



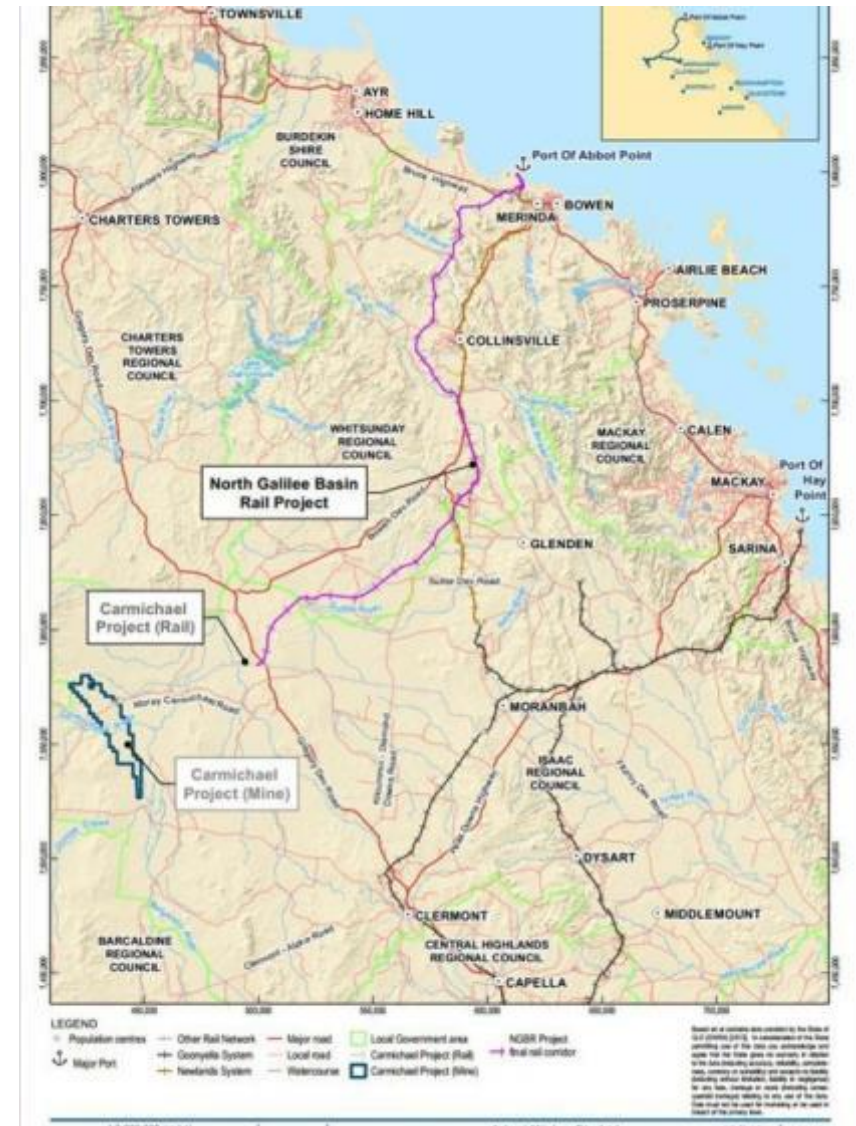
# EDO NSW, Lawfare, Environmental Institutions and the Environment

Sue Higginson  
CEO



# The Mine

- Approved by the Australian Government Minister for Environment in 2014
- 60 year mine life
- 6 open cut pits, 5 underground mines, associated infrastructure
- Potential impacts:
  - Biodiversity
  - Climate change
  - Aboriginal heritage
  - Local community
  - The Great Barrier Reef



# The Case – the birth of Australian *Lawfare*

- David v Goliath



# The Outcome

- Minister conceded that a legal error was made and agreed to set aside the approval

No: NSD332015

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**MACKAY CONSERVATION GROUP INCORPORATION NUMBER: IA03355  
(INCORPORATED PURSUANT TO THE ASSOCIATIONS INCORPORATION ACT  
1981 (QLD))**  
Applicant

**THE COMMONWEALTH OF AUSTRALIA** and others named in the schedule  
First Respondent

## ORDER

**JUDGE:** JUSTICE KATZMANN

**DATE OF ORDER:** 04 August 2015

**WHERE MADE:** Sydney

**BY CONSENT, THE COURT ORDERS THAT:**

1. The decision under review dated 24 July 2014 be set aside.
2. There be no order as to costs.

## The Fallout

- Enormous media coverage
- Politicisation of the court
- Allegations of ‘green lawfare’ and ‘vigilante litigation’

## **Setback for Adani as Australian court revokes environment clearance for \$16.5 billion coal mine**

Environmentalists hailed the ruling against the \$16 billion Adani project as a victory in their efforts to block the mine, which they claimed put the Great Barrier Reef under threat.

# The Threat

Attorney-General for Australia  
Senator the Hon George Brandis QC

August 2015—Government acts to protect jobs from vigilante litigants

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## Government acts to protect jobs from vigilante litigants

18 August 2015

The Government has decided to protect Australian jobs by removing from the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) the provision that allows radical green activists to engage in vigilante litigation to stop important economic projects.

Section 487 of the EPBC Act provides a red carpet for radical activists who have a political, but not a legal interest, in a development to use aggressive litigation tactics to disrupt and sabotage important projects.

The activists themselves have declared that that is their objective – to use the courts not for the proper purpose of resolving a dispute between citizens, but for a collateral political purpose of bringing developments to a standstill, and sacrificing the jobs of tens of thousands of Australians in the process.

It is now for the federal Labor Party to show that it cares more about jobs than inner-city greens.

The legislation will be introduced into the Parliament for passage through the House of Representatives later this week.

# The Response

And what was the legal technicality? Greg Hunt broke the law by ignoring his own department's advice on the endangered yakka skink (*Egernia rugosa*) and the ornamental snake (*Denisonia maculata*).

It's illegal to ignore advice now? Best law ever!

Actually I voted for the National Party at the last election

Here's a fun fact! The renewables industry has lost well over 2300 jobs since Tony Abbott became Prime Minister. True!

This government is about JOBS JOBS JOBS!

Until today I could count on one flipper the number of major projects that have been stopped by environmental legal challenges.

Now I need 2 flippers

## The Reasoning

- Open standing provisions to enable third parties access to justice to protect the environment and uphold the law

# Proposed changes to Federal environmental laws a step backwards for the environment and communities

By EDO NSW Executive Director Jeff Smith

19 August 2015

**Update:** Coalition members of the Senate Committee have [handed down a report](#) supporting the Government's Bill to remove extended standing for environment groups to access the courts. Labor and the Greens [released dissenting reports](#).



# The Funding Fears

- Proposal to remove the deductible gift recipient status of environmental charities

NATIONAL AFFAIRS

## Crackdown urged on tax-deductible status of environmental groups

The Australian | 12:00AM May 5, 2016

14



Save



SID MAHER  
NSW Chief of Staff | Sydney | @sidmaher

A crackdown on the tax-deductible status of environmental charities has been recommended amid growing complaints from miners that the taxpayer is subsidising illegal activity.

## The Funding Cuts

- \$10 million in funding to EDOs cut in 2013
- \$34 million to be cut from community legal centres nationally from 2017

### Funding cut to Environmental Defender's Offices described as 'barbaric'

Updated 19 Dec 2013, 1:05am

**A nationwide network of legal centres providing representation for environment-related cases deemed to be in the public interest have had their funding cut by the Federal Government.**

The government cut \$10 million in funding to Environmental Defenders Offices (EDO) in the budget measures outlined in the [Mid-Year Economic and Fiscal Outlook \(MYEFO\)](#).



## EDO NSW – An Institution

- We help people protect the environment through law
- Community legal centre specialising in public interest environmental law
- State-wide services
- Independent from government
- Multi-disciplinary
  - Legal advice and casework
  - Policy and law reform
  - Community legal education and outreach
  - Aboriginal engagement
  - Scientific and international programs
- Australian Network of EDOs

## Don't forget - You can help

- Your support for EDO NSW will help us to help the community to protect the environment through:
  - Accountable and informed decision-making
  - Better environmental laws
  - Community access to justice
- Donations are tax deductible
- <http://www.edonsw.org.au/donate>