



Always was, always will be, Aboriginal and  
Torres Strait Islander land.



# Empowering communities to be heard to mitigate climate change and disasters

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Environmental Defenders Office



# Who are the Environmental Defenders Office?

National community legal centre

Focused on **public interest environmental issues** (climate change, ecosystem health, community health)

Provide legal assistance through litigation, advice, law reform advocacy and education

Decades of experience in climate change mitigation related litigation and law reform advocacy



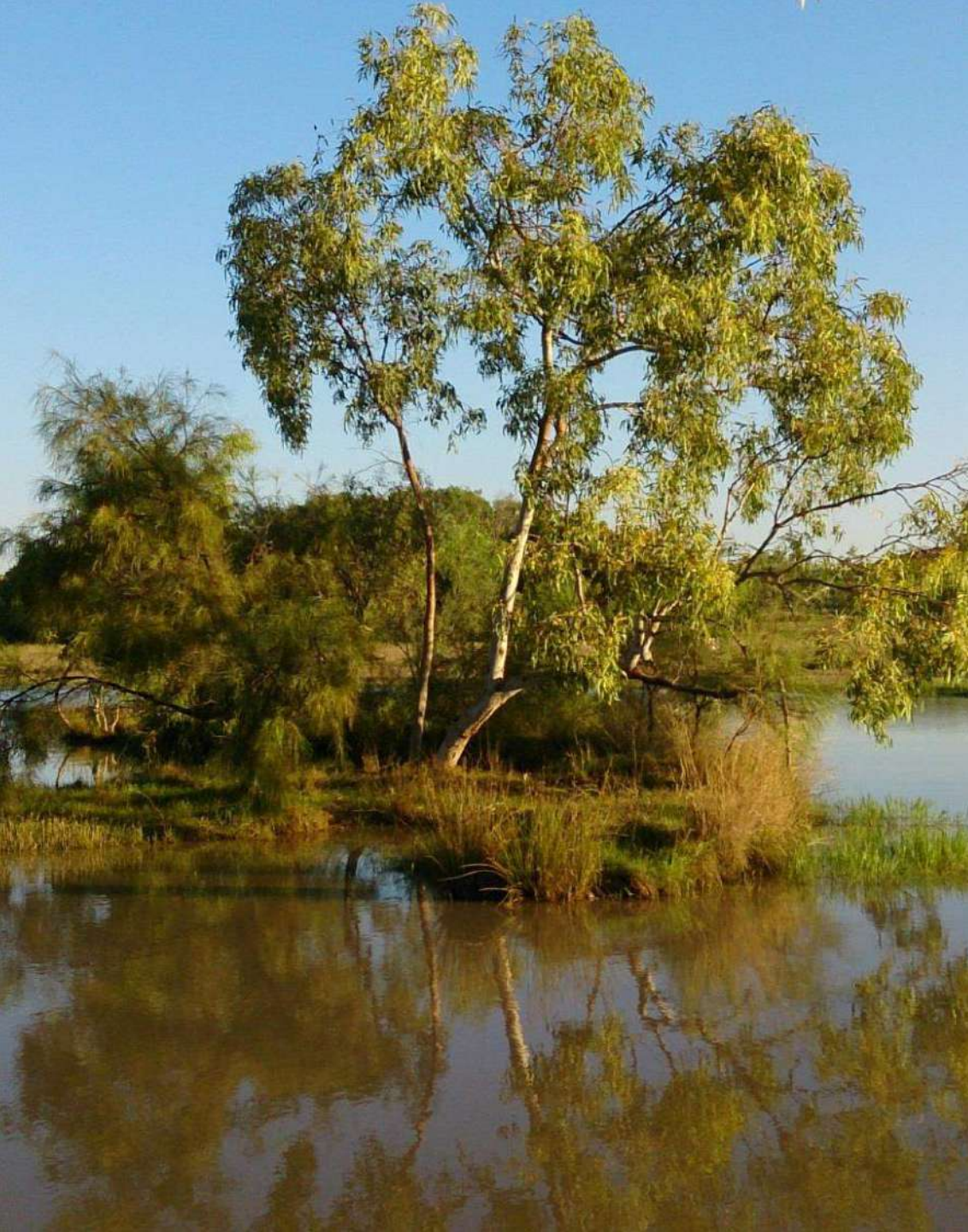




# Focus today:

- **Outline of EDO's work around climate change and disasters, from mitigation lens**
- **Summary of EDO's learnings** - the importance of community empowerment in decision making around climate and disasters and the role of CLCs





# Snapshot of EDO's climate litigation

**Qld:** litigation focused on mitigation via project approval of coal mines, including exported and internal emissions, challenging:

- State level approvals
- EPBC Act assessment

**Nationally and internationally:** EDO also assists clients in corporate law and other areas of administrative litigation around Australia and in the Pacific.



# "The coalfields of Queensland, Australia have more coal under development than any state or province in the world"

<https://globalenergymonitor.org/report/deep-trouble-tracking-global-coal-mine-proposals/>

- Coal is the most carbon-rich of all fossil fuels and its combustion has contributed the most to planetary warming.
- Limiting how much coal countries can burn is considered an urgent priority for restraining global heating.





# Not only are coal mines bad for the climate...

Coal mines typically have significant impacts also on:

- Groundwater and surface water resources - also at threat from, and in higher demand, thanks to climate change
- Communities living nearby, downstream and along transport routes – harmful air and water pollutants
- Cultural heritage of First Nations
- Biodiversity impacts from the massive land areas they require to be cleared and pollutants
- Plus, flooding of mines is a major pollutant risk



# We've come a long way in Queensland...

## ***Queensland Conservation Council Inc v Xstrata Coal Queensland Pty Ltd*** (Newlands coal mine)

2006 case – Qld Land and Resources Tribunal

- One of the first cases in Qld to challenge a coal mine proposal on the basis of GHG emissions
- Existence of climate change and veracity of climate science challenged in decision by Member, without submissions from any party to these points.
- Appeal successful in finding this was a breach of natural justice
- Queensland Government legislated to specifically authorise the mine, bi-passing need for re-hearing.





# From there

- **Land Court:**
  - 8 projects 19 judgments
- **Supreme Court**
  - 7 projects 14 judgments
- **Wandoan – 1.2 BT emission**
- **Alpha – 1.8 BT emission**
- **Kevins Corner – 1.8 BT emission**
- **Adani – 4 BT emission**
- **Acland – 290 mt emission**
- **Waratah – 3.2 BT emission**
- **Total: 12.29 BT**





# To today...

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- ***Waratah Coal v Youth Verdict & The Bimblebox Alliance (Galilee Coal Project)***
  - 2022 case – Land Court of Queensland
    - **Land Court recommended refusal:**
      - Including on the basis of the impacts of the mine's emissions (including scope 3) on climate change and human rights protected under the *Human Rights Act 2019* (Qld).
  - **First Nations' experiences of climate change able to be amplified:**
    - Court heard on Country evidence from First Nations with respect to their experience of and risks of climate change impacting their cultural rights, under s 28 of the Human Rights Act.





# Further findings from *Waratah*

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In applying the Human Rights Act and climate risks, the Court applied the **principles of ecologically sustainable development**, considering:

- The **precautionary principle**
- The disproportionate burden for future generations, undermining the **intergenerational equity** principle.





# Further findings from *Waratah*

- **The right to life:**
  - There was a **clear and pressing threat to the right to life** that is now experienced by people in Queensland and would only be **exacerbated by increasing emissions** to which the Project would make a material contribution.
  - The importance of preserving the right to life **weighs more heavily in the balance than the economic benefits** of the mine and securing further energy in South-East Asia.

HRA s 16.





# Further findings from *Waratah*

- **The rights of First Nations Peoples:**

- Considered the evidence of First Nations witnesses, both through their affidavits and on-Country evidence, particularly their creation stories, and quoted some passages.
- Found that **climate change impacts would have a profound impact on cultural rights**, and **for peoples who would be displaced from their country, the survival of First Nations Peoples' culture** which s 28 was intended to protect.
- The Court concluded that, **set against the history of dispossession of First Nations Peoples' land, the limit on cultural rights and the potential destruction of culture**, counts against the Project being approved.

HRA s 28.



# Further findings from *Waratah*

- **The rights of children:**

- The scope of the right encompasses the climate change implications of the Project because of the **vulnerability of children to climate change impacts** and the **intergenerational aspect of climate change risks** making the rights of children paramount.
- The Court concluded that the **best interests of children are not served by actions that place a barrier in achieving the Paris Agreement temperature goal** and that this weights the balance against approving the applications.

HRA s 26(2).





# Further findings from *Waratah*

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- **The right to property:**

- The project would make a material contribution to future climate change and regarding the right to life, made the same finding in relation to the right to property.
- The importance of the **right to property had an additional dimension in relation the grief and loss of displaced First Nations Peoples compounded by disruption to and loss of culture.**
- The Court concluded that **when the human cost is added to the equation, the scale weigh in favour of preserving the right to property.**

HRA s 24(2).



# Further findings from *Waratah*

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- **The right to privacy and home:**
  - Found the same as for the rights to life and property but that there was an **additional dimension in relation to the loss of home for some First Nations Peoples which would further risk the loss of cultural and the associate health burden of displacement.**
  - The Court concluded that the balance favours preserving the right to privacy and home.

**HRA s 25(2)**





# Further findings from *Waratah*

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- **The right to enjoy human rights without discrimination:**
  - Took into account the **disproportionate impact of climate change on children, First Nations Peoples, and older people, people living in poverty, and other disadvantaged people.**
  - Found that the limit is not a reasonable limit that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

HRA s 15(2).



# Human rights potentially impacted by climate change

## Established in *Waratah*:

- the right to life (s 16)
- the cultural rights of First Nations Peoples (s 28)
- the rights of children (s 26)
- the right to property (s 24)
- the right to privacy and home (s 25(a))
- the right to enjoy human rights without discrimination (s 15(2))

## Other possible rights:

- right to health, as implied in the right to life (s 16)
- right to a clean, healthy and sustainable environment, as implied in the right to life (s 16) and the rights of children (s 26)
- right to education (s 36)
- right to culture generally (s 27)
- right to move freely (s 19)





# Learnings and outcomes from this litigation

- **Dogged determination needed... (as we all know)**
- **Importance of empowering community members to take part in decision making that impacts them, to have their stories heard, to organise together and to hold governments and corporations to account.**
- **Power of the Human Rights Act:**
  - In allowing real stories to be heard, to ground legal arguments.
  - Providing a voice to those impacted to amplify their experience.
- **Many human rights are arguably impacted by climate change in some way, even beyond those rights upheld in Waratah decision.**
- **Power of on Country evidence and need for Cultural Protocols for First Nations evidence:**
  - Placing the Court and legal system in the environments and communities that are being discussed, hearing from the people impacted.
  - Needs to be balanced by appropriate protocols for hearing and handling that evidence.
- **Most if not all of our cases and grounds are impacted and exacerbated by climate change.**

# Opportunities for climate and human rights grounds

## Planning law - adaptation

Failures to consider risks from climate change in town planning  
e.g. flooding; heat; inadequate consideration of disabilities

Where there is a '**public interest**'  
**test** in decision making criteria

Disaster management laws – e.g.  
inadequate consideration of  
disabilities, discrimination.

Health and safety  
considerations: safe and  
appropriate housing and  
infrastructure for those at risk of  
climate impacts

Insurance and climate risk



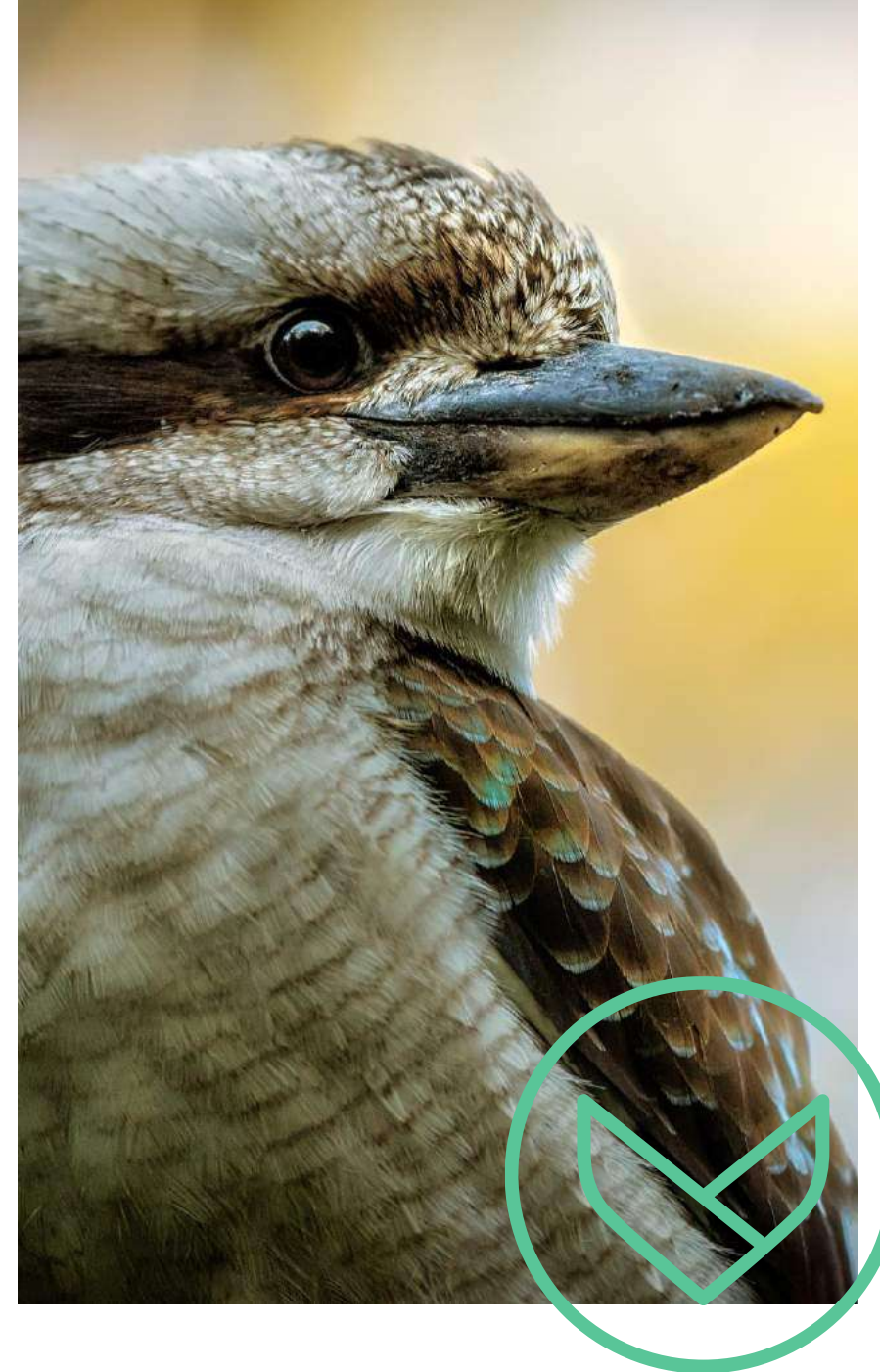
# Law reform advocacy

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- **Complimentary to litigation**

- Litigation can bring attention to an issue and show failings of law – providing live examples
- e.g. Waratah has led to a Greenhouse Gas Emissions Guideline from Qld Gov enshrining some outcomes of the decision

- **Opportunity for working with others, building power for change through broader network and community**






# The role of CLCs?

- Can support community building and empowering agency in advocacy. Movement lawyering.
- Can facilitate people having their stories heard in decision making that impacts them.
- Important role at the center of complexity around climate impacts – can see and demonstrate the linkages between climate change and real impacts to communities.
- Maintaining connection across CLCs and networks to facilitate referrals, capacity build and ensure all needs of clients are met.





Get involved in the review  
of the Qld *Human Rights  
Act!*

*Our rights need defending.*



Thank you.

