

GRATA FUND

# IMPACT 21 REPORT 22





# Eora Nation



We acknowledge the Bedegal people who are traditional owners of the land on which we work.

We pay our respect to the tens of thousands of years of stories and community life that has thrived in the Eora Nation and to the Elders past, present and emerging.

This always was, is and will always be Aboriginal land.



Grata Fund is grateful to be supported by UNSW Law & Justice



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*people powered justice*

## Table of Contents

Who we are	4
What we do	5
Note from the Acting Executive Director	6
Impact	8
Cases	9
Thank You	19

# Who we are

Grata builds a fairer world by harnessing the power of high impact lawsuits, known as strategic litigation, to create structural change. Democracy works when people can exercise their right to have a voice, including in court, where facts prevail over spin.

Unlike other Western, liberal democracies, Australians are often blocked from exercising this basic democratic right because of insurmountable financial barriers to groundbreaking litigation. If an individual or community tries to pursue an important issue in the courts, they must pay the other sides' legal bill if they lose, even if the case is brought in the public interest, which could be hundreds of thousands of dollars, making it almost impossible to hold powerful governments and corporate leaders accountable.

Disbursements, which are the legal costs of running a case, including filing fees, expert witness costs, travel and printing costs can run into the hundreds of thousands of dollars. People are forced to make a choice between financial security and fighting for the rights of their community in court. No other democracy in the world makes it so expensive to hold the powerful accountable.

Grata breaks down these barriers in three key areas: human rights, climate justice and democratic freedoms. We do this using a movement lawyering approach: working with communities, legal experts and advocacy partners on integrated litigation and campaign strategies that tackle injustice while centring the voices and expertise of affected people.

We prioritise cases that have the potential to break gridlocks and create significant sustainable impact for communities on a national scale.





# What we do

Grata Fund is Australia's first specialist non-profit strategic litigation incubator and funder. Grata develops, funds, and builds sophisticated campaign architecture around high impact, strategic litigation brought by people and communities in Australia.

We focus on communities, cases and campaigns that have the potential to break systemic gridlocks across human rights, climate justice and democratic freedoms.

We specialise in granting recoverable adverse cost relief (guarantees) and disbursements (hard legal costs), both responsively to applications from people, communities and their legal representatives, and proactively developing litigation as well as legal education and training where there are capacity gaps in Australia's legal community.

Grata removes the enormous financial barriers to court and supports people and communities facing injustice to integrate litigation with strategic movement-driven campaigns. We do not fund legal fees, solicitors or barristers, rather all legal work is provided pro bono.

Our courts are the third pillar of our democracy, designed to check the power of governments and corporate leaders. By opening this tool to more communities, we can hold decision-makers accountable in court and push back against unfairness.



# Note from the Acting Executive Director



In the last year, Grata has continued to support communities facing injustice and civil society to bring the sort of circuit-breaking litigation that is made possible when the eye-watering financial barriers to court are removed.

I am proud to report that Grata Fund alongside our legal partners have stood alongside brave and courageous plaintiffs to fight injustice including:

Uncle Pabai and Uncle Paul to file their landmark Australian Climate Case to hold the federal government to account for climate harm in the Torres Strait Islands and demand greater climate action for all Australians;


Ms Jasmine Cavanagh, Enid Young and the residents of Santa Teresa in the NT to ensure the government provides and maintains humane, habitable and reasonably comfortable housing. The decision now benefits over 65,000 residents across 76 remote communities in the NT. We're supporting Enid to take the case all the way to the High Court so the decision can benefit tenants across the country;

Johnny Jack, Joanne Pepperill, Jamesie Stafford, Anita McNamara, Kennedy Brown and other residents of the remote community of Laramba in the NT to challenge the NT Government's failure to provide safe drinking water to First Nations people in remote public housing;

The Garawa, GudANJI, Marra and Yanyuwa Peoples to demand protection of their sacred sites, river and country from the impacts of the McArthur River Mine;

Refugees like Yasir\* to challenge the traumatic and inhumane use of handcuffs and restraints against refugees and asylum seekers in detention;





IT expert Justin Warren to use the FOI system to show what various former ministers including Scott Morrison, Christian Porter and Alan Tudge knew of the failed Robodebt program that unlawfully raised \$1.76 billion in debts against 443,000 people; and

Justice Action to successfully defend the right to an informed vote for prisoners in South Australia that has the potential to impact over 42,970 prisoners across the country.

Grata has also supported journalists, campaigners, activists and NGOs challenge the continued abuse of the Freedom of Information system ensuring an open democracy where the public retains their right to know, particularly through the Grata/Monash Law Democracy and Freedoms Clinic.

We published two reports on democracy including [Freedom of Information Hit List - Challenging Government Secrecy through the Courts](#) and the [Knowledge is Power](#) guide to the FOI System for civil society. These guides breaks down the laws and processes of FOI, helping applicants overcome hurdles to have the best chance of obtaining government information.

Thank you to our supporters and every individual and organisation who has worked with us to make this possible. We are so excited to share this report with you, and for what lies ahead.

Warmly,  
Maria Nawaz

# Impact

The Grata community has stood alongside brave and courageous plaintiffs to enable varied landmark strategic litigation working with a range of litigation teams from across the country.

Fifteen of the sixteen cases we've supported have been successful.

To date, Grata and our sister organisation Matilda Legal have granted over \$1,179,500 in adverse costs protection and over \$583,918 in hard court costs.

The landmark litigation that Grata has supported to date has benefited over 1,107,320 women, men and children across the country.

cases have been successful

**15/16**

beneficiaries

**1,107,320**

granted in hard court costs

**\$583,918**

granted in adverse cost protection

**\$1,179,500**





# Cases

# Jasmine and Enid defended the right to habitable housing

We stood alongside Jasmine Cavanagh, an Eastern Arrernte woman and young mother living in Ltyentye Apurte (Santa Teresa, NT), Ms Enid Young, a 77 year old Eastern Arrernte woman, and another 70 households in their community who have been fighting for 600 urgent repairs to their rental properties since 2015.

For years the Ltyentye Apurte Community have lived in rental homes with leaking sewage, exposed electrical wires and missing doors. Since 2016, they've been standing together fighting through the courts for rental homes that are humane and comfortable. Temperatures regularly hover above 40 degrees in summer and below zero degrees in winter.

Together with Australian Lawyers for Remote Aboriginal Rights, we helped defend their right to habitable housing, forcing them to recognise the community's legal right to compensation and repairs for 65,000 people from all 76 remote communities in the NT.

We also supported the community to force the NT Government to wipe over \$70 million in false rental debts.

We are now supporting Enid take the NT government all the way to the High Court of Australia to argue that tenants should be compensated for distress and loss where the landlord fails to meet their obligations to provide habitable housing which could impact tenants across the country.



Enid Young with her family outside court



# Joanne and Jamesie defended the right to safe drinking water

We supported Joanne Pepperill, Jamesie Stafford and the community of Laramba demand clean drinking water alongside Australian Lawyers for Remote Aboriginal Rights.

First Nations communities in the NT are experiencing severe water insecurity and toxicity. Drinking water supplies are variously precarious or unsafe for approximately 65,000 residents of all 76 remote Indigenous communities.

First Nations families in Laramba are forced to rely on toxic drinking water, contaminated by uranium at 2.5 times the safe level.

The NT Government, which supplies this water, has known about this toxicity for almost a decade and done nothing.

The NT government guarantees water supply and quality to 18 gazetted towns under statute, however the NT government doesn't guarantee this to the 76 remote communities, creating a significant racial justice issue.

Together, we are challenging the NT Government's failure to provide the bare necessity of clean drinking water to tenants in remote NT communities.



# Jack and Josie are demanding the protection of Sacred Sites

We are supporting Garawa elder, Jack Green and Gudanji woman, native title rightsholder Josie Davey Green and the Garawa, Gudanji, Marra and Yanyuwa Peoples alongside the Environmental Defenders Office to demand protection of their sacred sites, river and country from the impacts of the McArthur River Mine.

The McArthur River Mine 70kms from Borroloola in the NT has been operating since 1993 and has had a complex and, at times, contentious history (even by the Northern Territory Environment Protection Authority's own account).

The mine has a history of destroying sacred sites, such as the Gudanji site of the Rainbow Serpent as well as waste rock spontaneously combusting. Recent rulings will mean that the height of waste rock will block views of Damangani, or Barramundi Dreaming, for the Traditional Owners affecting their custom and cultural practices.

We are standing alongside the Traditional Owners to demand that the NT Government act in accordance with the law and demand that the Mine be closed and fund the cost for over thousand years of monitoring and rehabilitation - the time it will take to restore the land.

If successful the case will benefit Traditional Owners seeking to defend their custom, culture and sacred sites as well as have enormous environmental and climate impact with the closure of the mine.





# Uncle Pabai and Uncle Paul are demanding the Australian Government take stronger climate action

We are proud to stand behind Uncle Pabai and Uncle Paul, two Guda Maluyligal Traditional Owners and Native Title rights holders from the islands of Boigu and Saibai in Zenadth Kes (the Torres Strait) who are taking the Australian Government to court to protect their community, and all Australians from climate change.

Uncle Pabai and Uncle Paul have turned to the courts in the hope of protecting their communities from disaster. They are arguing that the Federal Government has a legal responsibility to ensure Torres Strait Islander Peoples are not harmed by climate change. In legal terms, this is called a 'duty of care'.

Uncle Pabai and Uncle Paul will argue that by failing to prevent climate change the Australian Government has unlawfully breached this duty of care, because of the severe and lasting harm that climate change would cause to their communities. They are seeking an order from the court requiring the government to prevent this harm to their communities by cutting greenhouse gas emissions.

This case is the first time that anyone in Australia has argued that the whole of the Federal Government – not just one Minister or agency – has a duty to protect people from climate harm. If successful, Uncle Pabai and Uncle Paul won't just be protecting their communities – they'll be making us all safer from damaging climate change.

Legal partners: Urgenda Foundation & Phi Finney McDonald



# Yasir\* is challenging the use of handcuffs and restraints against refugees

Grata is supporting Yasir\* who is bravely challenging the Australian Border Force for the harmful use of restraints on refugees which has been condemned by medical professionals and human rights experts alongside the Public Interest Advocacy Centre.

In 2013, Yasir fled his country because he had no status as an ethnic minority and was constantly targeted by police and authorities. More than two decades earlier, he was deported from his country of birth with his family – and imprisoned as ‘enemies of the state’ for two years. Yasir was tortured by the prison guards as a child who kept him in handcuffs. He saw them do the same to his family and other prisoners.

Despite Yasir’s experience of torture with handcuffs at the hands of authorities, Border Force requires Yasir and other people locked in detention to wear handcuffs in order to access medical care or travel to court. For Yasir, this means he is unable to access the medical care he needs for fear of seizures if he is handcuffed.

Yasir is standing up against this harmful, punitive practice for himself and others trapped in detention. He is taking on Border Force in court to demand the end of the traumatic and inhumane use of handcuffs and restraints against asylum seekers and refugees in detention. If the case is successful, the ban on the practice of restraining refugees would benefit 1,402 women and men currently in detention.





# Justice Action defended the right to an informed vote

Grata supported prisoners' advocacy organisation Justice Action to successfully demand the right to an informed vote alongside Allens.

In May 2022, ahead of the Federal Election, the South Australian Government decided not to distribute non-partisan, apolitical information about political parties and candidates to people in prison contained in the Just Us newspaper.

Just Us is an impartial publication that contains contributions from all the main political parties about their policies as well as information on how to vote. It's the only election guide distributed in prisons - and thousands of prisoners rely on it. Unlike the rest of the population, political parties cannot distribute How to Vote or scorecards in prisons.

As a direct result of the case, the government agreed to distribute Just Us, and 3,200 people in SA prisons had access to impartial voting information prior to the federal election. The case also sends a strong message to other states to respect the right to an informed vote for up to 42,970 prisoners.





# Justin is demanding the the right to know

Grata is supporting IT expert Justin Warren to use the FOI system to show what various ministers including Scott Morrison, Christian Porter and Alan Tudge knew of the failed Robodebt program that unlawfully raised \$1.76 billion in debts against 443,000 people.

Grata supported Justin to apply to Services Australia under the Freedom of Information Act 1982 (Cth) (FOI Act) for documents relating to the business case of the notorious Robodebt scheme found to be unlawful by the Federal Court.

The documents could show what Ministers knew about the scheme, and what went wrong.

The plagued program was a blatant failure, unlawfully raising \$1.76 billion in debts against 443,000 vulnerable people. It has been described as a 'human tragedy' as many people had their lives severely affected by the false debts. Some had wages and/or tax returns garnished despite later being found not to owe any money and in one case a young man with intellectual disability took his life.

Services Australia is appealing the decision of the Information Commissioner in the Administrative Appeals Tribunal.



# Defending Democracy

Australia's Freedom of Information system is a crucial democratic tool that allows journalists, advocates, and even politicians to expose wrongdoing and enhance government accountability. We have seen a concerning trend toward increased political secrecy including abuse and under resourcing of the FOI system. Grata sees the protection of our FOI system as central to maintaining an open democracy.

Grata continued to advocate to protect our democracy, increase government transparency, litigate to fix the FOI system, expose abuse of the system and build FOI capacity.

In August 2021, we launched our Freedom of Information Hit List - Challenging Government Secrecy through the Courts, the result of two years work. Our research found that FOIs are routinely refused due to the inappropriate use of cabinet confidentiality to block requests, and the unreasonable refusal of FOIs seeking text, Whatsapp, Signal or other electronic messages.

Our research found that government agencies only granted 26% of FOIs for non-personal information in full in 2019-20. A further 34% were granted in part and 41% were refused.





About 10% of FOIs were decided more than 90 days late, a five-fold increase from the previous year. Delays have worsened each year for three years, and 79% of requests were processed within the 30-day statutory time period in 2019-20, down from 85% in 2017-18.

This hit list sets out a list of FOI exemptions and approaches used by Federal Government ministers and agencies to refuse FOI requests and block access to information that we believe are often unlawful. The list was developed in consultation with civil society and journalists, and established Grata's reputation as FOI specialists.

In April 2022, we launched the Knowledge is Power guide to the FOI System for civil society. The guide breaks down the laws and processes of FOI, helping applicants overcome hurdles to have the best chance of obtaining government information. The guide is designed to help journalists, NGOs, activists and lawyers understand and navigate the FOI system to strengthen transparency and help them advocate in their work.

Grata Fund has also operated as a hub for FOI inquiries, providing information and referrals to individuals and organisations trying to hold the government to account. We have provided strategic guidance to journalists, activists and lawyers - helping to build important FOI challenges with expert legal teams across state and federal jurisdictions. Since the launch of our FOI litigation hit list we have seen a tenfold increase in FOI inquiries.





# THANK YOU

All of this work and impact would not have been possible without the plaintiffs, beneficiaries, community legal centres, advocacy partners, solicitors, barristers and pro bono firms that have worked alongside us to make these landmark cases possible.

We also thank our thousands of supporters, donors, trusts and foundations, the Executive Director Leadership Council and Grata staff team and Board for their ongoing commitment and contribution that has enabled this extraordinary impact.

Grata Fund is also grateful for the support of UNSW Law and Justice.

## Plaintiffs

- Uncle Pabai Pabai and Uncle Paul Kabai and the communities of the Torres Strait Islands;
- Yasir\* and other Asylum Seekers and Refugees in detention;
- Jasmine Cavanagh, Enid Young and the community of Santa Teresa;
- Johnny Jack, Joanne Pepperill, Jamesie Stafford, Anita McNamara, Kennedy Brown and other residents of Laramba;
- Jack Green, Josie Davey Green, and the Garawa, Gudanji, Marra and Yanyuwa Peoples;
- Justin Warren; and
- Brett Collins and Justice Action.



# THANK YOU

## **Legal Partners**

- Australian Lawyers for Remote Aboriginal Rights
- Environmental Defenders Office Lawyers (National)
- Environmental Justice Australia, VIC
- Fitzroy Legal Service, VIC
- Human Rights Law Centre, VIC
- Justice Connect, NSW/VIC
- LGBTI Legal Service, QLD
- North Australian Aboriginal Justice Agency, NT
- Public Interest Advocacy Centre, NSW
- Victorian Aboriginal Legal Service, VIC
- Urgenda Foundation, Netherlands
- WestJustice, VIC

## **Advocacy Partners**

- Aboriginal Housing NT,
- Aboriginal Peak Organisation NT
- Amnesty International
- Australian Conservation Fund
- Australian Democracy Network
- Australian Lawyers for Human Rights
- CANA
- Community Legal Centres NSW
- Community Legal Centres Australia
- Central Land Council
- GetUp!
- Greenpeace
- Human Rights Law Centre
- North Australian Aboriginal Justice Agency

# THANK YOU

- Northern Land Council
- Public Interest Advocacy Centre
- Redfern Legal Centre
- The Australia Institute
- The Centre for Public Integrity
- Womens Legal Service NSW

## **Barristers**

- Alexander Edwards, NSW Bar
- Alexander Flecknoe-Brown, NSW Bar
- Christopher Ward SC, NSW Bar
- Daniel Reynolds, NSW Bar
- David Hume, NSW Bar
- Deborah Dinnen, NSW Bar
- Diana Tang, NSW Bar
- Fiona McLeod AO SC, Vic Bar
- Geoffrey Watson SC, NSW Bar
- Julia Wang, Vic Bar
- Lindy Barrett, Vic Bar
- Madeleine Bridgett, NSW Bar
- Matthew Albert, Vic Bar
- Nicholas Boyd-Caine, Vic Bar
- Shanta Martin, Vic Bar
- Stephen McDonald SC, SA Bar

## **Pro Bono firms**

- Allens
- Ashurst
- Colin Biggers & Paisley
- Gilbert + Tobin
- Hall & Wilcox
- Johnson, Winter and Slattery
- Maurice Blackburn
- Phi Finney McDonald



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