a Climate Act to legislate emissions reductions targets and to require that decision makers act in accordance with those targets, along with monitoring and reporting and a new Climate Authority to oversee whole-of-government action.

In October 2020, EDO joined forces with the Australian Conservation Foundation and the Queensland Conservation Council to release a report outlining the many benefits that can be gained from legislating a solid governance framework to ensure Queensland does its bit to reduce emissions and therefore reduce the risks of dangerous climate change impacts.

A Climate Act sends a clear signal that the government is committed to action to reduce our emissions, which provides certainty and confidence for business and civil society and helps to drive low-carbon investment and innovation and lower the cost of a just transition to a low-carbon economy. Through clear accountability mechanisms, a Climate Act can ensure Queensland proactively responds to climate change risk and reduces its greenhouse gas emissions across all sectors, consistent with the overarching aim of the Queensland Government's climate change response.



Our Healthy Environment and Justice Teams

Southern and Central Queensland

Improving Environmental Regulation

This year, our Southern and Central Queensland office has worked to improve access to environmental information through public register improvements with Department of Environment and Science. Our lawyers have been supporting and advising around the implementation of an Independent Environment Protection Authority and advocating for improvements to environmental and resource regulation to better protect the environment. Part of this law reform work includes backing strengthened laws on Great Barrier Reef water quality regulation - against consistent attacks - and advocating for improvements.

North Queensland

Information Request About Cloncurry Roads

EDO made a successful Right to Information appeal to Office of the Information Commissioner to obtain reports by a local government on decisions on the methods and scheduling for repairing rural roads which result in large sedimentation into waterways.

Russell River Catchment Sustainability Plan

We provided legal advice and support on the state and federal laws and policies to improve water quality for the Great Barrier Reef through wetland catchment health and regeneration. Working closely with the Office of the Great Barrier Reef, the Department of Environment and Science and Wanjuru traditional owner Dennis Ah-Kee and Liz Owen to facilitate funding and project delivery.

Urannah Dam Coordinated Project

We drafted submissions on behalf of a native title holder for the Terms of Reference to include rights, particularly cultural rights, in the decision-making process by virtue of Queensland's Human Rights Act which came into effect in January of this year.

Tasmania

In the past financial year, the Tasmanian office has made several important law reform submissions including in response to:

The proposed Bushfire Mitigation Measures Bill, which proposed to override environmental and cultural heritage protections and require landowners and tenants to take steps to mitigate bushfire risk on their properties through clearing and/or hazard reduction burning. EDO made a comprehensive submission objecting to the Bill and outlining how Tasmania's laws could better address climate change mitigation and adaptation. This Bill appears to have been abandoned by the Tasmanian Government in the face of resoundingly negative public feedback.

The review of the *Aboriginal Heritage Act 1975* (Tas), which has been acknowledged as “woefully outdated” and in need of comprehensive reform. EDO's submissions to the review suggested pathways of reform to ensure Aboriginal cultural heritage considerations were embedded into land and resource management decision-making, with the Tasmanian Aboriginal community responsible for decision-making on cultural heritage.

The Independent Review of the Climate Change (State Actions) Act 2008 (Tas), which is the third review of the Act since it was introduced. EDO's submission recommended that Tasmania legislate a greenhouse gas emission target of net zero by 2022, to lock in Tasmania's current negative emissions profile and a range of measures to ensure all government decision-making addressed the need to mitigate GHG emissions and adapt to a changing climate.





South Australia

EDO's South Australian office contributed to *A Call to Action: Protecting Adelaide's tree canopy* as a follow up to the 2020 report *What's Happening to Adelaide's Trees*. A Call to Action outlines the top priorities, practical steps and law reform needed to turn around the significant tree loss occurring across Adelaide.

The South Australian government released a discussion paper outlining a number of proposed changes to the *Petroleum and Geothermal Energy Act 2000 (SA)* including how projects are assessed and the process for community to comment on proposals. The EDO prepared a submission responding to the proposals.

The South Australian government proposed changes to the *Pastoral Land Management and Conservation Act 1989 (SA)* including extending leases to 100 years and the removal of stock limits. The EDO prepared a submission responding to the proposals and provided ongoing advice to various clients.

Australian Capital Territory

In 2020, the Canberra office of the EDO was largely non-operational due to the impacts of COVID-19 and staffing changes. In January, EDO hired two full-time solicitors who re-opened the doors in Canberra, set up a new functioning office, started building an ACT practice, and restarted the Canberra volunteer program.

The new team has been working primarily on a number of law reform matters, primarily advocating for the recognition in Australia of the human right to a healthy environment, and to have the right legislated in the *Human Rights Act 2004 (ACT)*. They have also been hard at work on the ACT's Planning System Review and Reform Project, and were invited by the ACT Chief Planner to participate in the Legislation Working Group to assist the ACT government prepare its draft bill for public consultation.

The team has continued EDO's longstanding association with ANU College of Law, and the team has mentored 16 students through the ANU's Environmental Law Clinic, convened by Dr James Prest. Our solicitors also engaged in numerous seminars on a wide range of environment, climate and biodiversity issues, including with the ACT Law Society, the ANU Institute for Climate, Energy & Disaster Solutions, Australian Earth Laws Alliance, and the Asian Research Institute for Environmental Law.

Defending the defenders

Citizen Representation Program Successes

Our Citizen Representation Program, has provided legal support services all across Australia in the last year. There have been countless legal services given to individuals and groups on issues ranging from the scope and extent of police powers, the rights of transgender and non-binary people in corrective custody to the process for obtaining permits and authorisations needed for protests. A core part of our work continues to be the provision of advice on court processes and criminal charges that flow from protest action to individuals from almost every jurisdiction in the country.

We have represented clients in the Queensland Magistrates Court, the NSW Local Court and the NSW District Court. We have successfully argued for no convictions being recorded in all sentencing proceedings since the beginning of 2021. We continue to fight against police bail conditions in

both jurisdictions, with all challenges to onerous police-imposed bail conditions being successful to date. We will be back in court defending matters where our clients argue that police charges have been incorrectly laid in the coming months.

In addition to legal advice and representation, we have also sought to raise awareness to the threats to climate activism in Australia by co-authoring a report with Greenpeace and the Human Rights Law Centre. An initial copy of which was sent to the United Nations in response to a Special Rapporteur call for submissions on the topic. The report documents the systemic repression faced by climate activists in Australia. We are hoping this will help the community understand the importance of activism and some of the major challenges activists face. The report is set to be released later in 2021.



Our International Program

Our International Program works with Pacific communities to use the law to respond to the major environmental threats in the region: climate change, logging and mining. The program operates at the critical intersection of indigenous rights, human rights and environmental protection. We centre indigenous perspectives and rights as we build partnerships to protect human rights and the environment through the informed use of the law.

A Year of Growth for our Team

Through the incredible commitment and efforts of our donors and other partners, a growing coalition of international, regional and local organisations are beginning to coalesce behind our work in the Pacific, particularly in Papua New Guinea. This has resulted in increased staff capacity in our partner organisations and at the EDO, where we have had the great privilege of welcoming two highly regarded Papua New Guinean lawyers, Ms Watna Mori and Dr Bal Kama, to our team.

This is hopefully just the beginning as we work to tackle the significant and broad ranging existential threats posed to our Pacific communities.

Responding to COVID in the Pacific

In addition to our legal projects, in these exceptional times, we have been asked to assist our partners in responding to the pandemic, enabling our partners to safely continue their critical work.

In early 2021, one of our partners announced they will need to urgently proceed with a workshop of community leaders. As COVID cases in PNG were surging at the time, EDO assisted our partner in developing their COVID protocol and also urgently shipped six digital thermometers and approximately 170 reusable masks to PNG for the workshop. The workshop was successful in re-energising local leaders at a crucial time. No COVID cases related to the workshop have been reported and an external observer noted that the COVID protocols from the workshop could be a model for other organisations and events.

EDO also worked with our key partner in PNG in urgently developing their “COVID-Safe Policy for External Engagements”. This policy has enabled our partner to continue trips to provinces to collect evidence to prevent illegal logging activities.

Solomon Islands Residents Win Historic Battle to Save their Island Home Against Bauxite Mine

The peoples of Wagina in Solomon Islands have registered a further win in their historic battle against a proposed bauxite mine development, which would have taken up 60% of their island home and created unacceptable and irreversible environmental impacts, threatening around 2000 residents who rely on the sea and land for their livelihood.

After over a year of deliberation, the Minister for Environment dismissed the mine developer’s appeal, which sought to overturn a March 2019 decision of the Environment Advisory Committee (EAC) refusing consent for the mine.

The International Program supported the Landowners Advocacy and Legal Support Unit (LALSU) within the Solomon Islands Public Solicitor’s Office (PSO) to bring the historic case to the EAC, representing Mr Tebukewa Mereki on behalf of the peoples of Wagina.

While this win is not necessarily the end of the case, the Minister’s decision represents the end of the Environment Act appeal process, significantly narrowing the ability of the developer to change the outcome. The developer would have to convince the High Court of Solomon Islands’ that the Minister had made an error of law and would be unable to make any arguments about the merits of the mine.



Top and Bottom: the Sepik River (courtesy Save the Sepik).
Middle: people attend a Save the Sepik event (courtesy Save the Sepik).



United Nations Raises Human Rights Concerns Over Proposed PNG Mine

In September, Eleven United Nations representatives responded to an urgent appeal to the UN Special Rapporteur on Toxic Wastes filed by Project Sepik and EDO's Papua New Guinea legal and advocacy partner CELCOR in May 2020, by writing to to stakeholders of the proposed Frieda River copper and gold mine in Papua New Guinea (PNG).

The letters raised 'serious concern' about the potential and actual threats of the project to human rights, including the rights to life, health, bodily integrity, water and food, and the right to free, prior and informed consent. The letters also raised concerns that the people of the Sepik River 'will be forced to bear the costs of the project in perpetuity'.

The letters have provided invaluable support to local communities who have grave concerns about the mine. They now know that the international community also shares their concerns and are prepared to act on any violations of international law in respect of the project.

Human Rights – Our Joint Submission to the United Nations on Climate Change

In July, environmental lawyers of Environmental Defenders Office, Environmental Justice Australia and Earthjustice made a joint submission to the United Nations Human Rights Council for Australia's Universal Periodic Review (UPR).

The submission urges the Australian Government to take serious and immediate action on climate change in order to protect human rights. This includes the rights to life, health, food, water, housing and culture, all of which are threatened by climate change. The rights of Indigenous peoples in Australia are particularly at risk.

Community Win over FOI Bid in PNG Seabed Mining Case

In September, the Papua New Guinea National Court rejected the PNG Government's attempt to dismiss the community's case to obtain key documents relating to the Solwara 1 deep seabed mining project.

Solwara 1 – proposed for the Bismarck Sea off the coast of New Ireland – would be the first commercial deep seabed mining project in the world. However, the PNG government has refused to provide affected communities with key documents, including the environment permit – the basic document setting out the environmental parameters of the mine.

Coastal communities launched legal proceedings against the PNG Government in December 2017, after their calls for the release of project documents were ignored over many years.

In early 2018, the Mineral Resources Authority (MRA) filed a motion to have the communities' case dismissed on the basis that no reasonable cause of action was disclosed, the proceedings were frivolous or vexatious or are an abuse of process.



MRA's motion was heard on 17 July 2017. On 11 September 2020, the Court handed down its decision, dismissing MRA's motion. This essentially means the plaintiffs have a legitimate case to be heard and they can proceed to a full hearing which will determine whether they will be entitled to the documents they have requested.

Compliance and evaluation

We use formal evaluations and informal feedback to continuously develop and improve our international capacity development programs.

EDO (formerly EDO NSW) has been a full member of the Australian Council for International Development (ACFID) since 2013.

ACFID maintains the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice for organisations working in aid and development. EDO is committed to full adherence with the Code, conducting our work with transparency, accountability and integrity.

For further information about the Code, please refer to www.acfid.asn.au. This site also includes information about how to make a complaint in relation to any breach of the Code.

The EDO Board

EDO is grateful for its skilled and experienced board of directors, who devote many hours to ensure the success of our organisation. It has been another momentous year for our EDO and we thank our board members for their time, expertise and leadership.

Directors

The following persons held the office of director during the year and up to report date:

Dr Bronwyn Darlington – Chair

Dr Kate Galloway – Deputy Chair

The Hon. Michael Barker

Mr Pepe Clarke

Ms Catherine Hathaway

Prof Jan McDonald

Mr Joe Morrison

Mr Phillip Vernon

Mr Brent Wallace

Rachel Eberhard

Ms Susanne Behrendt





Our People

EDO kicked off this financial year with a complete restructure to reflect our status as a new national organisation and better focus our resources on our key areas of work.

Our teams have been divided into two main pillars; Systemic Change, which covers the overarching themes of Climate Change, Biodiversity and Water; and Healthy Environment and Justice, which is our jurisdictional work in every state and territory.

Elaine Johnston – Director of Systemic Change

It's been a privilege to lead EDO's inaugural Systemic Change Program since my appointment as the Director of Legal Strategy in 2020, and I'm incredibly proud of what we have achieved in our first year through an unwavering commitment to our shared goals.

The team is made up of lawyers and legal administrators from around the country, with staff based in Hobart, Perth, Darwin, Brisbane, Sydney and Melbourne. It includes lawyers with a range of expertise, including specialists in legal regimes in the Pacific Islands, policy and law reform, legal education, corporate and commercial law, insurance law, constitutional law, international legal regimes, and of course environmental and administrative law.

Together, we're focussed on bringing about systemic legal change in the Australia Pacific region that protects nature and our shared climate through leadership, partnerships and transformative legal strategies across our three focus areas: Safe Climate, Biodiversity and Freshwater.

This year saw us bring on new team members in the Freshwater, Safe Climate and Biodiversity teams, as well within our International Program. We have also recruited a team of corporate lawyers to investigate new legal interventions against polluters and those who fund coal and gas projects that are inconsistent with a safe climate.



In 2020/21, we successfully filed and ran a number of important pieces of strategic litigation, including landmark climate cases raising novel legal questions on the impact of new coal on the human rights of young people and Indigenous Australians, and the statutory duties owed by the Environment Protection Authority to address greenhouse gases and climate change. We had some great wins too, including against Adani's North Galilee Water Scheme in the Federal Court.

It's been so exciting to watch our corporate and commercial work develop new legal strategies to tackle the climate crisis. One of the highlights of the year came when the Japan Bank for International Cooperation announced it will stop funding overseas coal power projects, just weeks after EDO's Safe Climate team challenged Barclays and HSBC over their involvement in a JBIC fund, which was financing a new coal fired power plant in Vietnam. This work demonstrated to us just how powerful EDO's engagement in challenging the funding of projects that pose a threat to our shared climate can be.

Nicole Sommer - Director of Healthy Environment and Justice

I am proud to have led EDO's Healthy Environment and Justice Program through its first year, after my appointment as Director in August 2020.

Our legal teams work for systemic change across the country from our eight offices, embedded in local communities with a central access point through our first national intake team.

We champion a safe and healthy environment for all, as a fundamental human right. We strive for equality – each of us deserves equal access to clean air, clean water and a healthy environment. We recognise that burdens are too often borne by First Nations people.

In 2020/21, we filed a legal challenge for traditional owners from Borroloola to the security bond for the McArthur River Mine, along with Environment Centre Northern Territory. We appeared at the Juukan Gorge Senate Inquiry and engaged in the Aboriginal heritage law reform in Western Australia.

We had victories in protecting our unique places, with wins to protect the Ningaloo Marine Park, the Great Barrier Reef and the Wet Tropics. We end the year with cases on foot to protect the Tasmanian Wilderness and Gondwanan World Heritage Areas.

Our deep work with clients at the local level is critical for environmental justice. I look forward to the year ahead working for our equal right to a safe and healthy environment.

EDO staff

as at 30th June 2021

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Vanessa Bartholomew
Rachael Barwick
Roslyn Bates Harling
Bronwyn Bell
Gabrielle Bond
Claire Bookless
Jacqueline Boyce
Frances Bradshaw
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Cheryl Lee Strangio
Daniel Thompson
Thomas Trumble
Linda Tucker
Natalie Vella
Rachel Walmsley
Kirstiana Ward
Karen Winfield
Nadja Zimmermann



Acknowledgements

EDO is deeply grateful to the following barristers, solicitors and firms for their ongoing commitment to the provision of legal assistance this year.

Angus Scott
Ashley Stafford
Bora Kaplan
Bret Walker SC AO
Charles Gregory
Cheyne Beetham
Claire Roberts
Craig Lenehan SC
Dane Chandler
David Topp
Denika Whitehouse
Dr Chris McGrath
Dr Sarah Pritchard SC
Emrys Nekvapil
Felicity Niemann
Fiona Cameron
Fiona McLeod SC AO
Geoffrey Kennett SC
Grant Donaldson SC
Henry Jackson SC
Hugo Leith
James Hutton
James Johnson
James Mack
Jane Needham SC
Jane Taylor
Jason Lazarus SC
Jeremy Kirk SC
Jerome Entwisle
John Church
John Taylor
Juliet Forsyth SC
Kasey McAuliffe-Lake
Kathleen Foley

Kyra Reznikov
Lauren Sims
Mark Seymour
Matthew Littlejohn
Matthew Pudovskis
Michael Doherty
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Natasha Hammond
Neil Williams SC
Nicholas Petrie
Nick Eastman
Nick Swan
Noel Hutley SC
Oliver Jones
Paul Leadbeter
Paula Morreau
Perry Herzfeld SC
Philippa Honey
Rachael Young
Rebecca McEwen
Richard Beasley SC
Robert White
Rupert Watters
Rutendo Muchinguri
Saul Holt QC
Sebastian Hartford Davis
Shawn Rajanayagam
Stephen Free SC
Stuart Henry SC
Tim Campbell
Tim Mellor
Tony McAvoy SC

Our sincere thanks also go to the following people for their assistance:

Associate Professor Brad Moggridge
Dr Tom Baxter
Prof Jan McDonald and Dr Phillipa McCormack
Ben Bartl
Brynn Mathews
Darren Tardio
Dr Alan Chenoweth
Dr Anthony Hopkins
Dr Eytan Rocheta
Dr Hugh Saddler
Dr James Prest
Dr Nathan Waltham
Dr Sajni Gudka
Dr Sven Teske
Felix Craig and Assoc Prof Rick Snell
Hilary Bambrick
Jiritju Fourmile
Les Francis
Martine Maron
Mike Cain
Nicki Hutley
Past EDO South Australia committee members Alex, Anna, Yvonne, Karen and Richard
Prof Nerilie Abram
Prof Ove Hoegh-Guldberg
Prof Stuart Khan
Professor Betty Weiler
Professor Brendan Mackey

Rachel Wilson
 Richard Fejo
 Rod Campbell
 Rod Fensham
 Sai Santoso-Miller
 Stephanie Booker
 Tony Coleman
 William Moon

Thank you also to:

Community Legal Centres
 Flinders University
 Grata Fund
 Law in Order
 Legal Practitioners' Fidelity Fund
 for funding grants
 Martin Place Chambers and
 Michelle Kearns
 Northern Land Council
 Northern Territory General
 Practice Education
 NT Government for
 funding grants
 NT Law Society Public
 Purpose Trust
 The ACT Government
 UNSW
 Today Design and all those
 stakeholders and supporters
 who took part in research for
 our new legal gateway.

Scientists and experts

The EDO Scientific and Expert
 Advisory Service works to
 ensure our lawyers and clients
 receive independent, objective
 scientific advice to support our
 policy, advice, litigation and legal
 education work.

As always, we thank all the
 experts we work with for their
 ongoing willingness to ensure that
 the individuals and community
 groups working to protect our
 environment have access to the
 best scientific advice possible. In
 2020/21 that included:

Alan Collins
 Alison Ziller
 Alistair Davey
 Andrea Broughton
 Ariane Weiss
 Brendan Ryan
 Christopher Dickman
 David Leitch
 David Milledge
 David Paull
 Glyn Wittwer
 Grant Wardell-Johnson
 Hugh Saddler
 Hugo Walton
 Ian Wright
 James Goodman
 Jamie Cleverly
 John Pye

John Quiggin
 Kevin Hayley
 Lucy Reading
 Matthew Currell
 Narelle Irvine
 Neil Perry
 Patrick Nunn
 Penny Sackett
 Peter Cook
 Peter Dupen
 Peter Serov
 Philip Pells
 Philip Zylstra
 Renata Bali
 Richard Kingsford
 Robert Ellis
 Robert Kooyman
 Roderick Campbell
 Ryan Vogwill
 Sara Bice
 Sharyn Anderson
 Simon Nicholas
 Simone Maynard
 Steve Phillips
 Stuart Khan
 Tanya Mason
 Tim Buckley
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 Tim Forcey
 Tony Wood
 Vanessa Pirotta
 Warwick Giblin
 Wendy Hawes
 Will Steffen

Thank You to All Our Volunteers:

Abigail Widijanto	Jacinta Cafe	Philip Travis
Alexander Blackborough	Jadviga Kobryn-Coletti	Phoebe Silva
Allira Bagley-Wilson	Jamie Love	Priam Rangiah
Alyssa Sealtiel	Jarin White	Raad Pharaon
Amy Lafferty	Jayne Cooper	Rachael Chick
Amy Tan	Jess Gittel Cornish	Rebecca Noonan
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Anna Hamoy	Jonathon Linn	Riley Quinn
Anna Kretowicz	Karen Shen	Rory Macdonald
Anna Skelly	Katta O'Donnell	Rose Foster
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Claudia Hodge	Lily Pan	Tamsin McAlister
Daniel Morey	Madeline Lilly-Howe	Taylah de Wit
Divya Naryan	Maria Wilhelsya Inviolata Watu	Tess Van Geelen
Donna Bagnall	Raka	Thomas Cameron
Edwina Oxenham	Marlikka Perdrisat	Thomas Moore
Elizabeth Cocks	Megan Waddell	Tim Dickson
Ella Mather	Melisa Quinn	Toby MacGregor
Emma Clark	Michael Pacheco	Tom Webb
Emma Scaife	Michael Trott	Verity Smith
Erika Aligno	Nadi Cox	Vi Pham
Fraser Gray	Nick Wray-Jones	William Holbrook
Grace Bramwell	Nicola Nearhos	Yale Hudson-Flux
Grace Desoe	Ola Moucharraffie	
Guy McDonald	Oliver Moss	
Hannah Skjellerup-Wakefield	Otis Platt	
	Peter Rowell	

Major Donor Acknowledgement

A heartfelt thank you to the donors who supported the impactful work of the Environmental Defenders Office in 2020/21.

ACME Foundation	Geoffrey and Ann Long	Mary Maher
Amanda Cohn	George Lewin	McKinnon Family Foundation
Andrew and Christine Galbraith	The Goodman Foundation	Michael and Margaret Williams
Andrew Hall	The Gordon and Christine Windeyer Foundation	The Morris Family Foundation
Angela Whitbread	The Graeme Wood Foundation	The Myer Foundation
Anne Reeves	The Green Family Foundation	The Norman Family
Annette Neill	Greg Jordan	The NR Peace & Justice Fund
Barry Newstead & P.K. Lee	Helen Henry	Naylor-Stewart Ancillary Fund
Belinda Seaton	The Horizon Foundation	Neil Gunningham
Bill and Jane Thompson	The Ian Potter Foundation	Nicole Robins
The Bluesand Foundation	The Ian Watson Foundation	The Orgil Family Foundation
Brian Snape AM	The James N. Kirby Foundation	Peter and Kim Martin
Bryan Havenhand & Anna Kaemmerling	Jamie Pittock	Pixel Seed Fund
Caroline Le Couteur	Jane Cajdler	Planet Wheeler Foundation
Chris & Gina Grubb	Jenny Scott	Purves Environmental Fund
Colin and Barbara Hindmarsh	Joan Staples and Barry Crisp	Robyn Gray
Cynthia Brook	Jos Luck	The Ross Knowles Foundation
Daryl & Claire Catt	Josette Wunder	the Ryan Cooper Family Foundation
David Robinson	Kate Girdwood	The SM Robinson PAF
Denise Fitch and Tim Winton	The Keith and Jeannette Ince Fund	Sue Mathews and Mark Burford
Derek Bolton	The Kimberley Foundation	Susan Robertson
Diversicon Environmental Foundation	The Lenko Family Foundation	Tim Buckley
Edwina Kearney	Lewis Tyndall	Tony Strachan
Elisabeth & Phillip Crossman	The Light Earth Foundation	Vicki Olsson
Elisabeth Hodson	Louise Maple-Brown and Simon Niblock	
Ereshkigal Foundation	M. Harris and L. Kerr	
Fran Petrou and Gary Seaton	Mark and Michelle Rawson	
The Garry White Foundation		

All donors listed gave \$5,000 or above in 2020/21. EDO extends our warmest thanks to donors who gave other amounts.

Funder Acknowledgement

We gratefully acknowledge the support provided through State and Territory government funding, and State and Territory Law Society grants, which provide funding towards our frontline access to justice legal services including:

Australian Capital Territory through the Justice and Community Safety Directorate

Australian Capital Territory Law Society Statutory Interest Account grant

Community Legal Centres Program administered by Legal Aid NSW

Community Legal Centres Program administered by Legal Aid Western Australia

Law Society of Northern Territory Public Purposes Trust grant and Legal Practitioners Fidelity Fund grant

Northern Territory Government through the Department of Environment and Natural Resources

State of Queensland through the Department of Justice and Attorney-General, and the Department of Environment and Science





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