LAWHACK 2026

HACK PACK

Climate Justice

26 MARCH 2026

NATIONAL JUSTICE PROJECT

Law Hack 2026 – Climate Justice
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CULTURAL SENSITIVITY WARNING: First Nations readers should note that this material includes the names of deceased persons.

THE NATIONAL JUSTICE PROJECT

The National Justice Project (**NJP**) is a proudly independent not-for-profit human rights legal and civil rights service. Our mission is to fight for justice, fairness and inclusivity by eradicating systemic discrimination. Together with our clients and partners we work to create systemic change and amplify the voices of communities harmed by government inaction, harm and discrimination.

Through legal action, advocacy, education, and collaborative projects, we challenge systemic discrimination by defending and promoting the rights of people who have experienced racism and discrimination in healthcare and legal systems, immigration detention, prisons and juvenile detention, and policing.

ACKNOWLEDGEMENT OF FIRST NATIONS PEOPLES' CUSTODIANSHIP

The NJP pays its respects to First Nations Elders, past and present, and extends that respect to all First Nations peoples throughout this country. The NJP acknowledges the diversity of First Nations cultures and communities and recognises First Nations peoples as the traditional owners and ongoing custodians of the lands and waters on which we work and live.

We acknowledge and celebrate the unique lore, knowledges, cultures, histories, perspectives and languages that Australia's First Nations Peoples hold. The NJP recognises that throughout history the Australian health and legal systems have been used as an instrument of oppression against First Nations Peoples. The NJP seeks to strengthen and promote dialogue between the Australian legal system and First Nations laws, governance structures and protocols. We are committed to achieving social justice and to bring change to systemic problems of abuse and discrimination.

NATIONAL JUSTICE PROJECT

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1. INTRODUCTION

1.1 ABOUT LAW HACK

Law Hack 2026 is co-hosted by the National Justice Project and the Jumbunna Institute for Indigenous Education and Research.

Law Hack reflects our strategy of securing systemic change through a combination of strategic legal action, social justice education, fearless advocacy and collaborative partnerships.

The purpose of Law Hack is to create a space that enables creative, bold, innovative legal strategy development to critical issues of our time.

NJP wishes to acknowledge the generous contributions of:

- The Knights Family Foundation for their sponsorship. The Knights Foundation is committed to making an impact across the Arts, Social Justice and the Environment through empowering innovative, bold and inclusive For Purpose Organisations.
- Hicksons | Hunt & Hunt for their pro bono assistance in preparing the Hack Pack.
- The International Towers team for generously hosting this event.

1.2 WHAT TO EXPECT

Law Hack 2026 brings together teams of legal professionals to develop strategies to advance climate justice.

During Law Hack 2026, your team will be allocated one of six questions on the theme of climate justice, develop a strategic legal strategy with the support of mentors, and pitch your strategy to a panel of experts.

1.3 HOW TO HACK

Welcome to the engine room of Law Hack 2026! You can choose how to spend your time most effectively.

Use the Hack Pack to access additional resources and information to support your journey. Your goal is to create robust legal strategies that address your challenge statement and the judging criteria.

- Familiarise yourself with the judging criteria and material provided relevant to your allocated challenge statement.
- The focus questions allocated are intentionally broad. As a team, you will need to decide what your core focus will be.
- The Hack Pack contains crucial information to help you understand the context and develop an impactful legal strategy. It provides insights into the legal, social, and historical context, enabling you to identify areas where strategic litigation can have a significant impact. The Hack Pack is not intended to be exhaustive, but provides plenty of stimulus to help motivate and inform your approach.
- Understand the legal and broader context and relevant stakeholders.

- Determine the opportunities to tackle the problem and select the approach that will be impactful and meet the criteria.

- Explore your objectives, tactics, prospects, risks, stakeholders, and ethical considerations.

- Prepare to present your 3-minute pitch with a 3-minute Q&A to the judges by deciding roles, structure and delivery.

1.4 JUDGING CRITERIA

CHANGE: Bold and strategic, showing potential to change the status quo (law, policy, culture and public perception).

HUMILITY: Respects people with lived experience as experts, drivers, and catalysts of change.

ACHIEVABLE: Clearly defined plan and strategy to make change.

NOVEL: Using legal action and advocacy in original, creative and innovative ways.

GROUNDED: Grounded in lived experience by addressing barriers of discrimination and injustice, in particular multi- layered disadvantage and discrimination.

EVIDENCE: Informed by research, data and evidence of need.

1.5 FOCUS AREAS

Each team will be allocated one of the following questions.

Adaptation Questions

Prepare an effective legal strategy that will:

1. **Section 5.1:** Ensure that the transition to a green energy future is consistent with human rights principles, including those outlined in the *United Nations Declaration on the Rights of Indigenous Peoples*.

2. **Section 5.2:** Incentivise the legal system (including the profession) support community resilience and adaptation in response to the climate crisis.

3. **Section 5.3:** Harness existing legal remedies and challenge the disproportionate impact of the climate crisis on particular communities.

Mitigation questions

Prepare an effective legal strategy that will:

1. **Section 5.4:** Utilise and/or challenge existing legal frameworks to support legal claims for climate action.

2. **Section 5.5:** Hold big polluters and government to account for their contribution to the climate crisis in the absence of a human rights act or bill of rights.

3. **Section 5.6**: Change our professional practises to work as ‘everyday climate lawyers’ as outlined by Chief Judge Preston of the NSW Land and Environment Court.

1.6 MENTORS

Expert mentors will be available throughout the day. You can consult a mentor at any time to get feedback, insight and reflections on your problem, strategy and solution.

Dr Keely Boom

Dr Keely Boom is an Awabakal woman, lawyer, academic, and Executive Officer of the Climate Justice Programme. Keely's work is dedicated to leveraging the law to expose and address climate harm, holding a PhD in law on the legal risk of climate change damage to Australia and Tuvalu. Keely brings nearly two decades of legal experience in environmental law. She lectures at the Australian National University and University of Wollongong and as an Industry Fellow for the Institute of Sustainable Futures at UTS.

Professor Craig D. Longman

Professor Craig D. Longman is Director of the Legal Strategies Hub and Professor of Practice at the Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, as well as a barrister at Black Chambers. He brings extensive experience in criminal and civil litigation, having led community-driven legal initiatives, high-profile human rights cases, and inquiries into First Nations deaths in custody. His work centres on strategic lawyering to challenge systemic injustice, with a strong focus on advancing First Nations rights and climate justice.

Professor Beth Goldblatt

Beth Goldblatt is a Professor in the Faculty of Law at the University of Technology Sydney and is a leading researcher on equality-focused responses to climate change. Her research highlights how climate change intensifies existing group-based and economic inequalities. She serves as the co-director of the Climate Change Working Group at the Berkeley Center for Comparative Equality and Anti-Discrimination Law and is a co-founder of the Economic, Social and Cultural Rights Network in Australia and Aotearoa (New Zealand).

Katrina Bullock

Katrina Bullock's work as a journalist, lawyer and advocate centres on advancing climate justice. As Head of Development and General Counsel at the Environmental Defenders Office, she combines legal leadership with development and growth, helping to build funding strength, resilience, and reach. Katrina's work bridges legal frameworks and strategic communications and litigation, highlighting how law and narrative can both be part of an effective response to the climate crisis.

1.7 YOUR JUDGES

Dr Marcelle Burns

Marcelle Burns is a Gomeroi-Kamilaroi First Nations woman and the Associate Dean of Indigenous Leadership and Engagement in the Faculty of Law at the University of Technology Sydney. With over 25 years of experience as a lawyer and academic, her work is led by a deep commitment to First Nations justice.

Dr Bal Kama

Dr Bal Kama is a strategic advocate specialising in public law, with a particular focus on constitutional law, human rights, and climate and environmental justice. He previously served as a Managing Lawyer at the Environmental Defenders Office, where he advanced environmental justice for Pacific Island nations through strategic litigation. He now operates Kamana Legal, an independent legal and advisory practice.

1.8 EVENT SCHEDULE

WELCOME & INTRODUCTION	
8:30am	Arrival, Coffee Cart, Registration
9:00am	Acknowledgement of Country: Aunty Glendra Stubbs
9:10am	Keynote Address: Dr Keely Bloom
9:25am	Housekeeping & Instructions
9:30am	Morning tea arrives
MORNING HACK	
9:30am	Morning Hack Session: Teamwork
Ongoing	Mentor Consultations: Expert mentors available
12:15pm	Mentors Host Team Sharing Session: Exchange of ideas with another team
LUNCH & PLENARY	
12:30pm	Lunch
AFTERNOON HACK	
1:15pm	Afternoon Hack Session: Teamwork
Ongoing	Mentor Consultations: Expert mentors are available
PITCHING & CELEBRATION	
4:00pm	Judges and visitors arrive
4:00pm	Canapes and drinks arrive (bar open)
4:00pm	15-minute wrap up time for teams starts
4:15pm	Strategy Pitches: 3-minute pitch with 4-minutes Q&A
5:15pm	Judges confer
5:25pm	Outcome announced & prizes awarded
5:30pm	International Towers Speech
5:35pm	Closing remarks: Naomi Lai
5:40pm	Networking and Celebration event
6:30pm	Event Ends

2. GLOSSARY

ACCR means the Australian Centre for Corporate Responsibility.

ACCUs refers to Australian Carbon Credit Units.

ACF means the Australian Conservation Foundation Inc.

ACT means the Australian Capital Territory.

ANREU means the Australian National Registry of Emissions Units, governed by the *Australian National Registry of Emissions Units Act 2011* (Cth).

ASIC means the Australian Securities and Investments Commission.

AusLSA means the Australian Legal Sector Alliance.

CFCs means chlorofluorocarbons.

CL Act means the *Civil Liability Act 2003* (Qld).

CoBD means the Convention on Biological Diversity.[1]

Corporations Act means the *Corporations Act 2001* (Cth)

CRC means the United Nations Committee on the Rights of the Child.

CROC means the Convention on the Rights of the Child.[2]

DOC Bill means the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023.

ECHR means the European Court of Human Rights.

ECPHRFF means the European Convention for the Protection of Human Rights and Fundamental Freedoms.[3]

EIA means Environment Information Australia.

EPA means Environment Protection Authority.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

FPIC means Free, Prior, Informed Consent, as defined by UNDRIP.

GED refers to a General Environmental Duty (see section 3.5(b) below).

Greenhouse Gas Protocol means the international, widely used framework for companies, cities, and countries to measure, manage, and report their greenhouse gas emissions.

HCFCs means hydrochlorofluorocarbons.

[1] *Convention on Biological Diversity,* opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).
[2] *Convention on the Rights of the Child,* opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
[3] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

HFCs means hydrofluorocarbons.

HRC means the United Nations Human Rights Committee.

ICC means the International Criminal Court.

ICCPR means the International Covenant on Civil and Political Rights.[4]

ICESCR means the International Covenant on Economic, Social and Cultural Rights.[5]

ICJ means the International Court of Justice.

IPCC means the Intergovernmental Panel on Climate Change.

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change.[6]

LPULASCR means the Uniform Legal Profession Uniform Law Australian Solicitors' Conduct Rules**.**

LRET means the Large-scale Renewable Energy Target, as defined in the *Renewable Energy (Electricity) Act 2000* (Cth).

Millennium Drought means the drought experienced between late 2001-2010 by the River Murray region (although in some areas it began as early as 1996), spanning the territory of various Traditional Owners and their Nations , including the Dhudhuroa, Wiradjuri, Barkindji, Ngarrindjeri and Yorta Yorta peoples.

MNES means "matters of national environmental significance" as defined in the EPBC Act.

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer.[7]

Nationally Determined Contribution means the periodic climate action plans submitted by each State Party to the Paris Agreement.

NCRA means the Australian Government's National Climate Risk Assessment dated 2025.

Native Title Acts means the *Native Title Act 1994* (ACT); *Validation (Native Title) Act 1994* (NT); *Native Title (New South Wales) Act 1994* (NSW); *Native Title (Queensland) Act 1993* (Qld); *Native Title (South Australia) Act 1994* (SA); *Native Title (Tasmania) Act 1994* (Tas); *Land Titles Validation Act 1994* (Vic); *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).

NCP means the OECD's National Contact Points.

NEPA means the National Environmental Protection Agency.

NEPC means the National Environment Protection Council, as established by the *National Environment Protection Council Act 1994* (Cth).

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[4] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

[5] *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

[6] *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 16 March 1998, 2303 UNTS 162 (entered into force 16 February 2005).

[7] *Montreal Protocol on Substances that Deplete the Ozone Layer*, opened for signature 16 September 1987, 1522 UNTS 3 (entered into force 1 January 1989).

NEPMs means the National Environment Protection Measures, as defined by the *National Environment Protection Council Act 1994* (Cth).

NES means the National Environmental Standards introduced to the EPBC Act by the *Environment Protection Reform Act 2025* (Cth).

NGO means a non-governmental organisation.

NNTT means the National Native Title Tribunal.

NSW means the state of New South Wales.

NT means the Northern Territory of Australia.

NT Act means the *Native Title Act 1993* (Cth).

NGER Act means the *National Greenhouse and Energy Reporting Act 2007* (Cth)**.**

NOPSEMA means the National Offshore Petroleum Safety and Environmental Management Authority.

OECD means the Organisation for Economic Co-operation and Development.

OPSGGM Act means the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).

Paris Agreement means the agreement titled 'Paris Agreement' entered into by parties to the UNFCCC.[8]

PEO Act means the *Protection of the Environment Operations Act 1997* (NSW).

PNG means Papua New Guinea.

Precautionary Principle means a principle of law (see, e.g. section 391 of the EPBC Act) whereby "the lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage".

Public Authority Obligation means the prohibition on public authorities acting in a way that is incompatible with a human right or to fail to give proper consideration to relevant human rights, pursuant to the *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic) and *Human Rights Act 2019* (Qld).

Rome Statute means the Rome Statute of the International Criminal Court.[9]

SA means the state of South Australia.

Scope 1 emissions refers to the Greenhouse Gas Protocol term for greenhouse gas emissions from sources that an organisation owns or controls directly.[10]

[8] *Paris Agreement*, opened for signature 22 April 2016, 3156 UNTS 3 (entered into force 4 November 2016).
[9] *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002).
[10] *Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard* (World Resources Institute and World Business Council for Sustainable Development, Revised ed, 2015) 25. Scope 1 emissions are direct GHG emissions that occur from sources that are owned or controlled by the company.

Scope 2 emissions refers to the Greenhouse Gas Protocol term for greenhouse gas emissions that a company causes indirectly and come from where the energy it purchases and uses is produced.

Scope 3 emissions refers to the Greenhouse Gas Protocol term for greenhouse gas emissions that are not produced by the company itself and are not the result of activities from assets owned or controlled by them, but by those that it's indirectly responsible for up and down its value chain.

SRES means the Small-scale Renewable Energy Scheme, as defined in the *Renewable Energy (Electricity) Act 2000* (Cth).

State means a nation state.

QCAT means the Queensland Civil and Administrative Tribunal.

Qld EP Act means the *Environmental Protection Act 1994* (Qld).

Qld EPA means the Queensland Environmental Protection Authority.

UDHR means the Universal Declaration of Human Rights.[11]

UN means the United Nations.

UNCCD means the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa.[12]

UNCLOS means the United Nations Convention on the Law of the Sea.[13]

UNDRIP means the United Nations Declaration on the Rights of Indigenous Peoples.[14]

UNFCCC means the United Nations Framework Convention on Climate Change.[15]

VCAT means the Victorian Civil and Administrative Tribunal.

VCPOL means the Vienna Convention for the Protection of the Ozone Layer.[16]

WA means the state of Western Australia.

2025 ICJ Opinion means the Advisory Opinion of the ICJ titled 'Obligations of States in respect of Climate Change', released in July 2025.[17]

[11] *Universal Declaration of Human Rights*, GA Res 217 A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).
[12] *United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa*, opened for signature 14 October 1994, 1954 UNTS 3 (entered into force 26 December 1996).
[13] *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).
[14] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, UN Doc A/RES/61/295 (13 September 2007).
[15] *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994).
[16] *Vienna Convention for the Protection of the Ozone Layer*, opened for signature 22 March 1985, 1513 UNTS 293 (entered into force 22 September 1988).
[17] *Obligations of States in respect of Climate Change* (Advisory Opinion) (International Court of Justice, 23 July 2025) https://icj-cij.org/case/187.

3. CLIMATE JUSTICE REGULATION

3.1 Introduction

'Mother Earth is no longer in a period of climate change, but in climate crisis'.[18] This is the biggest human rights, environmental, social, economic, and legal challenge of our generation.

The Intergovernmental Panel on Climate Change, the UN body for assessing the science related to climate change[19] has found that the "increase in combined surface air and sea surface temperatures averaged over the globe" has led to global average temperatures which are +1.2°C warmer than the 1850–1900 pre-industrial average.[20] In addition, the CSIRO and Bureau of Meteorology found, in 2024, that Australia's average climate has warmed by +1.5°C since national records began in 1910.[21] The Australian Climate Service projects that future changes in global average temperatures will have the following impact at +1.5°C, +2.0°C and +3.0°C above pre-industrial average temperatures:[22]

[18] *Indigenous Peoples' Global Summit on Climate Change*, 'The Anchorage Declaration' (Declaration to UNFCCC, 24 April 2009) 1.

[19] Intergovernmental Panel on Climate Change, *'Intergovernmental Panel on Climate Change'* (Web Page, 2025) https://www.ipcc.ch/\.

[20] *Intergovernmental Panel on Climate Change*, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, 2023).

[21] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment: Full Report* (Commonwealth of Australia, 2025) 15.

[22] Ibid 16.

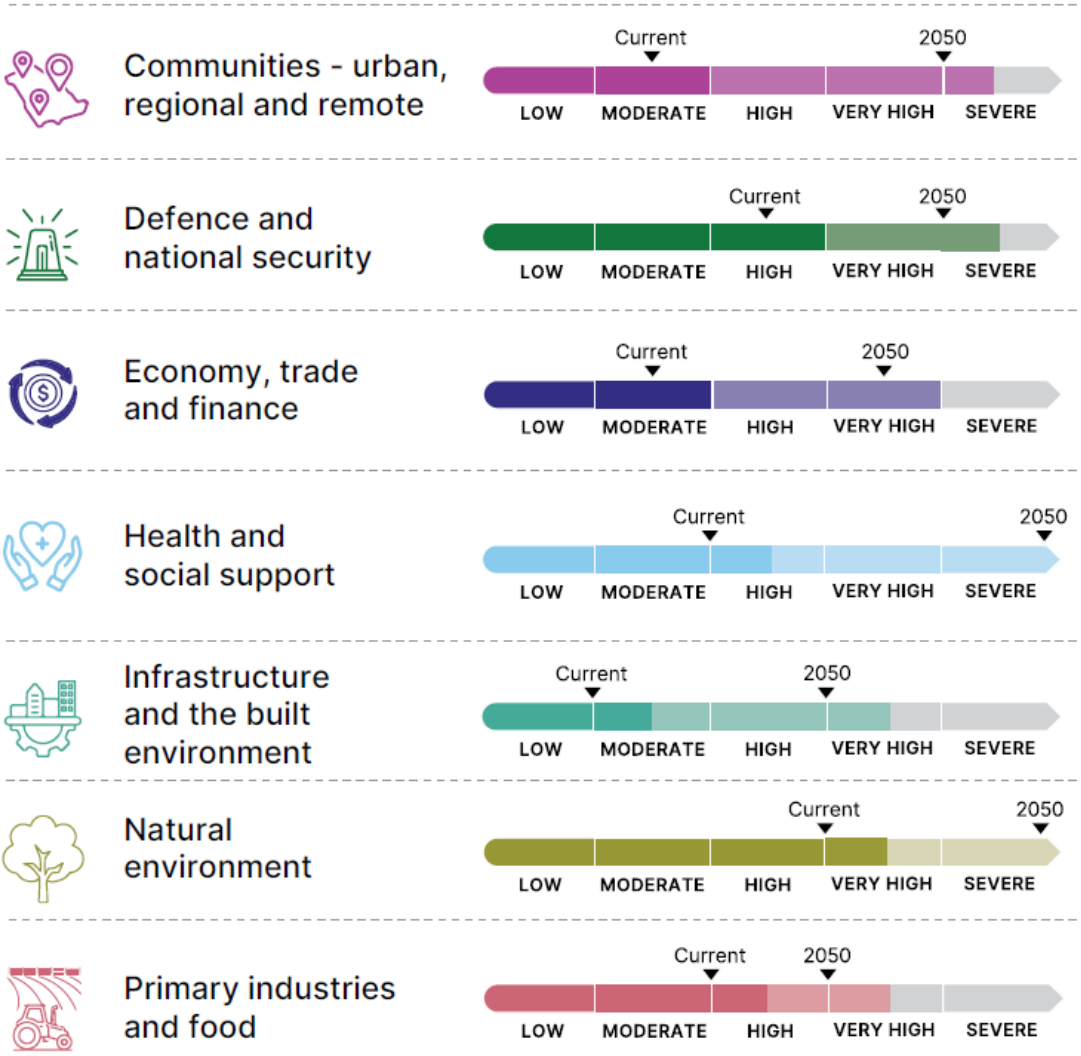
	Current	Future change relative to current		
	GWL +1.2°C	GWL +1.5°C	GWL +2.0°C	GWL +3.0°C
Severe/extreme heatwave days	4 days	+2 days	+5 days	+14 days
Time spent in drought	19 months per decade	-10% to +36%	-8% to +69%	-15% to +89%
Fire susceptibility		↑ in south, east	↑↑ then ↓ in south, ↑ east	↑↑ then ↓ in south, ↑ east
Frequency of extratropical lows	88 hours per year	No clear change	-19% to +8%	-25% to -3%
Frequency of large hail events	5–10 events in east	Insufficient data	↑ in east	Insufficient data
Tropical cyclone frequency (cat 4/5)	2–3 per year on average	Little change or small ↑	Little change or ↑	Little change or ↑
Maximum daily runoff	2.6mm	-39% to +47%	-53% to +58%	-57% to +59%
Marine heatwave duration	18 days	+22 days	+77 days	+161 days

	Current rise since 1880	Future change relative to current sea level			
		GWL +1.5/ +2.0°C at 2050	GWL +2.0°C at 2090	GWL +3.0°C at 2090	Planning benchmark
Sea level rise	0.2m	+0.14m	+0.32m	+0.54m	+0.94m
Frequency of coastal flooding	15 days	+24 days	+87 days	+193 days	+257 days
Extreme water level frequency	x 1.0	x 2.0	x 5	x 14	x 101

Figure 6: Summary of how the priority hazards are projected to change across Australia for each global warming level (+1.5°C, +2.0°C and +3.0°C) compared with the current climate (+1.2°C above the preindustrial average). The figure uses climate variables or indices (composites of climate variables) to quantify the changes in the hazards. Fire susceptibility uses the current year as the baseline and indicates direction and strength of change for future GWLs and years. Circles indicate a confidence rating based on the direction of change. 3 circles = *high confidence*, 2 circles = *medium confidence*, 1 circle = *low confidence* (ACS, 2025).

The National Climate Risk Assessment, in which the Federal Government summarised and evaluated various risks and impacts of climate change on 8 key systems and across 11 regions in Australia, risks (as at 2025 and 2050), the Australian Climate Service rated the risks to Australia's key systems as follows:[23]

[23] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment: Full Report* (Commonwealth of Australia, 2025)



The unequal burden of this crisis upon First Nations communities, Pasifika communities, disabled persons, and children, is no longer anticipated but actively felt. To provide a few illustrations:

- Sea levels in the low-lying islands of Zenadth Kes (the Torres Strait) are already rising by 6 – 8 mm per year, inundating traditional homelands, desecrating burial sites, destroying the breeding grounds of totemic species and forewarning forced migration off Country.[24]
- First Nations people disproportionately comprised 5.4% of the population in Black Summer fire-affected areas, which saw widespread devastation including significant displacement, destruction of cultural sites, exacerbation of pre-existing health conditions and death.
  First Nations Peoples across rural NSW and WA facing drought and environmental degradation have reported increased rates of depression and suicidality. Research has confirmed the casual link between impacts of the climate crisis and mental ill-health being amplified among Indigenous populations who have strong, deep, and ancestral connections to the land.

Yet, if all countries were to follow Australia's response to this crisis, global average temperatures could reach over 3°C, and up to 4°C, higher than pre-industrial levels[25] (i.e. twice the 1.5°C limit agreed to in the Paris Agreement, which we desperately need to achieve to avoid the worst of what is to come).

[24] Veronica Matthews et al, *Climate Change and Aboriginal and Torres Strait Islander Health* (Discussion Paper, Lowitja Institute and the National Health Leadership Forum, November 2021) 17, 24.
[25] Climate Action Tracker, *'Paris Temperature Goal'* (Web Page, 2024) <https://climateactiontracker.org/about/›.

Given Australia's vulnerability to climate devastation (brought to the foreground by the latest disasters), the unequal distribution of that devastation, our coal-orientated energy industry which continues to fuel our collective demise, and the grossly inadequate response of our government to national and global calls for action, strategic climate litigation is imperative.

Decarbonisation is the priority here given the urgency. As Chief Justice Preston of the NSW Land and Environment Court highlights, to remain anywhere near the 1.5°C limit, 'most fossil fuel reserves will need to remain in the ground unburned'.[26] To that end, we intend to apply our skillset, strategic mindset, and drive to put pressure on both the government and corporate actors to decarbonise.

There are three main kinds of policies implemented to address climate change: [27]

1) **Mitigation measures** implemented in response to climate change, to lower its rate of acceleration.

2) **Adaptation measures**, which involve anticipating the adverse effects of climate change and taking appropriate action to prevent or minimise such damage, or taking advantage of opportunities that may arise implemented to support affected communities and help them adapt to the current and future climate change. For example, in an infrastructure context, building defences to protect against sea-level rise.

3) **Relocation measures** for communities who have been displaced due to climate change.

At NJP, we feel a strong sense of responsibility to act, not only due to our serious concerns for our collective future and present, but also due to the discriminatory impacts of the climate crisis. This work is fundamentally aligned with our work, and vision, to end discrimination:

- First Nations communities are exposed to unequal socioeconomic, environmental, systemic and cultural consequences of the climate crisis, including via the desertification, flooding, and decimation of Country, species extinction, food and water shortages, proliferation and exacerbation of disease and forced migration with associated social dislocation.[28]
- Disabled persons are also disproportionately impacted by the crisis, as they are often among those most adversely affected in an emergency with incommensurate rates of morbidity and mortality, and experience structural barriers to emergency support. Both sudden-onset natural disasters and slow-onset events can seriously impede their rights, including food, safe drinking water and sanitation, health-care services and medicines, and adequate housing.[29]
- Children are also disproportionately affected due to their unique metabolism, physiology, and developmental needs. They also experience higher morbidity and mortality rates following extreme weather events, as well as increased vulnerability to abuse, exploitation, and denial of access to basic needs such as food and education.[30]

By seeking accountability for this discrimination, we move closer to NJP's objective of achieving a fair, just, and equitable society that protects the rights of all people.

[26] *Gloucester Resources Limited v. Minister for Planning* [2019] NSWLEC 7, [550].
[27] *Australian Human Rights Commission*, 'Climate Change and Human Rights' (Web Page) <https://humanrights.gov.au/our-work/rights-and-freedoms/climate-change-and-human-rights>.
[28] Jay Williams, 'The Impact of Climate Change on Indigenous People – The Implications for the Cultural, Spiritual, Economic and Legal Rights of Indigenous People' (2011) 16(4) *International Journal of Human Rights* 648, 672.
[29] Human Rights Council, *The Parlous State of Poverty Eradication: Report of the Special Rapporteur on Extreme Poverty and Human Rights*, 44th sess, Agenda Items 2 and 3, UN Doc A/HRC/44/40 (19 November 2020); Office of the High Commissioner for Human Rights, *Right to Development - Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General*, UN Doc A/HRC/54/38 (9 May 2023).
[30] Human Rights Council, *Analytical Study on the Relationship Between Climate Change and the Full and Effective Enjoyment of the Rights of the Child: Report of the Office of the United Nations High Commissioner for Human Rights*, 35th sess, Agenda Items 2 and 3, UN Doc A/HRC/35/13 (4 May 2017).

3.2 Key International Treaties and Instruments – An Overview

(a) Climate Change Treaties

As stated by the ICJ in its advisory opinion "Obligations of States in respect of Climate Change in July 2025 (**2025 ICJ Opinion**),[31] "the UNFCCC, the Kyoto Protocol and the Paris Agreement are the principal legal instruments regulating the international response to the global problem of climate change. The UNFCCC establishes the ultimate objective as well as the basic principles and general obligations of States in respect of climate change, whereas the Kyoto Protocol and the Paris Agreement, [each "related legal instruments" of the UNFCCC[32]], respectively translate these basic principles and general obligations into a set of more specific interrelated obligations, each of which gives expression to a broad practical approach of the community of States parties to the problem of climate change".[33]

The United Nations Framework Convention on Climate Change 1992 (UNFCCC)[34]

The "ultimate objective" of the UNFCCC is to stabilize "greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system." It states that "such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner."[35] The UNFCCC imposes different obligations on developed "Annex I countries" (being the OECD countries and including Australia), as the source of most past and current greenhouse gas emissions,[36] and developing countries. Obligations on Annex I countries include:

Mitigation obligation	• adopting national policies and taking corresponding measures on the mitigation of climate change, by limiting anthropogenic emissions of greenhouse gases and protecting and enhancing their greenhouse gas sinks;[37]
Adaptation obligations	• formulating and implementing national and regional programs containing measures to facilitate adequate adaptation to climate change;[38] • developing appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas affected by drought and desertification, as well as floods;[39] • taking climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions;[40] and • employing appropriate methods, for example impact assessments, with a view to minimising adverse effects that adaptation projects or measures could have on the economy, on public health or on the quality of the environment.[41]
Other obligations	Annex I countries are also required to:

[31] *Obligations of States in Respect of Climate Change (Advisory Opinion)* (International Court of Justice, General List No 187, 23 July 2025) ('Climate Change Advisory Opinion').
[32] *Climate Change Advisory Opinion* [118], [119].
[33] *Climate Change Advisory Opinion* [116], [120]
[34] *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) ('*UNFCCC*').
[35] UNFCCC art 2.
[36] 'United Nations Climate Change', *United Nations Framework Convention on Climate Change* (Web Page) <https://unfccc.int/process-and-meetings/united-nations-framework-convention-on-climate-change\>.
[37] *UNFCCC* arts 4(1)(b), 2(a).
[38] *UNFCCC* art 4(1)(b).
[39] *UNFCCC* art 4(1)(e).
[40] *UNFCCC* art 4(1)(f).
[41] *UNFCCC* art 4(1)(f).

	• provide financial support to developing countries for action on climate change;[42] and • report regularly on their climate change policies and measures,[43] including by providing an annual inventory of their greenhouse gas emissions.[44] Australia's reports can be found here.

Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol)[45]

The Kyoto Protocol (which was signed by Australia in 1998, ratified in 2007 and entered into force for Australia in March 2008),[46] strengthens the mitigation obligations in the UNFCCC[47] by specifying "quantified emissions limitation and reduction commitments" for 37 developed States, including Australia, and for the European Union.[48] Each specified State is required to limit and reduce their greenhouse gas emissions in accordance with agreed individual targets over the first commitment period of 2008-2012 and, as agreed by some parties including Australia by way of the Doha Amendment to the Kyoto Protocol on 8 December 2012, the second commitment period of 2013-2020.[49] No further commitment period after 2020 has been agreed upon. In the 2025 ICJ Opinion, the ICJ stated that it "considers that the lack of agreement on a further commitment period under the Kyoto Protocol after the adoption of the Paris Agreement does not mean that the Kyoto Protocol has been terminated. The Kyoto Protocol therefore remains part of the applicable law."[50]

For the first commitment period, Australia adopted a QELRO limiting Australia's emissions growth over the first commitment period to 108% per cent of 1990 levels.[51] Australia's QELRO for the second commitment period was 99.5 per cent of 1990 levels.[52]

The Paris Agreement[53]

The Paris Agreement was adopted in 2015 by the Conference of Parties[54] of the UNFCCC, with the following objects (**Paris Agreement Objectives**):[55]

- "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change". In this respect, the ICJ noted in the 2025 ICJ Opinion that "while the Paris Agreement provides for limiting the global average temperature increase to well below 2°C above pre-industrial levels as a goal and 1.5°C as an additional effort, 1.5°C has become the scientifically based consensus target under the Paris Agreement";[56]
- "increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production"; and
- "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."

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[42] *UNFCCC* art 4(3).
[43] *UNFCCC* art 4(1).
[44] *UNFCCC* art 4(1)(a).
[45] *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 11 December 1997, 2303 UNTS 162 (entered into force 16 February 2005) ('Kyoto Protocol').
[46] *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 16 March 1998, 2303 UNTS 148 (entered into force 16 February 2005).
[47] *Climate Change Advisory Opinion* [219].
[48] *Kyoto Protocol* Annex B.
[49] *Doha Amendment to the Kyoto Protocol*, opened for signature 8 December 2012, 3377 UNTS 1 (entered into force 31 December 2020).
[50] *Climate Change Advisory Opinion* [120].
[51] *Kyoto Protocol* Annex B
[52] *Australian Mission to the European Union*, *Australia & Climate Change Action* (Factsheet, September 2020) <https://belgium.embassy.gov.au/files/bsls/September%202020%20Final%20Climate%20Change%20factsheet.pdf>.
[53] *Paris Agreement*, opened for signature 22 April 2016, 3156 UNTS 3 (entered into force 4 November 2016) ('Paris Agreement').
[54] *United Nations Framework Convention on Climate Change*, **'Conference of the Parties (COP)'** (Web Page) <https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop>.
[55] *Paris Agreement* art 2(1).
[56] *Climate Change Advisory Opinion* [224].

State parties to the Paris Agreement are subject to the following obligations:

Mitigation obligations	• to achieve the temperature goal of 1.5°C, parties must "aim to reach a global peaking of greenhouse gas emissions as soon as possible …and to undertake rapid reductions thereafter, so as to achieve net zero emissions by balancing anthropogenic greenhouse gas emissions and their removal by sinks by the second half of the century"[57]; • to prepare, communicate and maintain successive "nationally determined contributions" (**NDCs**) that it intends to achieve which "become more demanding over time".[58] In this respect, the ICJ noted that parties are "obliged to exercise due diligence and ensure that their NDCs fulfil [the Paris Agreement Objectives]" to a standard whereby "the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement".[59] Australia's latest NDC was submitted in September 2025 and commits Australia to reduce emissions by 62-70% below 2005 levels by 2035;[60] and • to pursue domestic mitigation measures aimed at achieving their NDCs.[61] In this respect, the ICJ noted in its 2025 ICJ Opinion that "a party's compliance with its obligations to pursue domestic mitigation measures … is to be assessed on the basis of whether the party exercised due diligence in its efforts and in deploying appropriate means to take domestic mitigation measures, including in relation to activities carried out by private actors".[62]
Adaptation obligation	to engage in and implement adaptation planning processes, including by developing or enhancing relevant plans, policies and/or contributions"[63]. The types of actions and processes that parties may take to meet their obligations under this provision include: • the "implementation of adaptation actions, undertakings and/or efforts";[64] • the formulation and implementation of national adaptation plans;[65] • the assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;[66] • monitoring, evaluating and learning from adaptation plans, policies, programmes and actions;[67] and • building the resilience of socio-economic and ecological systems, including through economic diversification and the sustainable management of natural resources.[68] The ICJ has indicated that fulfilment of these obligations is to be assessed against a standard of due diligence which requires that parties use their best efforts, in line with the best available science, with a view to achieving the Paris Agreement Objectives. The ICJ suggested that the following measures may be sufficient for parties to meet their adaptation obligations: ecosystem restoration, the creation of early warning systems, resilience-enhancing infrastructure, regenerative farming, crop diversification,

[57] *Paris Agreement* art 4(1).
[58] *Climate Change Advisory Opinion* [241].
[59] *Climate Change Advisory Opinion* [245]-[246].
[60] *Department of Climate Change, Energy, the Environment and Water*, 'International climate action' (Web Page, 13 January 2026) https://www.dcceew.gov.au/climate-change/international-climate-action.
[61] *Paris Agreement* art 4(2).
[62] *Climate Change Advisory Opinion* [241].
[63] *Paris Agreement* art 7(9).
[64] *Paris Agreement* art 7(9)(a).
[65] *Paris Agreement* art 7(9)(b).
[66] *Paris Agreement* art 7(9)(c).
[67] *Paris Agreement* art 7(9)(d).
[68] *Paris Agreement* art 7(9)(e).

	weatherproofing of buildings, and managing land to reduce wildfire risk, implemented by parties through the deployment of appropriate measures and the exercise of best possible efforts.[69]
Co-operation obligations	The Paris Agreement contains multiple co-operation obligations,[70] including an obligation on developed States to provide financial resources to developing States, for both mitigation and adaptation[71] and to build the capacity of developing countries to implement the Paris Agreement.[72]

(b) Other Environmental Treaties

Australia is a party to various other international treaties imposing obligations that directly address or touch on climate change issues, including the following:

United Nations Convention on the Law of the Sea (**UNCLOS**)

In circumstances where the ICJ has confirmed that greenhouse gas emissions may constitute "pollution of the marine environment" within the meaning of UNCLOS,[73] parties to UNCLOS are subject to the following obligations:

- Article 192: a positive obligation to take measures to protect and preserve the marine environment and a negative obligation not to degrade it[74];
- Article 194: to take all necessary measures to reduce and control pollution, with the ultimate aim of preventing its occurrence altogether, although they are not required to ensure an immediate cessation of marine pollution caused by greenhouse gas emissions. The ICJ considers that the standard of due diligence required in implementing such measures is stringent[75];
- Article 206: States must, as far as practicable, conduct an environmental impact assessment when there are reasonable grounds for believing that planned activities under their jurisdiction or control which emit greenhouse gases may cause substantial pollution or significant and harmful changes to the marine environment, including in respect of activities with an impact on areas beyond national jurisdiction[76],

as well as various cooperation obligations.[77]

Vienna Convention for the Protection of the Ozone Layer (**VCPOL**); **Montreal Protocol on Substances that Deplete the Ozone Layer** (**Montreal Protocol**)

Parties to the VCPOL are subject to a general obligation to protect "human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer". Pursuant to the Montreal Protocol, a supplement to the VCPOL, they must "in accordance with the means at their disposal and their capabilities", take measures to co-operate and "[a]dopt appropriate legislative or administrative measures"[78] and to phase out, according to a fixed schedule, the production and consumption of all the main ozone-depleting substances, including certain greenhouse gases, through control measures.[79]

Convention on Biological Diversity (**CoBD**)

The objectives of the CoBD include: "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources".[80] Parties to the CoBD are subject to obligations to:

[69] *Climate Change Advisory Opinion* [258].
[70] *Paris Agreement* arts 7(6)-(7), 8(4), 12, 10(2).
[71] *Paris Agreement* arts 4(5), 9.
[72] *Paris Agreement* art 11.
[73] *Climate Change Advisory Opinion* [340].
[74] *Climate Change Advisory Opinion* [342].
[75] *Climate Change Advisory Opinion* [349].
[76] *Climate Change Advisory Opinion* [353].
[77] *UNCLOS* arts 197, 200 and 201.
[78] *VCPOL* art 2, *Climate Change Advisory Opinion* [320].
[79] *Climate Change Advisory Opinion* [323].
[80] *CoBD* art 1.

- Article 3: ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction;[81]
- Article 5: co-operate, as far as possible and as appropriate, in areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity;[82]
- Article 6: integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies, which "may encompass measures for mitigation of and/or adaptation to climate change, particularly where they relate to the conservation of vulnerable ecosystems"[83]
- Articles 7-8: identify and monitor processes and categories of activities that have, or are likely to have, significant adverse impacts on the conservation and sustainable use of biological diversity and, as far as possible and as appropriate, regulate or manage the any such processes and categories of activities, including those which contribute to greenhouse gas emissions.[84]

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (**UNCCD**)

The UNCCD was drafted, "bearing in mind the contribution that combating desertification can make to achieving the objectives of the [UNFCCC], the [CoBD] and other related environmental conventions"[85] and imposes obligations on State parties to:[86]

- Article 4(2)(a): adopt an integrated approach addressing the physical, biological and socio-economic aspects of the processes of desertification and drought;
- Article 4(2)(d): promote cooperation among affected country Parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought, taking account of "climate change" as one of the physical aspects of desertification and drought; and
- Article 6: (for developed countries) support affected developing country parties in their efforts to combat desertification and mitigate the effects of drought, including through the provision of financial resources.

(c) Customary International Law

(i) Duty to prevent significant harm to the environment

As part of customary international law, States have a duty to prevent transboundary environmental harm,[87] which requires them to "use all the means at [their] disposal in order to avoid activities which take place in [their] territory, or in any area under [their] jurisdiction, causing significant damage to the environment of another State". The ICJ has made clear that this obligation also applies to the climate system,[88] providing that the main elements of this obligation are:

- the risk of significant harm to the environment, including to the climate: system: For the duty to prevent to arise, there must be a risk of significant harm to the environment.[89] Whether an activity constitutes a risk of significant harm depends on both the probability or foreseeability of the occurrence of harm and its severity or magnitude and should therefore be determined by, among other factors, an assessment of the risk and level of harm combined"[90] as well as have regard to the best available science.[91] In this context, a risk of significant harm may be present in situations "where significant harm to the

[81] *Climate Change Advisory Opinion* [327].
[82] *Climate Change Advisory Opinion* [327].
[83] *Climate Change Advisory Opinion* [328].
[84] *Climate Change Advisory Opinion* [329].
[85] *UNCCD* preamble.
[86] *Climate Change Advisory Opinion* [333].
[87] *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) 1996 ICJ Rep 226, 242 [29]; *Climate Change Advisory Opinion* [272].
[88] *Climate Change Advisory Opinion* [273].
[89] *Climate Change Advisory Opinion* [274].
[90] *Climate Change Advisory Opinion* [275].
[91] *Climate Change Advisory Opinion* [278].

environment is caused by the cumulative effect of different acts undertaken by various States and by private actors subject to their respective jurisdiction or control"[92]; and

- **due diligence as the required standard of conduct**: States fulfil their duty to prevent significant harm to the environment by acting with due diligence.[93] The ICJ considers that "due diligence", in this context, requires[94]:
  - appropriate rules and measures, which include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid and sustained reductions of greenhouse gas emissions that are necessary for the prevention of significant harm to the climate system;
  - the availability of scientific and technological information and the need to acquire and analyse such information;
  - current standards which may arise from binding and non-binding norms, but may also be reflected in certain decisions of the COPs to the climate change treaties and in recommended technical norms and practices, as appropriate;
  - the principle of common but differentiated responsibilities and respective capabilities, it being understood that "the degree of care expected of a State with a well-developed economy and human and material resources and with highly evolved systems and structures of governance is different from States which are not so well placed" but which are nevertheless obliged to take all the means at their disposal to protect the climate system in accordance with their capabilities and available resources;
  - scientific information regarding the probability and the seriousness of possible harm, it being understood that States should also not refrain from or delay taking actions of prevention in the face of scientific uncertainty;
  - the assessment by States of the risks and impact of proposed activities contributing to greenhouse gas emissions to be undertaken within their jurisdiction or control, on the basis of the best available science; and
  - States' notification of and consultation in good faith with other States where planned activities within their jurisdiction or control create a risk of significant harm or significantly affect collective efforts to address harm to the climate system, such as the implementation of policy changes in relation to the exploitation of resources linked to greenhouse gas emissions.

(ii) Duty to co-operate for the protection of the environment

The ICJ considers that "the duty of States to co-operate for the protection of the environment is a rule whose customary character has been established"[95] and is a central obligation under the Charter of the United Nations,[96] the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States[97] in accordance with the Charter of the United Nations and the treaties referred to in sub-sections (a) and (c) above. "It also derives from the principle that the conservation and management of shared resources and the environment are based on shared interests and governed by the principle of good faith.[98]

[92] *Climate Change Advisory Opinion* [276].
[93] *Climate Change Advisory Opinion* [280].
[94] *Climate Change Advisory Opinion* [281]-[299].
[95] *Climate Change Advisory Opinion*, ITLOS Reports 2024, p. 110, para. 296; MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 110, para. 82); ICJ at [140].
[96] *UN Charter* art 1.
[97] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" (General Assembly resolution 2625 (XXV) of 24 October 1970).
[98] *Climate Change Advisory Opinion* [141] quoting *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 264, 102; *Nuclear Tests (Australia v France)* (Judgment) [1974] ICJ Rep 253, 268, 46.

(d) International Human Rights Law

Climate change may significantly impair the enjoyment of the following rights, which are enshrined in various human rights treaties[99]:

the right to life	International Covenant on Civil and Political Rights[100] (**ICCPR**) art 6; Convention on the Rights of the Child[101] (**CROC**) art 6; Universal Declaration of Human Rights[102] (**UDHR**) art 3
the right to health	International Covenant on Economic, Social and Cultural Rights[103] (**ICESCR**) art 12; UDHR art 25; and CROC art 24.
the right to an adequate standard of living, encompassing: • access to food; • access to water; and • access to housing.	ICESCR art 11; UDHR art 25; CROC art 27;
the right to privacy, family and home	ICCPR art 17; UDHR art 12; CROC art 16;
the rights of children	ICCPR art 24
the rights of women	See generally the Convention on the Elimination of All Forms of Discrimination against Women[104]; and ICCPR art 3; ICESCR art 3.
the rights of indigenous peoples.	United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).[105] See in particular: • **article 25:** the right of Indigenous people to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard; • **article 26:** the right of Indigenous people to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired; • **article 28:** the right of Indigenous people to redress (by means that can include restitution or, when this is not possible, just, fair and equitable compensation) for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;

[99] International Court of Justice, *Summary of the Advisory Opinion of 23 July 2025: Obligations of States in respect of Climate Change* (Summary, 23 July 2025) 18 <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-sum-01-00-en.pdf>.
[100] *ICCPR* art 6.
[101] *CROC* art 6.
[102] *UDHR* art 3
[103] *ICESCR* art 12.
[104] *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW').
[105] *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, UN Doc A/RES/61/295 (13 September 2007) ('UNDRIP').

	• **article 29:** the right of Indigenous people to the conservation and protection of the environment and the productive capacity of their lands or territories and resources; • **article 31:** the right of Indigenous people to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts; • **article 32:** the right of Indigenous people to determine and develop priorities and strategies for the development or use of their lands or territories and other resources, and **articles 24** (traditional medicines and health practices), **3** (self-determination), **10** (relocation without informed consent), **11** (cultural traditions and customs), **12** (spiritual and religious traditions, customs and ceremonies) and **18** (decision-making). See further detail regarding articles 10, 11(2), 19, 28, 29(2) and 32(2) in section 5.1 below.

The ICJ has found that:

- a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, in that full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment;[106] and
- States must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations, including under the treaties above.[107]

Further information regarding human rights and climate change is set out in section 5.1 below.

3.3 Key Legislation – Domestic

A complex patchwork of legislation governing the environment is in place in Australia, with responsibility for climate change regulation being carried by the Commonwealth Government and state/territory Governments concurrently. The Commonwealth's responsibilities are principally established through the foreign affairs power in the Australian Constitution[108] under which the Government implements Australia's responsibilities under international agreements on environmental protection. The residual powers of the states under the Constitution allow for the concurrent regulation of environmental matters that lay outside of the Commonwealth's responsibilities.[109]

The following table sets out a high-level summary of the various environmental issues which are regulated by Federal and state and territory legislation (each numeral in the see below for legislation corresponding to number in table). Further details regarding key statutes referred to are set out in sections 3.4 and 3.5 below.

Regulated area	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Environmental bodies									
Establishment of EPA	1	2	3	4	5	6	7	8	9
Establishment of National Environment Protection Council	10	11	12	13	14	15	16	17	18

[106] *Climate Change Advisory Opinion* [393], [403].
[107] *Climate Change Advisory Opinion* [404].
[108] *Australian Constitution* s 51 (xxix).
[109] *House of Representatives Standing Committee on the Environment and Energy*, *Environmental Regulation in Australia* (Parliamentary Paper, Parliament of Australia, 2020) https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Environment/Green_Tape/02_Environmental_regulation_in_Australia.pdf.

Regulated area	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Ministerial climate change advisory body	19	20	21		22	23			
Environmental duties									
General Environmental Duty (**GED**) to prevent or minimise environmental harm		24		25	26	27	28	29	
Duty to notify authority regarding pollution incidents or other environmental harm	30	31	32	33	34	35	36	37	38
Duty to take action to restore harm caused by pollution incident					39			40	
Greenhouse Gas Emissions									
Legislated net zero target	41	42	43		44	45	46	47	
Legislated net zero target year	2050	2045	2050		2050	2050	2030	2045	
Policy net zero target year				2050					2050
Legislated interim reduction target(s)	48	49	50		51	52		53	
Legislated renewable energy targets	54	55			56	57	58	59	
Human Rights Legislation									
Express right to healthy environment		60							
Right to life		61			62			63	
Right to privacy and home		64			65			66	
Cultural rights		67			68			69	
Obligation on statutory authority to act in a way that is incompatible with a human right or to fail to give proper consideration to relevant human rights		70			71			72	
Obligation to interpret laws of that jurisdiction in a way that is compatible with human rights (so far as it is possible, consistently with the purpose of each law)		73			74			75	
Ability for aggrieved persons to commence proceedings regarding contraventions (only in conjunction with other issues)					76			77	
Ability for aggrieved persons to commence proceedings regarding contraventions (in their own right)		78							
Civil Enforcement provisions									
Open standing (any person can commence proceedings)		79	80		81	82		83	
Semi-open standing (any person with conditions, e.g. leave requirement, requirement to first notify applicable regulator or person engaged in environmental protection activities)	84	85			86	87		88	

Regulated area	Cth	ACT	NSW	NT	Qld	SA	Tas	Vic	WA
Standing limited to persons whose interests are affected by the proceeding				89		90	91		
Indigenous persons rights									
Native title legislation	92	93	94	95	96	97	98	99	100
Cultural heritage legislation	101	102	103	104	105	106	107	108	109
Land grants and rights	110	111	112	113	114	115	116	117	118
Treaty and/or voice to parliament legislation						119		120	
Legislation for regulation of specific environmental issues									
Waste management, pollution and litter	121	122	123	124	125	126	127	128	129
Ozone layer protection	130	131	132	133	134	135	136	137	138
Protection of cultural resources (inc. heritage legislation)	139	140	141	142	143	144	145	146	147
Water regulation and coastal protection	148	149	150	151	152	153	154	155	156
Nature conservation, including biodiversity	157	158	159	160	161	162	163	164	165
Renewable energy and electricity	166	167	168		169	170	171	172	
Mining and petroleum extraction		173	174	175	176	177	178	179	180
Review of planning/construction projects									
Provision for environmental enquiries	181	182	183	184	185	186	187	188	189
Provision for inquiries regarding draft environmental protection policies									190

[1] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (to commence on 1 July 2026).
[2] *Environment Protection Act 1997* (ACT) pt 2.
[3] *Protection of the Environment Administration Act 1991* (NSW).
[4] *Northern Territory Environment Protection Authority Act 2012* (NT).
[5] *Environmental Protection Act 1994* (Qld)
[6] *Environment Protection Act 1993* (SA)
[7] *Environmental Management and Pollution Control Act 1994* (Tas) s 12.
[8] *Environmental Protection Act 2017* (Vic).
[9] *Environmental Protection Act 1986* (WA).
[10] *National Environment Protection Council Act 1994* (Cth) s 8.
[11] *National Environment Protection Council Act 1994* (ACT) s 7.
[12] *National Environment Protection Council (New South Wales) Act 1995* (NSW) s 8.
[13] *National Environment Protection Council (Northern Territory) Act 1994* (NT) s 8.
[14] *National Environment Protection Council (Queensland) Act 1994* (Qld) s 8.
[15] *National Environment Protection Council (South Australia) Act 1995* (SA) s 8.
[16] *National Environment Protection Council (Tasmania) Act 1995* (Tas) s 8.
[17] *National Environment Protection Council (Victoria) Act 1995* (Vic) s 8.
[18] *National Environment Protection Council (Western Australia) Act 1996* (WA) s 8.
[19] *Climate Change Act 2022* (Cth) pt 4.
[20] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 16 (Climate Change Council)
[21] *Climate Change (Net Zero Future) Act 2023* (NSW) pt 3 (Net Zero Commission)
[22] *Clean Economy Jobs Act 2024* (Qld) pt 4 (Clean Economy Expert Panel).
[23] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 9 (Premier's Climate Change Council).
[24] *Environment Protection Act 1997* (ACT) s 22
[25] *Waste Management and Pollution Control Act 1998* (NT) s 12.
[26] *Environmental Protection Act 1994* (Qld) s 319.
[27] *Environment Protection Act 1993* (SA) s 25.
[28] *Environmental Management and Pollution Control Act 1994* (Tas) s 23A.
[29] *Environmental Protection Act 2017 (Vic) s 25.*

[30] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 199, 214, 256 (regarding impacts on threatened species, listed ecological communities, listed migratory species and listed marine wildlife).
[31] *Environment Protection Act 1997* (ACT) s 23.
[32] *Protection of the Environment Operations Act 1997* (NSW) s 148.
[33] *Environment Protection Act 2019 (NT)* pt 9 div 8; *Waste Management and Pollution Control Act 1998* (NT) s 12.
[34] *Environmental Protection Act 1994* (Qld) s 320A-320DB.
[35] *Environment Protection Act 1993* (SA) s 83.
[36] *Environmental Management and Pollution Control Act 1994* (Tas) s 32.
[37] *Environment Protection Act 2017* (Vic) s 32.
[38] *Environmental Protection Act 1986* (WA) s 72.
[39] *Environmental Protection Act 1994* (Qld) s 319C.
[40] *Environment Protection Act 2017* (Vic) s 31.
[41] *Climate Change Act 2022* (Cth) s 10.
[42] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 6.
[43] *Climate Change (Net Zero Future) Act 2023* (NSW) 9(1)(c).
[44] *Clean Economy Jobs Act 2024* (Qld) s 5(c).
[45] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 5(1).
[46] *Climate Change (State Action) Act 2008* (Tas) s 5.
[47] *Climate Action Act 2017* (Vic) s 6.
[48] *Climate Change Act 2022* (Cth) s 10(1)(a).
[49] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 7.
[50] *Climate Change (Net Zero Future) Act 2023* (NSW) s 9(1)(a)-(b).
[51] *Clean Economy Jobs Act 2024* (Qld) s 5(a)-(b).
[52] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 5(2).
[53] *Climate Action Act 2017* (Vic) s 10.
[54] *Renewable Energy (Electricity) Act 2000* (Cth) s 40.
[55] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 9.
[56] *Energy (Renewable Transformation and Jobs) Act 2024* (Qld) s 9.
[57] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 5(2)(b).
[58] *Energy Co-ordination and Planning Act 1995* (Tas) s 3C.
[59] *Renewable Energy (Jobs and Investment) Act 2017* (Vic) s 7.
[60] *Human Rights Act 2004* (ACT) s 27C.
[61] *Human Rights Act 2004* (ACT) s 9.
[62] *Human Rights Act 2019* (Qld) s 16.
[63] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 9.
[64] *Human Rights Act 2004* (ACT) s 12.
[65] *Human Rights Act 2019* (Qld) s 25.
[66] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 13.
[67] *Human Rights Act 2004* (ACT) s 27.
[68] *Human Rights Act 2019* (Qld) ss 27-28.
[69] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 19.
[70] *Human Rights Act 2004* (ACT) s 40B.
[71] *Human Rights Act 2019* (Qld) s 58.
[72] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38.
[73] *Human Rights Act 2004* (ACT) s 30.
[74] *Human Rights Act 2019* (Qld) s 48.
[75] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 32.
[76] *Human Rights Act 2019* (Qld) s 59.
[77] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 39.
[78] *Human Rights Act 2004* (ACT) s 40C.
[79] *Planning Act 2023* (ACT) s 456(2); *Nature Conservation Act 2014* (ACT) s 336.
[80] *Environmental Planning and Assessment Act 1979* (NSW) s 9.45; *Protection of the Environment Operations Act 1997* (NSW) ss 252, 253; *Heritage Act 1977* (NSW) s 153; *Biodiversity Conservation Act 2016* (NSW) ss 13.14, 13.15; *Fisheries Management Act 1994* (NSW) s 282; *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986* (NSW) s 10; *National Parks and Wildlife Act 1974* (NSW) s 193; *Wilderness Act 1987* (NSW) s 27; *Rural Fires Act 1997* (NSW) s 100H; *Water Management Act 2000* (NSW) s 336; *Protection from Harmful Radiation Act 1990* (NSW) s 25B.
[81] *Planning Act 2016* (Qld) s 180; *Nature Conservation Act 1992* (Qld) ss 173D-173N.
[82] *Planning, Development and Infrastructure Act 2016* (SA) s 214.
[83] *Planning and Environment Act 1987* (Vic) ss 114, 125; *Heritage Act 2017* (Vic) s 216.
[84] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 475.
[85] *Environment Protection Act 1997* (ACT) ss 127-8; *Heritage Act 2004* (ACT) s 62.
[86] *Environmental Protection Act 1994* (Qld) s 505;
[87] *Environment Protection Act 1993* (SA) s 104.
[88] *Environment Protection Act 2017* (Vic) s 309.
[89] *Environment Protection Act 2019* (NT) ss 230, 226.
[90] *Native Vegetation Act 1991* (SA) s 31A-33.
[91] *Land Use Planning and Approvals Act 1993* (Tas) s 63B; *Environmental Management and Pollution Control Act 1994* (Tas) s 48. A "person with a proper interest in the subject matter" has been interpreted narrowly by the Tasmanian Civil and Administrative Tribunal. As stated by the Environmental Defenders Office, "while each case turns on its own facts and circumstances, the TASCAT (and its predecessor, the Resource Management and Planning Appeal Tribunal) has taken a restrictive approach in determining whether an applicant has a proper interest or not. To have a proper interest, a person needs to have more than a mere "academic" interest in the outcome of the matter." (at https://www.edo.org.au/wp-content/uploads/2023/05/Enforcing-a-planning-laws-in-Tasmania.pdf)
[92] *Native Title Act 1993* (Cth).

[93] *Native Title Act 1994* (ACT).
[94] *Native Title Act 1994* (NSW).
[95] *Validation (Native Title) Act 1994* (NT).
[96] *Native Title (Queensland) Act 1993* (Qld).
[97] *Native Title (South Australia) Act 1994* (SA).
[98] *Native Title (Tasmania) Act 1994* (Tas).
[99] *Land Titles Validation Act 1994* (Vic).
[100] *Native Title (State Provisions) Act 1999* (WA); *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).
[101] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth); *Australian Heritage Council Act 2003* (Cth); *Environment Protection and Biodiversity Conservation Act 1999* (Cth); *Protection of Movable Cultural Heritage Act 1986* (Cth); *Aboriginal and Torres Strait Islander Act 2005* (Cth); *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).
[102] *Heritage Act 2004* (ACT).
[103] *National Parks and Wildlife Act 1974* (NSW); *Mining Act 1992* (NSW); *Environmental Planning and Assessment Act 1979* (NSW); *National Trust of Australia (New South Wales) Act 1990* (NSW); *Heritage Act 1977* (NSW).
[104] *Northern Territory Aboriginal Sacred Sites Act 1989* (NT); *Heritage Act 2011* (NT).
[105] *Aboriginal Cultural Heritage Act 2003* (Qld); *Torres Strait Islander Cultural Heritage Act 2003* (Qld); *Nature Conservation Act 1992* (Qld); *Recreation Areas Management Act 2006* (Qld); *Marine Parks Act 2004* (Qld); *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld); *Queensland Heritage Act 1992* (Qld).
[106] *Aboriginal Heritage Act 1988* (SA); *Maralinga Tjarutja Land Rights Act 1984* (SA); *Planning, Development and Infrastructure Act 2016* (SA); *Heritage Places Act 1993* (SA); *Mining Act 1971*(SA); *National Parks and Wildlife Act 1972* (SA).
[107] *Aboriginal Heritage Act 1975* (Tas); *Nature Conservation Act 2002* (Tas); *National Parks and Reserves Management Act 2002* (Tas).
[108] *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cth); *Aboriginal Heritage Act 2006* (Vic); *Heritage Act 2017* (Vic); *Mineral Resources (Sustainable Development) Act 1990* (Vic).
[109] *Aboriginal Heritage Act 1972* (WA); *Aboriginal Heritage (Marandoo) Act 1992* (WA); *Conservation and Land Management Act 1984* (WA); *Environmental Protection Act 1986* (WA).
[110] *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).
[111] *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (Cth).
[112] *Aboriginal Land Rights Act 1983* (NSW).
[113] *Parks and Reserves (Framework for the Future) Act 2003* (NT); *Cobourg Peninsula Aboriginal Land, Sanctuary and Marine Park Act 1981* (NT); *Nitmiluk (Katherine Gorge) National Park Act 1989* (NT); *Pastoral Land Act 1992* (NT); *Territory Parks and Wildlife Conservation Act 1977* (NT); *Crown Lands Act 1992* (NT); *Northern Territory Aboriginal Sacred Sites Act 1989* (NT).
[114] *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld); *Aboriginal Land Act 1991* (Qld); *Torres Strait Islander Land Act 1991* (Qld).
[115] *Aboriginal Lands Trust Act 2013* (SA); *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA); *Maralinga Tjarutja Land Rights Act 1984* (SA); *Pastoral Land Management and Conservation Act 1989* (SA); *Aboriginal Lands Trust Act 2013* (SA).
[116] *Aboriginal Lands Act 1995* (Tas).
[117] *Aboriginal Lands Act 1970* (Vic); *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Vic); *Aboriginal Land (Northcote Land) Act 1989* (Vic); *Aboriginal Lands Act 1991* (Vic); *Traditional Owner Settlement Act 2010* (Vic).
[118] *Aboriginal Affairs Planning Authority Act 1972* (WA); *Land Administration Act 1997* (WA).
[119] *First Nations Voice Act 2023* (SA).
[120] *Statewide Treaty Act 2025* (Vic).
[121] *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth); *Environment Protection (Sea Dumping) Act 1981* (Cth); *Navigation Act 2012* (Cth).
[122] *Waste Management and Resource Recovery Act 2016* (ACT); *Litter Act 2004* (ACT); *Environment Protection Act 1997* (ACT).
[123] *Protection of the Environment Operations Act 1997* (NSW); *Marine Pollution Act 2012* (NSW); *Contaminated Land Management Act 1997* (NSW); *Waste Avoidance and Resource Recovery Act 2001* (NSW); *Waste Avoidance and Resource Recovery Act 2001* (NSW); *Water Act 1912* (NSW).
[124] Waste Management and Pollution Control Act 1998 (NT); *Marine Pollution Act 1999 (NT)*; *Environment Protection (Beverage Containers and Plastic Bags) Act 2011 (NT)*; *Litter Act 1972* (NT).
[125] *Waste Reduction and Recycling Act 2011* (Qld); *Environmental Protection Act 1994* (Qld); *Transport Operations (Marine Pollution) Act 1995* (Qld).
[126] *Environment Protection Act 1993* (SA); *Local Nuisance and Litter Control Act 2016* (SA); *Local Government Act 1999* (SA); *Protection of Marine Waters (Prevention of Pollution From Ships) Act 1987* (SA); *Environment Protection (Sea Dumping) Act 1984* (SA).
[127] *Litter Act 2007* (Tas); *Litter (Infringement Offences) Regulations* (Tas); *Plastic Shopping Bags Ban Act 2013* (Tas); *Marine-related Incidents (MARPOL Implementation) Act* (Tas); *Environmental Management and Pollution Control Act 1994* (Tas).
[128] *Pollution of Waters by Oil and Noxious Substances Act 1986* (Vic); *Circular Economy (Waste Reduction and Recycling) Act 2021* (Vic); *Environment Protection Act 2017* (Vic); *Pollution of Waters by Oil and Noxious Substances Act 1986* (Vic).
[129] *Litter Act 1979* (WA); Waste Avoidance and Resource Recovery Act 2007 (WA); *Environmental Protection Act 1986* (WA); *Pollution of Waters by Oil and Noxious Substances Act 1987* (WA).
[130] *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).
[131] Regulated by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).
[132] *Ozone Protection Act 1989* (NSW).
[133] Regulated by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).
[134] *Environmental Protection Act 1994* (Qld).
[135] Regulated by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).
[136] Regulated by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).
[137] Regulated by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).
[138] Regulated by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth).
[139] *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
[140] *Heritage Act 2004* (ACT).
[141] *Heritage Act 1977* (NSW).
[142] *Heritage Act 2011* (NT).
[143] *Queensland Heritage Act 1992* (Qld).
[144] *Heritage Places Act 1993* (SA).

[145] *Historic Cultural Heritage Act 1995* (Tas).
[146] *Heritage Act 2017* (Vic).
[147] *Heritage Act 2018* (WA).
[148] *Water Act 2007* (Cth); *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth); *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
[149] *Water and Sewerage Act 2000* (ACT); *Water Resources Act 2007* (ACT).
[150] *Water Management Act 2000* (NSW); *Coastal Protection Act 1979* (NSW); *Marine Pollution Act 2012* (NSW).
[151] *Water Act 1992* (NT); *Marine Pollution Act 1999* (NT).
[152] *Water Act 2000* (Qld); *Coastal Protection and Management Act 1995* (Qld).
[153] *Landscape South Australia Act 2019* (SA); *Coast Protection Act 1972* (SA); *Marine Parks Act 2007* (SA).
[154] *Marine-related Incidents (MARPOL Implementation) Act* (Tas); *Water and Sewerage Industry Act 2008* (Tas); *Water Management Act 1999* (Tas); State Coastal Policy 1996 made under the *State Policies and Projects Act 1993* (Tas) and *Crown Lands (Shack Sites) Act 1997* (Tas).
[155] Water Act 1989 (Vic); *Pollution of Waters by Oil and Noxious Substances Act 1986* (Vic); *Marine and Coastal Act 2018* (Vic).
[156] *Water Agencies (Powers) Act 1984* (WA); *Rights in Water and Irrigation Act 1914* (WA); *Waterways Conservation Act 1976* (WA); *Environmental Protection Act 1986* (WA).
[157] *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
[158] *Nature Conservation Act 2014* (ACT); *Tree Protection Act 2005* (ACT); *Urban Forest Act 2023* (ACT); *Fisheries Act 2000* (ACT).
[159] *Biodiversity Conservation Act 2016* (NSW); *National Parks and Wildlife Act 1974* (NSW); *Wilderness Act 1987* (NSW); *Threatened Species Conservation Act 1995* (NSW); *Native Vegetation Act 2003* (NSW); *Environmental Planning and Assessment Act 1979* (NSW); *Forestry Act 2012* (NSW); *Fisheries Management Act 1994* (NSW).
[160] *Territory Parks and Wildlife Conservation Act 1976 (NT)*; *Forestry Act 1980* (NT); *Fisheries Act 1988* (NT); *Parks and Wildlife Commission Act 1980* (NT).
[161] *Nature Conservation Act 1992* (Qld); *Vegetation Management Act 1999* (Qld); *Pest Management Act 2001* (Qld); *Forestry Act 1959* (Qld); *Fisheries Act 1994* (Qld).
[162] *National Parks and Wildlife Act 1972* (SA); *Livestock Act 1997* (SA); *Native Vegetation Act 1991* (SA) (to be replaced with the *Biodiversity Act 2025* (SA) when it commences); *Forestry Act 1950* (SA); *Aquaculture Act 2001* (SA).
[163] Nature Conservation Act 2002 (Tas); *Threatened Species Protection Act 1995* (Tas); *Wildlife (General) Regulations 2010* (Tas); *National Parks and Wildlife Act 1970* (Tas); *Forest Management Act 2013* (Tas); *National Parks and Reserves Management Act 2002* (Tas); *Living Marine Resources Management Act 1995* (Tas).
[164] *Victorian Conservation Trust Act 1972* (Vic); *Flora and Fauna Guarantee Act 1988 (Vic)*; *Conservation, Forests and Lands Act 1987* (Vic); *Wildlife Act 1975* (Vic); *Forests Act 1958 (Vic)*; *National Parks Act 1975* (Vic); *Fisheries Act 1995* (Vic); *Crown Land (Reserves) Act 1978* (Vic).
[165] *Conservation and Land Management Act 1984* (WA); *Biodiversity Conservation Act 2016* (WA); *Biosecurity and Agriculture Management Act 2007* (WA); *Reserves (National Parks and Conservation Parks) Act 2004* (WA); *Fish Resources Management Act 1994* (WA); Aquatic Resources Management Act 2016 (WA).
[166] *Australian Renewable Energy Act 2011* (Cth); *Building Energy Efficiency Disclosure Act 2010* (Cth); *Renewable Energy (Electricity) Act 2000* (Cth).
[167] *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (ACT); *Electricity Feed-in (Renewable Energy Premium) Act 2008* (ACT).
[168] *Electricity Infrastructure Investment Act 2020* (NSW); Electricity *Supply Act 1995 (NSW)*; *Energy and Utilities Administration Act 1987 (NSW)*.
[169] *Energy (Renewable Transformation and Jobs) Act 2024* (Qld); *Electricity Act 1994* (Qld); *Gas Supply Act 2003* (Qld).
[170] *Electricity Act 1996* (SA); *Hydrogen and Renewable Energy Act 2023* (SA).
[171] *Energy Co-ordination and Planning Act 1995* (Tas)
[172] *Renewable Energy (Jobs and Investment) Act 2017* (Vic); *National Electricity (Victoria) Act 2005* (Vic); *Victorian Renewable Energy Act 2006* (Vic); *National Gas (Victoria) Act 2008* (Vic); *Electricity Industry Act 2000* (Vic); *Gas Industry Act 2001* (Vic).
[173] *Planning Act 2023* (ACT).
[174] *Mining Act 1992* (NSW); *Petroleum (Onshore) Act 1991* (NSW); *Petroleum (Offshore) Act 1982* (NSW); *Pipelines Act 1967* (NSW).
[175] *Mineral Titles Act 2010* (NT); *Energy Pipelines Act 1981* (NT); *Petroleum Act 1984* (NT); *Geothermal Energy Act 2009* (NT); *Petroleum (Submerged Lands) Act 1982* (NT); *Energy Pipelines Act 1982* (NT).
[176] *Mineral Resources Act 1989* (Qld); *Geothermal Energy Act 2010* (Qld); *Petroleum Act 1923* (Qld); *Petroleum and Gas (Production and Safety) Act 2004* (Qld); *Petroleum (Submerged Lands) Act 1982* (Qld).
[177] *Mining Act 1971* (SA); *Energy Resources Act 2000* (SA); *Petroleum and Geothermal Energy Act 2000* (SA); *Natural Gas Authority Act 1967* (SA); *Petroleum (Submerged Lands) Act 1982* (SA).
[178] *Mineral Resources Development Act 1995* (Tas); *Gas Pipelines Act 2000* (Tas); *Petroleum (Submerged Lands) Act 1982* (Tas).
[179] *National Gas (Victoria) Act 2008* (Vic); *Geothermal Energy Resources Act 2005* (Vic); *Petroleum Act 1998* (Vic); *Offshore Petroleum and Greenhouse Gas Storage Act 2010* (Vic); *Pipelines Act 2005* (Vic); *Mineral Resources (Sustainable Development) Act 1990* (Vic).
[180] *Mining Act 1978* (WA); *Petroleum Pipelines Act 1969* (WA); *Petroleum and Geothermal Energy Resources Act 1967* (WA); *Petroleum (Submerged Lands) Act 1982* (WA).
[181] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) pt 8 div 7.
[182] *Planning Act 2023* (ACT) ss 132-137.
[183] *Environmental Planning and Assessment Act 1979* (NSW) ss 2.9.
[184] *Environment Protection Act 2019* (NT) s 57; *Planning Act 1999* (NT) s 144.
[185] *Environmental Protection Act 1994* (Qld) s 319.
[186] *Planning, Development and Infrastructure Act 2016* (SA) s 245.
[187] *Environmental Management and Pollution Control Act 1994* (Tas) s 23A.
[188] *Environment Effects Act 1978* (Vic) s 9(1); *Planning and Environment Act 1987* (Vic) Pt 8.
[189] *Environmental Protection Act 1986* (WA) ss 40(2)(c), 40(7), 42.
[190] *Environmental Protection Act 1986* (WA)s 29.

3.4 Key Legislation – Federal

(a) *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act)

The EPBC Act is Australia's primary environmental law, establishing a framework in relation to projects which have, will have or are likely to have a significant impact on any of the "matters of national environmental significance" (**MNES**). Any such projects ("**controlled actions**") are required to be referred to the Minister for the Environment and Water for assessment and approval, to ensure that such projects do not cause unacceptable environmental impacts.

There are currently nine MNES, including the Great Barrier Reef Marine Park, threatened species, nuclear actions and world heritage areas. Climate change and/or greenhouse gas emissions are not among those listed 'matters of national environmental significance' (see the *Living Wonders* decision in section 5.4(b)(i) below wherein the applicants unsuccessfully sought that the Court interpret certain matters included in the EPBC Act broadly enough to include climate change impacts). Civil penalties apply for breaches of the EPBC Act, including starting a project without the requisite approvals.[110]

Decisions made under the EPBC Act cannot be subject to merits review,[111] so litigants are limited to judicial review challenges of the relevant Minister's process in making a decision and cannot challenge the substantive merits of the decision.

On 28 November 2025, the Federal Government passed legislation amending the EPBC Act[112] which:

- allow the Environment Minister to make "National Environmental Standards" (**NES**) (see the draft policy papers here) providing provide guidance on how to meet the requirements of the EPBC Act. Project proposals reviewed under the EPBC Act must be consistent with the National Environmental Standards to be approved, unless the Minister, in their discretion, considers that any the inconsistencies are reasonably necessary for ensuring the public interest is met;[113]
- introduce "unacceptable impacts" criteria and provide that the Minister cannot accept any projects which will have an unacceptable impact on nationally protected matters unless reasonably necessary for ensuring the public interest;[114]
- introduce "residual significant impacts" criteria (being those impacts that will not be avoided, mitigated or repaired in the course of taking the action or complying with an approval condition), in respect of which project proponents must pass the "net gain test" to obtain approval[115] (unless reasonably necessary in the public interest for the project to be approved), requiring that they compensate for damage caused, or likely to be caused by a residual significant impact of the action, to a net gain. As noted by the Explanatory Memorandum,[116] "this will ensure that actions that will have, or are likely to have, residual significant impacts on [MNES] will generally only be able to be approved if the taking of the action will leave the relevant protected matter better off than it was before the action."
- require that project proponents demonstrate that they have taken appropriate measures to avoid, mitigate, or repair environmental impacts before a condition related to offsets for residual significant impacts are attached to an approval;[117]

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[110] *Environment Protection and Biodiversity Conservation Act* 1999 (Cth) pt 3; s 74AA.
[111] Allens, *'Penalties, Merits Review and Third-Party Enforcement'* (Web Page) <https://www.allens.com.au/campaigns/federal-enviromental-reform-recasting-the-epbc-act/penalties-merits-review-and-third-party-enforcement/>.
[112] *Environment Protection Reform Act 2025* (Cth); *National Environmental Protection Agency Act 2025* (Cth); *Environment Information Australia Act 2025* (Cth); *Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Act 2025* (Cth); *Environment Protection and Biodiversity Conservation (General Charges Imposition) Act 2025* (Cth); *Environment Protection and Biodiversity Conservation (Customs Charges Imposition) Act 2025* (Cth); *Environment Protection and Biodiversity Conservation (Excise Charges Imposition) Act 2025* (Cth).
[113] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 136A/ Environmental Protection Act s 237.
[114] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 136B/ Environmental Protection Act s 237.
[115] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 136C/ Environmental Protection Act s 237.
[116] Explanatory Memorandum, Environment Protection and Biodiversity Conservation Amendment (Reform) Bill 2025 (Cth) 195.
[117] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 134(3F)/ Environmental Protection Act s 230.

- increase the penalties which apply for breaches of the EPBC Act;[118]
- establish the following new bodies:
  - the National Environmental Protection Agency (**NEPA**), whose purpose is to:[119]
    - carry out the functions conferred on the CEO by a range of environmental Commonwealth laws (e.g. undertaking audits and issuing environment protection orders under the EPBC Act),
    - advise and assist the Minister in relation to the exercise of any powers or the performance of any functions of the Minister under those laws;
    - make recommendations to the Minister in relation to opportunities to improve regulation under those Cth laws; and
    - monitor and audit the operation of declarations, bilateral agreements and bioregional plans made under the EPBC Act; and
  - Environment Information Australia (**EIA**) whose functions relate the provision of high-quality information and data relating to the environment and matters in respect of which the Minister has functions under national environmental law;[120]
- provide the Minister with new powers to make "protection statements" in relation to threatened species and ecological communities, which set requirements for certain decisions relating to those species and communities;[121] and
- expanding the involvement of the Indigenous Advisory Committee in a range of matters under the EPBC Act, including requiring consultation with the Committee during the development of NES relating to engagement with Indigenous persons.[122]

The Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022 (Cth) which proposes to amend the EPBC Act to:

- introduce a new class of controlled action as those which "would emit between 25,000 to 100,000 tonnes of carbon dioxide equivalent scope 1 emissions in any one year" and:
- require the Minister when approving any such action or when considering whether to enter into a conservation agreement, to consider Australia's national carbon budget and greenhouse gas emissions reduction targets;
- require the Minister to reject the approval of actions that would emit over 100,000 tonnes of carbon dioxide equivalent scope 1 emissions; and
- require the Climate Change Authority to develop a national carbon budget to 2050 and to annually assess that budget,

is still before Parliament.

(b) Legislation regulating greenhouse gas emissions

(i) Australian greenhouse gas target

The *Climate Change Act 2022* (Cth) sets out Australia's greenhouse gas emissions reduction targets (codifying Australia's obligations under the Paris Agreement) of:

- 43% below 2005 levels by 2030; and
- net zero emissions by 2050.[123]

(ii) Duty to avoid excess emissions situations

Pursuant to the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**), entities which are "designated large facilities" (being entities whose total yearly greenhouse gas emissions, accounting for any Australian Carbon Credit Units (**ACCUs**), have a carbon dioxide equivalence of 100,000 tonnes)[124] are subject to a

[118] *Environment Protection Reform Act 2025* (Cth) sch 1 pt 2.
[119] *National Environmental Protection Agency Act 2025* (Cth) s 13.
[120] *Environment Information Australia Act 2025* (Cth) s 10.
[121] Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 298A/ Environmental Protection Act s 431.
[122] Environment Protection and Biodiversity Conservation Act 1999 (Cth) s 514YI.
[123] *Climate Change Act 2022* (Cth) s 10.
[124] *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XJ; *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (Cth) s 8.

duty[125] to ensure that their total greenhouse gas emissions do not exceed a specified amount (which is referrable to that entity) for a specified period[126]. A failure to do so is referred to as an "excess emissions situation",[127] and the Clean Energy Regulator (who is established by the *Clean Energy Regulator Act 2011* (Cth)) may apply to the Court for orders requiring the facility to pay a civil penalty (in the amount of the excess emissions).[128] The NGER Act and National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 (Cth) made under it, establish a scheme by which the facility's total emissions for the reporting period may be increased or reduced by way of safeguard mechanism credit units.[129]

(iii) Credit Schemes

The ACCU Scheme is established by the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) and permits participants to earn one ACCU for every tonne of carbon dioxide equivalent emissions stored or avoided by particular Australian projects they run (for example projects which use new technology, upgrade equipment or change business practices to improve productivity or energy use).[130] The ACCU Scheme is not limited to "designated large facilities" and can be utilised by individuals, sole traders, companies, local, state and territory government bodies and trusts.

As ACCUs constitute personal property,[131] participants in the ACCU Scheme can sell ACCUs (for example to private buyers who purchase ACCUs to voluntarily offset their greenhouse gas emissions or meet compliance requirements) via the Australian National Registry of Emissions Units (**ANREU**) (governed by the *Australian National Registry of Emissions Units Act 2011* (Cth)) or to the Australian Government by entering a carbon abatement contract.[132] Certified emission reduction units (the international equivalent of ACCUs)[133] can also be traded via the ANREU.

A similar scheme is in place in relation to renewable energy generation, via the Renewable Energy Target scheme, made under the Renewable Energy (Electricity) Act 2000 (Cth), which incentivises:[134]

- investment in renewable energy power stations via the Large-scale Renewable Energy Target (**LRET**), permits certain entities to create large-scale generation certificates and surrender them to the Clean Energy Regulator to demonstrate renewable energy use; and

- installation of small-scale renewable energy systems by households and businesses via the Small-scale Renewable Energy Scheme (**SRES**).

(iv) Regulation of specific substances/products impacting greenhouse gas emissions

Various industry or substance-specific legislation is in place imposing obligations directed at reducing greenhouse gas emissions, including the following:

- The manufacturing, import and export of substances which deplete the ozone layer, such as chlorofluorocarbons (**CFCs**) and hydrochlorofluorocarbons (**HCFCs**), and

[125] *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XF.
[126] *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XG.
[127] *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XE.
[128] *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XF.
[129] *National Greenhouse and Energy Reporting Act 2007* (Cth) pt 4, div 4A.
[130] Clean Energy Regulator, *Australian Carbon Credit Unit Scheme* (Web Page) <https://cer.gov.au/schemes/australian-carbon-credit-unit-scheme>.
[131] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) s 150.
[132] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) pt 2A.
[133] Clean Energy Regulator, *International Units* (Web Page, 10 November 2025) <https://cer.gov.au/markets/international-units>.
[134] Department of Climate Change, Energy, the Environment and Water (DCCEEW), *Renewable Energy Target Scheme* (Web Page) <https://www.dcceew.gov.au/energy/renewable/target-scheme>.

synthetic greenhouse gases, for example, hydrofluorocarbons (**HFCs**), which trap heat in the atmosphere,[135] are governed by the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) (**OPSGGM Act**). The OPSGGM Act gives effect to the Australian Government's obligations under the Vienna Convention, Montreal Protocol, UNFCCC, Kyoto Protocol and Paris Agreement and provides for the phase down of HFC imports[136], by way of an annual import quota that gradually reduces over 18 years. The end point of the phase-down, 15% of the baseline level, will be reached on 1 January 2036.

- products that use energy or affect the energy used by another product are regulated by the *Greenhouse and Energy Minimum Standards Act 2012* (Cth), which sets out minimum energy efficiency requirements for regulated products to be supplied in Australia[137] and is overseen by the Greenhouse & Energy Minimum Standards Regulator;
- the *New Vehicle Efficiency Standard Act 2024* (Cth) requires car light vehicle manufacturers and suppliers to comply with specified CO_2 emissions targets in relation to new vehicles supplied to Australia; and
- the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth) governs offshore electricity infrastructure projects and activities in Commonwealth waters.

(v) Reporting:

- Pursuant to the *Climate Change Act 2022* (Cth) s 12, the Minister is required to prepare an annual climate change statement (informed by the Climate Change Authority,[138] a body established under the Climate Change Authority Act 2011 (Cth)) including details such as progress made towards achieving the greenhouse gas emissions reduction targets;
- the NGER Act establishes a single national reporting framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations. Pursuant to the NGER Act, corporations whose greenhouse gas emissions exceed specified thresholds[139] are required to annually report to the Clean Energy Regulator regarding greenhouse gas emissions, energy production and energy consumption of the entities under their operational control and in their corporate group[140] and may also provide reports relating to their reduction of greenhouse gas emissions and removal of greenhouse gases.[141] The National Greenhouse and Energy Reporting (Measurement) Determination 2008 sets out the methods and criteria for calculating greenhouse gas emissions and energy data under the NGER Act. The data that companies report through the NGER scheme is used to prepare Australia's National Greenhouse Accounts to fulfil Australia's domestic and international greenhouse gas emissions reporting obligations under the UN Framework Convention on Climate Change and Paris Agreement. Reporting entities are also subject to an obligation to prepare an annual sustainability report under the *Corporations Act 2001* (Cth);[142] and
- manufacturers, importers or exporters of regulated substances under the OPSGGM Act are required to report certain information to the Minister for the Environment and Water regarding those substances.[143]

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[135] Department of Climate Change, Energy, the Environment and Water, *Hydrofluorocarbon (HFC) Phase-Down* (Web Page) <https://www.dcceew.gov.au/environment/protection/ozone/hfc-phase-down>.
[136] Department of Climate Change, Energy, the Environment and Water, *Australia's HFC Phase-Down – Factsheet* (Web Page) <https://www.dcceew.gov.au/environment/protection/ozone/publications/hfc-phase-down-factsheet>.
[137] *Greenhouse and Energy Minimum Standards Act 2012* (Cth) **pt 3**.
[138] *Climate Change Act 2022* (Cth) s 14.
[139] *National Greenhouse and Energy Reporting Act 2007* (Cth) ss 12-13.
[140] *National Greenhouse and Energy Reporting Act 2007* (Cth) s 19.
[141] *National Greenhouse and Energy Reporting Act 2007* (Cth) s 21.
[142] *Corporations Act 2001* (Cth) pt 2M.3, ss 292A.
[143] *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth) s 46.

(c) National Environment Protection Measures

The *National Environment Protection Council Act 1994* (Cth) (and corresponding legislation in each state)[144] establish the National Environment Protection Council (**NEPC**) and grant the NEPC power to make National Environment Protection Measures (**NEPMs**) in relation to specified issues and to assess and report on the implementation and effectiveness of the NEPMs in participating jurisdictions.

The following NEPMs have been approved by the National Environment Protection Council:

- National Environment Protection (Air Toxics) Measure;
- National Environment Protection (Used Packaging Materials) Measure;
- National Environment Protection (Movement of Controlled Waste between States and Territories) Measure;
- National Environment Protection (Assessment of Site Contamination) Measure;
- National Environment Protection (Diesel Vehicle Emissions) Measure;
- National Environment Protection (National Pollutant Inventory) Measure; and
- National Environment Protection (Ambient Air Quality) Measure.

The implementation of such measures, however, largely remains within the purview of each respective government and occurs by different means in different states. In NSW, a "protection of the environment policy" may be made to implement a NEPM under s 11 of the *Protection of the Environment Operations Act 1997* (NSW) (**PEO Act**), though the NEPMs are typically implemented via regulations to the PEO Act.[145]

Each state is required to submit an annual report regarding the implementation and effectiveness of national environment protection measures within its jurisdiction throughout the preceding financial year. Such reports are compiled by the NEPC into an annual report containing its views on the implementation and effectiveness of measures when considered in their totality. Copies of previous annual reports can be found here.

(d) Merits Review

Various pieces of legislation at a Federal Level provide for merits review of environmental decisions by persons whose interests are affected by the decision.[146] These include:

- decisions relating to permits for listed threatened species, migratory species, marine species, ecological communities and wildlife permits;[147]
- decisions relating to permits issued under the *Environment Protection (Sea Dumping) Act 1981* (Cth);[148]
- decisions of the Australian Fisheries Management Authority;[149]
- decisions regarding permits pertaining to hazardous waste and of the actions to be taken with respect to such waste;[150]
- certain decisions regarding the National Environment Protection Measures;[151] and
- certain decisions made under the *Offshore Petroleum and Greenhouse Gas Storage Act* (Cth) 2006,[152] *Recycling and Waste Reduction Act 2020* (Cth)[153] and *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).[154]

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[144] *National Environment Protection Council Act 1994* (ACT); *National Environment Protection Council (New South Wales) Act 1995* (NSW); *National Environment Protection Council (Queensland) Act 1994* (Qld); *National Environment Protection Council (South Australia) Act 1995* (SA); *National Environment Protection Council (Tasmania) Act 1995* (Tas); *National Environment Protection Council (Victoria) Act 1995* (Vic); *National Environment Protection Council (Western Australia) Act 1996* (WA).
[145] See, e.g. *Protection of the Environment Operations (Waste) Regulation 2014* (NSW) Pt 8 (Australian Packaging Covenant).
[146] *Administrative Review Tribunal Act 2024* (Cth) s 17.
[147] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 206A, 221A, 263A, 303GJ.
[148] *Environment Protection (Sea Dumping) Act 1981* (Cth) s 24.
[149] *Fisheries Management Act 1991* (Cth) s 165.
[150] *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (Cth) s 57.
[151] *National Environment Protection Measures (Implementation) Act 1998* (Cth) s 34.
[152] *Offshore Petroleum and Greenhouse Gas Storage Act (Cth) 2006* ss 745, 747.
[153] *Recycling and Waste Reduction Act 2020* (Cth) s 154.
[154] *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) pt 24.

The EPBC Act also provides for internal review of:

- Ministerial decisions as to whether an action is a controlled action requiring approval;[155] and
- decisions regarding conservation orders.[156]

(e) Heritage Protection Orders

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) permits the Minister for the Environment and Water to make a declaration (on application from an Aboriginal and Torres Strait Islander person or people or their representatives) to protect an area, object or class of objects that are under threat of injury or desecration.[157] Contravention of any such declarations is a criminal offence.[158] In relation to applications for declarations in relation to an "area", the Minister must be satisfied that the area is a "significant Aboriginal area" that is under threat of injury or desecration, but does not have to exercise their discretion to make the declaration.[159]

(f) Corporate Reporting Requirements

The *Corporations Act 2001* (Cth) (**Corporations Act**) requires that disclosing entities, public companies, large proprietary companies, registered schemes, registrable superannuation entities and certain small companies are required to prepare a sustainability report for a financial year (from 1 July 2025, 2026 or 2027, depending on the category of entity) if:

- they meet at least two of the three specified revenue, asset value and employee number thresholds;
- they have reporting obligations under the NGER Act;
- they are a registered scheme, registrable superannuation entity or retail corporate collective investment vehicles controlling assets over the prescribed monetary threshold.[160]

In addition:

- entities required to prepare an annual directors' report must include details of its performance in relation to any 'particular and significant' environmental regulations that it is subject to; and
- the Australian Securities Exchange recommends that listed companies disclose in their annual report and/or on their website, whether they have any "whether they have any material exposure to environmental and social risks and, if it does, how it manages or intends to manage those risks".[161]

(g) Native Title

'Native title' describes a group of rights and interests (in the form of laws and customs) of First Nations Australians in land or water that are recognised by the common law,[162] and statute at a Commonwealth level, by way of the *Native Title Act 1993* (Cth) (**NT Act**) and in each Australian state[163] (together, the **Native Title Acts**).The Native Title Acts set out the process by which native title can be claimed and regulate activities that might affect native title in future.

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[155] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 78.
[156] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 468, 469.
[157] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) ss 9-10.
[158] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) s 22-23.
[159] *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) s 10.
[160] *Corporations Act 2001* (Cth) ss 292A, 296A, 296B.
[161] ASX, 'Guidance Note 9 Disclosure of Corporate Governance Practices' ASX (Guidance Note, 1 January 2020) <https://www.asx.com.au/documents/rules/gn09_disclosure_corporate_governance_practices.pdf\>.
[162] *Fejo v Northern Territory* (1998) 195 CLR 96 [46]; *Native Title Act 1993* (Cth) s 223 (*'NT Act'*).
[163] *Native Title Act 1994* (ACT); *Validation (Native Title) Act 1994* (NT); *Native Title (New South Wales) Act 1994* (NSW); *Native Title (Queensland) Act 1993* (Qld); *Native Title (South Australia) Act 1994* (SA); *Native Title (Tasmania) Act 1994* (Tas); *Land Titles Validation Act 1994* (Vic); *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).

Where a native title determination has been made, the NT Act imposes an obligation on Government and other parties to negotiate in good faith[164] with the native title holders in relation to the doing of "future acts"[165] that may affect their native title rights and interests.[166]

The right to negotiate applies to future acts which comprise:

- the creation of a right to mine, whether created by mining lease or otherwise;[167]
- certain renewals or re-grants of a lease or licence, in so far as the act creates a right to mine;[168] and
- a variation of a right to mine, which proposes to extend the area to which the right to mine relates.[169]

However, the following are included in the future acts which are excluded from the negotiation obligation:[170]

- the creation of a right to mine for the sole purpose of the construction of an infrastructure facility associated with mining;
- approved exploration acts, gold or tin mining acts or opal and gem mining, however, In South Australia, the right to negotiate applies to the grant of exploration authorities and production tenements[171];
- offshore acts including acts in the intertidal zone; and
- certain renewals of rights to mine.

An act to which the right to negotiate applies will be invalid to the extent it affects native title unless the procedure for negotiation set out in the NT Act is followed.[172] Future acts can also be validated by way of agreement to an Indigenous Land Use Agreement.

If the parties are unable to resolve the dispute within 6 months, either party may apply to the relevant arbitral body for a determination[173] (in Commonwealth matters, the National Native Title Tribunal (**NNTT**))[174]. The arbitral body may make the following determinations:

- a determination that the act must not be done;
- a determination that the act may be done; or
- a determination that the act may be done subject to conditions to be complied with by any of the parties.[175]

When making a determination, the arbitral body is required to take into account:[176]

- the effect of the future act on:
- the enjoyment by the native title parties of their registered native title rights and interests;
- the way of life, culture and traditions of any of those parties; and
- the development of the social, cultural and economic structures of any of those parties; and
- the freedom of access by any of those parties to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions; and
- any area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions;

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[164] *NT Act* s 30A.
[165] *NT Act* s 26.
[166] NT Act s 233.
[167] *NT Act* s 26(c)(i).
[168] *NT Act* s 26(1A)(c).
[169] *NT Act* s 26(1)(c)(ii).
[170] *NT Act* s 26(2).
[171] *NT Act* s 26(1)(c).
[172] *NT Act* s 28.
[173] *NT Act* s 35.
[174] *NT Act* s 27.
[175] *NT Act* s 38.
[176] *NT Act* s 39(1).

- the interests, proposals, opinions or wishes of the native title parties in relation to the management, use or control of land or waters in relation to which there are registered native title rights and interests, of the native title parties, that will be affected by the act;
- the economic or other significance of the act to Australia, the state or territory concerned, the area in which the land or waters concerned are located and Aboriginal peoples and Torres Strait Islanders who live in that area;
- any public interest in the doing of the act; and
- any other matter that the arbitral body considers relevant.

If a matter has been referred to the NNTT and the NNTT makes a determination that the future act may be done (including with conditions), the Native Title holder is unable to receive compensation in respect of the impact on their native title, as a condition providing for payment is prohibited by s 38(2) of the NT Act.

(h) Environmental offences

As set out in the summary in section 3.3 above, the Australian environment is regulated by multiple statutes at a federal and state level, with general or specific legislation governing issues such as:

- waste management, pollution and litter;
- protection of heritage items;
- protection of forests and national parks;
- protection and management of water;
- nature conservation, including native plant and animal species;
- protection of specific places of significance;
- biodiversity;
- renewable energy and electricity; and
- mining and pipelines.

Many of these statues criminalise various environmental offences, for example (without limitation):

- air, water and land pollution offences;
- littering offences;
- animal cruelty offences; and
- environmental management offences.[177]

In each jurisdiction, legislation makes provision for executive officers, directors and/or other persons involved in the management of a corporation to be held personally liable for offences committed by corporations under that legislation[178] or, in Queensland, for failing to ensure that the corporation has complied with that legislation.[179]

3.5 Key Legislation – state and territory

(a) State Emissions Targets

[177] Australian Bureau of Statistics, 'Division 16 Environmental offences', *Australian and New Zealand Standard Offence Classification (ANZSOC), 2023* (Web Page, 30 November 2023) <https://www.abs.gov.au/book/export/36765/print>.

[178] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 493-495; *Environment Protection Act 1997* (ACT) s 147(1); *Nature Conservation Act 2014* (ACT) s 366; *Urban Forest Act 2023* (ACT) s 140; *Waste Management and Pollution Control Act 1998* (NT) s 91(1); *Planning Act 1999* (NT) s 80F; *Environment Protection Act 2019* (NT) s 265; *Protection of the Environment Operations Act 1997* (NSW) ss 169, 169A, 169B; *Biodiversity Conservation Act 2016* (NSW) ss 13.6, 13.7; National Parks and Wildlife Act 1974 (NSW) ss 175A, 175B, 176C; *Heritage Act 1977* (NSW) s 159; *Environment Protection Act 1993* (SA) s 129; *Landscape South Australia Act 2019* (SA) s 234; *Native Vegetation Act 1991* (SA) s 39; *Planning, Development and Infrastructure Act 2016* (SA) s 220; *Environmental Management and Pollution Control Act 1994* (Tas) s 60; *Environment Protection Act 2017* (Vic) ss 349-352; *Planning and Environment Act 1987* (Vic) s 128; *Heritage Act 2017* (Vic) s 232; *Biodiversity Conservation Act 2016* (WA) s 237.

[179] *Environmental Protection Act 1994* (Qld) s 493; *Planning Act 2016* (Qld) s 227; *Nature Conservation Act 1992* (Qld) s 162.

Most Australian states have specific "climate change legislation" codifying their greenhouse gas emission and renewable energy targets. Those targets are as follows:

Legislation by state	Net zero target date	Interim emission target(s)	Renewable energy target
Climate Change and Greenhouse Gas Reduction Act 2010 (ACT)	30 June 2045[180]	• 40% less than 1990 emissions by 30 June 2020[181] • Average amount of greenhouse gas emissions produced per person in the ACT each year to peak by 30 June 2013[182]	100% use of renewable energy on and from 1 January 2020[183]
Climate Change (Net Zero Future) Act 2023 (NSW)	30 June 2050[184] The Premier and the Minister are required to ensure NSW achieves the net zero target.[185]	• By 30 June 2030: reduce net emissions in NSW by at least 50% from net greenhouse emissions in 2005. • By 30 June 2035: reduce net emissions in NSW by at least 70% from net greenhouse emissions in 2005.[186]	Not specified in the *Climate Change (Net Zero Future) Act 2023* (NSW), however it does specify an "adaptation objective" for the state to be more resilient to a changing climate.[187]
NT	While there is no formal legislation in place, the NT's policy framework aims for net zero by 2050.[188]		
Clean Economy Jobs Act 2024 (Qld); *Energy (Renewable Transformation and Jobs) Act 2024* (Qld)	30 June 2050[189]	• By 30 June 2030: reduce net emissions in Queensland to at least 30% below the net emissions in Queensland for 2005. • By 30 June 2035: reduce net emissions in Queensland to at least 75% below the net emissions in	• By 2030: 50% of the electricity generated in Queensland is generated from renewable energy sources. • By 2032: 70% of the electricity generated in Queensland is generated from renewable energy sources. • By 2035: 80% of the electricity generated in Queensland is

[180] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 6.
[181] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT)s 7.
[182] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 8.
[183] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 9.
[184] *Climate Change (Net Zero Future) Act 2023* (NSW) s 9(1)(c).
[185] *Climate Change (Net Zero Future) Act 2023* (NSW) s 11.
[186] *Climate Change (Net Zero Future) Act 2023* (NSW) s 9(1)(a)-(b).
[187] *Climate Change (Net Zero Future) Act 2023* (NSW) s 10.
[188] Northern Territory Government, *Northern Territory Climate Change Response: Towards 2050* (Report, July 2020) 8 \<https://environment.nt.gov.au/media/docs/climate-change-response/northern-territory-climate-change-response-towards-2050.pdf\>.
[189] *Clean Economy Jobs Act 2024* (Qld) s 5(1)(c).

		Queensland for 2005.[190]	generated from renewable energy sources.[191]
Climate Change and Greenhouse Emissions Reduction Act 2007 (SA)	31 December 2050[192]	• Reduction to an amount that is at least 60% below 2005 levels by 31 December 2030.[193]	100% net renewable electricity generation in the state by 31 December 2027[194]
Climate Change (State Action) Act 2008 (Tas); *Energy Co-ordination and Planning Act 1995* (Tas)	30 June 2030[195]	Not specified in the *Climate Change (State Action) Act 2008* (Tas).	• In at least one calendar year ending on or before 31 December 2030, 15,750 GWh of electricity is to be generated by utilising renewable energy sources or by converting renewable energy sources into electricity; and • in at least one calendar year ending on or before 31 December 2040, 21,000 GWh of electricity is to be generated by utilising renewable energy sources or by converting renewable energy sources into electricity.[196]
Climate Action Act 2017 (Vic); *Renewable Energy (Jobs and Investment) Act 2017* (Vic)	"the year 2045"[197]	The emissions reduction target for the period: • 1 January 2021 to 31 December 2025 is 28-33% below Victoria's emissions for the year 2005.[198] • 1 January 2026 to 31 December 2030 is 45-50% below	• By 2020, for 25% of electricity generated in Victoria to be generated by means of facilities that generate electricity by utilising renewable energy sources or converting renewable energy sources into

[190] *Clean Economy Jobs Act 2024* (Qld) s 5(1)(a)-(b).
[191] *Energy (Renewable Transformation and Jobs) Act 2024* (Qld) s 9.
[192] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 5(1).
[193] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 5(2)(b).
[194] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 5(2)(b).
[195] *Climate Change (State Action) Act 2008* (Tas) s 5.
[196] *Energy Co-ordination and Planning Act 1995* (Tas) s 3C.
[197] *Climate Action Act 2017* (Vic) s 6.
[198] *Climate Action Act 2017* (Vic) s 10(1).

		Victoria's emissions for the year 2005.[199] • 1 January 2031 to 31 December 2035 is 75-80% below Victoria's emissions for the year 2005.[200]	electricity (**Renewable Sources**); • By 2025, for 40% of electricity generated in Victoria to be generated by Renewable Sources; • By 2030, for 50% of electricity generated in Victoria to be generated by Renewable Sources. [201]
WA	While there is no formal legislation in place, WA's policy framework aims for net zero by 2050.[202]		

The climate change legislation specified in the table above also:

- (in NSW, South Australia and Victoria) include guiding principles for action to address climate change.[203] In Victoria, these principles include informed decision making, integrated decision making, risk management, equity, community engagement and compatibility[204] and must be taken into account in determining the Victoria's interim emissions reduction targets and its climate change strategy and adaptation action plan[205]. In South Australia, sector agreements, climate change policies and statewide emissions reduction plans must be consistent with the guiding principles[206];
- require annual or biannual (for South Australia) reports to be prepared regarding the relevant state's progress against their target;[207]
- (in South Australia and Tasmania) require regular climate change risk assessments to be conducted by the relevant state government;[208]
- (in South Australia, Tasmania and Victoria) require the relevant state government to prepare a climate change action plan/strategy[209] and (in Victoria) an adaptation plan,[210] each of which must be regularly reviewed;
- (in Queensland, South Australia and Tasmania) require the relevant state government to prepare sector-specific resilience and emission reduction plans and (in Australian Capital territory and South Australia) sector-specific agreements regarding resilience and emission reduction[211]. By way of example, the Tasmanian legislation specifies that plans must be

[199] *Climate Action Act 2017* (Vic) s 10(2).
[200] *Climate Action Act 2017* (Vic) s 10(3).
[201] *Renewable Energy (Jobs and Investment) Act 2017* (Vic) s 7.
[202] Western Australian Government, *Western Australian Climate Policy* (Policy, 30 November 2020) \<https://www.wa.gov.au/system/files/2020-12/Western_Australian_Climate_Policy.pdf\>.
[203] *Climate Change (Net Zero Future) Act 2023* (NSW) s 8; *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 3(2); *Climate Action Act 2017* (Vic) pt 4 div 3.
[204] *Climate Action Act 2017* (Vic) ss 23-28.
[205] *Climate Action Act 2017* (Vic) ss 14, 31, 36.
[206] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) ss 14, 16.
[207] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 19; *Climate Change (Net Zero Future) Act 2023* (NSW) s 21; *Clean Economy Jobs Act 2024* (Qld) s 8; *Energy (Renewable Transformation and Jobs) Act 2024* (Qld) s 11; *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 7; *Climate Change (State Action) Act 2008* (Tas) *ss 5D-5E; Energy Co-ordination and Planning Act 1995* (Tas) s 13; *Climate Action Act 2017* (Vic) s 52; *Renewable Energy (Jobs and Investment) Act 2017* (Vic) s 8.
[208] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 14A; *Climate Change (State Action) Act 2008* (Tas) *s 5B*.
[209] *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 14(1a);*Climate Change (State Action) Act 2008* (Tas) *s 5A; Climate Action Act 2017* (Vic) s 29.
[210] *Climate Action Act 2017* (Vic) s 34.
[211] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 23; *Clean Economy Jobs Act 2024* (Qld) s 11; *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) ss 14B, 16; *Climate Change (State Action) Act 2008* (Tas) s 5C.

prepared the following sectors: energy, transport, industrial processes and product use, agriculture, land-use, land-use change and forestry and waste;[212]

- (in ACT, NSW, Queensland and South Australia) establish an advisory body tasked with advising the relevant state government regarding climate change and the emissions reductions targets.[213] In the ACT, the relevant Minister is required to consider any relevant advice provided by the ACT Climate Change Council in exercising its functions under the *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT).[214] The Victorian legislation provides for "independent advice" from an appropriately qualified expert;[215] and
- (in South Australia) expressly provides that a function of the Minister under the *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) is to "promote consultation with business, First Nations people and within the community about issues associated with climate change".

The *Climate Action Act 2017* (Vic) includes additional obligations on:

- decision-makers of specified climate decisions (for example, the decision-maker in relation to licenses and permits under the *Environment Protection Act 2017* (Vic)[216]) to have regard to matters such as "the potential impacts of climate change relevant to the decision or action" (including biophysical impacts, long and short term economic, environmental, health and other social impacts and indirect, direct and cumulative impacts)[217] and "the potential contribution to the state's greenhouse gas emissions of the decision or action";[218] and
- the Victorian Government to "endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant".[219]

(b) General Environmental Duties (GED)

In most Australian states, any person who conducts an activity"[220] that causes or may cause:

- **ACT**: "environmental harm or environmental nuisance", defined as "any impact on the environment as a result of human activity that has the effect of degrading the environment (whether temporarily or permanently)"[221].
- **NT**: "pollution resulting in environmental harm or that generates or is likely to generate waste". In this context, "environmental harm" includes any actual or potential harm to or adverse effect on the environment;[222]
- **Queensland**: "environmental harm", defined as "any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance";[223]
- **South Australia**: environmental harm, in the form of polluting the environment;
- **Tasmania**: "environmental harm or environmental nuisance", defined to include "any adverse effect on the environment (of whatever degree or duration)";[224] and
- **Victoria:** "risks of harm to human health or the environment from pollution or waste"

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[212] *Climate Change (State Action) Act 2008* (Tas) s 5C(1).
[213] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 16 (Climate Change Council; *Climate Change (Net Zero Future) Act 2023* (NSW) pt 3 (Net Zero Commission); *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) s 9 (Premier's Climate Change Council); *Clean Economy Jobs Act 2024* (Qld) pt 4 (Clean Economy Expert Panel).
[214] *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) s 18.
[215] *Climate Action Act 2017* (Vic) s 7A.
[216] *Climate Action Act 2017* (Vic) s 17, sch 1.
[217] *Climate Action Act 2017* (Vic) s 17(3).
[218] *Climate Action Act 2017* (Vic) s 17(1)-(2).
[219] *Climate Action Act 2017* (Vic) s 20.
[220] *Environment Protection Act 2017* (Vic) **s 3**; *Environment Protection Regulations 2021* (Vic) sch 1 item 37.
[221] *Environment Protection Act 1997* (ACT) Dictionary pt 1 (definition of 'environmental harm'; definition of 'environmental nuisance').
[222] *Waste Management and Pollution Control Act 1998* (NT) s 4.
[223] *Environmental Protection Act 1994* (Qld) s 14.
[224] *Environmental Management and Pollution Control Act 1994* (Tas) s 5.

is subject to a GED to minimise (defined as prevention or elimination, or if not reasonably practicable to do so, reduction)[225] such risks, so far as reasonably practicable.[226]

In assessing a contravention of the GED, Courts are required to have regard to factors such as:

- the nature and sensitivity of the receiving environment;
- the current state of technical knowledge for the activity;
- the financial implications of taking the action to prevent or minimise the harm;
- the likelihood and degree of success in preventing or minimising the environmental harm or environmental nuisance of each of the steps that might be taken; and
- other circumstances relevant to the conduct of the activity.[227]

The Victorian and Queensland legislation prescribes specific actions that will be considered to be a breach of the GED.[228]

The Victorian EPA may seek civil penalties for breaches of the GED,[229] and the EPA in Tasmania, South Australia and the NT may issue environmental protection notices,[230] environment protection orders[231] and pollution abatement notices[232] respectively, however, there are limited civil enforcement rights for individuals. In particular, legislation in the ACT, NT, Queensland, South Australia and Tasmania provides that a breach of the GED does not, of itself, give rise to a civil right or remedy.[233]

Contravention of the GED may be prosecuted as a criminal offence where:

- **ACT, NT, Queensland, South Australia & Tasmania**: the contravention causes, or is likely to cause, serious or material environmental harm;[234] and
- **Victoria**: the contravention occurred in the course of conducting a business or an undertaking.[235]

Whilst there is no explicit GED in NSW and WA, it is an offence in WA to cause serious or material environmental harm,[236] and various tiers of offences regarding different types of pollution apply under chapter 5 of the PEO Act.

Applicable maximum penalties are as follows:

State	Maximum Civil Penalty	Criminal Contravention Maximum Penalty	Aggravated Contravention Maximum Penalty

[225] *Environment Protection Act 2017* (Vic) s 6; *Environmental Protection Act 1994* (Qld) s 319(1).
[226] *Environment Protection Act 2017* (Vic) s 25(1); *Environmental Protection Act 1994* (Qld) s 319; *Environmental Management and Pollution Control Act 1994* (Tas) s 23A; *Waste Management and Pollution Control Act 1998* (NT) s 12; *Environment Protection Act 1997* (ACT) s 22; Environment Protection Act 1993 (SA) s 25.
[227] *Environment Protection Act 1997* (ACT) s 22(2); *Waste Management and Pollution Control Act 1998* (NT) s 12(2); *Environmental Management and Pollution Control Act 1994* (Tas) s 23A(2); *Environmental Protection Act 1994* (Qld) s 319(4); *Environment Protection Act 1993* (SA) s 25(2).
[228] *Environment Protection Act 2017* (Vic) s 25(4)-(5); *Environmental Protection Act 1994* (Qld) s 319(5).
[229] *Environment Protection Act 2017* (Vic) s 314.
[230] *Environmental Management and Pollution Control Act 1994* (Tas) s 23A(3).
[231] *Environment Protection Act 1993* (SA) ss 25(4)(a), 93.
[232] *Waste Management and Pollution Control Act 1998* (NT) s 12(3).
[233] *Environment Protection Act 1997* (ACT) s 22(3); *Waste Management and Pollution Control Act 1998* (NT) s 12(3); *Environmental Protection Act 1994* (Qld) s 24(3); *Environment Protection Act 1993* (SA) s 25(4); *Environmental Management and Pollution Control Act 1994* (Tas) s 23A(3).
[234] *Environmental Protection Act 1994* (Qld) ss 319(2). Serious and material environmental harm are defined in ss 16-17 respectively; *Environmental Management and Pollution Control Act 1994* (Tas) ss 50-51; *Waste Management and Pollution Control Act 1998* (NT) s 83; *Environment Protection Act 1997* (ACT) ss 137-138.
[235] *Environment Protection Act 2017* (Vic) s 25(2)-(3).
[236] *Environmental Protection Act 1986* (WA) ss 50A-50B.

ACT	n/a	Serious environmental harm by pollution:[237] Natural person: $160,000 Body corporate: $810,000 Material environmental harm by pollution:[238] Natural person: $80,000 Body corporate: $405,000 Environmental harm by pollution:[239] Natural person: $8,000 Body corporate: $40,500	Serious environmental harm by pollution:[240] Natural person: $320,000 or imprisonment for 5 years (or both) Body corporate: $1,620,000 Material environmental harm by pollution:[241] Natural person: $160,000 or imprisonment for 2 years or both Body corporate: $810,000 Environmental harm by pollution:[242] Natural person: $16,000 or imprisonment for 6 months or both Body corporate: $81,000
NT	n/a	The *Waste Management and Pollution Control Act 1998* (NT) provides for a sliding scale of offences, depending on the knowledge, intention, etc of the offender. The offences range from Environmental Offence levels 1-4, which are as follows:[243] Level 4: Natural person: $14,553 Body corporate: $72,765	Level 1: Natural person: between $72,765-$727,650 Body corporate: $363,636-$3,636,360
Queensland	n/a	$276,219.50 [244]	(if the offence is committed wilfully) $751,050.00 or 2 years imprisonment[245]
SA	n/a	Serious environmental harm by pollution:[246] Natural person: $250,000 Body Corporate: $500,000	Serious environmental harm by pollution:[248] Natural person: $500,000 or imprisonment for 4 years or both Body Corporate: $2,000,000

[237] *Environment Protection Act 1997* (ACT) s 137(3). The current value of a penalty unit (until 30 June 2026) in the ACT is $160 for natural persons and $810 for Corporations (see *Legislation Act 2001* (ACT) s 133).
[238] *Environment Protection Act 1997* (ACT) s 138(3).
[239] *Environment Protection Act 1997* (ACT) s 139(3).
[240] *Environment Protection Act 1997* (ACT) s 137(1).
[241] *Environment Protection Act 1997* (ACT) s 138(1).
[242] *Environment Protection Act 1997* (ACT) s 139(1).
[243] *Environmental Offences and Penalties Act* (NT) s 4-7. The current value of a penalty unit (until 30 June 2026) in the Northern Territory is $189.
[244] *Environmental Protection Act 1994* (Qld) s 319(2). The current value of a penalty unit (from 1 July 2025) in Queensland is $166.90.
[245] *Environmental Protection Act 1994* (Qld) s 319(2). The current value of a penalty unit (from 1 July 2025) in Queensland is $166.90.
[246] *Environment Protection Act 1993* (SA) s 79(2).
[248] *Environment Protection Act 1993* (SA) s 79(1).

		Material environmental harm by pollution:[247] Natural person: $150,000 Body Corporate: $250,000	Material environmental harm by pollution:[249] Natural person: $250,000 or imprisonment for 2 years or both Body Corporate: $500,000
Tasmania	n/a	Serious environmental harm by pollution:[250] Natural person: $246,000 Body corporate: $512,500 Material environmental harm by pollution:[251] Natural person: $123,000 Body corporate: $246,000	Serious environmental harm by pollution:[252] Natural person: $512,500 or imprisonment for up to 4 years (or both). Body corporate: $2,050,000 Material environmental harm by pollution:[253] Natural person: $246,000 Body corporate: $512,500
Victoria	Natural person: $407,020 Body corporate: $2,035,100[254]	Natural person: $407,020 Body corporate: $2,035,100[255]	Natural person: $814,040 Body corporate: $4,070,200[256]

For the purposes of the Victorian provisions, a person "conducts" a business or undertaking: "whether or not the business or undertaking is conducted for profit or gain; and whether or not the business or undertaking is conducted by a government or public authority".[257]

(c) Other Environmental Duties

State legislation also includes duties to:

- notify the relevant EPA or local council as soon as practicable after becoming aware of a "notifiable incident", including:
  - **Queensland**: an event that causes or threatens serious or material environmental harm because of the person's or someone else's act or omission[258];
  - **ACT, NT, SA and WA:** where serious or material environmental harm from pollution is caused or threatened in the course of an activity undertaken by a person;[259]
  - **Tasmania**: where a pollutant has been released which may cause an environmental nuisance;[260] and

[247] *Environment Protection Act 1993* (SA) s 80(2).
[249] *Environment Protection Act 1993* (SA) s 80(1).
[250] *Environmental Management and Pollution Control Act 1994* (Tas) s 50(2). The current value of a penalty unit (until 30 June 2026) in Tasmania is $205.
[251] *Environmental Management and Pollution Control Act 1994* (Tas) s 51(2). The current value of a penalty unit (until 30 June 2026) in Tasmania is $205.
[252] *Environmental Management and Pollution Control Act 1994* (Tas) s 50(1). The current value of a penalty unit (until 30 June 2026) in Tasmania is $205.
[253] *Environmental Management and Pollution Control Act 1994* (Tas) s 51(1). The current value of a penalty unit (until 30 June 2026) in Tasmania is $205.
[254] *Environment Protection Act 2017* (Vic) s 314. The current value of a penalty unit (until 30 June 2026) in Victoria is $203.51.
[255] *Environment Protection Act 2017* (Vic) s 25(2). The current value of a penalty unit (until 30 June 2026) in Victoria is $203.51.
[256] *Environment Protection Act 2017* (Vic) s 27(1), The current value of a penalty unit (until 30 June 2026) in Victoria is $203.51.
[257] Environment Protection Act 2017 (Vic) s 3(4).
[258] *Environmental Protection Act 1994* (Qld) s 320A-320DB.
[259] *Environment Protection Act 1993* (SA) s 83; *Environmental Offences and Penalties Act* (NT) s 14; *Environment Protection Act 1997* (ACT) s 23; *Environment Protection Act 1986* (WA) s 72.
[260] *Environmental Management and Pollution Control Act 1994* (Tas) s 32.

- **NSW & Victoria**: a pollution incident that causes or threatens to cause material harm to human health or the environment;[261] and
- prepare and implement a pollution incident response management plan[262];
- restore the environment after engaging in activities which contaminate it, including to:
  - **Queensland**: take measures, as far as reasonably practicable, to rehabilitate or restore the environment to its condition before causing or permitting an incident involving contamination of the environment to happen that results in unlawful environmental harm;[263] and
  - **Victoria**: take action to restore the affected area in the event of a pollution incident which occurred as a result of the person's activity and which causes or is likely to cause harm to human health or the environment, to the state it was in prior to the incident.[264]

(d) Merits review:

Legislation in each Australian state and territory provides for internal and external merits review of:

- **ACT**: planning and environmental decisions, for example regarding development approvals, environmental authorisations, environmental improvement plans, environment protection orders, environmental audit and other pollution control decisions;[265]
- **NSW**: persons who are subject to, or dissatisfied with, a wide range of decisions made under environmental, planning, biodiversity or heritage legislation may appeal to the NSW Land and Environment Court;[266]
- **NT**: decisions regarding development applications, heritage, environment protection licences or approvals, environmental audit programs, pollution abatement notices, and certain other pollution control measures;[267]
- **Qld**: various decisions regarding development applications, environmental authorities, licences, registration certificates, notices and orders, environmental management plans and audits, Heritage Register listed places and certain enforcement orders;[268]
- **SA**: decisions regarding development or environmental authorisations and certain limited decisions under planning, natural resource management and heritage legislation;[269]
- **Tas**: planning decisions and certain decisions regarding pollution control, the Heritage Register;[270]
- **Vic**: decisions regarding planning permits and decisions made by the Victorian EPA in relation to works approvals, licences, permits, fees, abatement notices, noise control notices and other matters;[271] and

[261] *Environment Protection Act 2017* (Vic) ss 30, 32; *Protection of the Environment Operations Act 1997* (NSW) s 148.
[262] *Protection of the Environment Operations Act 1997* (NSW) s 153A.
[263] *Environmental Protection Act 1994* (Qld) s 319C.
[264] *Environment Protection Act 2017* (Vic) s 31.
[265] *Planning Act 2023* (ACT) s 506; *ACT Civil and Administrative Tribunal Act 2008* (ACT) ss 9, 11; *Environment Protection Act 1997* (ACT) s 135; *Nature Conservation Act 2014* (ACT) ss 360-362, Sch 1; *Heritage Act 2004* (ACT) s 114; *Urban Forest Act 2023* (ACT) ss 133, 134, Sch 1 Pt 1.1.
[266] *Land and Environment Court Act 1979* (NSW) s 17; *Mining Act 1992* (NSW) ss 128, 155, 206, 236H, 270; *Petroleum (Onshore) Act 1991* (NSW) ss 69R, 112, 112B-112G; *Environmental Planning and Assessment Act 1979* (NSW) pt 8; *Protection of the Environment Operations Act 1997* (NSW) ss 287-292; *Biodiversity Conservation Act 2016* (NSW) ss 2.16, 6.26, 8.15, 8.23, 11.6,11.13, 11.23, 11.28, 11.34; *Local Land Services Act 2013* (NSW) ss 60L, 60M, 60ZJ; *Heritage Act 1977* (NSW) s 36.
[267] *Planning Act 1999* (NT) ss 111-116; *Waste Management and Pollution Control Act 1998* (NT); *Water Act 1992* (NT) s 105D, Sch 2; *Territory Parks and Wildlife Conservation Act 1976* (NT) s 99; *Heritage Act 2011* (NT) ss 90, 91, Sch 1.
[268] *Planning Act 2016* (Qld) s 229, Sch 1; *Environmental Protection Act 1994* (Qld) s 523; *Queensland Heritage Act 1992* (Qld) ss 161, 162, 111, 98; *Environmental Offsets Act 2014* (Qld) s 36; *Vegetation Management Act 1999* (Qld) s 63B; *Marine Parks Act 2004* (Qld) ss 118-121; *State Development and Public Works Organisation Act 1971* (Qld) ss s, 157D, 157E; *Nature Conservation Act 1992* (Qld) s 173M.
[269] *Planning, Development and Infrastructure Act 2016* (SA) s 201-204; *Environment Protection Act 1993* (SA) ss 103H, 103J, 106; *Landscape South Australia Act 2019* (SA) s 216; *Heritage Places Act 1993* (SA) s 20; *Environment, Resources and Development Court Act 1993* (SA) s 17(1).
[270] *Land Use Planning and Approvals Act 1993* (Tas) s 61; Environmental Management and Pollution Control Act 1994 (Tas) ss 24-25A, 27, 30, 36, 42ZI-42ZL, Sch 2 cl 4(h); *Historic Cultural Heritage Act 1995* (Tas) ss 27, 45, 53, 61.
[271] *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 51; *Planning and Environment Act 1987* (Vic) s 77-86, 184-184G; *Wildlife Act 1975* (Vic) s 86C; *Flora and Fauna Guarantee Act 1988* (Vic) s 36-38; *Heritage Act 2017* (Vic) ss 106-108.

- **WA**: various planning and development and biodiversity conservation decisions and decisions of the WA Environmental Protection Authority.[272]

(e) Environmental inquiries:

Each Australian state makes provision for environmental inquiries to form part of the decision-making process of certain decisions which may have important environmental consequences.[273] For example, in a planning context, the environmental impact of certain proposals must be assessed via an environmental impact assessment.[274] In the NT, when directed to do so by the relevant Minister, the Development Consent Authority must conduct an inquiry for purposes connected with the administration of the *Planning Act 1999* (NT). Pursuant to the *Inquiries Act 1945* (NT), the appointed person conducting the enquiry:

- can enter and search a building or a place, inspect and make extracts from, or copies of, books, documents or papers; and seize any item, book, document or paper that they reasonably believe to be related to the inquiry, without a warrant[275]; and
- compel a witness to be examined on oath.[276]

Only NSW legislation provides for review of heritage matters by an independent commission.[277] Only WA legislation provides for inquiries in relation to draft environmental protection policies.[278]

The recommendations of an environmental inquiry are generally not binding on the relevant Minister but may be required to be considered by the inquiry/report proponent.[279]

(f) Human Rights Legislation:

Human Rights legislation is in force in Queensland, Victoria and the ACT only.[280] Each of those Acts codifies the right to life, right to privacy and home, cultural rights, including of Indigenous peoples and the *Human Rights Act 2004* (ACT) expressly recognises the right to a healthy environment.[281] In each of those states, it is unlawful for public authorities (including Courts, when acting in an administrative capacity)[282], to act in a way that is incompatible with a human right or to fail to give proper consideration to relevant human rights[283] (**Public Authority Obligation**). See section 4.3(b)(iv) below regarding proceedings commenced in relation to breaches of the Public Authority Obligation.

The Human Rights Bill 2025 (NSW), proposing to implement similar obligations in NSW, is currently being considered by NSW Parliament.[284]

(g) Environment Protection Authority

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[272] State Administrative Tribunal Act 2004 (WA) Pt 3; Planning and Development Act 2005 (WA) ss 249-255; Environmental Protection Act 1986 s 100-104; Biodiversity Conservation Regulations 2018 (WA) reg 89.

[273] *Planning Act 2023* (ACT) s 132; *Environment Protection Act 1997* (ACT) s 94; *Environment Protection Act 2019* (NT); *Environment Protection Regulations 2020* (NT) reg 60; *Planning Act 1999* (NT) s 144; *Environmental Planning and Assessment Act 1979* (NSW) s Sch 2 cl 3; *Protection of the Environment Operations Act 1997* (NSW) ss 310-314; *State Development and Public Works Organisation Act 1971* (Qld) s 12(1); *Planning, Development and Infrastructure Act 2016* (SA) s 22(1)(e); *Public Land (Administration and Forests) Act 1991* (Tas) ss 14-16; *Environment Effects Act 1978* (Vic) s 9(1); *Planning and Environment Act 1987* (Vic) pt 8; *Environmental Protection Act 1986* (WA) s 40.

[274] *Planning Act 2023* (ACT) ss 102-131.

[275] *Inquiries Act 1945* (NT) s 8.

[276] *Inquiries Act 1945* (NT) s 9-10.

[277] *Heritage Act 1977* (NSW) ss 34, 36.

[278] *Environmental Protection Act 1986* (WA) s 29.

[279] *Environment Protection Regulations 2020* (NT) reg 155.

[280] Human Rights Act 2004 (ACT); Charter of Human Rights and Responsibilities Act 2006 (Vic); Human Rights Act 2019 (Qld).

[281] Human Rights Act 2004 (ACT) s 27C.

[282] *Human Rights Act 2004* (ACT) s 40(2); *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 4(1)(j); *Human Rights Act 2019* (Qld) s 9(4)(b).

[283] *Human Rights Act 2004* (ACT) s 40B; *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38; *Human Rights Act 2019* (Qld) s 58.

[284] Parliament of New South Wales, *Human Rights Bill 2025* (Web Page) <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18724>.

The powers of the EPA in each state are specified in the following:
Environment Protection Act 1997 (ACT)
Protection of the Environment Administration Act 1991 (NSW)
Environment Protection Act 2019 (NT)
Environmental Protection Act 1994 (Qld)
Environment Protection Act 1993 (SA)
Environmental Management and Pollution Control Act 1994 (Tas)
Environmental Protection Act 2017 (Vic)
Environmental Protection Act 1986 (WA)

Most states' EPAs can compel the production of documents or other information, can issue infringement-type notices and some may take actions such as requiring companies to conduct environmental audits or preparing environmental improvement plans.[285]

(h) Environmental offences

See section 3.4(h) above.

(i) Native Title

See section 3.4(g) above.

Most Australian states and territories have generally incorporated the NT Act's definition of "Native Title"[286] in the Native Title Acts, however the South Australian legislation excludes the references to "Torres Strait Islanders" from its definition.[287]

4. CLIMATE CHANGE LITIGATION

4.1 Introduction

Globally there has been an upward trend[288] in applications or complaints filed by individuals (including children and youth), human rights groups, communities (including Indigenous groups), NGOs, business entities, and governments (both at a federal and state level) with various courts, tribunals, quasi-judicial bodies or other adjudicatory bodies (including special procedures of the United Nations and arbitration tribunals), seeking relief through:

- the enforcement of existing climate laws;
- the integration of climate action into existing environmental, energy and natural resources laws;
- orders to legislators, policymakers and business enterprises to be more ambitious and thorough in their approaches to climate change;
- establishment of clear definitions of human rights and obligations affected by climate change; and
- compensation for climate harms.[289]

Australia has been described as a "particularly fertile testing ground for public interest litigation on climate change, given its sophisticated and independent legal institutions, a government policy supporting heavy industry, and the severe climate change impacts in the region".[290] In 2024, it was ranked second globally for the cumulative number of climate change cases filed,

[285] *Environment Protection Act 1997* (ACT) ss 69, 76.
[286] NT Act s 223.
[287] *Native Title (South Australia) Act 1994* (SA).
[288] United Nations Environment Programme, 'Global Climate Litigation Report: 2023 Status Review' (2023) https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global_climate_litigation_report_2023.pdf?sequence=3 12.
[289] United Nations Environment Programme, 'Global Climate Litigation Report: 2023 Status Review' (2023) <https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global_climate_litigation_report_2023.pdf?sequence=3>
[290] Daisy Mallett et al., Climate change litigation in Australia: legislative and legal pressure build (9 November 2020), King & Wood Mallesons <https://www.kwm.com/au/en/insights/latest-thinking/climate-change-litigation-in-australia.html>.

with 164 cases filed between 1986-2024, following the United States of America, with ~2,000 cases.[291]

Early Australian climate change cases (termed "**first generation cases**") typically involved claims under environmental planning and permitting laws challenging government approvals where corporations were involved as a project proponent.[292] More recently, plaintiffs in a body of "**next generation cases**" have sought to ensure the direct accountability of defendants for their contribution to climate change, to challenge their environmental representations, or to drive corporate energy transition and adaptation. In these next generation cases, plaintiffs are increasingly filing cases with causes of action in company, financial and consumer law.[293] Human rights and causes of action in torts have also featured in Australian climate change litigation but less prominently than international jurisdictions, due to factors such as the lack of a national bill of rights and a generally conservative approach of Australian courts to recognising novel duty of care arguments.[294] "Remedies sought in corporate climate litigation cases have tended to be non-pecuniary, reflecting the aims of litigants to shape law, policy and corporate behaviour".[295]

The United Nations Environment Programme's research indicates that climate change cases typically fall into the following broad categories:[296]

Climate right enforcement cases	Actions asserting that insufficient climate mitigation or adaptation violates plaintiffs' rights, including the human rights referred to in section 3.1 above (see, e.g. the *Waratah* case in section 5.1(b)(i) below). As set out in section 4.2 below, there are many barriers to plaintiffs' commencing cases falling into this category, including financial challenge (particularly due to the risk of adverse costs orders), intimidation and lack of know-how.[297] These barriers are especially harmful for vulnerable groups such as First Nations communities, women, children, and those of a lower socioeconomic status.
Domestic enforcement cases	Actions seeking to enforce the mitigation and adaptation obligations that governments have committed to internationally and/or implemented at a domestic level, by way of net-zero targets or other legislative requirements, for example via civil enforcement (see e.g., *Donnelly* in section 5.4(b)(iv) below and *Macquarie Generation v Hodgson* in section 5.5(b) below).
Fossil fuels and carbon sink cases	Actions challenging specific resource-extraction and resource-dependent projects (including the environmental permitting and review processes of such projects) to ensure adequate assessment of the projects' climate change implications. See, e.g. *Sharma and others v. Minister for the Environment* (2022) in section 5.3(b)(iii) below.
Corporate liability and	Actions seeking to hold greenhouse gas emitters or fossil fuel companies responsible for climate harm (See, e.g. New Zealand case *Smith v Fonterra Co-Operative Group Limited* (2022) in section 5.5(b) below) or for

[291] Setzer, Joana and Catherine Higham, *Global Trends in Climate Change Litigation: 2025 Snapshot* (Grantham Research Institute on Climate Change and the Environment, 2025) <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf>.

[292] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, *Global Perspectives on Corporate Climate Legal Tactics: Australia National Report* (British Institute of International and Comparative Law, Version 1.1, March 2024) 5 <https://www.biicl.org/documents/12234_global_perspectives_on_corporate_climate_legal_tactics_-_australia_national_report_v1.pdf>.

[293] Ibid.

[294] Ibid.

[295] Ibid.

[296] United Nations Environment Programme, 'Global Climate Litigation Report: 2023 Status Review' (2023) 26 <https://wedocs.unep.org/bitstream/handle/20.500.11822/43008/global_climate_litigation_report_2023.pdf?sequence=3>.

[297] Grata Fund, *Adverse Costs: The Impossible Choice* (Report, 30 August 2022).

responsibility cases	ignoring or misusing knowledge about climate change risk. For example, in Republic of Korea case *Kang et al v KSURE and KEXIM* (2022)[298] the Plaintiffs commenced proceedings in respect of an export credit agency's investment in a gas reserve off the coast of First Nations' land in Australia.[299] Korbel has observed that climate change litigation directed at corporations to date in Australia has primarily been driven by a desire to raise awareness and improve corporate responsiveness to climate change risks. As such, the relief sought has mostly been declarative or injunctive.[300] In other jurisdictions, litigants have gone further and sought damages for breach of company and director duties.[301] Regulatory authorities may also commence criminal proceedings against body corporates or individuals, including via vicarious liability, for environmental offences.[302]
Climate disclosure and greenwashing cases	Actions in respect of statements made by corporations relied upon by plaintiffs in making financial decisions, as well as cases brought by governments enforcing securities disclosures and consumer protection laws. See, e.g. *ASIC v Mercer Superannuation (Australia) Limited* in section 4.3(d)(i) below.
Adaptation Failure cases	Actions in which plaintiffs seek compensation for adaptation efforts that have caused harm or damaged property and/or injunctive or declaratory relief for failing to adapt in the face of known climate risks. See, e.g. *Pabai v Commonwealth of Australia (No 2)* in section 5.4(b)(v) below.

In their 2025 Global trends in Climate Change Litigation Snapshot,[303] Setzer and Higham categorise strategic climate-aligned cases as follows:

- **Government framework cases:** which challenge the ambition or implementation of climate targets and policies affecting the whole of a country's (national or state) economy and society;
- **Integrating climate considerations cases**: which seek to integrate climate considerations, standards or principles into a given decision or sectoral policy, with the dual goal of stopping specific harmful policies and projects, and mainstreaming climate concerns in policymaking;

[298] Kang v Korea Trade Insurance Corporation (KSURE) and Korea Export–Import Bank (KEXIM) (Seoul District Court, *Kang et al v KSURE and KEXIM*, 23 March 2022).

[299] Ibid.

[300] The Law Society of New South Wales, Briefing Paper: Climate Change Litigation – Trends, Cases, and Future Directions (Briefing Paper, November 2021) https://www.lawsociety.com.au/sites/default/files/2021-11/LS3660_PAP_ClimateChangeLitigation_2021-11-29.pdf, citing Andrew Korbel, 'A New Era of Climate Change Litigation in Australia?' Corrs Chambers Westgarth (Web Page, 8 April 2019) https://www.corrs.com.au/insights/a-new-era-of-climate-change-litigation-in-australia.

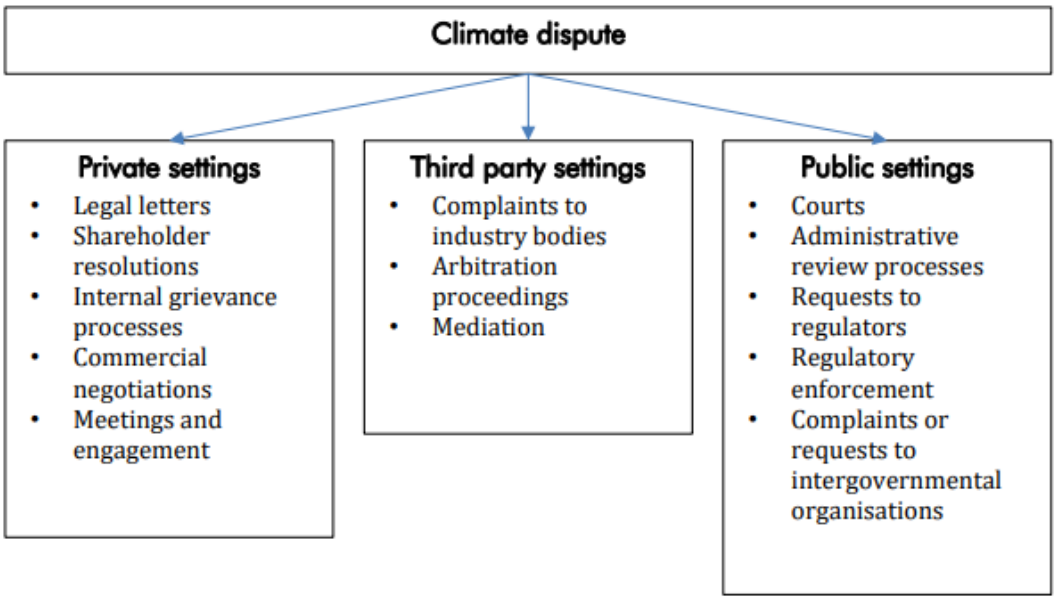
[301] *People of the State of New York v Exxon Mobil Corporation* (Supreme Court of the State of New York, New York County, 452044/2018, 24 October 2018).

[302] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 493-5, 498B; *Environment Protection Act 1997* (ACT) s 146(1), 146(3), 147(1); *Criminal Code 2002* (ACT) ss 50-52; *Nature Conservation Act 2014* (ACT) s 365-6; *Urban Forest Act 2023* (ACT) s 140; *Waste Management and Pollution Control Act 1998* (NT) s 90(1), 90(2), 91(1); *Environment Protection Act 2019* (NT) ss 265, 267; *Planning Act 1999* (NT) s 80F; *Protection of the Environment Operations Act 1997* (NSW) ss 169, 169A, 169B; *Biodiversity Conservation Act 2016* (NSW) ss 13.6, 13.7; *National Parks and Wildlife Act 1974* (NSW) ss 175A, 175B, 176C; *Heritage Act 1977* (NSW) s 159; *Environmental Protection Act 1994* (Qld) ss 492-3; *Planning Act 2016* (Qld) ss 227-8; *Nature Conservation Act 1992* (Qld) s 162; *Environment Protection Act 1993* (SA) ss 127(1)(a), 129(1)(a), 129(3); *Landscape South Australia Act 2019* (SA) s 234; *Native Vegetation Act 1991* (SA) s 39;*Planning, Development and Infrastructure Act 2016* (SA) ss 220, 226; *Environmental Management and Pollution Control Act 1994* (Tas) ss 58(1)(a), 60; *Environment Protection Act 2017* (Vic) ss 349-352; *Planning and Environment Act 1987* (Vic) s 128; *Heritage Act 2017* (Vic) s 232; *Biodiversity Conservation Act 2016* (WA) s 237.

[303] Joana Setzer and Catherine Higham, Global Trends in Climate Change Litigation: 2025 Snapshot (Report, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, June 2025) <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf>.

- **Polluter pays cases**: in which plaintiffs seek monetary damages from defendants based on an alleged contribution to climate change harm through the emission of greenhouse gases and/or other activities that contribute to climate change;
- **Corporate framework cases**: that seek to disincentivise companies from continuing with high-emitting activities by requiring changes in group-level policies, corporate governance and decision-making extending through the companies' operations;
- **Failure-to-adapt cases**: which challenge a government or company for failure to take climate risks into account;
- **Transition risk cases**: which concern the (mis)management of transition risk by directors, officers and others tasked with ensuring the success of a business;
- **Climate-washing cases**: which challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future; and
- **Turning-off-the-taps cases**: which challenge the flow of finance to projects and activities that are not aligned with climate action.

While climate change disputes are typically thought of as those before a Court or Tribunal, Peel, Markey-Tower and Shields indicate that "there are legal interventions taking place outside the courtroom which may have relevance for understanding the broader direction of evolution of corporate climate litigation", which includes a broader range of approaches set out in the diagram below.[304]



4.2 Common issues for Plaintiffs

Some key issues faced by plaintiffs in climate justice litigation matters are set out below. However, it is important to note that the highly politicised nature of climate change litigation may mean that cases can result in positive (or, as set out in subsection (f) below, negative) policy changes, regardless of whether the case itself is successful. For example, following various cases against VicForests in respect of native forest logging in Victoria[305] (with each plaintiff being represented by Environmental Justice Australia), including an unsuccessful case

[304] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, Global Perspectives on Corporate Climate Legal Tactics: Australia National Report (Report Version 1.1, British Institute of International and Comparative Law, March 2024) 9 <https://www.biicl.org/documents/12234_global_perspectives_on_corporate_climate_legal_tactics_-_australia_national_report_v1.pdf>.

[305] *Friends of Leadbeater's Possum Inc v VicForests (No 3)* FCA 651; *Wildlife of the Central Highlands Inc v VicForests* (Supreme Court of Victoria, S ECI 2020 00373).

by Friends of Leadbeater's Possum,[306] in May 2023, the Victorian government announced the end of native forest logging in Victoria, affecting 1.8 million hectares of land.[307]

(a) Justiciability:

"Justiciability" refers to "the capability and appropriateness of a claim made in a court, or an issue raised by the claim, being adjudicated by the Court".[308] In this context:

- "capability" means that the claim must be capable of being considered legally and of being determined by the application of legal principles and techniques;[309] and
- "appropriateness" means that the claim must be appropriate for the courts to decide, as opposed to the legislature and executive.[310]

In climate justice litigation, justiciability often becomes an issue in cases involving questions of policy, as opposed to law. For example, in *Graham Barclay Oysters Pty Ltd v Ryan*[311], the Plaintiff brought a claim in negligence against the state and local Government for an outbreak of disease in an oyster farm, on the basis that they each "could and should have done more to prevent the outbreak".[312] Neither Government body was found to owe a duty of care to the Plaintiff and the High Court stated at [6]:

> *"When courts are invited to pass judgment on the reasonableness of governmental action or inaction, they may be confronted by issues that are inappropriate for judicial resolution, and that, in a representative democracy, are ordinarily decided through the political process. Especially is this so when criticism is addressed to legislative action or inaction. Many citizens may believe that, in various matters, there should be more extensive government regulation. Others may be of a different view, for any one of a number of reasons, perhaps including cost. Courts have long recognised the inappropriateness of judicial resolution of complaints about the reasonableness of governmental conduct where such complaints are political in nature*"

As stated by the Hon Preston J, "It is not so much the presence of political questions in a dispute as the absence of legal principles and techniques for the court to resolve those questions that is the touchstone for determining the justiciability of the dispute. That is illustrated by the Full Court of the Federal Court of Australia's decision in *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd*."[313] In that case, a mining company sought judicial review of the Federal Cabinet's decision to nominate an area of land in the NT (later included in Kakadu National Park) for inclusion on the World Heritage List under the World Heritage Convention. The Court found that the Cabinet's decision was not justiciable due to the political subject-matter of the decision and the absence of legal criteria to review that decision.[314] See also *Sharma* in section 5.3(b)(iii) below, wherein two judges held that it was not appropriate to impose a duty of care in circumstances where doing so raises policy

[306] *Friends of Leadbeater's Possum Inc v VicForests (No 3)* FCA 652.
[307] Environmental Justice Australia, 'EJA Logging Court Cases' (Web Page) <https://envirojustice.org.au/legal-work/protecting-ecosystems/defending-native-forests/eja-logging-court-cases/>.
[308] Brian J Preston, 'Justiciability Issues in Climate Change Litigation' (Speech, British Institute of International and Comparative Law Climate Change Litigation Course, 5 October 2023 and 24 October 2024) <https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_Justiciability_issues_in_climate_change_litigation.pdf>.
[309] Brian J Preston, 'Justiciability Issues in Climate Change Litigation' (Speech) <https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_Justiciability_issues_in_climate_change_litigation.pdf>, citing DM Walker, The Oxford Companion to Law (Clarendon Press, 1980) 694.
[310] Brian J Preston, 'Justiciability Issues in Climate Change Litigation' (Speech, British Institute of International and Comparative Law Climate Change Litigation Course, 5 October 2023 and 24 October 2024) <https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_Justiciability_issues_in_climate_change_litigation.pdf>, citing Jeremy Kirk, 'Justiciability' in Cheryl Saunders and Adrienne Stone (eds), The Oxford Handbook of the Australian Constitution (Oxford University Press, 2018) 510.
[311] *Graham Barclay Oysters Pty Ltd v Ryan (2002)* 211 CLR 540, 553–5 [5]–[7].
[312] Ibid [8].
[313] *Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd (1987)* 15 FCR 274 (FCAFC).
[314] Brian J Preston, *"Justiciability Issues in Climate Change Litigation"* (Speech, 2021) 3–5 <https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_Justiciability_issues_in_climate_change_litigation.pdf>.

considerations about the proper response to climate change, an issue which is unsuitable for judicial determination.[315]

Justiciability is often a ground relied upon by Defendants seeking summary dismissal of climate justice claims (see, e.g. *Gray v Macquarie Generation),*[316] and presents a hurdle for Plaintiffs commencing climate justice cases in establishing that their matter is not essentially a policy question which would more appropriately addressed by the legislature. This is a key issue in climate change litigation as "[t]he paradox here is that many climate change litigation actions aim to strategically shift government policy on climate change."[317]

(b) Causation:

Causation for a climate change-induced event resulting in loss or damage to a plaintiff is confused by the varied myriads of contributors of greenhouse gas emissions, distributed globally and over long timeframes.[318] Such claims, subject to limitation periods, are also affected by the delays between the emission of greenhouse gas emissions and the consequence of climate change.[319]

See, for example, *Pabai v Commonwealth of Australia*,[320] referred to in section 5.4(b)(v) below, in which the Court found that the alleged breach by the Commonwealth could not be found to have materially contributed to the harm suffered by Torres Strait Islanders, in circumstances where:

- on a per capita basis, Australia's emissions make up only a relatively small proportion of the global greenhouse gas emissions that induce climate change[321]; and
- any additional greenhouse gases that might have been emitted by Australia as a result of the emissions reductions targets set in 2015, 2020 and 2021 would have caused no more than an extremely small and almost immeasurable increase in global average temperature.[322]

This can be contrasted with *Gray v Minister for Planning and Others*[323], in which Pain J found causation between climate change and the Anvill Hill coal project, noting that "the fact there were many contributors globally did not mean the contribution from a single large source such as the Anvil Hill Project, in the context of NSW, should be ignored in the environmental assessment process."[324]

However, as stated by Emmanouil, Popa and Kallies, "recent advances in climate change and attribution science mean that the proportionate impact of a company's greenhouse gas emissions on the atmosphere can be quantified with increasing accuracy"[325] (see also section 5.5(a)(i) below). For example, Heede calculates that between 1751 and 2010, BHP, Australia's top carbon major,[326] was responsible for 0.52% of global carbon dioxide and methane emissions,[327] through its production of oil, gas and coal and associated downstream

[315] *Minister for the Environment v Sharma (2022)* 291 FCR 311, 320–5 [8]–[17], [233]–[266], [346] (Allsop CJ), [868] (Wheelahan J).
[316] *Gray v Macquarie Generation* [2010] NSWLEC 34 [58], [60].
[317] Amelia H McGuire, 'Climate Change Litigation and Corporate Responsibility: A New Duty of Care?' (2021) 47(2) *Monash University Law Review* 143, 162 <https://classic.austlii.edu.au/au/journals/MonashULawRw/2021/19.pdf>.
[318] Brian J Preston, *'Climate Change Litigation: A Conspectus'* (Speech, 2020) 8 <https://lec.nsw.gov.au/documents/speeches-and-papers/preston_climate%20change%20litigation%20-%20a%20conspectus.pdf>.
[319] Ibid.
[320] *Pabai v Commonwealth of Australia* [2025] FCA 796.
[321] Ibid [927].
[322] Ibid [1052].
[323] *Gray v Minister for Planning and Others* [2006] NSWLEC 720.
[324] *Gray v Minister for Planning* [2006] NSWLEC 720, 262.
[325] Nia Emmanouil, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) 47(3) *Monash University Law Review* 142.
[326] Jeremy Moss and Persephone Fraser, *Australia's Carbon Majors* (Report, 2019) 7.
[327] Richard Heede, 'Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010' (2014) 122(1–2) *Climatic Change* 229, 237.

emissions. While "the likelihood that this shift will occur in the near term is small",[328] "Australian courts are demonstrating a greater openness to draw on climate science to support their decisions."[329] See, e.g. *Gloucester Resources Ltd v Minister for Planning* (in section 5.4(b)(i) below) wherein Preston CJ drew on expert witness Professor Will Steffen's evidence to support his decision to reject the planning approval of a new coal mine.

In cases involving claims on the basis of common law rights such as nuisance and negligence, plaintiffs face an additional hurdle of establishing that the damage was reasonably foreseeable to a person in the defendant's position,[330] i.e. in the case of CO^2 emitter defendants, that they know and have known about the links between climate change, fossil fuel extraction and combustion.[331]

(c) Evidentiary issues/Climate Science

As a related issue, in early climate change cases, Australian plaintiffs faced challenges relating to evidence in terms of linking individual mining projects to specific climate change impacts.[332] Through the gradual development of case law, the science of climate change has become accepted. For example, in *Sharma* (referred to in section 5.3(b)(iii) below), there was no contest over the science of climate change and the parties proceeded on the basis of a Statement of Agreed Facts.[333] The reports of the IPCC have been particularly influential in solidifying the courts' acceptance of climate change.[334] In some Courts, the existence and impacts of climate change have reached the status of information available to the court in a manner akin to a court taking 'judicial notice' (per s 144 of the Uniform Evidence Legislation) of climate change and its impacts. For example, in NSW Land and Environment Court case *David Kettle Consulting Pty Limited v Gosford City Council*[335] the Judge, independent of the evidence presented by the parties, made the following observation when evaluating an expert's evidence about the likely environmental impact of increasing the rate of groundwater extraction for commercial bottling:

> *"32 In response to a question in relation to ground water recovery rates, Mr Lane [expert witness for the applicant] confirmed that he had assumed a continuation of past rainfall and aquifer recharge patterns.*
>
> *33 The most recent information published by the Intergovernmental Panel on Climate Change makes it clear that the validity of such an assumption is improbable. Recent observational data show that relative to the worst-case scenario model developed by the IPCC, climate change is occurring more rapidly and at a greater magnitude than anticipated. These recent significant upwards increases in climate change rates coupled with an inherent uncertainty associated with the limited temporal data elucidating the ground water-extraction relationship, direct us to consider the matter with caution."*

[328] Sabrina McCormick et al, 'Science in Litigation, the Third Branch of US Climate Policy' (2017) 357(6355) *Science* 979, 980.
[329] Nia Emmanouil, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) 47(3) *Monash University Law Review* 142, 167.
[330] David Hunter and James Salzman, 'Negligence in the Air: The Duty of Care in Climate Change Litigation' (2007) 155(6) *University of Pennsylvania Law Review* 1741, 1747–52.
[331] Nia Emmanouil, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) 47(3) *Monash University Law Review* 142, 167, 168.
[332] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, *Global Perspectives on Corporate Climate Legal Tactics: Australia National Report* (British Institute of International and Comparative Law, Version 1.0, February 2024) 38.
[333] Nia Emmanouil, Tina Popa and Anne Kallies, *'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?'* (2021) 47(3) Monash University Law Review 142, 160–2, 171.
[334] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, *Global Perspectives on Corporate Climate Legal Tactics: Australia National Report* (British Institute of International and Comparative Law, Version 1.1, March 2024) 38, 38.
[335] *David Kettle Consulting Pty Limited v Gosford City Council* [2008] NSWLEC 1385.

In next generation cases, a focus of evidentiary challenges by corporate defendants has been relevance and what evidence the decision-maker is able to have regard to.[336] For example in *Gloucester Resources Ltd v Minister for Planning* (in section 5.4(b)(i) below), the Appellants accepted the causal link between greenhouse gas ('GHG') emissions (both generally and in relation to the specific project) and climate change but sought to exclude consideration of 'Scope 3 emissions' in the context of an application for a development consent to establish a new open cut coalmine in New South Wales.

Some Courts have begun to take a more flexible approach to the collection of evidence from First Nations individuals and communities where it is provided in oral form (which may have once faced admissibility challenges under the mainstream legal system). For example, in the *Waratah* case referred to in section 5.1(b)(i) below, the Queensland Land Court travelled to remote areas in Queensland to hear evidence on Country from traditional custodians of the land regarding the impacts that climate change is having on the lives and futures of First Nations peoples and followed First Nations protocols when doing so.

(d) Remoteness of damage:

In actions in which damages are sought, plaintiffs bringing broad claims may be subject to a counterargument by a defendant that:

- the damage is too remote, in the sense that there is a policy argument against defendants being subject to "a liability in an indeterminate amount for an indeterminate time to an indeterminate class";[337]
- loss has not yet crystallised and therefore cannot be quantified.

(e) Antiregulatory litigation:

As noted above, climate change litigation may be influential in delaying a project or creating hurdles to approval that eventually see the project modified or even terminated. For example, while VCAT's decision in *Australian Conservation Foundation v Latrobe City Council*[338], regarding the Hazelwood coal-fired power station, did not prevent the Victorian Government from approving the extension the subject of the decision, "publicity surrounding the case was seemingly a factor in its later conclusion of a Greenhouse Gas Reduction Deed, with the owner of the power station required to offset a portion of the power station's emissions".[339]

However, climate change cases may also be antiregulatory in their focus or consequences. Antiregulatory-focussed climate change litigation includes the 'backlash' cases filed challenging positive climate policies, for example in *Uren v Bald Hills Wind Farm Pty Ltd,*[340] neighbours of the operator of a wind turbine successfully obtained damages against the operator for excessive noise, on the grounds of common law nuisance.

Antiregulatory consequences can also occur in response to successful climate change cases, for example negative media responses and appeals to supportive governments for assistance in combating business threats posed by climate change cases.[341] For example, in *Queensland*

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[336] Jacqueline Peel and Rebekkah Markey-Towler, 'What Are the Facts in Issue? The Central Role of Relevance in Climate Litigation in Australia' in Jacqueline Peel and Hari M Osofsky (eds), *The Climate-conscious Lawyer: Building the Legal Response to the Climate Crisis* (CAUL Open Educational Resources Collective, 2025)

[337] Brian J Preston, 'Climate Change Litigation – A Conspectus' (Speech, Land and Environment Court of New South Wales, 4 November 2010) <https://lec.nsw.gov.au/documents/speeches-and-papers/preston_climate%20change%20litigation%20-%20a%20conspectus.pdf>, quoting *Ultramares Corp v Touche* 174 NE 441 (NY, 1931) 444, cited in *Bryan v Maloney* (1995) 182 CLR 609, 618.

[338] *Australian Conservation Foundation v Latrobe City Council (2004)* 140 LGERA 100.

[339] Jacqueline Peel and Hari M Osofsky, 'Litigation as a Mitigation Tool' in Jacqueline Peel and Hari M Osofsky, Climate Change Litigation: Regulatory Pathways to Cleaner Energy (Cambridge University Press, 2015) 54, 98, referring to Brian J Preston, 'The Influence of Climate Change Litigation on Governments and the Private Sector' (2011) 2(4) Climate Law 485.

[340] *Uren v Bald Hills Wind Farm Pty Ltd* [2022] VSC 145.

[341] Jacqueline Peel and Hari M Osofsky, 'Barriers to Progress through Litigation' in Jacqueline Peel and Hari M Osofsky (eds), *Climate Change Litigation* (Cambridge University Press, 2015) 300.

Conservation Council Inc v Xstrata Coal Queensland P/L & Ors,[342] on the same day the Court of Appeal handed down a judgment in favour of the environmental NGOs' objection to the proposed extension to a coal mine authorisation, the Queensland government announced that it would amend the state mining and environmental legislation to authorize the mine extension and avoid delay to the project. A media release issued by the government declared, "This action comes in response to today's court ruling that, on a legal technicality, could have stalled the mine's further development."[343] Four days later, legislative amendments were passed by the Queensland Parliament to validate approvals for the mine's extension.[344]

In *Dual Gas Pty Ltd & Ors v. Environment Protection Authority,*[345] the plaintiffs commenced proceedings following the imposition by VCAT of a condition preventing a power station from commencing until the retirement of an equivalent amount of more greenhouse gas–intensive electricity generation capacity in Victoria, pursuant to the emissions target in the *Climate Change Act 2010* (Vic). Following a review initiated days before the hearing commenced, the Victorian government accepted recommendations to remove the emissions reduction target in that legislation and indicated that the Government would not proceed with the introduction of a state-based greenhouse emissions intensity standard for power generators – two issues that had been the subject of extensive argument before VCAT.[346]

Antiregulatory consequences to climate change litigation have also played out in the litigation funding arena (aggravating the costs issues referred to above), for example:

- the decision in July 2013 to cut all Legal Aid funding for public interest environmental matters;[347] and
- the Federal Government's decision in December 2013 to cut funding to the EDOs in NSW, Queensland and Victoria (reversed in 2022), which closely followed sustained media attacks on the NSW EDO for its "anticoal" legal challenges;[348] and
- the Queensland Government's decision not to renew the Queensland EDO's funding in July 2025, which a "spokesperson" for the Government indicated might be the result of "past behaviour", including the adverse costs order awarded against the EDO in Santos (see section 5.3(b)(i) below).[349]

(f) Identification of defendants:

In many climate justice cases against corporate defendants, identification of the correct defendant may also pose a hurdle for plaintiffs. While some of the company groups identified as Carbon Majors[350] (see section 5.5(a)(i) below) are the sole owners of subsidiaries that extract and market the fossil fuels, others might be jointly owned, creating issues in attributing liability, as Courts are generally reluctant to pierce the corporate veil by imputing liability from

[342] *Re Xstrata Coal Queensland Pty Ltd & Ors [2007] QLRT 33*; *Queensland Conservation Council Inc v Xstrata Coal Queensland P/L & Ors* [2007] QCA 338.
[343] *Re Xstrata Coal Queensland Pty Ltd; Queensland Conservation Council Inc v Xstrata Coal Queensland Pty Ltd* (Case Summary, Australian & Pacific Climate Change Litigation Database, University of Melbourne) <https://law.app.unimelb.edu.au/climate-change/case.php?CaseID=401&jurisdictionID=5&id=5>.
[344] *Mining and Other Legislation Amendment Act 2007* (Qld), noted in *Re Xstrata Coal Queensland Pty Ltd; Queensland Conservation Council Inc v Xstrata Coal Queensland Pty Ltd* (Case Summary, Australian & Pacific Climate Change Litigation Database).
[345] *Dual Gas Pty Ltd & Ors v Environment Protection Authority* [2012] VCAT 308.
[346] Jacqueline Peel and Hari M Osofsky, 'Barriers to Progress through Litigation' in Jacqueline Peel and Hari M Osofsky (eds), *Climate Change Litigation* (Cambridge University Press, 2015).
[347] Jacqueline Peel and Hari M Osofsky, 'Barriers to Progress through Litigation' in Jacqueline Peel and Hari M Osofsky (eds), *Climate Change Litigation* (Cambridge University Press, 2015) 306.
[348] Jacqueline Peel and Hari M Osofsky, 'Barriers to Progress through Litigation' in Jacqueline Peel and Hari M Osofsky (eds), *Climate Change Litigation* (Cambridge University Press, 2015) 307.
[349] Will Murray, 'Queensland government cuts Environmental Defenders Office funding despite pre-election promise for support' (ABC News, 15 May 2025) <https://www.abc.net.au/news/2025-05-15/environmental-defenders-office-funding-cut-queensland-government/105293462>.
[350] Climate Law Accelerator (TERRA Program), *Loss and Damage Litigation Against Carbon Majors* (Report, January 2025).

a subsidiary to a parent company.[351] "To date, no court has imputed liability from a subsidiary to a parent company in a climate change litigation case."[352]

In this respect, Emmanouil, Popa and Kallies refer to BHP, Australia's largest carbon major[353], as an example. BHP operates as a dually listed company, with two parent companies, BHP Group Limited and BHP Group Plc. In practical terms, BHP operates as a single economic entity, governed by a single board and management,[354] however it wholly owns hundreds of subsidiaries and shares in hundreds of other companies and projects. For instance, through its joint project with Mitsubishi Corporation in Queensland, the BHP Mitsubishi Alliance, BHP is Australia's largest coal producer. If an action were brought against BHP, the plaintiff would need to name its wholly and jointly owned subsidiaries (e.g. BHP Mitsubishi Alliance) and joint venture partners such as Mitsubishi Corporation, and find grounds for the court to impute liability from the subsidiary to the parent companies, for the parents to be liable.[355]

(g) Costs:

'Litigation is often a lengthy, costly and risky process, and in certain contexts … can result in broader political backlash',[356] particularly in circumstances where the resources available to corporate defendants typically far outweigh those available to citizen or non-profit litigants. As stated by Preston J, 'the public lacks the financial resources to plead effectively on the environment's behalf'.[357] While individuals and Environmental and Community groups involved in litigation can try to limit their own costs by seeking utilizing the services of low-cost community legal centres (such as the national network of Environmental Defenders Offices, seeking litigation funding and requesting the appearances of counsel and experts on a pro bono basis), depending on the Court in which the claim is commenced, any such actions also carry a risk of adverse costs orders, particularly highly speculative or novel claims.

By way of example, in *Munkara v Santos* (referred to in section 5.3(b)(i) below), Charlesworth J made an adverse costs order that the Applicants pay Santos' costs. In circumstances where the Applicants were without the financial means to satisfy the costs order, Santos obtained a non-party costs application against the Applicant's solicitors, the Environmental Defenders Office (**EDO**). Santos also successfully sought to issue subpoenas from other related activist organisations opposed to the Barossa Project the subject of the litigation, for the purpose of assessing whether to seek a contribution towards its costs from those entities. While such subpoenas were subsequently not pressed by Santos (following a request by each entity for leave to appeal), such practice sets a precedent for future climate justice litigation.

While Courts such as the NSW Land and Environment Court have adopted specific costs rules permitting the Court to grant an exemption from the usual costs rule in environmental planning and protection cases where it is "satisfied that the proceedings have been brought in the public interest,[358] the availability of this exemption may provide little comfort to litigants who have no certainty that the exemption will be applied when they commence a case.[359] Litigants may also

[351] *ACC Houston Chapter, 'Piercing the Corporate Veil: Strategies for Corporate Lawyers and Litigators'* (Presentation, 5 December 2024) slide 5 ("Courts are reluctant to pierce the veil").
[352] Nia Emmanouil, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) 47(3) *Monash University Law Review* 142, 165.
[353] Ibid.
[354] 'Unified Corporate Structure', BHP (Web Page, 2022) <https://www.bhp.com/about/our-businesses/unified-corporate-structure>.
[355] Nia Emmanouil, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) 47(3) *Monash University Law Review* 142, 165.
[356] Joana Setzer and Rebecca Byrnes, *Global Trends in Climate Change Litigation: 2019 Snapshot* (Policy Report, July 2019) 1, 10.
[357] Brian Preston, 'Public Enforcement of Environmental Laws in Australia' (1991) 6 Journal of Environmental Law and Litigation 39, 74.
[358] Land and Environment Court Rules 2007 (NSW) r 4.2
[359] Jacqueline Peel and Hari M Osofsky, 'Barriers to Progress through Litigation' in Jacqueline Peel and Hari M Osofsky (eds), *Climate Change Litigation* (Cambridge University Press, 2015) 281.

be able to seek protective costs orders,[360] which permit the Court to make an order specifying the maximum amount of costs that one party can recover from another, whether requested by a party or on its own motion. For example, in *Blue Mountains Conservation Society Inc v Delta Electricity*,[361] (**BMCG v Delta**) a civil enforcement case found to have been brought in the public interest, a non-governmental local conservation group sought to prevent the respondent a large government owned electricity generator from polluting a river which, if made out, would have been a criminal offence. At an early stage the Plaintiff sought an order limiting the costs recoverable by either party in the sum of AU$10,000. The Court considered that the case would raise complex and novel legal matters and made a protective costs order capping the parties' costs liability at $20,000. In coming to this decision, the Court noted that the Plaintiff did not have significant assets, had no financial interest in the proceedings and demonstrated that it could not continue the litigation if the order was not made. Although the Respondent estimated that its costs would be over $200,000, it had significant financial resources and did not demonstrate that the protective costs order would cause it financial hardship.[362] This decision was upheld on appeal.[363]

(h) SLAPP Suits

Applicants to climate change litigation may also be subject to "SLAPP suits", referring to "Strategic Litigation Against Public Participation", being proceedings intended to intimidate public interest-initiated action, which are primarily directed at diverting the Applicant's resources away from the actions they have commenced in environmental matters with a view to deterring similar action by others.[364] Such actions may be based on claims for malicious prosecution, abuse of process, defamation, conspiracy and trade practices infringements. For example:

- in *Ballina Shire Council v Ringland,*[365] the Council commenced defamation and injurious falsehood claims in respect of a press release issued by the Clean Seas Coalition in the course of separate proceedings involving a challenge to a development application; and
- in *AGL Energy Limited v Greenpeace Australia Pacific Limited*[366] AGL Energy Limited commenced proceedings alleging that Greenpeace had breached its intellectual property (both trade mark and copyright) in using AGL's logo and brand in Greenpeace's "AGL is Australia's biggest corporate climate polluter" and "Australian's Greatest Liability" campaigns.[367] AGL failed to establish its claims in relation to Greenpeace's uses of its logo, but it did succeed in relation to its claims on three social media posts as well as some photographs and placards. The Federal Court denied AGL's request for damages.

(i) "Market substitution argument"

The market substitution argument is an argument that has increasingly been successfully relied on by mining companies and Government decision-makers in cases challenging large fossil fuel projects, particularly in Queensland.[368] It "puts forward the proposition that stopping a particular project of this kind will not have any net benefit in addressing climate change as it will be replaced by another such project elsewhere in the world to meet market demand for the fossil fuel in question [and] is sometimes coupled with a further argument that blocking an

[360] *Uniform Civil Procedure Rules 2005* (NSW) pt 42 r 42.1.
[361] *Blue Mountains Conservation Society Inc v Delta Electricity* (2009) 170 LGERA 1.
[362] Nicola Pain, 'Protective Costs Orders in Australia: Increasing Access to Courts by Capping Costs' (Paper presented at the Australasian Conference of Planning and Environment Courts and Tribunals, 7 March 2014) <https://lec.nsw.gov.au/documents/speeches-and-papers/acpect_2014_protective_costs_paper_pain_j.pdf>.
[363] Delta Electricity v Blue Mountains Conservation Society Inc [2010] NSWCA 263; (2010) 176 LGERA 424.
[364] LexisNexis, *Halsbury's Laws of Australia* (online at 25 March 2025) 180 Environment, 'II Environmental Litigation (5) Civil Enforcement (B) Judicial Review in Environmental Litigation [180-6745] SLAPP suits'.
[365] *Ballina Shire Council v Ringland* (1994) 33 NSWLR 680.
[366] *AGL Energy Limited v Greenpeace Australia Pacific Limited* [2021] FCA 625.
[367] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, *Global Perspectives on Corporate Climate Legal Tactics: Australia National Report* (Report, British Institute of International and Comparative Law, Version 1.0, February 2024) 18.
[368] Jacqueline Peel, *Legal Opinion – Gaps in the Environment Protection and Biodiversity Conservation Act and Other Federal Laws for Protection of the Climate* (Report, Climate Council, October 2023).

Australian mine will in fact have a net climate detriment as Australian coal is argued to be of better quality, and therefore less environmentally harmful when combusted, than an equal quantity of coal sourced overseas"[369] (see, e.g. the *Living Wonders* decision in section 5.4(b)(i) below). While the market substitution argument has been rejected in cases involving merits review[370] (see the *Gloucester Resources* case in section 5.4(b)(i) below and *Waratah* case in section 5.1(b)(i) below), as set out in section 4.3 (Merits Review) below, there are limited opportunities for merits review of decisions impacting climate change.

4.3 Causes of Action

In the absence of any direct statutory right of action for environmental harms, individual, community or NGO applicants have relied on various different causes of action in commencing climate change litigation, with mixed success. These include the following:

(a) General	
(i) Tortious claims: negligence	In both actions against government defendants and corporate defendants, applicants have had limited success establishing a duty of care to address climate change. See, e.g. *Pabai v Commonwealth of Australia (No 2)* in section 5.4(b)(v) below and *Sharma and others v. Minister for the Environment* (2022) in section 5.3(b)(iii) below, though note that *Pabai* is currently subject to a Full Federal Court appeal and there is an argument that *Sharma* leaves the door open for Plaintiffs whose harm has materialised prior to commencing proceedings, who are geographically closer to the source of harm,[371] or who commence proceedings in statutory frameworks separate to the EPBC Act. This is in contrast to international decisions in jurisdictions with vastly different statutory frameworks,[372] such as *Milieudefensie et al. v. Royal Dutch Shell plc.*[373] In that case, Friends of the earth Netherlands claimed Shell had violated its obligation to reduce its CO^2 emissions in the atmosphere. The Hague District Court found, based on the unwritten standard of care in the Dutch Civil Code, that Shell had a responsibility to contribute to the prevention of the harm to the extent of its ability.
(ii) Civil enforcement	Various environmental statues in each Australian jurisdiction contain enforcement provisions which entitle Regulatory bodies or, (as set out in section 3.3 above) in every jurisdiction other than WA, any other persons to commence proceedings to remedy or restrain breaches of that legislation by government agencies, individuals or private entities (as applicable). For example, ss 252-253 of the PEO Act provides that any person, whether or not any right of that person has been or may be infringed by or as a consequence of the breach, may commence proceedings in the NSW Land and Environment Court for an order to remedy or restrain a breach (including a threatened or apprehended breach) of the PEO Act or to restrain a breach of any other Act or statutory rule, if the breach (or the threatened or apprehended breach) is causing or is likely to cause harm to the environment.[374]

[369] Jacqueline Peel, *Legal Opinion* – *Gaps in the Environment Protection and Biodiversity Conservation Act and Other Federal Laws for Protection of the Climate* (Climate Council, October 2023) 26[113].
[370] Jacqueline Peel, *Legal Opinion* – *Gaps in the Environment Protection and Biodiversity Conservation Act and Other Federal Laws for Protection of the Climate* (Climate Council, October 2023) 26 [113].
[371] Pabai v Commonwealth of Australia (No 2) [2025] FCA 796; Minister for the Environment v Sharma [2022] FCAFC 35.
[372] Thomas Gray KC, Dr Beth Nosworthy and Astrid Gillam, 'National and international perspectives on climate change litigation' (2024) 54 *Australian Bar Review* 16, 23.
[373] *Milieudefensie et al v Royal Dutch Shell plc* (District Court of The Hague, 26 May 2021).
[374] *Protection of the Environment Operations Act 1997* (NSW) ss 252-253.

	Certain jurisdictions/statutes impose prerequisite requirements for commencing civil proceedings, for example a decision by the regulator not to take action regarding the breach and/or inaction on the part of the regulator regarding the breach, within a specified period. There have been very limited civil enforcement cases commenced by private entities and/or individuals and the decisions which have proceeded to final hearing have largely been unsuccessful (see *Donnelly* in section 5.4(b)(iv) below and *Macquarie Generation v Hodgson* in section 5.5(b) below). Irrespective, such cases can play a role in both defendant accountability and government accountability (where the relevant breach has not been pursued by the relevant regulator).[375] For example, in *BMCG v Delta*[376], as part of the settlement agreed to, Delta Electricity admitted to polluting waters in breach of the PEO Act and agreed to vary its license to specify maximum concentration levels for certain elements. The NSW EPA's failure to take enforcement action was also criticised.[377]
(iii)Tortious claims: defamation	In *Shift2Neutral Pty Ltd v Fairfax Media Publications Pty Ltd*[378], the Applicant was a company described as being established for the purpose of conducting environmental audits and offering certificates representing credits under a carbon offset scheme to entities wishing to reduce their carbon footprint or render their operations carbon neutral. The Applicant sued Fairfax for defamation in relation to publications in the Sydney Morning Herald which described the Applicant as "fake, shifting paper certificates instead of saving forests and cutting greenhouse emissions" thus deceiving its customers and investors. While the Court agreed the publications were defamatory, Fairfax succeeded in its justification defence, as the imputations were substantially true. The Applicant was unsuccessful in its appeal of this decision. In the United States, climate scientist Michael Mann was awarded US$2 in compensatory damages and US$1,001,000 in punitive damages in relation to false statements made regarding his work.[379] It remains to be seen how any such cases would be determined by an Australian Court.
(iv) Native title future act determinations	Once First Nations groups have successfully established native title over an area (which is widely acknowledged to be a difficult task[380]), they are granted the right of negotiation referred to in section 3.4(g) regarding future acts. Section 3.4(g) above also provides a general overview of the kinds of determinations which may be made by the arbitral body event that negotiation regarding a proposed future act is unsuccessful. First Nations groups have had limited success with future act determinations. The following table has been reproduced from Lucas'

[375] Sarah Wright, 'Holding regulators to account in New South Wales pollution law: Part 2 — the limits of judicial review and civil enforcement' (2017) 5 *AIAL Forum* 46, 55.
[376] *Blue Mountains Conservation Society Inc v Delta Electricity* (2009) 170 LGERA 1.
[377] Elaine Johnson, 'Blue Mountains Conservation Society v Delta Electricity' [2011] (3) *National Environmental Law Review* 35.
[378] *Shift2Neutral Pty Ltd v Fairfax Media Publications Pty Ltd* [2015] NSWCA 274.
[379] *Michael E Mann v Rand Simberg and Mark Steyn* (Superior Court of the District of Columbia, 2012 CA 008263 B, filed 22 October 2012) <https://cdn.climatepolicyradar.org/navigator/USA/2012/mann-v-simberg_6ef9505b059ee0320994c4912c77a207.pdf>.
[380] Lisa Strelein, 'Reforming the Requirements of Proof: The Australian Law Reform Commission's Native Title Inquiry' (2014) *Indigenous Law Bulletin*.

article[381] "The Future Act Regime in Australian Native Title: Data Analysis, Trends and Insights"[382] and reflects the position as at 6 November 2023:

Arbitration outcome	1994 - November 2023	November 2018 - November 2023
Future act can proceed without conditions	375 (73%)	35 (67%)
Future act can proceed with conditions	137 (27%)	17 (33%)
Future act cannot proceed	3 (<1%)	0 (0%)
Total	515	52

As indicated by the above, the NNTT has rarely used its power to refuse future acts. In the three successful cases:

- the First Nations group were able to establish that the future act would impact a sacred site of particular significance to the native title party, though there were additional exacerbating circumstances. For example[383]
  - in *Western Desert Lands Aboriginal Corporation (Jamukurnu – Yapalikunu)/Western Australia/Holocene Pty Ltd*,[384] the Native Title Holder had exclusive title to the relevant land. The NNTT stated "if it were confined only to a consideration of the effect of the act on native title rights and interests and other factors listed in s 39(1)(a) without the need to consider s 39(1)(a)(v) [which requires the NNTT to consider "any area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions"], then a conclusion that the act may be done would be the likely outcome,"[385] and
  - in *Weld Range Metals Limited / Western Australia / Simpson*[386] there was a decision of the proponent not to fund the costs of the native title party to engage in a meeting, which created delay[387]; or
- the project was not in the public interest. Described as a "unique case"[388] the project in *Seven Star Investments Group Pty Ltd/Western Australia/Wilma Freddie and Others on behalf of Wiluna* was determined not to proceed[389]:
  - as the exploration methodology had "no rational or scientific basis"; and

[381] Michael Lucas, 'The Future Act Regime in Australian Native Title: Data Analysis, Trends and Insights' (2024) 51(2) University of Western Australia Law Review 248, 258.
[382] Michael Lucas, 'The Future Act Regime in Australian Native Title: Data Analysis, Trends and Insights' (2024) 51(2) University of Western Australia Law Review 248, 258.
[383] Michael Lucas, 'The Future Act Regime in Australian Native Title: Data Analysis, Trends and Insights' (2024) 51(2) *University of Western Australia Law Review* 248, 260.
[384] *Western Desert Lands Aboriginal Corporation (Jamukurnu – Yapalikunu)/Western Australia/Holocene Pty Ltd* [2009] NNTTA 49.
[385] Ibid [201].
[386] *Weld Range Metals Limited/Western Australia/Ike Simpson and Others on behalf of Wajarri Yamatji* [2011] NNTTA 172.
[387] Ibid 261.
[388] *Seven Star Investments Group Pty Ltd/Western Australia/Wilma Freddie and Others on behalf of Wiluna*, [2011] NNTTA 53 (24 March 2011) [116].
[389] Ibid [119].

	• due to the "irretrievable breakdown in relations between [the parties] and the real potential for further serious disputations and conflict in the future... which [would] impact on the claimants' capacity to carry out their cultural obligations." Cases such as *Santos NSW Pty Ltd and Another v Gomeroi People and Another* (see section 5.1(b)(iii) below), indicate that any success on appeal to the Federal Court may be pyrrhic, where the matter is remitted back to the NNTT, and that "public interest" is malleable enough to be used against First Nations groups. Cases such as *Harvey v Minister for Primary Industry and Resources*[390] indicate that project proponents have also sought to interpret the NT Act in such a way that would restrict First Nations' groups negotiation right. In this case, the High Court overturned a Federal Court finding that the grant of a mineral lease, in connection with the McArthur River Mine project in the Northern Territory was not the "creation or variation of a right to mine" within s 24MD(6B) of the NT Act. The lease was found to be invalid as the NT Act had not been followed. In the Federal Government's inquiry into the destruction of the Juukan Gorge by Rio Tinto in 2020 (a site representing 46,000 years of culture and history for the Puutu Kunti Kurrama and Pinikura (PKKP) peoples of the Pilbara in Western Australia),[391] it acknowledged the submission of the Kimberley Land Council that *"if native title holders do not agree to an act being done and the matter proceeds to determination before the NNTT, there is a 98% chance that the NNTT will determine that the act can be done or done subject to conditions. The extremely high likelihood that proponents will obtain the necessary approvals even if they don't reach agreement with and obtain the consent of native title parties means that the playing field for agreement-making is never level and native title parties participate in the future act process knowing that if they don't reach agreement with a proponent there is an almost 100% chance the proponent will have its interest granted if it makes a future act determination application."* A review of the NT Act's future acts regime is currently underway."[392] It should be noted that even where native title or other rights and interests of First Nations persons have been established, such rights and interests may be vulnerable to climate change itself as "[s]ea level rises will extinguish certain rights and interests over land because they will disappear."[393]
(b) *Actions against government defendants*	
Administrative Review	

[390] *Harvey v Minister for Primary Industry and Resources* [2024] HCA 1.
[391] Joint Standing Committee on Northern Australia, *Never Again: Inquiry into the Destruction of 46,000-Year-Old Caves at the Juukan Gorge in the Pilbara Region of Western Australia – Interim Report* (Commonwealth of Australia, December 2020)
[392] Australian Law Reform Commission, *Review of the Future Acts Regime: Discussion Paper* (Discussion Paper, 22 May 2025) <https://www.alrc.gov.au/publication/review-of-the-future-acts-regime-discussion-paper-2025/>.
[393] Australian Law Reform Commission, *Review of the Future Acts Regime* (Inquiry, 4 June 2024).

Administrative review on grounds relating to climate change has formed the predominant portion of climate change litigation in Australia.[394] A common approach has involved seeking to incorporate climate change within the scope of decision-making, particularly for projects with substantial climate impacts, by reference to broader statutory purposes.[395] Review of an environmental decision may be in relation to: (a) the merits of the decision (merits review), permitting the decision maker to confirm, vary or set aside the decision on review; or (b) the legality of the decision (judicial review).	
(i) Administrative review: Merits Review	Many of these cases have been unsuccessful, particularly those brought in the state of Queensland.[396] However, others have had full or partial success, for example: • *Dual Gas Pty Ltd & Ors v Environment Protection Authority*[397], in which the VCAT upheld approval for a new power station incorporating a novel coal drying and gasification process as "best practice," but adding a condition preventing commencement of the project until such time as retirement of an equivalent amount of more greenhouse gas–intensive generation capacity was secured.[398] • *Gippsland Coastal Board v South Gippsland Shire Council*[399], in which six permit applications for dwellings on land close to the coast were refused, including on the grounds that the risk of sea levels rising created a risk of flooding "beyond an acceptable degree of reasonableness". VCAT applied the Precautionary Principle, finding that a lack of scientific certainty about the specific future environmental implications of the sea level rise *should not be used* as a reason to avoid putting protective measures in place and that a course of action was warranted to prevent foreseeable, irreversible, future harm. Shortly after the decision was handed down, the Victorian government released the 2008 Victorian Coastal Strategy, which established the Precautionary Principle and additional sea level rise benchmarks for coastal development as policy requirements.[400] Cases such as *Gloucester Resources v Minister for Planning* (in section 5.4(b)(i) below) indicate that merits review proceedings which facilitate a full re-examination of the evidence can result in favourable results. In 2022, Setzer and Higham's review of international cases involving a procedural decision or decision on the merits found that 54% of cases (245) had outcomes favourable to climate change

[394] The Hon Justice Brian J Preston, 'The Impact of the Paris Agreement on Climate Change Litigation and Law' (Speech, Land and Environment Court of New South Wales, *The Impact of the Paris Agreement on Climate Change Litigation and Law*, undated) 29 <https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_The_Impact_of_the_Paris_Agreement_on_Climate_Change_Litigation_and_Law.pdf>.

[395] Jacqueline Peel and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) *Transnational Environmental Law* 37, 39; Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press, 2015) ('*Climate Change Litigation*') 795-6.

[396] Jacqueline Peel and Hari M Osofsky, Climate Change Litigation: Regulatory Pathways to Cleaner Energy (Cambridge University Press, 2015) ch 3, 101, discussing Re Xstrata Coal Queensland Pty Ltd & Ors QLRT 33; Xstrata Coal Queensland Pty Ltd & Ors v Friends of the Earth – Brisbane Co-Op Ltd & Ors and Department of Environment and Resource Management QLC 13; Hancock Coal Pty Ltd v Kelly & Ors and Department of Environment and Heritage Protection (No 4) QLC 12.

[397] *Dual Gas Pty Ltd & Ors v Environment Protection Authority* [2012] VCAT 308.

[398] Jacqueline Peel and Hari M Osofsky, Climate Change Litigation: Regulatory Pathways to Cleaner Energy (Cambridge University Press, 2015) ch 3, 101.

[399] *Gippsland Coastal Board v South Gippsland Shire Council* [2008] VCAT 1545.

[400] Jacqueline Peel and Hari M Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press, 2015).

	action.[401] However, a common criticism is that the Australian avenues for merits review of climate change decisions are limited, particularly under the EPBC Act,[402] and various reviews have recommended the EPBC Act be amended to allow for a broader range of environmental decisions to be merits reviewed.[403]
(ii) Administrative review: Judicial Review	The grounds of judicial review can be grouped into three broad categories: 1. illegality: see, e.g. *ACF v Minister for the Environment* (2016) 251 FCR 308 further below in this subsection; 2. irrationality (which encompasses illogicality and unreasonableness[404]): see, e.g. *Living Wonders* in section 5.4(b)(i) below. The most common form way of framing this challenge is on the basis of a failure to take into account relevant considerations expressly required or implied by a statute[405] (see *Gray v Minister for Planning*[406] for implied conditions); and 3. procedural impropriety (see, e.g. *Gray v Minister for Planning*[407] in respect of an inadequate environmental impact assessment).[408] While there has been a degree of success via these routes, (see, e.g. *Bushfire Survivors for Climate Action Inc v Environment Protection Authority* in section 5.4(b)(iii) below), successful decisions, at best, result in an order that the original decision-maker reconsider their decision. This ultimately leaves the discretion with the decision-maker.[409] See, e.g. *Santos NA Barossa Pty Ltd v Tipakalippa* and *Munkara v Santos NA Barossa Pty Ltd* (No 3) in section 5.3(b)(i) below. Courts in these cases have also generally been careful to focus their decision on whether the decision in question was properly made rather than considering the merits of the decision.[410] The various legal challenges to the Carmichael Coal Mine (commonly known as the "**Adani Mine**"), estimated to generate an estimated 4.7 billion tonnes of greenhouse gas emissions over at least 60 years,[411] provide an example of the way by which a administrative review proceedings can be deployed in a litigation strategy in multiple ways

[401] Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2022 Snapshot* (Policy Report, Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, 30 June 2022) 3 https://www.cccep.ac.uk/wp-content/uploads/2022/06/Global-trends-in-climate-change-litigation-2022-snapshot.pdf#:~:text=A%20quantitative%20review%20of%20the%20outcomes%20of,had%20outcomes%20favourable%20to%20climate%20change%20action.

[402] Jacqueline Peel, *Legal Opinion – Gaps in the Environment Protection and Biodiversity Conservation Act and Other Federal Laws for Protection of the Climate* (Climate Council, October 2023) https://climatecouncil.org.au/wp-content/uploads/2023/10/Peel-Opinion-Climate-and-the-EPBC-Act-October-2023-EMBARGO.pdf.

[403] Kim Rubenstein and Joel Townsend, *User-Focussed, Efficient, Accessible, Independent and Fair: Merits Review and the Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (Lock the Gate Alliance, April 2024) <https://assets.nationbuilder.com/lockthegate/pages/8669/attachments/original/1713231325/Report_on_EPBC_Act_merits_review_WEB.pdf?1713231325>.

[404] *Minister for Immigration and Border Protection v Stretton* (2016) 237 FCR 1, 3.

[405] *Climate-Conscious Lawyer* (OER Collective, 2023) <https://oercollective.caul.edu.au/climate-conscious-lawyer/chapter/2-developments-in-administrative-law-in-response-to-climate-change/> at 2.1.2, quoting Victoria McGinness and Murray Raff, 'Coal and Climate Change: A Study of Contemporary Climate Litigation in Australia' (2020) 37 *Environmental and Planning Law Journal* 87, 9.

[406] *Gray v Minister for Planning (2006) 152 LGERA 258; [2006] NSWLEC 720.*

[407] Ibid.

[408] Brian Preston, 'Justiciability issues in climate change litigation' <https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_Justiciability_issues_in_climate_change_litigation.pdf> 13.

[409] Thomas Gray KC, Dr Beth Nosworthy and Astrid Gillam, 'National and international perspectives on climate change litigation' (2024) 54 *Australian Bar Review* 16, 24.

[410] Ibid 24.

[411] Chris Taylor and Malte Meinshausen, *Draft Joint Report to the Land Court of Queensland on "Climate Change – Emissions"* (Report, envlaw.com.au) <https://envlaw.com.au/wp-content/uploads/carmichael14.pdf> 8.

and at multiple times in respect of approvals issued for harmful projects.

Adani Mine legal challenges

When the mine was proposed in 2010, the following approvals were required:

- a mining lease under the Mineral Resources Act 1989 (Qld) **(Adani Mining Lease);**
- an environmental authority under the Environmental Protection Act 1994 (Qld) **(Adani Environmental Authority);** and
- Ministerial approval under the EPBC Act.

Each of the above approvals was challenged between 2014-2021 by multiple conservation and Indigenous groups.

Adani Mining Lease & Environmental Authority

Land Services of Coast and Country Inc (**LSSC**), a conservation group, issued objections, pursuant to the process set out in the *Mineral Resources Act 1989* (Qld) and *Environmental Protection Act 1994* (Qld) (**Qld EP Act**), to the Adani Mining Lease & Environmental Authority being granted, including on the basis of the Adani Mine's:

- impact on the groundwater and groundwater-dependent ecosystems;
- impact on biodiversity, including an endangered bird species; and
- contribution to climate change in the form of the coal burning and the consequent impact on the Great Barrier Reef.

LSSC also argued that the Adani Mine was contrary to public interest. Following the objections hearing, the Land Court of Queensland recommended that the Adani Mining Lease & Environmental Authority be granted, subject to conditions regarding monitoring of impacts on the endangered bird species.[412] Both were granted in 2016.

LSCC subsequently sought judicial review of the grant of the Adani Environmental Authority, on the basis that the Qld EPA failed to comply with its obligation to exercise its functions in a way that best achieves the objects of the *Qld EP Act*, including the object of "ecologically sustainable development". Following the filing of an affidavit by the Qld EPA that they were aware of that obligation when making the decision, LSCC amended the application to allege that Qld EPA had erred at law in relation to that obligation.[413] LSCC's application was dismissed by the Queensland Supreme Court on the basis that the Qld EP Act obligation was drafted at a high level of generality and did not constitute a "mandatory consideration".[414]

[412] *Adani Mining Pty Ltd v Land Services of Coast and Country Inc* [2015] QLC 48.
[413] *Land Services of Coast and Country Inc v Chief Executive, Department of Environment and Heritage Protection* (Supreme Court of Queensland, 4189/16, 5 August 2016) <https://envlaw.com.au/wp-content/uploads/carmichael59.pdf>.
[414] *Land Services of Coast and Country Inc v Chief Executive, Department of Environment and Heritage Protection & Anor* [2016] QSC 272 (25 November 2016).

	Various other challenges to the Adani Mining Lease and associated proposed Indigenous Land Use Agreement, filed by Indigenous groups pursuant to the NT Act were also dismissed.[415] EPBC Approval In 2014, the Federal Environment Minister assessed and approved the Adani Mine pursuant to the EPBC Act. Shortly following this, Mackay Conservation Group commenced proceedings seeking judicial review of the approval on the basis that the Minister failed to: (a) adequately consider the total impact on the greenhouse gas emissions from the mine, especially scope three greenhouse gas emissions; (b) adequately consider the environmental record of the proposed mine operator, which included a number of breaches of Indian environmental laws and regulations; and (c) consider two expert Approved Conservation Advice reports in respect of two Australian endangered species; the Yakka Skink and the Ornamental Snake. The proceeding was settled on the basis that ground (c) was made out and the first approval was set aside by agreement. The Minister then issued a second EPBC Act approval of the Adani Mine in October 2015. Between 2015 and 2020, the Australian Conservation Foundation Inc (**ACF**) commenced four applications seeking judicial review of the second Adani Mine EPBC Approval:[416] 1. In 2015, ACF challenged the second approval on the basis that the Minister failed to: o consider the likely impact of combustion emissions on the Great Barrier Reef; o apply the Precautionary Principle; and o act consistently with Australia's international treaty obligations regarding World Heritage sites, as required by s 137 of the EPBC Act. While the review and ACF's appeal were dismissed,[417] ACF was only ordered to pay 70% of the Minister's costs and 40% of Adani's costs, given the public interest nature of the litigation, that ACF did not personally stand to gain from the decision and that the case resolved significant issues about important legislation.[418]

[415] Adani Mining Pty Ltd and Another v Adrian Burragubba, Patrick Malone and Irene White on behalf of the Wangan and Jagalingou People [2015] NNTTA 16 (8 April 2015); Burragubba v State of Queensland [2016] FCA 984 (19 August 2016); Burragubba v State of Queensland [2017] FCAFC 133; Burragubba & Anor v Minister for Natural Resources and Mines & Anor [2016] QSC 273.

[416] *Mackay Conservation Group v Commonwealth of Australia & Ors (Federal Court of Australia, NSD 33 of 2015, 4 August 2015);* *Australian Conservation Foundation Incorporated v Minister for the Environment and Energy* (No 2) [2017] FCAFC 216; *Australian Conservation Foundation Incorporated v Minister for the Environment and Energy* (No 2) [2017] FCAFC 216

[417] *Australian Conservation Foundation Incorporated v Minister for the Environment* (2016) 251 FCR 308;

[418] *Australian Conservation Foundation Incorporated v Minister for the Environment* (No 2) [2016] FCA 1095

	2. In 2017, ACF was unsuccessful in its appeal of the above decision.[419] 3. In 2018, ACF successfully challenged the Minister's election not to apply the 'water trigger' under the EPBC Act to the Adani Mine's essential water source: the North Galilee Water Scheme, meaning that the Adani Mine's impacts on water resources would not be subject to assessment.[420] The government conceded it had comprehensively failed to apply proper process in considering the public submissions, including admitting to having lost submissions, and the decision was set aside by consent.[421] 4. In 2019, the Minister again determined that the water trigger did not apply and the ACF sought judicial review of this further decision. In 2021, the Federal Court found for ACF, requiring the Minister to reconsider their decision.[422]
(iii) Breach of statutory duty	In *Bushfire Survivors for Climate Action Inc v Environment Protection Authority* (see section 5.4(b)(iii) below), a climate action group had success in obtaining a mandamus order requiring the NSW EPA to comply with its duty to develop instruments to ensure the protection of the NSW environment from climate change, in circumstances where the NSW EPA's policies were found to lack 'concrete and direct objectives or standards to ensure environment protection' and failed to identify how success would be measured. However, as set out below, the Court did not find that the duty specifically required that the NSW EPA regulate sources of greenhouse gas emissions in a way consistent with limiting global temperature rise to 1.5°C above pre-industrial levels, due to the discretion it was awarded by the relevant legislation. This indicates that such actions will have limited success in respect of environmental statues which impose broad duties and/or grant decision-makers broad discretion in exercising their duties. It has not yet been tested whether an action based on the tort of breach of statutory duty would succeed in a climate change context, though it is expected that applicants would have difficulty establishing the following elements: • the "relatively rare"[423] "legislative intention that the statute imposing the statutory duty confers on an individual a private civil cause of action in respect of a breach of that duty"[424]; and • that the Applicant suffered "damage, of a kind which the statutory duty was designed to prevent, caused by the breach of the statutory duty"[425], for reasons set out in section 4.2 above.

[419] *Australian Conservation Foundation Incorporated v Minister for the Environment and Energy [2017] FCAFC 134*;
[420] Environmental Defenders Office, *Case Explainer: North Galilee Water Scheme* (16 March 2019) <https://www.edo.org.au/2019/03/16/case-explainer-north-galilee-water-scheme/>.
[421] Australian Conservation Foundation, *'ACF Wins Legal Challenge to Adani's Water Scheme Approval as Federal Government Concedes Case'* (Webpage, 12 June 2019) <https://www.acf.org.au/news/acf-wins-legal-challenge-to-adanis-water-scheme-approval-as-federal-govt-concedes-case>.
[422] *Australian Conservation Foundation Incorporated v Minister for the Environment* [2021] FCA 550.
[423] LexisNexis, *Halsbury's Laws of Australia* (online at 4 July 2023) 415 Tort, '(4) Breach of Statutory Duty (C) Private Cause of Action [415-1340] General'.
[424] *Martin v Western District of Australasian Coal & Shale Employees Federation* (1934) 34 SR (NSW) 593.
[425] *Kebewar Pty Ltd v Harkin* (1987) 9 NSWLR 738.

(iv) Human rights-based actions	While Australia has no national bill of rights, human rights legislation is in force at a state-level in Victoria,[426] Queensland[427] and the ACT[428], as set out in section 3.5(f) above. Individuals whose human rights are or will be impacted by contraventions of the Public Authority Obligation may make a complaint to the applicable human rights or oversight body (following a complaint to the relevant authority)[429] or, may commence proceedings. However: • in Victoria and Queensland, breach of the Public Authority Obligation is not a right of action in itself. Any such claims can only be made in proceedings in which relief or a remedy is sought (on grounds other than the Public Authority Obligation) that the relevant decision was unlawful;[430] • in the ACT, until 1 October 2028,[431] proceedings cannot be commenced in relation to contraventions of the right to a healthy environment.[432] This does not prevent individuals from making claims in relation to the same circumstances on the basis of other human rights. For example, individuals are permitted to claim that a public authority acted in a way that is incompatible with the Right to life in circumstances where the subject matter of the claim may include an exposure of the person to an environmental risk to their health that is life threatening;[433] and • Courts are not permitted to award damages in relation to any such breaches.[434] Having regard to the success of the active objectors in the *Waratah* decision (see section 5.1(b)(i) below), there may be a strategic advantage in commencing proceedings in states with human rights litigation, including in administrative cases where the relevant Court is required to interpret provisions consistently with human rights. However, please note the limitations referred to in section 5.1(b)(i) below regarding *Waratah*, including regarding anticipatory breach. In June 2025, Burns J of the Queensland Supreme Court approved proceedings commenced by Members of the Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians against the Government in relation to the Adani Mine, alleging, pursuant to the *Human Rights Act 2019* (Qld) and Qld EP Act that the government's failure to act to protect sacred sites is unlawful.[435] The groups have also filed a class action in the Federal Court against Adani (now Bravus), alleging serious racial discrimination and vilification for Bravus' failure to permit access to the sacred Doongmabulla Springs site for cultural

[426] *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[427] *Human Rights Act 2019* (Qld).
[428] *Human Rights Act 2004* (ACT).
[429] *Human Rights Commission Act 2005* (ACT) s 41D(2); *Human Rights Act 2019* (Qld) s 65; *Victorian Human Rights Commission*, 'Charter Complaints and Remedies' https://www.humanrights.vic.gov.au/for-public-sector/charter-complaints-and-remedies/.
[430] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 39(1); *Human Rights Act 2019* (Qld) s 59(1)-(2).
[431] *Human Rights Act 2004* (ACT) s 40C(10).
[432] *Human Rights Act 2004* (ACT) s 40C(8).
[433] *Human Rights Act 2004* (ACT) s 40C(9).
[434] *Human Rights Act 2004* (ACT) s 40C(6); *Human Rights Act 2019* (Qld) s 59(3); *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 39(3).
[435] *Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians Ltd v Chief Executive, Department of Environment, Science and Innovation* (Supreme Court of Queensland, Burns J, BS 1902/24, 6 June 2025).

	ceremonies and in relation to public statements issued by Bravus regarding the Applicants.[436]
(c) *Actions against corporate defendants*	
(i) Personal liability	As set out in section 3.4(h) above, legislation at a federal and state level provides for executive officers, directors and other persons involved in the management of a corporation to be held personally liable for environmental offences committed by that corporation. Recent regulatory trends (see King Wood Mallesons article here) indicate that state EPA's may be more active in prosecuting individuals for such crimes, as evidenced by cases such as *Environment Protection Authority v Nath*[437], in which the NSW EPA successfully prosecuted the director of a tyre recycling organisation in circumstances where: • the corporation had previously been prosecuted for similar breaches of environment protection legislation and for failures to comply with waste regulations on at least two separate occasions; • previous action taken by the NSW EPA against the corporation did not result in compliance; • the corporation had entered voluntary administration; and • the director had "almost complete control over the commission of the offences".
(ii) Directors Duties	The Corporations Act imposes duties on company directors to exercise their powers and discharge their duties: • in good faith, in the best interests of the company and for a proper purpose[438]; and • with the degree of care and diligence that a reasonable director in their position would exercise.[439] While the application of directors' duties to climate change has not yet been tested by a Court,[440] public opinions prepared by senior Australian barristers provide guidance regarding how the duties might be interpreted: Duty of good faith In advice commissioned by the Australian Institute of Company Directors regarding the duty of good faith, Bret Walker SC and Gerald Ng SC posited that: [441] • directors have considerable discretion to identify the best interests of the company and that while shareholder interests are central, directors can and should consider a range of different stakeholder interests, including those of employees, customers, suppliers, creditors, traditional owners, the environment and broader community (particularly due to the potential reputational harm that may result); and • directors should take a long-term view of where the company's interests lie.

[436] Standing Our Ground, 'Blog', Standing Our Ground (Web Page) <https://standing-our-ground.org/blog/\>.
[437] *Environment Protection Authority v Nath* [2024] NSWLEC 10.
[438] *Corporations Act 2001* (Cth) s 181.
[439] Ibid s 180.
[440] Developments in Company Law in Response to Climate Change' in Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer* (La Trobe eBureau, 2024) <https://oercollective.caul.edu.au/climate-conscious-lawyer/chapter/2-developments-in-company-law-in-response-to-climate-change/\>.
[441] Australian Institute of Company Directors, *Directors' 'Best Interests' Duty in Practice* (AICD Practice Statement, July 2022).

	Duty of care and diligence Between 2016-2021, prominent commercial law barristers Noel Hutley SC and Sebastian Hartford-Davis released a series of legal opinions in which they posited that company directors, as part of their duty of care and diligence, are required to inform themselves of foreseeable risks posed to company interests by climate change and take proportionate measures to manage these risks.[442] In particular: • climate change risks would be viewed by courts as reasonably foreseeable;[443] • emerging policy developments (including the Paris Agreement), increasing investor and community expectations, and scientific projections, which evidenced that climate risks may manifest in the short to medium term each elevate the standard of care expected of a reasonable director;[444] • "it is no longer safe to assume that directors adequately discharge their duties simply by considering and disclosing climate-related trends and risks; in relevant sectors, directors of listed companies must also take reasonable steps to see that positive action is being taken: to identify and manage risks, to design and implement strategies, to select and use appropriate standards, to make accurate assessments and disclosures, and to deliver on their company's public commitments and targets";[445] and • directors should carefully align any public commitments on climate change (including net-zero emissions targets) with the company's operational strategy, as a failure to do so may expose directors to liability for misleading and deceptive conduct.[446] ASIC has described the 2016 opinion as "legally sound and… reflective of our understanding of the position under the prevailing case law in Australia in so far as directors' duties are concerned."[447] However, international cases based on equivalent duties to act with due care and skill such as *ClientEarth v Shell's Board of Directors [2023] EWHC1897*, commenced in relation to duties in the *Companies Act 2006* (UK) indicate that: [448] • the duty is focussed on material financial risks to the company and "it is reasonably open for directors to decide to continue to pursue climate-damaging activities such as new oil and gas developments in the short to medium term as part of their business model if they are profitable and the financial risks associated with these activities can be appropriately managed … even though this is completely at

[442] Centre for Policy Development, *2016 Hutley Opinion on Directors' Duties and Climate Change* (Legal Opinion, 30 October 2016) (Noel Hutley SC and Sebastian Hartford-Davis).
[443] Ibid.
[444] Noel Hutley and Sebastian Hartford-Davis, *Climate Change and Directors' Duties (Supplementary Memorandum of Opinion*, Centre for Policy Development (26 March 2019) 3-8.
[445] Noel Hutley QC and Sebastian Hartford-Davis, *Climate Change and Directors' Duties: Further Supplementary Memorandum of Opinion* (23 April 2021) 2-3.
[446] Ibid 11-15.
[447] John Price, *'Climate Change'* (Speech, Centre for Policy Development: Financing a Sustainable Economy, Sydney, 18 June 2018) <https://www.asic.gov.au/about-asic/news-centre/speeches/climate-change/>.
[448] Developments in Company Law in Response to Climate Change' in Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer* (La Trobe eBureau, 2024) <https://oercollective.caul.edu.au/climate-conscious-lawyer/chapter/2-developments-in-company-law-in-response-to-climate-change/\>.

	odds with the timely phase out of fossil fuels required to achieve the *Paris Agreement* goals"; and • there is a "tendency to prioritise shareholder interests (or more specifically, the short-term, profit-focused interests of current shareholders above the interests of longer-term or even future shareholders) in interpreting the best interests of the company.
(iii) Misleading and/or deceptive representations	Greenwashing claims have typically been commenced by Regulators against corporate defendants (see "Greenwashing actions" below), however, there may be scope for private parties to commence proceedings under the Australian Consumer Law for false and/or misleading or deceptive representations.[449] The Hon Justice Markovic has not yet handed down her decision in Federal Court proceedings commenced against Santos Limited by the Australian Centre for Corporate Responsibility (**ACCR**), which may, if successful, serve as precedent for such claims. The Santos Proceedings have been commenced in respect of statements in Santos' annual report that natural gas is "clean fuel" and that it has a credible pathway to net zero emissions by 2040.[450] The ACCR is seeking a declaration that Santos has engaged in misleading or deceptive conduct or conduct that is likely to mislead or deceive and injunctions prohibiting such conduct and requiring Santos to issue a corrective statement. Similar proceedings commenced against Energy Australia were settled in May 2025.[451]
(iv) Corporate mandatory disclosure	"In recent years there has been an upsurge in interest in climate-related financial disclosures. Climate risk and disclosure have become a shared interest of domestic financial regulatory bodies, international groups, investor bodies and the public"[452] Various claims have been filed by shareholders seeking disclosure of information and/or documents from companies regarding environmental issues on grounds such as: • s 247A of the *Corporations Act*, permitting Courts to make orders authorising shareholders to inspect the company's books where the application is brought in good faith for a "proper purpose" or for the purpose of commencing proceedings against the company (see *Abrahams v CBA* in section 5.4(b)(vi) below and *Beree v National Australia Bank*[453]); • s 516A of the EPBC Act which requires disclosure by Government Agencies of certain matters regarding their effect on the environment (see *Jubilee v Export Finance and Insurance Corporation & Ors* in section 5.4(b)(vi) below); • s 1017C of the Corporations Act, which requires the disclosure of particular information in relation to superannuation products (see *McVeigh v REST* in section 5.4(b)(vi) below); and

[449] *Competition and Consumer Act 2010* (Cth) sch 2 ('Australian Consumer Law') ss 18, 29.
[450] *Australian Centre for Corporate Responsibility v Santos* (Federal Court of Australia, NSD858/2021, commenced August 25 2021)
[451] Equity Generation Lawyers, 'Parents v EnergyAustralia (Offsets Greenwashing)' (Web Page) <https://equitygenerationlawyers.com/case/ap4ca-v-energyaustralia/>.
[452] Brian J Preston, *'The Impact of the Paris Agreement on Climate Change Litigation and Law'* (Speech/Paper, 27–28 September 2019) 48 <https://lec.nsw.gov.au/documents/speeches-and-papers/Preston_CJ_-_The_Impact_of_the_Paris_Agreement_on_Climate_Change_Litigation_and_Law.pdf>.
[453] *Beere v National Australia Bank* (Federal Court of Australia, NSD715/2024).

	• the preliminary discovery rules (see *Rossiter v ANZ Group Holdings Limited*).[454] While Plaintiffs in these cases have generally successfully obtained the documents sought by way of a commercial settlement, there is limited precedent involving consideration of these provisions in a climate change context and the disclosure is usually for a limited purpose and subject to strict obligations of confidence (see, e.g. the orders made in *Abrahams v CBA,* referred to in section 5.4(b)(vi) below).[455] The new obligation in the Corporations Act to prepare and publicise annual sustainability reports (see section 3.4(f) above) may obviate the need for such proceedings in relation to in-scope reporting entities.
(v) Tortious claims: nuisance	Nuisance claims are commenced in relation to unreasonable and substantial: • acts, unwarranted by law, which endanger the life, health, property, morals or comfort of the public or obstruct or interfere with the public in the exercise or enjoyment of public rights (**public nuisance**)[456]; • interferences with use and enjoyment of property (**private nuisance**).[457] The usual requirements of causation and remoteness of damage (including that the interference was reasonably foreseeable) apply to nuisance actions seeking damages.[458] While employed as a leading cause of action by climate litigators in the US,[459] limited nuisance claims relating to environmental harms have been commenced in Australia. The recent wave of US cases largely involves plaintiffs seeking compensation from carbon majors for alleged climate change-related damage, relying on advances in science in their attempts to apportion liability.[460] The factors referred to in section 4.2 above may be having an impact on the hesitance of Australian plaintiffs to bring such claims, particularly from a causation perspective, given the uncertainty among courts regarding whether downstream end user emissions from the combustion of fossil fuels should be attributed to the total greenhouse gas emissions of coal mines (see, e.g. *ACF v Minister for the Environment and Energy* in section (b)(ii) above, compared against *Gloucester Resources Ltd v Minister for Planning* (in section 5.4(b)(i) below)). Obiter from *Macquarie Generation v Hodgson* (see section 5.5(b) below) indicates that a nuisance claim in respect of CO^2 emissions would be particularly difficult. In addition, given 'the social or public interest value in the defendant's activity' is a factor in determining whether an interference is

[454] Equity Generation Lawyers, 'Catherine Rossiter v ANZ Group Holdings Limited' (Web Page) <https://equitygenerationlawyers.com/case/catherine-rossiter-v-anz-group-holdings-limited/>.
[455] *Abrahams v Commonwealth Bank of Australia (Federal Court of Australia, NSD864/2021).*
[456] LexisNexis, *Halsbury's Laws of Australia* (online at 4 July 2023) 415 Tort, '(3(c)) Public Nuisance'.
[457] LexisNexis, *Halsbury's Laws of Australia* (online at 4 July 2023) 415 Tort, '(3(b)) Private Nuisance'.
[458] LexisNexis, *Halsbury's Laws of Australia* (online at 4 July 2023) 415 Tort, '(3(c)) Public Nuisance'; LexisNexis, *Halsbury's Laws of Australia* (online at 4 July 2023) 415 Tort, '(3(b)) Private Nuisance'.
[459] Nia Emmanouil, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) 47(3) *Monash University Law Review* 142.
[460] Nia Emmanouil, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can It Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) 47(3) *Monash University Law Review* 142,151.

	"unreasonable" in nuisance claims,[461] there is a risk that Courts would find corporate defendants' actions in generating greenhouse gases, etc, to be reasonable.
(d) Regulatory Proceedings	
(i) Greenwashing actions	Various Australian Regulators have had success pursuing corporate defendants regarding statements that give an incorrect impression about the entities' environmental actions (greenwashing).[462] For example, in 2008, the Australian Competition and Consumer Commission entered into an enforceable undertaking with Goodyear Tyres regarding misleading statements about 'environmentally friendly tyres'[463] and successfully obtained declarations that GM Holden Limited had engaged in conduct that was likely to mislead or deceive for misleading statements that Saab vehicles were carbon neutral and that native trees were being planted as a carbon offset.[464] ASIC has also actively issued infringement notices[465] and sought civil penalties regarding greenwashing. In Australian Securities and Investments Commission v Mercer Superannuation (Australia) Limited [2024] FCA 850, Australian Securities and Investments Commission v Vanguard Investments Australia Ltd (No 2) [2024] FCA 1086 and Australian Securities and Investments Commission v LGSS Pty Ltd (No 3) [2025] FCA 205**,** ASIC successfully obtained orders requiring: • Mercer Superannuation to pay a pecuniary penalty of AU$11.3million; • Vanguard Investments to pay a pecuniary penalty of AU$12.9million; and • Active Super to pay a pecuniary penalty of AU$10.5million, for false or misleading representations and conduct liable to mislead public, in contravention of *Australian Securities and Investments Commission Act 2001* (Cth). Each of the defendants was also ordered to pay ASIC's costs. The contraventions in each case were found to be serious, with the Federal Court making findings that each of the defendants benefitted from their misleading conduct by misrepresenting ethical nature of significant part of its investments. While Australian regulators have discretion as to whether to pursue regulatory action against corporate offenders, one strategy adopted by climate action groups in Australia has been to send and publicise letters to the relevant regulator, requesting that they exercise their investigation powers. For example, in late 2022, the Environmental Defenders Office wrote to the ACCC, on behalf of the Australian Conservation Foundation, requesting that they investigate greenwashing claims in an advertising campaign by the Australian Gas

[461] *Southern Properties (WA) Pty Ltd v Executive Director of the Department of Conservation and Land Management* (2012) 42 WAR 287, 310 [118].
[462] Thomson Reuters Practical Law, *Greenwashing.*
[463] Australian Competition and Consumer Commission, 'Goodyear Tyres apologises, offers compensation for unsubstantiated environmental claims' (Media Release, 26 June 2008) <https://www.accc.gov.au/media-release/goodyear-tyres-apologises-offers-compensation-for-unsubstantiated-environmental-claims> (accessed 6 March 2024).
[464] *Australian Competition and Consumer Commission v GM Holden Ltd* (ACN 006 893 232) [2008] FCA 1428.
[465] Australian Securities and Investments Commission, 'ASIC Acts Against Greenwashing by Energy Company' (Media Release No 22-294MR, 27 October 2022) <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-294mr-asic-acts-against-greenwashing-by-energy-company/>.

	Network (**AGN**).[466] The ACCC commenced proceedings against the AGN in June 2025, noting that it investigated the AGN "after receiving complaints about Australian Gas Networks from consumers and the Australian Conservation Foundation".[467]

4.4 Complaints to International Bodies

Complainants have also pursued claims in various international forums, including by way of:

Complaint forum	Example complaint(s)
Complaints to the United Nations Human Rights Committee (HRC) who is empowered to receive and consider individual complaints from individuals or groups of individuals claiming to be victims of a violation of the ICCPR by States who have ratified the Optional Protocol to the ICCPR[468] (including Australia[469]).	In 2019, a group of Indigenous residents of the Torres Strait Islands made a complaint to the HRC alleging that the Australian Government had failed to take mitigation and adaptation measures to combat the effects of climate change, including to ensure the long term habitability of the Torres Strait Islands in violation of various human rights including the right to life, rights to culture, freedom from arbitrary or unlawful interference with privacy, family and home and the rights of children to protection.[470] In 2022, the HRC found that "by failing to implement adequate mitigation and adaptation measures to prevent negative climate change impacts on the authors and the islands where they live, [Australia] had violated their rights under the ICCPR".[471] The HRC considered that Australia was required to provide an adequate remedy and recommended that Australia: • provide adequate compensation to the complainants for the harm that they have suffered; • engage in meaningful consultations with the complainants' communities in order to conduct needs assessments; • continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; • monitor and review the effectiveness of the measures implemented and resolve any deficiencies as soon as practicable; and • take steps to prevent similar violations from occurring in the future. The Australian Government's response is here. However, note also *Sacchi et al. v Argentina et al*.[472], in which 16 children filed a complaint with the Committee on the Rights of the Child pursuant to the Optional Protocol which applies

[466] Environmental Defenders Office, 'Ad Standards Complaint re Australian Gas Network' (Complaint, 9 August 2022) <https://www.edo.org.au/wp-content/uploads/2023/02/Ad-Standards-complaint-re-Australian-Gas-Network.pdf>.
[467] Australian Competition and Consumer Commission, 'Australian Gas Networks in Court over Alleged Greenwashing in Renewable Gas Campaign' (Media Release, 26 June 2025) <https://www.accc.gov.au/media-release/australian-gas-networks-in-court-over-alleged-greenwashing-in-renewable-gas-campaign>.
[468] Office of the United Nations High Commissioner for Human Rights, 'Individual Communications' (Web Page) <https://www.ohchr.org/en/treaty-bodies/ccpr/individual-communications>.
[469] Office of the United Nations High Commissioner for Human Rights, 'Human Rights Indicators' (Web Page) <https://indicators.ohchr.org/>.
[470] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 6, 27, 17 and 24.
[471] Human Rights Committee, *Communication No 3624/2019*, UN Doc CCPR/C/135/D/3624/2019 (n.d.) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F135%2FD%2F3624%2F2019&Lang=en>.
[472] Committee on the Rights of the Child, *Sacchi et al v Argentina et al*, UN Doc CRC/C/88/D/104/2019 (2021).

	under the CROC against Argentina, Brazil, France, Germany, and Turkey, alleging that each State had violated the complainants' human rights under the CROC by failing to fulfil their international commitments to reduce emissions. The Complaint was found to be inadmissible by the Committee, as the Complainants had not started any domestic proceedings and thus had not exhausted the domestic remedies in each Defendant State before making the complaint.[473]
Requests for investigations made to the Office of the Prosecutor of the International Criminal Court (**ICC**).	In 2022, Students for Climate Solutions New Zealand and the UK Youth Climate Coalition submitted a request to the prosecutor of the ICC: • to open an investigation against Senior Executives from BP "into the crime against humanity of climate change pursuant to Article 15 of the Rome Statute"; and • for "payment of reparations to victims of climate change through the loss and damage mechanisms under Article 8 of the United Nations Framework Convention on Climate Change's Paris Agreement".[474] Whilst not yet determined, any such cases are subject to various limitations (see Lionel Nichols' article here for more information), including that the ICC can only prosecute crimes set out in the Rome Statute[475]. Crimes "causing serious damage to the environment" were removed from the final draft of the Rome Statute[476] and Article 8(2)(b), which recognises the war crime of intentionally launching an attack during an international armed conflict where it is known that such an attack will cause 'severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated" contains the only reference to the environment in the Rome Statute. In September 2024, Fiji, Samoa, and Vanuatu submitted a joint proposal to the ICC to recognize "ecocide" (defined in section 5.5 below) as a war crime. If a two-thirds majority of member States approve an amendment to the Rome Statute, 'ecocide' would become the court's fifth jurisdictional responsibility, alongside genocide, crimes against humanity, war crimes, and crimes of aggression. This would allow the ICC's Office of the Prosecutor to initiate an investigation against an individual suspected of 'ecocide', either on its own initiative or upon referral.[477]
Advisory proceedings in the International Court of Justice (**ICJ**), however,	In July 2025, the ICJ delivered an advisory opinion on "the obligations of States with respect to climate change". This advisory opinion was requested by a resolution of the United

[473] Office of the United Nations High Commissioner for Human Rights, 'Session Details' (Web Page) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1351&Lang=en>.

[474] NZ Students for Climate Solutions and UK Youth Climate Coalition, *NZ Students for Climate Solutions and UK Youth Climate Coalition v Board of BP – Points of Claim* (Submission, 12 August 2022) <https://cdn.climatepolicyradar.org/navigator/XAA/2022/nz-students-for-climate-solutions-and-uk-youth-climate-coalition-v-board-of-bp_21f0362b7e11a6003f5d487e51e5552d.pdf>.

[475] Lionel Nichols, 'Is a Failure to Act on Climate Change a Crime against Humanity?' (Article, 6 March 2024) <https://www.4newsquare.com/is-a-failure-to-act-on-climate-change-a-crime-against-humanity/>.

[476] Ibid.

[477] Eco Jurisprudence Monitor, 'Vanuatu, Fiji, and Samoa Proposed Amendment to the Rome Statute to Include a Crime of Ecocide' (Web Page, 9 September 2024) <https://ecojurisprudence.org/initiatives/vanuatu-fiji-and-samoa-proposed-amendment-to-the-rome-statute-to-include-a-crime-of-ecocide/>.

note that the ICJ will only determine legal questions referred to it by United Nations organs and specialized agencies and its opinions are not binding (unless a State has otherwise agreed).[478]	Nations General Assembly following a campaign by 27 students from the University of the South Pacific.[479] See section 5.1(b)(i) below for a summary of the advisory opinion.
Complaints to United Nations Special Rapporteurs.	In 2021, 5 young Australians made a complaint to the United Nations Special Rapporteur on Human Rights and the Environment, Special Rapporteur on the Rights of Indigenous Peoples, and Special Rapporteur on the Rights of Persons with Disabilities,[480] asserting that the Australian government had breached the Paris Agreement and multiple UN instruments, including but not limited to the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and UNDRIP. The Complainants claimed harms including significant mental health issues resulting from fears of future harm, damage to and forced disconnection with important cultural sites and Country, the impeded ability to attend school, as well as inability to leave their homes and asked each of the Special Rapporteurs to seek an explanation from Australia regarding how: • Australia's climate inaction is consistent with its human rights obligations; • Australia's current conduct is compatible with human rights of young Australians and a 1.5°C pathway; • the current Nationally Determined Contribution decision-making has involved young people in Australia who are and will continue to feel the acute impacts of climate harms and the State's decision-making, and whether the State will establish a permanent forum to take advice from young people from impacted communities about the lived reality of climate inaction. The complaint further sought that the Special Rapporteurs urge Australia to set a 2030 target that is consistent with its human rights obligations. The complaint is currently pending.
OECD's grievance mechanisms, OECD Watch and its National Contact Points (**NCP**) (see the Australian NCP for Responsible Business Conduct here), [481] set up to provide a remedy for corporate misconduct and breaches of the OECD Guidelines for	• In 2020, Friends of the Earth Australia and three individuals whose properties had been damaged or destroyed in bushfires filed a complaint regarding ANZ Bank to the Australian NCP, alleging that aspects of ANZ's disclosures, target-setting and scenario-analysis regarding fossil fuels, greenhouse gas emissions and climate change breached the OECD Guidelines. The Australian NCP found that ANZ was not in breach of the OECD Guidelines, noting that while climate change from greenhouse gas emissions (including those arising from bank financing) is increasing bushfire risk, this does not mean any funding which

[478] International Court of Justice, 'How the Court Works' (Web Page) <https://www.icj-cij.org/how-the-court-works>.
[479] International Institute for Sustainable Development, 'ICJ Advisory Opinion on Climate Change' (Web Page) <https://www.iisd.org/articles/deep-dive/icj-advisory-opinion-climate-change>.
[480] Environmental Justice Australia, *Environmental Justice Australia (EJA) v Australia* (Submission, 2021) <https://cdn.climatepolicyradar.org/navigator/XAA/2021/environmental-justice-australia-eja-v-australia_4fb14bd09bfcf936d5b462b38477a0dc.pdf>.
[481] OECD Watch, 'Our Work' (Web Page) <https://www.oecdwatch.org/about-us/our-work/>.

Multinational Enterprises on Responsible Business Conduct (**OECD Guidelines**).[482]	enables greenhouse gas emission is a breach of the Guidelines, as the breach will depend on what due diligence has occurred. The Australian NCP noted that there was ambiguity about the OECD Guidelines expectations regarding climate change and recommended that the OECD review the guidelines and provide further guidance.[483] The OECD subsequently released a guidance document tiled 'Managing Climate Risks and Impacts through Due Diligence for Responsible Business Conduct'.[484]
	• In 2019, ClientEarth filed a complaint regarding an advertising campaign run by BP in the UK to the UK NCP, alleging that BP had, in breach of the OECD Guidelines[485]:
	  • misrepresented the scale of its renewable and low-carbon energy;
	  • omitted information about negative impacts of climate change caused using fossil fuels; and
	  • made misleading claims about the lifecycle of emissions and the environmental impacts of gas.
	Before the UK NCP could issue its assessment, BP announced that it would withdraw the campaign and made a commitment to stop global corporate reputation advertising campaigns and to redirect resources towards promoting climate policies. As a result, the UK NCP rejected the complaint on the basis that they viewed the matter as being resolved

5. CLIMATE JUSTICE LAWHACK QUESTIONS

5.1 Adaptation Q1: Human rights-consistent transition to a green energy future

Prepare an effective legal strategy to ensure that the transition to a green energy future is consistent with human rights principles, including those outlined in the United Nations Declaration on the Rights of Indigenous Peoples.

(a) Background

(i) Human rights impacted by climate change

Various human rights are jeopardised by climate change. This includes:

the right to life[486]	which "can be violated by a life-threatening situation even if there is no loss of life"[487] and which confers obligations: • in the **positive:** to take positive steps to ensure the right is protected; and

[482] Australian National Contact Point for Responsible Business Conduct, 'About the AusNCP' (Web Page) <https://ausncp.gov.au/about>.

[483] Australian National Contact Point for Responsible Business Conduct, *Final Statement: Friends of the Earth* (Final Statement, December 2021) <https://ausncp.gov.au/sites/default/files/2021-12/AusNCP_Final_Statement_Friends_of_Earth_0.pdf>.

[484] Organisation for Economic Co-operation and Development, *Managing Climate Risks and Impacts Through Due Diligence for Responsible Business Conduct* (Report, October 2023) <https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/10/managing-climate-risks-and-impacts-through-due-diligence-for-responsible-business-conduct_024e5002/8aee4fce-en.pdf>.

[485] ClientEarth, *ClientEarth v BP* (Complaint to the UK National Contact Point, 5 December 2019) <https://www.oecdwatch.org/complaint/clientearth-vs-bp/>.

[486] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 6.

[487] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1459] [1468]; Human Rights Committee, *Views: Communication No, 3624/2019*, UN Doc CCPR/C/135/D/3624/2019 (22 September 2022), [8.3].

	• in the **negative:** to refrain from conduct that causes an arbitrary deprivation of life,[488] being ""intentional or otherwise foreseeable and preventable life terminating harm or injury, caused by an act or omission".[489] As noted by the Land Court of Queensland, jurisprudence indicates that "environmental degradation, climate change, and unsustainable development constitute pressing and serious threats to the ability to enjoy the right to life".[490] In 2019, the United Nations' Human Rights Committee, by way of a "general comment" on Article 6, noted that "environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life".[491]
the rights of children[492]	as "the decisions we make today have far more consequences for children alive and those yet to be borne than it does for today's adults"[493] and due to children's inability to control the decisions that affect them.[494]
the right to property[495]	as climate change impacts include destruction of property or a sufficient restriction on the ability to use and enjoy property.[496]
the right to privacy and home[497]	as extreme heart and sea level rise is expected to make certain parts of Australia unliveable in the future.[498]
the right to enjoy human rights without discrimination[499]	noting, as set out above and in section 5.3 below, the disproportionate impacts of climate change on older and younger persons, and on First Nations persons.
the right to adequate food[500]	due to the impact of sudden and slow-onset events, including heatwaves, salinisation, sea-level rise, flooding and droughts, on food systems worldwide.[501]
the rights to safe drinking water[502] and to sanitation[503]	as climate change is projected to reduce renewable surface water and groundwater resources significantly in most arid and semi-arid regions, including as a result of extreme weather events, overexploitation of groundwater and increased concentration of pollutants.[504]

[488] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1453]-[1454].
[489] Human Rights Committee, *General Comment No 36: Article 6: Right to Life,* 124th Sess, UN Doc CCPR/C/GV/36 (3 September 2019), 2 [6].
[490] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1480].
[491] Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)*, 16th sess, UN Doc CCPR/C/GC/36 (3 September 2019) [62].
[492] CROC, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 24.
[493] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1580].
[494] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1587].
[495] Universal Declaration of Human Rights (UDHR): Article 17(2).
[496] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1611].
[497] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 17.
[498] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1625].
[499] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 3.
[500] ICESCR art 11.
[501] Report of the United Nations High Commissioner for Human Rights, 'Measures for minimizing the adverse impact of climate change on the full realization of the right to food' (2024) A/HRC/55/37 < https://docs.un.org/en/A/HRC/55/37>.
[502] UN General assembly resolution A/RES/64/292 https://docs.un.org/en/A/RES/64/292.
[503] UN General assembly resolution A/RES/70/169 https://digitallibrary.un.org/record/821067?v=pdf.
[504] Office of the United Nations High Commissioner for Human Rights, *Climate Change and the Human Rights to Water and Sanitation: Special Thematic Report 1* (January 2022) <https://www.ohchr.org/sites/default/files/2022-01/climate-change-1-friendlyversion.pdf>.

the right to the enjoyment of highest attainable standard of physical and mental health[505]	For example, climate change may impact physical health through extreme weather or changes in temperature; and indirectly through changes to natural systems that result in crop failures, expanding disease vectors, and displacement of persons.[506] Clinical disorders such as depression and anxiety may also be contributed to by climate change.[507] The Committee on Economic, Social and Cultural Rights has underscored that this right requires States, inter alia, to refrain from unlawfully polluting air, water and soil.[508]

Particular groups' vulnerabilities may intersect with more than one human right, compounding the human rights implications of any act which is inconsistent with their rights.[509] By way of example, in addition to the impact on the above human rights of First Nations people, climate change also impacts their cultural rights[510] (see, in particular, the rights enshrined in the UNDRIP set out in section 3.2 above and the rights enshrined in state legislation set out in section 3.5(f) above) including the rights to conserve and protect the environment and the productive capacity of land, water and other resources and to enjoy, maintain, control, protect, develop and use language and traditional cultural expressions.[511]

Various Courts have confirmed that First Nations people will be disproportionately affected by climate change impacts, both:

- physically, for example via their geography exposing them to heatwaves and sea level rise[512]; and
- in terms of survival of culture, due to their active commitment to and participation in caring for country.[513]

More information regarding the disproportionate impact of climate crisis on various groups is set out in section 5.3 below.

(ii) <u>Just Transitions</u>

However, there is concern to ensure states' responses (including proactive policy responses as well as inaction) to climate change do not restrict other human rights such as the right to work,[514] in circumstances where policy responses to climate change necessitate structural transformations that will affect national economies, enterprises, workers and communities.[515] For example, in 2019, the UN Global Compact Network Australia estimated that between 2020 and 2040-2050, in association with the closure of coal-fired power stations, 8,500 Australian jobs would be lost.[516] This poses challenges for both those workers and the communities that have come to depend on

[505] International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12(1).
[506] Office of the United Nations High Commissioner for Human Rights, 'The Impact of Climate Change on the Enjoyment of the Right to Health' <https://www.ohchr.org/en/climate-change/impact-climate-change-enjoyment-right-health>.
[507] Royal Australian and New Zealand College of Psychiatrists, *The Mental Health Impacts of Climate Change* (Position Statement No 106, December 2021) <https://www.ranzcp.org/clinical-guidelines-publications/clinical-guidelines-publications-library/the-mental-health-impacts-of-climate-change\>.
[508] Committee on Economic, Social and Cultural Rights, *General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)*, 11 August 2000, UN Doc E/C.12/2000/4, [34].
[509] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1600].
[510] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1; ICESCR art 15.
[511] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1529]-[1536].
[512] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1542], [1568].
[513] Ibid [1557], [1568].
[514] ICESCR art 6.
[515] United Nations Framework Convention on Climate Change, *Just Transition of the Workforce, and the Creation of Decent Work and Quality Jobs*, UN Doc FCCC/TP/2016/7 (26 October 2016) 17 <https://unfccc.int/resource/docs/2016/tp/07.pdf>.
[516] UN Global Compact Network Australia, 'Just Transition' (Web Page) <https://unglobalcompact.org.au/environment-climate-change/just-transition/>.

the coal energy industry,[517] particularly in circumstances where "previous energy transitions have demonstrated how uneven distribution of costs and benefits exacerbate socio-spatial inequalities for low-income households, First Nation peoples and other marginalised cohorts".[518]

The Paris Agreement expressly "tak[es] account of the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities"[519]. A "just transition" is generally defined as "the shift towards a low-carbon society that ensures the protection of minorities and carbon dependent communities from undue burdens of the decarbonization costs".[520]

Stambe et al consider that successful just transition requires:

- a multifaceted approach that ensures a 'fair' distribution of benefits and burdens emerging from environmental policy changes; and
- that the voice, interests and desires of local communities experiencing disruption from policy decisions not be overlooked by more powerful actors (such as policy makers, government agencies, private firms) managing the transition.[521]

Just transitions cases have been lodged in multiple countries, challenging the distributional impacts of climate policy or the processes by which climate policies were developed, generally on human rights grounds (see the Just Transition litigation tracking tool here). Further examples are set out in subsection (b) below. Such decisions can have a similar effect to the "backlash" lawsuits by delaying or dismantling existing or emerging regulatory measures purporting to address climate change.[522]

(iii) Free, Prior, Informed Consent (**FPIC**)

FPIC is a key principle of UNDRIP, including in:

- Article 10, which prohibits removal of Indigenous peoples from their lands or territories without their free, prior and informed consent;
- Article 11(2), which requires States to provide effective redress for Indigenous peoples' cultural, intellectual, religious and spiritual property taken without their FPIC;
- Article 19, which requires States to obtain their FPIC before adopting and implementing legislative or administrative measures that may affect Indigenous people;
- Article 28, which requires States to provide just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their FPIC;

[517] Corinne Schoch and Kylie Porter, *Leaving No One Behind: Planning for a Just Transition* (Discussion Paper, Global Compact Network Australia, August 2019) <https://unglobalcompact.org.au/wp-content/uploads/2019/08/2019.08.27_Just-Transition-Discussion-Paper.pdf>.

[518] Stambe et al, 'Jobs aren't enough: Redefining just transitions in Australia with community voices' (2025) *Energy Research & Social Science 122, 103999* citing B. Brown, S.J. Spiegel, Coal, climate justice, and the cultural politics of energy transition, Global Environmental Politics 19 (2) (2019) 149–168; K. McGowan, N. Antadze, Recognising the Dark Side of Sustainability Transitions, 2023; and B.K. Sovacool, Who are the victims of low-carbon transitions? Towards a political ecology of climate change mitigation, Energy Research & Social Science 73 (101916) (2021).

[519] *Paris Agreement*, opened for signature 22 April 2016, ATS 24 (entered into force 4 November 2016) pmbl.

[520] Maria Antonia Tigre et al, 'Just Transition Litigation in Latin America: An Initial Categorization of Climate Litigation Cases Amid the Energy Transition' (Research Paper No 9/2023, Sabin Center for Climate Change Law, Columbia Law School and University of Groningen Faculty of Law, 3 January 2023).

[521] Stambe *et al*, 'Jobs Aren't Enough: Redefining Just Transitions in Australia with Community Voices' (2025) *Energy Research & Social Science* 122, 103999.

[522] Daniel A Markell and J B Ruhl, 'An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?' (2012) 64(1) *Florida Law Review* 15; Jacqueline Peel and Hari M Osofsky, 'Climate Change Litigation's Regulatory Pathways: A Comparative Analysis' (2020) 14(1) *Law and Policy* 1.

- Article 29(2), which requires that States take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their FPIC; and
- Article 32(2), which requires that States consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their FPIC prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

In the FPIC Manual, the Food and Agriculture Organization of the UN provides that all elements within FPIC are interlinked and should not be treated as separate elements but are defined as follows:[523]

- **Free**: "refers to a consent given voluntarily and without coercion, intimidation or manipulation. It also refers to a process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations or timelines that are externally imposed";
- **Prior**: "means that consent is sought sufficiently in advance of any authorisation or commencement of activities, at the early stages of a development or investment plan, and not only when the need arises to obtain approval from the community";
- **Informed**: "refers mainly to the nature of the engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process" (see page 15 of the FPIC manual for further details regarding this element); and
- **Consent**: "refers to the collective decision made by the rights-holders and reached through the customary decision-making processes of the affected Indigenous Peoples or communities. Consent must be sought and granted or withheld according to the unique formal or informal political-administrative dynamic of each community. Indigenous peoples and local communities must be able to participate through their own freely chosen representatives, while ensuring the participation of youth, women, the elderly and persons with disabilities as much as possible."

The Federal Government's guidelines regarding FPIC, which apply to the Department of Climate Change, Energy, the Environment and Water when their work "directly impacts First Nations communities"[524] can be found here. While the "free", "prior" and "informed" elements are expressed to "always" apply, the "consent" aspect is expressed to be "subject to legislative context".[525]

A key criticism of the negotiation process,[526] native title future acts determination process (set out in sections 3.4(g) and 4.3 (Native Title future acts determinations) above), and native title generally, is that it is at odds with the principle of FPIC, including because "rights to self-determination must be more than a simple right to be consulted in a process where the final approval is granted by another".[527] As stated by Dennis Walker during the Aboriginal Tent Embassy:

[523] Food and Agriculture Organization of the United Nations (FAO) *Free Prior and Informed Consent: An Indigenous Peoples' Right and a Good Practice for Local Communities – Manual for Project Practitioners* (FAO, **2016**) 15.

[524] Department of Climate Change, Energy, the Environment and Water (DCCEEW), *First Nations Engagement: The Principles of Free, Prior and Informed Consent – Better Practice Engagement with First Nations Communities and People* (Guidelines, 2025) 5.

[525] Ibid 5.

[526] Nia Emmanouil and Carla Chan Unger, *First Peoples and Land Justice Issues in Australia: Addressing Deficits in Corporate Accountability* (RMIT University, 17 March 2021).

[527] Marcelle Burns and Narelle Bedford, 'For the Love of Country: First Nations, Native Title and Climate Change' in *Becoming a Climate Conscious Lawyer: Climate and the Australian Legal System* (La Trobe University eBureau, 2025) <https://oercollective.caul.edu.au/climate-conscious-lawyer/chapter/1-introduction-for-the-love-of-country-first-nations-native-title-and-climate-change/>.

> *"What I would like to point out to you is that in terms of our land and our law it needs to be understood, as my mother said, that we are custodians of this land. And when people say, "oh we lost this land or we lost that land," we didn't lose it anywhere. The land is still here and we still have the responsibility of being custodians of that land. The problem is that we haven't been given the power in the non-Aboriginal legal system to fulfill that custodial right. Until our Elders in Council decide on these matters through their customary laws and until that consent, which Captain Cook was supposed to get, is properly given, then we still live under bad laws."*[528]

In his article, Lucas considers that if the future acts process was based on the FPIC model or another type of consent-based model, "the primary pathway to validating future acts would be through agreement-making. Given that 79% of arbitration applications are withdrawn and most of those withdrawals end in agreement, it is evident that even current disputes tend to result in agreements. Application of FPIC would essentially involve eliminating the arbitration system for validating future acts. In short, if there is no agreement, the project or action does not proceed."[529]

(iv) First Nations-led response to climate crisis

As the oldest continuous living culture, having responded to climate variability and environmental change for millennia, First Nations peoples intimately understand their Country and are custodians of unique knowledge and practices that offer effective climate solutions, such as sustainable agriculture systems and climate-resilient water management.[530]

As stated by Matthews et al, "Indigenous scholars globally view anthropogenic climate change as an extension of colonialism, further eroding the rights of Indigenous peoples to practice their culture and live on traditional lands" in circumstances where:

- "Colonization, capitalism, and climate change all reflect the continued dominance of Western individualistic ("egocentric") philosophies that place humans above and separate from their environment, commodifying and exploiting the environment for power and profits"; and
- "By contrast, the collectivistic ("ecocentric") Indigenous cultures focus on deep, holistic connections to the environment in which valuable knowledge systems have developed from careful custodianship through which ecosystems flourished over millennia."[531]

Many scholars posit that sharing and bringing together Indigenous and Western knowledge systems will enhance understanding of ecological processes and improve effectiveness of climate adaptation and mitigation strategies.[532] By way of example, a collaboration between Yugul Mangi rangers and university-based ecologists in northern Australia led to increased understanding of species presence to inform land-management practices and protection of biodiversity in changing climate conditions.[533]

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[528] Irene Watson, 'Sovereign Spaces, Caring for Country, and the Homeless Position of Aboriginal Peoples' (2009) 180(1) *South Atlantic Quarterly* 27, 27.

[529] Michael Lucas, 'The Future Act Regime in Australian Native Title: Data Analysis, Trends and Insights' (2024) 51(2) *University of Western Australia Law Review* 248, 269.

[530] United Nations Development Programme, 'Indigenous Knowledge Is Crucial in the Fight against Climate Change – Here's Why' (Web Article, 31 July 2024) <https://climatepromise.undp.org/news-and-stories/indigenous-knowledge-crucial-fight-against-climate-change-heres-why>.

[531] Matthews et al., 'Justice, culture, and relationships: Australian Indigenous prescription for planetary health' (2023) 381 *Science* 636, 636.

[532] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (IPCC, 2022).

[533] Emilie Ens, Mitchell L Scott, Yugul Mangi Rangers, Craig Moritz and Rebecca Pirzl, 'Putting Indigenous Conservation Policy into Practice Delivers Biodiversity and Cultural Benefits' (2016) 25(14) *Biodiversity and Conservation* 2889.

There has been growing recognition of the importance of First Nations' traditional knowledge and practices, for example by way of the National Environmental Science Program (and its National First People's Gathering on Climate Change)[534] and increased interest in traditional landscape management and cultural burning since the 2019-20 fires.[535] However, Quandamooka woman and Marine Ethnoecologist Mibu Fischer indicates that such First Nations peoples are still experiencing challenges in the form of prevailing negative perceptions and selective adoption of First Nations practices: "we can't just talk about cultural burning at the expense of other cultural land management and water management practices… there might be two months in a year when you are able to put fire into the landscape…the success of cultural burning relies on effective management over those other ten months as well."[536]

There is general international Indigenous consensus regarding the following determinants of planetary health:

- respecting Country and Indigenous governance that draws on knowledge from, and gives voice to, Country;
- rights of Indigenous people to land, language, health, and intergenerational connections; and
- healthy connections and relationships between Country and people.[537]

In their review of the peer-reviewed studies that describe First Nations–led climate mitigation or adaptation strategies that directly or indirectly referred to health outcomes for First Nations peoples, Matthews et al., noted the following:[538]

- appropriate reparations to enable climate adaptation and improvements in First Nations people's health would include:
  - access to Country;
  - equitable power sharing and co-governance arrangements over land and waters; and
  - enabling supports to strengthen adaptive capacity, including appropriate housing and access to quality education and employment opportunities.
- Native Title and Land Rights do not always provide First Nations people with full autonomy over use of Country, as recently demonstrated by the extinguishment of Native Title by the Queensland government for the Adani coal mine[539] and the wilful destruction of the Juukan Gorge[540];
- First Nations knowledge regarding environmental practices must be celebrated, preserved, and protected by strengthening intergenerational transmission, Indigenous cultural and intellectual property rights, and Indigenous data sovereignty;[541] and
- Restorative justice requires respectful engagement with First Nations people to build trust. "Equitable power and governance arrangements are a crucial ingredient, along with firm commitments to appropriately resource adaptation initiatives" and

[534] NESP Climate Systems Hub, '2024 National First Peoples Gathering on Climate Change' (Webpage, 15 November 2024) <https://nesp2climate.com.au/resource/2024-national-first-peoples-gathering-on-climate-change/>.
[535] Emergency Leaders for Climate Action, 'First Nations Climate Justice' (Report, June 2021) 10.
[536] Emergency Leaders for Climate Action, 'First Nations Climate Justice' (Report, June 2021) 11.
[537] Veronica Matthews *et al*, 'Justice, Culture, and Relationships: Australian Indigenous Prescription for Planetary Health' (2023) 381 *Science* 636, 636.
[538] Ibid 640-641.
[539] Dominic O'Sullivan, 'Indigenous People No Longer Have the Legal Right to Say No to the Adani Mine – Here's What It Means for Equality' (Daily Bulletin, 5 September 2019) <https://www.dailybulletin.com.au/news/48165-indigenous-people-no-longer-have-the-legal-right-to-say-no-to-the-adani-mine-here-s-what-it-means-for-equality>.
[540] Joint Standing Committee on Northern Australia, *Never Again: Inquiry into the Destruction of 46,000-Year-Old Caves at the Juukan Gorge in the Pilbara Region of Western Australia* (Interim Report, Parliament of Australia, 2020) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Northern_Australia_46P/CavesatJukanGorge>.
[541] Ben Orlove *et al*, 'Placing Diverse Knowledge Systems at the Core of Transformative Climate Research' (2023) 52 *Ambio* 1431.

"initiatives led by Aboriginal and Torres Strait Islanders", to enhance the cultural integrity of processes and ensure that projects feature relationality (centring community and their relationship to Country) and reciprocity (co-benefits for community and Country).

(b) Key Cases

(i) Human rights cases

See section 4.3 above regarding the ongoing cases commenced by the Nagana Yarrbayn Wangan and Jagalingou Cultural Custodians.

International Court of Justice Advisory Opinion: "Obligations of States in respect of Climate Change"[542]

By referral from the UN General Assembly (at the instigation of Pacific Islands Students Fighting Climate Change), the ICJ was asked to provide an advisory opinion on the following questions:

> *(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?*
> *(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:*
> *(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?*
> *(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?'"*

Key findings from the ICJ regarding question (a) are set out in section 3.2 above. Regarding question (b), the ICJ found that:

- "the most significant primary obligation for States.. is the obligation to prevent significant harm to the climate system and other parts of the environment, which applies to all States, including those that are not parties to one or more of the climate change treaties. State[s] do not incur responsibility simply because the desired result is not achieved; rather, responsibility is incurred if the State fails to take all measures which were within its power to prevent the significant harm… A State that does not exercise due diligence in the performance of its primary obligation to prevent significant harm to the environment, including to the climate system, commits an internationally wrongful act entailing its responsibility;"[543]
- "A breach by a State of any obligations identified in response to question (a) constitutes an internationally wrongful act entailing the responsibility of that State".[544] The internationally wrongful act in question is not the emission of greenhouse gases per se, but the breach of conventional and customary obligations[545];
- in relation to private actors, [a State's] obligations that it has under question (a) include an "obligation to regulate the activities of private actors as a matter of due diligence…a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction[546];

[542] International Court of Justice, *Obligations of States in respect of Climate Change* (Advisory Opinion, 23 July 2025) <https://www.icj-cij.org/case/187>.
[543] Ibid [409].
[544] Ibid 132.
[545] Ibid [427].
[546] Ibid [428]

- "The legal consequences resulting from the commission of an internationally wrongful act may include the obligations of:
  - cessation of the wrongful actions or omissions, if they are continuing;
  - providing assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require; and
  - full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and injury."[547] In this respect, the Court noted:
    - Mitigation: all States parties have a legal interest in the protection of the main mitigation obligations set forth in the climate change treaties and may invoke the responsibility of other States for failing to fulfil them[548];
    - Restitution: while the remedy of restitution, "which involves the re-establishment of the situation that existed before the wrongful act was committed, may prove difficult or unfeasible in the case of environmental harm, since such harm is often not easily reversible", where climate change has been caused by greenhouse gas emissions, restitution may take the form of reconstructing damaged or destroyed infrastructure, and restoring ecosystems and biodiversity;[549]
    - Compensation: in the event that restitution proves materially impossible, responsible States have an obligation to compensate, in an amount which corresponds to the financially assessable damage suffered by the injured State or its nationals[550]; and
    - Causation:
      - "while climate change is caused by cumulative greenhouse gas emissions, it is scientifically possible to determine each State's total contribution to global emissions, taking into account both historical and current emissions. What constitutes a wrongful act is not the emissions in and of themselves but actions or omissions causing significant harm to the climate system in breach of a State's international obligations".
      - where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act[551]; and
      - Causation involves two distinct elements:[552]
        - whether a given climatic event or trend can be attributed to anthropogenic climate change; and
        - to what extent damage caused by climate change can be attributed to a particular State or group of States.
      - While the second element must be established on a case-by-case basis, in many cases the first element may be addressed by recourse to science. The Court acknowledged that the scientific evidence adduced in the course of the ICJ proceedings established that "significant harm to the climate system has been caused as a result of anthropogenic greenhouse gas emissions".[553]

***Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21**

In this case, the Land Court of Queensland recommended that a mining lease and environmental authority for the Waratah mine be refused following objections to each being

[547] Ibid 132.
[548] Ibid [439]-[441].
[549] Ibid [451].
[550] Ibid [452].
[551] Ibid [410]-[431].
[552] Ibid [423].
[553] Ibid [437].

granted by various parties, including advocacy groups Youth Verdict and The Bimblebox Alliance (the active objectors).

This was the first Australian climate change case in Australia in which domestic human rights legislation was relied upon, with the Court finding that the adverse consequences of greenhouse emissions, including those that would be emitted if coal from the Waratah mine was mined and combusted, would unjustifiably limit the enjoyment of several human rights, including First Nations cultural rights and the human rights set out in rows 1-5 of the table in subsection (a)(i) above.

The Human *Rights Act 2019* (Qld) was not relied upon as a cause of action but rather:

- as public entities, both the Government decision makers in relation the mining lease and environmental authority and the Court, in considering the recommendation to make to the decision makers, were required to ensure that they gave proper consideration to relevant human rights and to make a decision that is not incompatible with human rights;[554] and
- the impact of the proposed mine on human rights was considered in connection with the Court's statutory requirements to take into account any prejudice to public right and public interest, in making its recommendation.[555]

This decision provides valuable insight as to how a Court might interpret each of the above rights in a climate change context, including findings regarding the disproportionate impact of climate change on older people, people living in poverty, other disadvantaged people, and First Nations Aboriginal and Torres Strait Islander peoples, and the intersection of those vulnerabilities, for example impacts specific to First Nations children.[556]

However:

- as a decision of a lower Court, it provides persuasive but not binding precedent for other Australian Courts;
- the objection was based on an anticipated breach of the above human rights, as opposed to an action seeking relief in respect of an actual breach, and considered in a specific statutory context. The Court, in response to a submission by Waratah that the objectors were required to establish causation between Waratah and the risk of injury, suggested that a lower threshold may apply in such "forward looking" cases: "The Court's task in deciding what recommendation to make is forward looking, anticipating the possible consequences, not adjudicative in the sense of attributing liability after the fact;"[557]
- The Court clarified that its function was not to make a legal ruling that the proposed mine would not be compatible with human rights,[558] and that its findings were in relation to the public interest criterion and its obligation to make a decision that is consistent with human rights. It should also be noted that the Court would have made the same findings regarding the public interest criterion, irrespective of its findings regarding the impact on human rights.[559]

[554] *Human Rights Act 2019* (Qld) s 58.
[555] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1783], [1795]-[1796], [1799]-[1800], [1889], [1934] referring to *Mineral Resources Act 1989* (Qld) s 269(4)(k) and *Environmental Protection Act 1994* (Qld) (then s 223(g) and Sch 1).
[556] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [1643] and [1650]-[1653].
[557] Ibid [1325] and [1329].
[558] Ibid [1705].
[559] Ibid [1798]-[1799] and [1808].

(ii) Just Transitions cases

***Company Workers Union of Maritima & Commercial Somarco Limited and Others v Ministry of Energy* (Case No. 25. 530-2021)**

This was a just transition case in Chile, commenced in relation to a decarbonisation agreement entered into between the Chilean Ministry of Energy and various energy companies (**Decarbonisation Agreement**) which provided for the generation of local action plans for communities affected by coal-fired power plants (**LAP**s). Following a decree by the Ministry that a LAP be implemented which purported to ensure the reinsertion or reconversion of workers affected by the Decarbonisation Agreement into the labour market without consulting with those workers, three union workers commenced proceedings arguing that the failure to consult the workers was in violation of their constitutional guarantees which recognize the right to equality before the law, freedom of labour, freedom of association, and property rights.[560]

Whilst initially rejected on procedural grounds, the Chilean Supreme Court overruled the Court of Appeals in finding that the lack of consultation was in violation of the Chilean government's obligation in the Decarbonisation Agreement to perform a just transition strategy both for the workers harmed by the loss of their direct and indirect source of employment and for the communities affected by the loss of services linked to the development of the declining thermoelectric activity, allowing the transition to an environmentally sustainable economy.[561] The Chilean government was ordered to implement a LAP for the reinsertion of the affected workers into the labour market which provided for consultation and to adopt various control measures to ensure compliance with the LAP.

Following this decision, in 2021 the Chilean government released a Just Transition Strategy to demonstrate compliance with the court decision.

(iii) Cases relevant to FPIC

As set out above, the Native title future act determination process does not currently provide for FPIC. The following case and those set out in section 4.3 above, provide an illustrative example of the existing process set out in the NT Act.

***Santos NSW Pty Ltd and Another v Gomeroi People and Another* [2025] NNTTA 12 (19 May 2025)**

This was a series of cases in respect of Santos' Narrabri Gas Project, located wholly within the area the subject of a native title claim by the Gomeroi People.[562] Despite objections in submissions to the various approval processes,[563] the project was approved and negotiations pursuant to the NT Act process described in section 3.4(g) above were undertaken between 2011-2021. In May 2021, Santos applied for a future act determination for the project. The Gomeroi People argued that the project should be refused on the basis of the public interest in:

- "seeking to mitigate and prevent the worst likely effects of global warming, which has consequences at global, national and local levels; and

[560] Political Constitution of the Republic of Chile (Chile) art 19.

[561] Sabin Center for Climate Change Law, *Company Workers Union of Maritima & Commercial Somarco Limited and Others v Ministry of Energy* (Web Page, 2021) <https://climatecasechart.com/non-us-case/company-workers-union-of-maritima-commercial-somarco-limited-and-others-with-ministry-of-energy/>

[562] GHD, *Narrabri Gas Project: Preliminary Environmental Assessment* (Report prepared for Santos NSW (Eastern) Pty Ltd, March 2014) 5.7.1 <https://narrabrigasproject.com.au/uploads/2015/06/Narrabri-Gas-Project-request-for-DGRs1.pdf>.

[563] Marcelle Burns and Narelle Bedford, '2. Case Study: Native Title and Climate Change' in *Becoming a Climate Conscious Lawyer: Climate Change and the Australian Legal System* (CAUL OER Collective, n.d.) 2.3 <https://oercollective.caul.edu.au/climate-conscious-lawyer/chapter/2-case-study-native-title-and-climate-change/#return-footnote-1376-14>.

- the preservation and continuity of the culture and society that underpins the Gomeroi People's tradition law [sic] and custom".[564]

In first instance, the NNTT found that Gomeroi People had not established that the relevant area was a place of cultural significance, that they did not have any evidence of the exercise of native title rights and interests in the project area and that their concerns were outweighed by the 'significant public interest in the responsible exploitation of gas reserves'. The project was approved on the condition that an additional research program be undertaken to assess Aboriginal cultural heritage in the project area to inform the siting of infrastructure and avoid damage to cultural sites.[565] In particular, Member Dowsett stated that "the extent of climate change is a worldwide phenomenon, not directly attributable to the extent of greenhouse gas emissions in north-western New South Wales. The Tribunal cannot resolve that anomaly. It is a matter for government."[566] On appeal, this decision was overturned and remitted to the NNTT for reconsideration,[567] on the basis that the NNTT had taken an unnecessarily narrow view of the public interest.[568]

In its second decision,[569] the NNTT approved the project, finding that while the leases to the land would "affect the enjoyment by Gomeroi of their registered native title right and interests"[570] any risks to Gomeroi culture and way of life were "limited, manageable and acceptable" and could be mitigated with suitable conditions. "Public interest", in this revised decision, was interpreted broadly, and included a consideration of factors such as preserving Aboriginal culture, and the impacts of greenhouse gases on global warming. In weighing up these considerations, the NTTT placed significant weight on energy reliability, including the public benefit in allowing "the transition away from reliance on coalfired power plants to supply the NSW and Australian domestic energy market."[571]

(c) Key Resources

Human Rights	Academic Articles • Brian Preston and Nicola Silbert, 'Trends in Human Rights-Based Climate Litigation: Pathways for Litigation in Australia' (Speech, 2021 Castan Centre for Human Rights Law and King & Wood Mallesons Annual Lecture, 9 December 2021). • Beth Goldblatt, Cristy Clark and Julia Dehm, "Climate Change and Human Rights Law" in Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer* (La Trobe University, 2024). • https://biotech.law.lsu.edu/blog/Climate-Change-Justice-and-Human-Rights-Report-FULL.pdf • Clark, Cristy and Beth Goldblatt, 'The Right to a Healthy Environment and Social and Economic Rights — Responding to Climate Change in Australia' (2023) 29(1) *Australian Journal of Human Rights* 65–83 • Davies, Kirsten, Sam Adelman, Anna Grear, Catherine Iorns Magallanes, Tom Kerns and S Ravi Rajan, 'The Declaration on Human Rights and Climate Change: A New Legal Tool for Global Policy Change' (2017) 8(2) *Journal of Human Rights and the Environment* 217–53 • Dehm, Julia, 'Coal Mines, Carbon Budgets and Human Rights in Australian Climate Litigation: Reflections on Gloucester Resources

[564] *Santos NSW Pty Ltd and Another v Gomeroi People and Another* [2022] NNTTA 74 (19 December 2022) at [770].
[565] Ibid [1041].
[566] Ibid [939].
[567] *Gomeroi People v Santos NSW Pty Ltd and Santos NSW (Narrabri Gas) Pty Ltd* [2024] FCAFC 26.
[568] Ibid.
[569] *Santos NSW Pty Ltd and Another v Gomeroi People and Another* [2025] NNTTA 12 (19 May 2025).
[570] Ibid [122].
[571] Ibid [410

	Limited v Minister for Planning and Environment' (2021) 26(2) *Australian Journal of Human Rights* 244–73 • Goldblatt, Beth, 'Climate Change, Inequality and Discrimination Law: The Example of Swimming Pool Access in Moree' (2023) 41(6) *UNSW Law Journal* 56 <https://doi.org/10.53637/HEYP3471> • Humphrys, Stephen (ed), *Human Rights and Climate Change* (Cambridge University Press, 2010) • Knox, John, 'Human Rights Principles and Climate Change' in Cinnamon Carlarne, Kevin R Gray and Richard Tarasofsky (eds), *Oxford Handbook of International Climate Change Law* (Oxford University Press, 2015) • Lewis, Bridget, 'The Potential of International Rights-based Climate Litigation to Advance Human Rights Law and Climate Justice' (2021) 9(1) *Griffith Journal of Law and Human Dignity* 1–27 • McInerney-Lankford, Siobhán, 'Climate Change and Social Rights: Perspectives on Legal Obligations' in Christina Binder, Jane A Hofbauer, Flávia Piovesan and Amaya Úbeda de Torres (eds), *Research Handbook on International Law and Social Rights* (Edward Elgar Publishing, 2020) 495 <https://doi.org/10.4337/9781788972130.00043> • Preston, Brian and Nicola Silbert, 'Trends in Human Rights-Based Climate Litigation: Pathways for Litigation in Australia' (2023) 49(1) *Monash University Law Review* 39 • Rodríguez-Garavito, César, 'Litigating the Climate Emergency: The Global Rise of Human Rights–based Litigation for Climate Action' in César Rodríguez-Garavito (ed), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press, 2022) 9–83 • Savaresi, Annalisa and Joana Setzer, 'Rights-based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers' (2022) 13(1) *Journal of Human Rights and the Environment* 7–34 UN Documents • Office of the High Commissioner for Human Rights, 'Understanding Human Rights and Climate Change', Submission to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, 2015. • Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)*, 16th sess, UN Doc CCPR/C/GC/36 (3 September 2019). • *The human right to a clean, healthy and sustainable environment*, GA Res 76/300, UN GAOR, UN Doc A/RES/76/300 (1 August 2022). • *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment - Note by the Secretariat*, UN Doc A/HRC/37/59 (24 January 2018). • *Good practices on the right to a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/43/53 (30 December 2019).
Just transitions	• United Nations Framework Convention on Climate Change, 'Just transition of the workforce, and the creation of decent work and quality jobs', UN Doc FCCC/TP/2016/7 (26 October 2016).

	• Peter Adey et al, Just Transitions in Australia: Moving Towards Low Carbon Lives Across Policy, Industry and Practice (Royal Holloway University of London and Monash University, March 2022).
FPIC	• Michael Lucas, 'The Future Act Regime in Australian Native Title: Data Analysis, Trends and Insights' (2024) 51(2) *University of Western Australia Law Review* 248. • Irene Watson, 'Sovereign Spaces, Caring for Country, and the Homeless Position of Aboriginal Peoples' (2009) 180(1) *South Atlantic Quarterly* 27. • Marcelle Burns and Narelle Bedford, 'Introduction – For the Love of Country: First Nations, Native Title and Climate Change' in Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer* (La Trobe University, 2024). • Nia Emmanouil and Carla Chan Unger, First Peoples and Land Justice Issues in Australia: Addressing Deficits in Corporate Accountability (RMIT University Business and Human Rights Centre, 17 March 2021).
First Nations-led response to climate crisis	• Francis Nona et al, Indigenous-led Rights-based Approaches to Climate Litigation: Discussion Paper (Lowitja Institute, June 2025). • Matthews et al., 'Justice, culture, and relationships: Australian Indigenous prescription for planetary health' (2023) 381 *Science* 636. Accompanying schedule here. • James Goodman, Heidi Norman and Devleena Ghosh, 'Indigenous Responses to Climate Change: From Climate Colonialism to Indigenous Climate Justice' (2025) 17(2) Cosmopolitan Civil Societies: An Interdisciplinary Journal (Editorial). • NESP Earth Systems and Climate Change Hub, National First Peoples Gathering on Climate Change: Summary Fact Sheet (2021).

(d) Media Reports

Human Rights	• Amnesty International Australia, 'Climate change: The human rights crisis we cannot ignore' (Web Page, 28 August 2025) <https://www.amnesty.org.au/climate-change-the-human-rights-crisis-we-cannot-ignore/>. • UN News, 'Human rights can be a 'strong lever for progress' in climate change, says UN rights chief ' (News Article, June 2025) <https://news.un.org/en/story/2025/06/1165106>. • Australian Human Rights Commission, 'Urgent action on climate change essential for human rights' (Media Release, 6 November 2025) <https://humanrights.gov.au/about/news/media-releases/urgent-action-climate-change-essential-human-rights>. • United Nations Human Rights Council, 'COP30 must advance human rights-based climate action in accordance with International Court of Justice advisory opinion – UN experts', *Office of the UN High Commissioner for Human Rights* (Press Release, 11 November 2025) <https://www.ohchr.org/en/press-releases/2025/11/cop30-must-advance-human-rights-based-climate-action-accordance?sub-site=HRC>.
Just transitions	• King & Wood Mallesons (Jasmine Forde, Chris Coates, Lucy Cornwell and Catrina Gu), 'A not-so "just transition" – corruption and modern slavery in clean energy', Lexology (Web Page, 7 November 2025).

	• 'The small Australian coal town with big lessons for successful net-zero transitions', edie (Web Page, 30 June 2025). (Republished with context by IHRB, 14 July 2025.) • Oliver Gordon, 'This Australian coal community is co-designing its own green future', Climate Home News (News Article, 19 March 2025) • Sydney Environment Institute (Gareth Edwards; Susan Park; Robert MacNeil), 'A just transition away from coal in Australia', University of Sydney'. • Braeden Keen, 'Just Transition: Case Studies Highlight Work Underway', Australian Energy Council (Analysis, 16 May 2024).
FPIC	• Ben Doherty, 'Queensland extinguishes native title over Indigenous land to make way for Adani coalmine', The Guardian (News Article, 31 August 2019). • Tony Denholder, Andrew Gay, Clare Lawrence and Sophie Westland, 'FPIC's reach expands beyond native title and cultural heritage', Ashurst (Insight, 25 July 2023) • Kate Galloway, 'The Albanese government has ordered an inquiry into native title – why is it needed?', The Conversation (Article, 20 June 2024). • Sophie Westland and Clare Lawrence, 'FPIC continues to dominate the discourse', Ashurst (Insight, 24 May 2024). • Michael Pelly, 'How the land rights game changed with Juukan Gorge', Australian Financial Review (News Article, 29 February 2024; updated 7 June 2024). • 'Mining companies flout human rights conventions when negotiating with Indigenous Australians, study finds', SBS News (News Article, 20 March 2021). • Jon Altman, 'The Native Title Act supports mineral extraction and heritage destruction', Arena (Commentary, 16 June 2020).
First Nations-led response to climate crisis	• Rachael Hocking, 'Calls for First Nations-led response to climate crisis following landmark meeting', SBS NITV (News Article, 29 March 2021). • NSW Government, 'How Aboriginal culture can help us understand climate change', AdaptNSW (Case Study) • CSIRO, 'Indigenous-led Digital Climate Stories Platform' (Web Page, last updated 30 November 2023).

5.2 Adaptation Q2: Response to climate crisis: community resilience and adaptation

Prepare an effective legal strategy that will incentivise the legal system (including the profession) support community resilience and adaptation in response to the climate crisis.

(a) Background

(i) Climate displacement and migration

"Forced displacement" occurs when individuals and groups are driven to flee from their home by factors such as force, compulsion, or coercion.[572] The defining characteristic of forced displacement is "the absence of will or consent".[573] Climate-induced forced displacement can be the direct result of climate change, for example in the event of bushfires or flooding destroying homes, or can indirectly result from the consequences, of climate change such as

[572] CBM Australia, *Climate-Induced Forced Displacement* (Web Page) <https://www.cbm.org.au/your-impact/advocacy-policy/climate-induced-forced-displacement>.
[573] Ibid.

socioeconomic deprivation or human rights violations.[574] Environmental migration (the movement of people away from regions significantly affected by climate change)[575] is often described as an adaptation strategy and can be understood as a form of forced displacement,[576] given the compulsion impact of climate change.

Climate-induced forced displacement may occur:

- within national borders, referred to as "internal displacement". At the end of 2024, 9.8 million people were displaced elsewhere within their country of residence due to disasters;[577] or
- across borders. For example, pursuant to the Falepili Union, Australia has agreed grant permanent residency to 280 Tuvaluans per year, being 2.5% percent of the islands' population.[578] See also *Teitiota v New Zealand* in section (b)(i) below.

Climate-induced forced displacement has a disproportionate impact on particular groups including:

- persons with disabilities, who are four times more likely than those without disabilities to lose their lives as a result of climate-induced disasters[579] and may:
  - be unable to move out of harm's way due to the inaccessibility of evacuation paths, absence of support or due to their social exclusion;[580]
  - struggle to access temporary shelter accommodation or shelters which are inaccessible;[581]
  - face barriers accessing information and resources, including as a result of inaccessible early warning systems, which limit their knowledge and capacity to adapt to climate change;[582]
  - have complex health needs which are impacted by unavailability of medical supplies and narrowing health response options in the event that climate change impacts critical infrastructure[583] and
- First Nations Australians who, with strong cultural ties to place[584] and connection to Country:
  - may lose their ability to care for Country and to practise and transmit particular lore and culture,[585] noting that the NCRA states that "the current climate trajectory suggests that, for some [First Nations] communities, displacement may ultimately become unavoidable";[586]
  - may experience severe health and wellbeing consequences, including increased homelessness and weakening of family and social connections, identity, and belonging … including due to reduced air quality, extreme heat, flooding, interrupted health services, and energy insecurity.[587]

[574] Ibid.
[575] Ibid.
[576] Ibid.
[577] Ibid.
[578] Sam Huckstep and Helen Dempster, *Australia–Tuvalu Climate and Migration Agreement: Takeaways and Next Steps* (Center for Global Development, Web Page) <https://www.cgdev.org/publication/australia-tuvalu-climate-and-migration-agreement-takeaways-and-next-steps>
[579] Australian Disability and Development Consortium (ADDC), *Climate Change and Disability* (Web Page) <https://www.addc.org.au/disability-equity/climate-change-and-disability>
[580] UNHCR, *Disability, Displacement and Climate Change* (Web Page) <https://www.unhcr.org/media/disability-displacement-and-climate-change>
[581] Ibid.
[582] Ibid.
[583] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment - First Pass Assessment Report* (Report, March 2024) 168.
[584] Ibid 61.
[585] Ibid 86.
[586] Ibid 91.
[587] Ibid 127.

Various "migration and displacement" risks are identified in the NCRA,[588] including the disruption to critical infrastructure and other resource supplies, impacts to social cohesion,[589] local economies, social networks, traditional identities and cultural heritage[590], financial challenges resulting from issues such as carve outs in home insurance for natural disasters such as "actions of the sea", which may encompass coastal flooding, erosion, tropical cyclone impacts[591] and impacts on volunteer capacity to assist in the event of a disaster.[592] An example case study, setting out the impact on 2022 floods on the Lismore community can be found on pages 93-94 of the NCRA. The experience of that community "highlights the challenges of recurring and compounding extreme events, which exacerbate issues such as housing shortages and cost-of-living pressures" and "show how climate events overwhelm standard response processes, shifting risks to communities".[593]

(ii) Protest rights

The right to protest in Australia has become increasingly curtailed by stricter laws limiting rights to participate in participate in civil disobedience, increased penalties for obstructing infrastructure and businesses, and extended police powers to disperse protest crowds.[594]

In their Protest in Peril Report, the Human Rights Law Centre (**HRLC**) indicated that "over the past two decades, 49 laws affecting protest have been introduced in federal, state and territory parliaments… [which] disproportionately targeted environmental defenders and people advocating for action on climate change".[595] Common elements of the laws identified by the HRLC were "vague and ill-defined offences, excessive police powers, disproportionately harsh penalties, and the prioritisation of corporate interests, like forestry and mining, over the rights of people to access public land to voice dissent".[596]

Brown v Tasmania and *Kvelde v State of New South Wales*, set out in subsection (b)(ii) below, demonstrate the chilling impacts such laws on the human right to peaceful assembly[597], which is crucial for realising all other human rights.[598] In particular, vague and/or imprecise laws governing protests and the right to gather on public and private land can inadvertently widen police discretion, significantly curtail the ways in which the public can engage in activism,[599] and, by extension, limit individuals' capacity to participate in democratic politics.

(b) Key Cases

(i) Climate displacement and migration

***Teitiota v The Chief Executive of the Ministry of Business Innovation and Employment* [2013] NZHC 3125; [2015] NZSC 107; *Teitiota v New Zealand* CCPR/C/127/D/2728/2016**

In this case, the Applicant sought refugee status from New Zealand on the basis that his homeland, Kiribati, an island country in Micronesia, was facing steadily rising sea water levels

[588] Ibid 32.
[589] Ibid 74.
[590] Ibid 58-60.
[591] Ibid 58.
[592] Ibid 74.
[593] Ibid 94.
[594] Hannah Ryan and Chloe Wood, 'Giving the environment a voice — the landmark decision of Brown v Tasmania' (2018) 33(2) *Australian Environment Review (*newsletter*)* 34, 34.
[595] Human Rights Law Centre, *New Evidence Shows Right to Protest in Peril in Australia* (Web Page, 3 July 2024) <https://www.hrlc.org.au/news/2024-07-03-protest-peril/>.
[596] Human Rights Law Centre, *Protest in Peril* (Report, 2 June 2024) 4 <https://www.hrlc.org.au/app/uploads/2025/04/2407-Protest-in-Peril-Report.pdf>.
[597] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 21.
[598] Human Rights Committee, General Comment No. 37 (2020) on the right of peaceful assembly (Article 21), 129th sess, UN Doc CCPR/C/GC/37 (17 September 2020) 1-3.
[599] Hannah Ryan and Chloe Wood, 'Giving the environment a voice — the landmark decision of Brown v Tasmania' (2018) 33(2) *Australian Environment Review (*newsletter*)* 34, 36.

as a result of climate change. The "fear" cited by the Applicant for the purposes of the Convention Relating to the Status of Refugees (**Refugee Convention**)[600] was that "over time, the rising sea water levels and the associated environmental degradation will force the inhabitants of Kiribati to leave their islands". The New Zealand High Court dismissed the application, upholding the New Zealand Immigration and Protection Tribunal's finding that the effects of climate change did not bring the Applicant within provisions of Refugee Convention.

The Applicant subsequently made a complaint to the UN Human Rights Committee, claiming that New Zealand had violated his right to life under the ICCPR in circumstances where sea level rise caused by global warming has led to Kiribati becoming an untenable and violent environment for him and his family. The Applicant referred to the scarcity of freshwater (due to saltwater contamination and overcrowding), erosion of inhabitable land (leading to a housing crisis, land disputes and numerous fatalities) and noted that attempts to combat sea level rise have largely been ineffective. The Committee concluded that, despite accepting the Applicant's evidence that sea level rise is likely to render the Republic of Kiribati uninhabitable in future, the timeframe of 10-15 years alleged by the Applicant "could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population". It found that removal of the Applicant back to Kiribati did not violate the Applicant's rights in circumstances where New Zealand's decision to reject his asylum application was not clearly arbitrary, a manifest error, or a denial of justice.

***José Noé Mendoza Bohórquez et al. v. Department of Arauca et al. Colombian Constitutional Court* [2024] Sentencia T-123**

This was a Colombian case in which the Colombian Constitutional Court concluded that victims of internal forced displacement due to environmental factors face a constitutional protection deficit as Colombian regulations at the time only addressed natural disaster victims and did not provide clear guidelines for relocation processes or durable solutions for those displaced by environmental degradation or slow-onset phenomena.

This case was filed by the Applicants following a flood in 2020 and a failed application to be recognised as victims of internal forced displacement under Colombian Law 1448 of 2011, seeking associated benefits. In its judgment, the Court recognized the Applicants as environmentally displaced with a right to state protection and found that the Saravena Mayor's Office, the Arauca Governorship, and the National Unit for Disaster Risk Management had violated the Applicants' human rights to housing, work, subsistence, food security, and personal security by only providing immediate aid after initial flooding and not addressing their subsequent needs. The relief was extended to all similarly affected by the Bojabá River flooding, and the Court urged Congress to create comprehensive legislation for environmental displacement.

(ii) Protest rights:

***Brown v Tasmania* (2017) 261 CLR 328**

This High Court decision involved a constitutional challenge to the *Workplaces (Protection from Protesters) Act 2014* (Tas). The Act prohibited protesters from preventing, hindering, or obstructing business activities on "business premises" or a "business access area" and gave police broad powers to move on and ban protesters that they reasonably believed had or would contravene the prohibitions. It also created an offence if the protested returned to the premises within 4 days after the ban had been issued.[601] The Plaintiffs in this case were both arrested for taking video footage of logging in Tasmania. The majority of the High Court applied the test

[600] *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

[601] Hannah Ryan and Chloe Wood, 'Giving the environment a voice — the landmark decision of Brown v Tasmania' (2018) 33(2) *Australian Environment Review (*newsletter*)* 34,34.

in *Lange v Australian Broadcasting Corporation*,[602] and found that while the purpose of protecting business from damage and disruption was a legitimate purpose, the Act went beyond what was reasonable and appropriate to achieve it. The plurality confirmed that the right to peaceful protest is protected by the implied freedom and is "indispensable to the exercise of political sovereignty by the people of the commonwealth."[603]

Kvelde v State of New South Wales [2023] NSWSC 1560

The plaintiffs in this case were members of a group called the "Knitting Nannas' "whose broad goal is to protest and raise awareness of environmental issues" and were regularly involved and participated in protest activities prior to 1 April 2022, when the following provision was introduced into the *Crimes Act 1900* (NSW):

> ***214A Damage or disruption to major facility***
> *(1) A person must not enter, remain on or near, climb, jump from or otherwise trespass on or block entry to any part of a major facility if that conduct—*
> *(a) causes damage to the major facility, or*
> *(b) seriously disrupts or obstructs persons attempting to use the major facility, or*
> *(c) causes the major facility, or part of the major facility, to be closed, or*
> *(d) causes persons attempting to use the major facility to be redirected.*
> *Maximum penalty—200 penalty units or imprisonment for 2 years, or both*

Following this provision being introduced, the Plaintiffs chose not to participate in future protests due to fears of arrest and imprisonment and had commenced the proceeding to challenge its validity, on the ground that it impermissibly burdened the implied freedom of political communication, which protects the free expression of political opinion, including peaceful protest.[604]

The Supreme Court declared that subsection (c) was invalid as it impermissibly burdened the implied freedom of political communication, in circumstances where:

- the provisions effectively burdened the implied freedom in their terms, operation and effect and the burden was not inconsequential;
- while the law had a legitimate purpose in seeking to deter conduct that would cause damage or serious disruption or obstruction to or the closure of major facilities (causing harm to the community generally), it was not reasonably appropriate and adapted to advance that legitimate object in a manner that was compatible with the maintenance of the constitutionally prescribed system of representative and responsible government; and
- the provision lacked necessity and was not adequate in its balance.

EH v QPS; GS v QPS [2020] QDC 205

In this case, the Queensland District Court overturned the convictions of two climate protesters, concluding that the convictions and sentences were overly harsh in the circumstances. During the 2019-2020 bushfires, the two defendants had had used tubular steel attachment devices to lock themselves to a 44-gallon drum filled with concrete to block a railway line that provides access to a coal loading facility, in protest of coal expansion. The defendants were found guilty of using a dangerous attachment device to interfere with transport infrastructure (an offence which had been introduced in response to protests against coal mining and regarding climate change)[605] and sentenced to 3 months imprisonment. Convictions were not recorded in relation to the other charges sought by the Prosecution of obstructing a railway; trespassing on a railway and contravening a direction or requirement.

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[602] *Lange v Australian Broadcasting Corporation* (1997) 189 CLR.
[603] Hannah Ryan and Chloe Wood, 'Giving the environment a voice — the landmark decision of Brown v Tasmania' (2018) 33(2) *Australian Environment Review (newsletter)* 34,35; *Brown and Another v Tasmania* (2017) 261 CLR 328 [88] per Keifel CJ, cell and Keane JJ.
[604] *Kvelde v State of New South Wales* [2023] NSWSC 1560.
[605] *EH v Queensland Police Service*; *GS v Queensland Police Service* [2020] QDC 205.

On appeal, the Queensland District Cout found that the gravity of the offence was minimal, given the lack of evidence that any loss was suffered, that members of the public were burdened, or that there was violence or the threat of violence. The court further explained that the defendants "have the right to express their views and to protest against an activity to which they object subject only to such restrictions as are prescribed by law and are necessary in a democratic society for (amongst other legitimate aims) the prevention of disorder or crime or the protection of the rights and freedoms of others," and that "the motive for the commission of the offence will often be relevant to the moral culpability of the offender, the weight to given to personal deterrence and it may affect the weight to be given to general deterrence." The Court accordingly allowed the appeal, vacated the convictions and resentenced the defendants to a single fine of $1000.

***Le Roy v Brisbane City Council* [2025] QCAT 314 (19 August 2025)**

This was a representative discrimination case filed by a member of a group called “Extinction Rebellion”, a movement with the purpose of encouraging governments to take action to prevent climate breakdown and the extinction of species. The Applicant alleged that she had been subjected to direct discrimination by the Brisbane City Council, on the basis of political belief or activity in the area of the supply of goods and services, by way of its decision to disallow Extinction Rebellion from booking meeting facilities operated by the Council and offered by it for public use.

Brisbane City Council had passed a motion that the Council’s facilities, including libraries, were not suitable meeting places for organisations that advocate or incite illegal activities and considered that Extinction Rebellion fell into this category. During this proceeding, it contended that Extinction Rebellion and its members and affiliates engage in large scale, coordinated and premeditated unlawful activities, in furtherance of that organisation's aims and beliefs. The Queensland Civil and Administrative Tribunal (**QCAT**) upheld the complaint and made a declaration that the Brisbane City Council unlawfully discriminated against the Applicant and other class members on the basis of political belief and activity, finding that:

- the political belief or activity in issue was “the actual, or at least perceived by the Respondent to be, belief that public protest marches should be planned and take place which involved the activities to put pressure on government to do something about climate change”; and
- “one of the bases for the decision by the Council was that Extinction Rebellion promoted conduct which was illegal and used the libraries to organise it. ... That illegality or belief in the use of civil disobedience and planning it in libraries was seen by Council as characteristic of members of, or affiliates of, Extinction Rebellion which it considered a basis for its political beliefs and activities.”

QCAT rejected the proposition that Extinction Rebellion engaged in “illegal or unlawful conduct”, defined by the Council as “unlawful activities which ‘conflicted with the mores of urban or city life”, finding that “the right to peaceful protest including in ways that disrupt traffic in peak hour and cause inconvenience, even mayhem during peak hour traffic, does not conflict with the mores of urban or city, but even if it did so conflict, it does not lose the protections against discrimination on the basis of political belief or activity”. The Tribunal further noted that “the proposition that discriminatory conduct against every person within an organisation is excused, or is not unlawful if the basis for the decision was that some of that group had done some illegal things has no place in Australian discrimination law”.

The Council was ordered to cease enforcing its resolution not to allow Extinction Rebellion to use its meeting rooms.

(c) Key Resources

Climate displacement	• National Climate Risk Assessment: NCRA Climate risks | Australian Climate Service Website • International Law Association's Sydney Declaration on the Protection of Persons in the context of Sea Level Rise • UNHRC Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation • UNHRC Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters • Draft Pacific Regional Framework on Climate Mobility, opens in a new window • Nansen Initiative Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change
Protest rights	• https://bpb-eu-w2.wpmucdn.com/blogs.bristol.ac.uk/dist/f/1182/files/2024/12/Criminalisation-and-Repression-of-Climate-and-Environmental-Protests.pdf • https://oercollective.caul.edu.au/climate-conscious-lawyer/chapter/2-criminal-law-and-climate-activism/ • Protest in Peril Report • https://law.adelaide.edu.au/ua/media/865/ALR_39%282%29_10_Duldig%20and%20Tran.pdf • https://humanrights.gov.au/protest-rights-australia-explainer

(d) Media Reports

Climate displacement	• https://www.abc.net.au/news/science/2024-11-01/thousands-annual-climate-displacement-australians-extreme-floods/104512436 • https://www.amnesty.org.au/aotearoa-new-zealand-urgent-reform-needed-as-australia-and-aotearoa-new-zealands-migration-systems-fail-to-protect-climate-affected-pacific-people/ • https://www.newscientist.com/article/mg26635502-900-the-australia-tuvalu-climate-migration-treaty-is-a-drop-in-the-ocean/ • https://www.bbc.com/news/articles/cvg9750vvwxo
Protest rights	• https://www.abc.net.au/news/2024-12-15/australia-leads-world-in-arresting-climate-environment-activists/104721294 • https://australiainstitute.org.au/post/australians-overwhelmingly-support-the-right-to-peaceful-protest/ • https://www.themandarin.com.au/284566-policies-on-protest-criminalising-environmental-defenders/ • https://www.greenqueen.com.hk/climate-protest-arrests-environment-crime-activists/

5.3 Adaptation Q3: Disproportionate impact of climate crisis

Prepare an effective legal strategy that will harness existing legal remedies and challenge the disproportionate impact of the climate crisis on particular communities.

(a) Background

While, in and of themselves, natural hazards are neutral to demographics such as race, age, location and gender, the impacts and responses to such hazards are not. As acknowledged by the NCRA, climate change disproportionately affects particular populations including First Nations communities, rural communities, older people, young children and those with a disability or other pre-existing health condition, particularly as these groups often:

- have fewer resources enabling them to adapt to climate change, including access to financial resources, healthcare, education and insurance;
- have less political influence on policy decisions and/or access to decision-making forums; and
- inhabit areas with increased exposure to natural disasters, such as flooding, droughts, and storms;

and most of these factors compound their susceptibility to climate-related shocks,[606] particularly for those persons with intersectional disadvantage. Climate change is often called a "threat multiplier" as it intensifies resource scarcity and worsens existing social, economic and environmental factors.[607]

As stated by Matcha Phorn-in, "if you are invisible in everyday life, your needs will not be thought of, let alone addressed, in a crisis situation."[608]

(i) First Nations Communities

As noted in the Special Rapporteur on the Rights of Indigenous Peoples' report, "Indigenous peoples are among those who have contributed least to the problem of climate change, yet they are the ones suffering from its worst impact".[609] First Nations Australians in particular:

- suffer from disruption of traditional cultural practices, including those which depend on connection to place and ecological systems;[610]
- are affected by impediments to the continuation, preservation and development of culture into the future and for future generations;[611]

[606] Sajjad Ali, Zafar Ahmad Khan, Muhammad Azhar and Ijaz Raheem, 'Investigating the Disproportionate Effects of Climate Change on Marginalized Groups and the Concept of Climate Justice in Policy-Making' (Web Page) <https://real.spcrd.org/index.php/real/article/view/390/399>; Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) 63, 65, 102.

[607] United Nations, *Human Security and Climate Change* (Web Page) <https://www.un.org/en/climatechange/science/climate-issues/human-security>.

[608] UN Women, 'Take Five: "If you are invisible in everyday life, your needs will not be thought of, let alone addressed, in a crisis situation"' (Web Page, 23 July 2018) <https://www.unwomen.org/en/news/stories/2018/7/take-five-matcha-phorn-in>.

[609] Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, UN Doc A/HRC/36/46 (2017) 3.

[610] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21, [631].

[611] Ibid.

- are more likely to live in housing that is not climate adapted and have a higher burden of poor health compared with national averages;[612]
- have a deep understanding of the interdependencies within the natural world, honed through generations of observation and interaction with the environment and their health and wellbeing is closely connected to the health of Country.[613] In addition to these health and wellbeing risks, risks from changing natural environments put First Nations communities' access to and reliance on bush foods, aquaculture and mariculture opportunities at risk;[614]
- have indicated in consultations with Government that the destruction of land, sea and Country is already impacting their cultural practices, including caring for Country as a mechanism for climate adaptation and sustainability;[615]
- are particularly impacted by relocation due to the loss of connection to Country;[616]
- who may not have adequate telecommunications infrastructure (for example, those located in remote communities) or access to disaster information in traditional languages, face risks including inability to receive timely disaster warnings, climate risk alerts, and essential information about emergency responses and health services;[617]
- are subject to existing health disparities[618] which will be exacerbated by key hazards expected to increase mortality and morbidity, such as heatwaves, floods, bushfires, droughts and tropical cyclones and increased pressure on the healthcare system;[619] and
- are disproportionately impacted by mining actions, with approximately 60% of mining projects occurring in close proximity to First Nations communities.[620]

(ii) <u>People with Disabilities</u>

Persons living with disabilities are among the most adversely affected in an emergency, sustaining disproportionately higher rates of morbidity and mortality, and at the same time, are among those least able to have access to emergency support.[621] By way of example, people living with disabilities:

- may have existing health issues exacerbated by the impact of climate change on health systems and "may have reduced access to health care and poorer health outcomes than others owing to a combination of structural factors, including stigma, social exclusion, poverty, discriminatory legislation and policies and the limited availability of tailored services and programs";[622]
- may have assistive devices (that enhance physical functions such as hearing, sight or mobility) lost or damaged during a climate disaster, leaving them without adaptive assistance. "Such devices are typically not a part of distributed relief materials and when they are, they may not provide for the same functionality that the lost devices provided"[623];

[612] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) 68.
[613] Ibid 38.
[614] Ibid 197.
[615] Ibid 196.
[616] Ibid 48.
[617] Ibid 63.
[618] UN Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples: Climate Change* (36th sess, Agenda Item 3, UN Doc A/HRC/36/46, 1 November 2017).
[619] Ibid 126.
[620] Commonwealth of Australia, *Working with Indigenous Communities: Leading Practice Sustainable Development Program for the Mining Industry* (2016) 1.
[621] Human Rights Council, *Human rights and climate change*, UN Doc A/HRC/RES/41/21 (12 July 2019).
[622] Office of the United Nations High Commissioner for Human Rights, *Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change*, UN Doc A/HRC/44/30 (22 April 2020) [8].
[623] Ibid [11].

- may be prevented from accessing shelters and safe spaces in the event of a disaster or may not be able to evacuate to safety. For example, in 2022, flooding in northern NSW had a profound impact on people with disabilities as evacuation information was confusing and inaccessible, essential services were disrupted, and access to safe housing before and after the event was limited;[624]
- may be forced, for economic or other accessibility reasons to move to urban slums and informal settlements and build shelters in hazardous areas where infrastructure and services are lacking, the rates of disease are high and there are challenges related to accessing safe water and sanitation. Such environments pose heightened barriers for persons with disabilities;[625] and
- may be unable to migrate and forced to remain in locations that are subject to climate change harms.[626]

(iii) Rural and Remote Communities

As at 2025, 26% of Australians live in inner and outer regional Australia, and 2% in remote and very remote areas.[627] Rural and remote communities are highly vulnerable to climate change due to:

- their reliance on single or climate-sensitive industries, such as agriculture and tourism.[628] Natural hazards affecting those industries may reduce employment opportunities for residents and affect mental health.[629] By way of example, it is estimated that ~6,000 jobs were lost at the height of the Millennium Drought and ~7,000 jobs were lost due to the 2019-20 bushfires.[630] Limited employment diversity and economic dependence on natural resources heighten the potential for disruption and reduce resilience in those areas; [631]
- socioeconomic factors, such as lower incomes, which impact on residents' abilities to take adaptive action, noting that residents in rural and remote regions face higher poverty rates compared to those in metropolitan areas.[632] For example, the Australian Competition and Consumer Commission has estimated that home building non-insurance across northern Australia stands at ~20%, compared to 11% for the rest of Australia;[633]
- demographic factors, including that 34% of Australians aged 65+(who are more vulnerable to extreme heat and other climate-related stresses) reside in rural and remote areas;[634] and
- geographic factors, including:
  - slower response times to natural hazards, compared to urban areas. If existing emergency response capabilities are already under strain, response time may further extend and adequacy of response will be further stretched, resulting in disproportionate risks to these communities;[635]

[624] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) 138.
[625] Office of the United Nations High Commissioner for Human Rights, *Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change*, UN Doc A/HRC/44/30 (22 April 2020) [16].
[626] Ibid [21]; Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/31/52 (2016).
[627] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) 49.
[628] Ibid 44, 50.
[629] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) quoting Hanigan and Chaston (2022) and Steffen et al (2019).
[630] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) 61.
[631] Ibid 44.
[632] Ibid 60.
[633] Ibid 108.
[634] Ibid 60.
[635] Ibid 86.

- poorer access to healthcare and social support services (including aged care, disability support, homelessness services);[636]
- reliance on long-distance supply chains often serviced by a sparse transport network which is vulnerable to extreme weather events, leading to disrupted supply of important commodities to remote communities;[637]
- long distances to service centres and weak infrastructure links, which increase energy and supply chain insecurity;[638]
- infrastructure challenges which lead to high set-up and maintenance costs;[639] and
- skilled worker shortages.[640]

In addition, the disparity in risk and impacts between communities, particularly rural and remote communities compared with capital cities, can deepen social divisions and increase tensions among different social groups.[641]

(iv) Women

The impacts of climate change have been shown to *not be* gender neutral. Women are particularly made vulnerable to impacts including:

- to risks to reproductive and maternal health as research indicates that extreme heat increases incidence of stillbirth, and warming global temperatures are helping to spread vector-borne illnesses such as malaria, dengue fever, and Zika virus[642];
- where they are excluded from decision making processes and not do not have the agency to relocate away from climate hazards;[643]
- due to evidence indicating that climate change increases the severity and number of women and girls experiencing violence.[644] Studies have indicated every 1°C rise in temperature is associated with a 4.7% increase in intimate partner violence;[645] and
- in that they are more likely to be injured due to long-standing gender inequalities that have created disparities in information, mobility, decision-making and access to resources and training.[646]

The gender-differentiated risks of climate change are often worse for women experiencing intersecting inequalities, whose discrimination is compounded.

(v) REMOVE OK?

(vi) Young people

Children and young people will inherit the result of decisions made today to adapt to climate change. The principle of intergenerational equity provides that "each generation holds the planet on trust, obliged to pass it to all future generations in no worse condition than that which they enjoyed and to provide equal access to its cultural and

[636] Ibid 139.
[637] Ibid 63.
[638] Ibid 45.
[639] Ibid 164.
[640] Ibid 164.
[641] Ibid 61.
[642] UN Women, 'How gender inequality and climate change are interconnected' (Web Page, 21 April 2025) <https://www.unwomen.org/en/articles/explainer/how-gender-inequality-and-climate-change-are-interconnected>.
[643] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) 139.
[644] Spotlight Initiative, *Colliding Crises: How the Climate Crisis Fuels Gender-Based Violence* (Issue Brief, 2025) 4.
[645] Yixiang Zhu et al, 'Association of Ambient Temperature With the Prevalence of Intimate Partner Violence Among Partnered Women in Low- and Middle-Income South Asian Countries' (2023) 80(9) *JAMA Psychiatry* 952.
[646] UN Women, *Gender Dimensions of Disaster Risk and Resilience* (Report, October 2021).

natural resources".[647] In its 2025 ICJ Opinion, the ICJ recognised intergenerational equity as a guiding principle for the interpretation and application of international law.[648]

As noted in the *Waratah* decision in section 5.1(b)(i) above:

- children (being those under 18 years old) are, on average, more at risk of poorer health outcomes and premature mortality because they are more vulnerable to thermal stress, which will have impacts on their health in addition to their learning and work;[649]
- the more the climate changes, the worse the adverse impacts will be on children's health and wellbeing in the future, as children will have to live longer with the impacts;[650]
- on current trends, two-thirds of today's children are expected to develop chronic conditions in their adult years;[651] and
- children are particularly vulnerable to climate change policy due to their inability to control the decisions that affect them.[652]

Climate change is reportedly already having an impact on children's health,[653] with evidence suggesting that, compared to adults, children experience more severe distress after climate events[654] and 1 in 4 young people reporting being "very or extremely concerned about climate change".[655]

(b) Key Cases

(i) First Nations Communities

Santos NA Barossa Pty Ltd v Tipakalippa [2022] FCAFC 193

Mr Tipakalippa, an Elder, senior Law Man and Traditional Owner of the Munupi clan in the Tiwi Islands sought judicial review of a decision by the National Offshore Petroleum Safety and Environmental Management Authority (**NOPSEMA**) to accept an environment plan submitted by Santos NA Barossa Pty Ltd (**Santos**) in relation to a project for offshore oil drilling near the Tiwi Islands (**Drilling Plan**). Pursuant to the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009* (Cth) (**OPGGS Regulations**), NOPSEMA was required to be satisfied that the Drilling Plan met specified criteria, including that the applicant had consulted with persons "whose functions, interests or activities may be affected by the activities" under the Drilling Plan. The Federal Court set aside NOPSEMA's decision on the basis that neither Mr Tipakalippa, others of the Munupi clan or indeed any of the Traditional Owners of the Tiwi Islands were consulted regarding the Drilling Plan. Santos' appeal to the Full Court of the Federal Court was dismissed.

Munkara v Santos NA Barossa Pty Ltd (No 3) [2024] FCA 9[656]

This action was filed by members of the Jikilaruwu, Munupi and Malawu clan groups in the Tiwi Islands in respect of Santos' offshore gas project involving the laying of a 262km pipeline for the conveyance of gas from a field in the Timor Sea to a processing plant in Darwin (**Barossa Project**). Pursuant to the OPGGS Regulations, a titleholder (in this case, Santos)

[647] Jane Anstee-Wedderburn, 'Giving a Voice to Future Generations: Intergenerational Equity, Representatives of Generations to Come, and the Challenge of Planetary Rights' (2014) 1(1) *Australian Journal of Environmental Law* 37–70.
[648] *Climate Change Advisory Opinion* 55 [157].
[649] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 [628]-[629].
[650] Ibid [629].
[651] Ibid [1592].
[652] Ibid [1587].
[653] Department of Climate Change, Energy, the Environment and Water, *National Climate Risk Assessment – First Pass Assessment Report* (Report, March 2024) 139.
[654] S Clayton, 'Climate Anxiety: Psychological Responses to Climate Change' (2020) 74 *Journal of Anxiety Disorders* 102263.
[655] Shu Mei Teo *et al*, 'Climate Change Concerns Impact on Young Australians' Psychological Distress and Outlook for the Future' (2024) 93 *Journal of Environmental Psychology* 102209.
[656] *Munkara v Santos NA Barossa Pty Ltd (No 4)* [2024] FCA 414 ; *Munkara v Santos NA Barossa Pty Ltd* (No 5) [2024] FCA 717.

will commit a criminal offence if it undertakes an activity in circumstances where any significant new impact or risk that is not provided for in the environment plan in force for the activity occurs. The Applicants sought to argue that a significant new environmental impact or risk had occurred and sought declaratory relief to the effect that Santos was obliged to submit an amended Drilling Plan to NOPSEMA before engaging further in pipelaying activities, as well as an injunction restraining the pipelaying activities until such amended plan was submitted.

The significant new environmental impact or risk sought to be recognised by the Applicants was:

- the potential harm to the Applicant's tangible cultural heritage, in the form of damage, destruction or loss to artefacts of archaeological significance relating to human occupation and activity on the land before sea levels rose; and
- the potential harm to the Applicant's intangible cultural heritage, in the form of the disruption to the travel of two significant ancestral beings through the sections of the sea through which the pipeline was proposed to pass and consequential calamities that may harm the Tiwi people.

The Court dismissed the Applicant's claim, finding that there was insufficient evidence that the song lines relate to or extend to the area in which the pipeline would pass through, such that the Applicant's pleaded case was not broadly representative of beliefs held by the relevant group or groups of people and could not be characterised as a "cultural feature" of an area, place or ecosystem, within the definition of "environment" in the OPGGS Regulations.

(ii) Women

***Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (European Court of Human Rights, Grand Chamber, Application No 53600/20, 9 April 2024)**

In this case, the Applicant found to have standing with the European Court of Human Rights (**ECHR**) was an association established to promote and implement effective climate protection on behalf of its members, predominantly being women over the age of 70. The Applicant sought the following legal remedy: that "the Respondents take all necessary actions within their competence to reduce [greenhouse gas] emissions to such an extent that Switzerland's contribution aligns with the target of holding the increase in global average temperature to well below 2ºC above pre-industrial levels, or at the very least, does not exceed the 2ºC target, thereby putting an end to the unlawful omissions undermining these targets". The applicants argued that Switzerland's domestic emissions reduction targets were insufficient, unconstitutional and incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms (**ECPHRFF**) and international law. They also considered the mitigation measures taken by Switzerland authorities were insufficient and that Switzerland authorities had no justification for their inaction in the field of climate change.

The Applicants "contended that they were members of a most vulnerable group affected by climate change" on the basis that "the life and health of older women were more severely impacted by periods of heatwaves than the rest of the population". While the individual applicants were found not to have "victim status" for the purposes of the ECPHRFF as they failed to demonstrate they were subject to a high intensity of exposure to the adverse effects of climate change such that there was a pressing need to ensure their protection,[657] the ECHR acknowledged that "the applicants belong to a group which is particularly susceptible to the effects of climate change".[658]

[657] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (European Court of Human Rights, Grand Chamber, Application No 53600/20, 9 April 2024) [533].
[658] Ibid [530]-[531].

Given the Association had sufficient standing, the ECHR found that "there were some critical lacunae in the Swiss authorities' process of putting in place the relevant domestic regulatory framework, including a failure … to quantify, through a carbon budget or otherwise, national greenhouse gas emissions limitations [and previous failure] to meet its past greenhouse gas emission reduction targets… By failing to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework" Switzerland had failed to comply with relevant obligations.

Maria Khan et al. v. Federation of Pakistan et al.

In this case, five women filed a writ petition, under Article 199 of the Constitution of Pakistan, against the Federation of Pakistan, the Ministry of Climate Change, the Ministry of Energy, the Alternative Energy Development Board, and the Central Power Purchasing Agency.

The petitioners argued that Pakistan had ratified the Paris Agreement but had failed to subsequently engage in any renewable energy power project and considered this to be an abdication of the respondents' responsibilities under the Public Trust Doctrine (their duty to act as trustees of the natural resources of the country) and a violation of the Court's jurisprudence on environmental and climate justice.

The petitioners claimed that as women and mothers, they were particularly endangered by global warming and disadvantaged in the context of the climate crisis, as documented in scientific research and international reports and alleged that the Pakistani Government was in breach of Article 25 of the Constitution of Pakistan in that climate change disproportionately affects the rights of the petitioners and more broadly of all Pakistani women. The case remains pending.

(iii) Young people

***Minister for the Environment v Sharma* [2022] FCAFC 35**[659]

This was a representative decision brought by eight Australian children on behalf of all children under the age of 18. In the primary decision, Bromberg J declared that the Commonwealth Minister for the Environment owed a duty to all people in Australia under 18 years of age to take reasonable care to avoid causing personal injury or death arising from the emissions of carbon dioxide into the Earth's atmosphere from the combustion of the coal to be mined in the extension of the mine, when exercising her power under ss 130 and 133 of the EPBC Act to consider and approve an extension of a coal mine in NSW. Human safety was stated to be an implied mandatory consideration in the making of the decision.

While, on appeal, the Full Court of the Federal Court unanimously found (for different reasons) that the duty of care should not be imposed upon the Minister, the Court did not disturb the findings made by Blomberg J regarding climate change and the current and future dangers to the world and humanity. These included findings regarding young people such as:

- "[i]n a Future World where global average surface temperature is 3℃ above pre-industrial levels, … one million Australian children are expected to suffer at least one heat-stress episode serious enough to require acute care in a hospital. Many thousands will suffer premature death from either heat-stress or from bushfire smoke";[660] and
- "each of the children [(on behalf of whom the representative action was commenced)], on average, is expected to lose between $41,000 and $85,000 of family wealth and, on average, (in today's dollars) $170,000 in lost income as a result of extreme weather and higher temperatures induced by climate change".[661]

[659] *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2)* [2021] FCA 774; *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560.
[660] Ibid [290]-[291].
[661] Ibid [292].

This decision has spurred on legislative proposals for reform such as the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023,[662] which proposed to require decision-makers not to make significant decisions in relation to the exploration or extraction of coal, oil or natural gas if the decision poses a material risk of harm to the health and wellbeing of children in Australia.

Sacchi et al v Argentina, Brazil France, Turkey and Germany[663]

In September 2019, 16 children and youth filed five petitions with the Committee on the Rights of the Child (**CRC**), pursuant to the Optional Protocol to CROC, alleging that by recklessly causing and perpetuating life-threatening climate change, Argentina, Brazil, France, Germany, and Turkey had failed to take necessary preventive and precautionary measures to respect, protect, and fulfil their rights to life, health, and culture by failing to sufficiently address the climate crisis.

In October 2021, the CRC rejected the petitions for failure to exhaust domestic remedies. Although it did not determine the merits of the allegations, the CRC made the following observation:[664]

> *"as children, the [complainants] are particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection states have heightened obligations to protect children from foreseeable harm."*

(iv) General

Environmental Justice Australia complaints to United Nations Special Rapporteurs

In October 2021 (revised in April 2025), Environmental Justice Australia made a complaint to the Special Rapporteur on the Promotion and protection of Human rights in the Context of Climate Change (previously also to the Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on the rights of Indigenous peoples)[665] on behalf of "a group of young Australians that includes children, First Nations people, people of colour, disabled people and young people from rural and remote communities".

The complaint alleges that Australia is violating its responsibility to protect the human rights of the Complainants by failing to take sufficiently ambitious action to mitigate the effects of climate change on the Complainants, in relation to activities within Australia's jurisdiction or control resulting in anthropogenic greenhouse gas emissions that fuel climate change. This includes Australia's active pursuit of policies that have resulted in, and will continue to cause, increased greenhouse gas emissions, thereby exacerbating climate change and foreseeably worsening the harms experienced by the Complainants.

The complaint has not yet been determined or formally responded to by the Special Rapporteur, however the Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment has made an intervention application in *Australian Conservation*

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[662] Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (Cth).

[663] Committee on the Rights of the Child, *Views: Communication No. 104/2019*, 88th Sess, UN Doc CRC/C/88/D/104/2019 (22 September 2021); *Views: Communication No. 105/2019,* 88th Sess, UN Doc CRC/C/88/D/105/2019 (22 September 2021); *Views: Communication No. 106/2019,* 88th Sess, UN Doc CRC/C/88/D/106/2019 (22 September 2021); *Views: Communication No. 107/2019,* 88th Sess, UN Doc CRC/C/88/D/107/2019 (22 September 2021); *Views: Communication No. 108/2019,* 88th Sess, UN Doc CRC/C/88/D/108/2019 (22 September 2021) *('Sacchi et al v Argentina et al').*

[664] Committee on the Rights of the Child, *Views: Communication No 104/2019*, 88th sess, UN Doc CRC/C/88/D/104/2019 (22 September 2021) [10.13].

[665] *Environmental Justice Australia (EJA) v Australia*, Complaint to the UN Special Rapporteurs (25 October 2021).

Foundation Inc. v Minister for Environment and Water & Anor (2025), referred to in section 5.4(b)(i) below.

(c) Key Resources

Disproportionate impact generally	• NCRA • https://real.spcrd.org/index.php/real/article/view/390/399
First Nations Communities	• Nia Emmanoiul, Tina Popa and Anne Kallies, 'Climate Change Litigation in Private Nuisance: Can it Address Harms Sustained by Traditional Owners in the Torres Strait?' (2021) Monash University Law Review 47(3). • https://docs.un.org/en/A/HRC/36/46 • Narelle Bedford, Tony McAvoy SC and Lindsey Stevenson-Graf, 'First Nations Peoples, Climate Change, Human Rights and Legal Rights' (2021) 40(3) *University of Queensland Law Journal* 371 • Birch, Tony, 'We've Seen the End of the World and We Don't Accept it: Protection of Indigenous Country and Climate Justice' in Joseph Camilleri and Deborah Guess (eds), Towards a Just and Ecologically Sustainable Peace: Navigating the Great Transition (Palgrave, 2024) • Burton, John, Deanna Kemp, Rodger Barnes and Joni Parmenter, 'Mapping Critical Minerals Projects and Their Intersection with Indigenous Peoples' Land Rights in Australia' (2024) Energy Research & Social Science 113 • Davis, Oscar, Bindi Bennett and Kelly Menzel, 'The Problem with Cooperative Action Problems: Conceptions of Agency and the Understanding of Environmental Crises' in Nicole Rogers and Michelle Maloney (eds), The Anthropocene Judgments Project: Futureproofing the Common Law (Routledge, 2023) 167 • Pearson, Elizabeth, 'Heartbreak in the Juukan Gorge: "Embarrassingly out of Kilter" Law Destroys 46,000-Year-Old Aboriginal Sacred Sites' (2020) 25(2) Art Antiquity and Law 147 • Waters, Joshua, 'If the Land is Sick, So Are We: First Nations Spirituality Explained', The Conversation Australia (online, 17 June 2024) • Watson, Irene, 'Aboriginal Laws of the Land: Surviving Fracking, Golf Courses and Drains Among Other Extractive Industries' in Nicole Rogers and Michelle Maloney (eds), Law as if Earth Really Mattered (Taylor & Francis, 2017)
People with disabilities	• UNHRC Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change
Rural Communities	• https://www.frontiersin.org/journals/psychiatry/articles/10.3389/fpsyt.2024.1450943/full
Women	• https://www.unwomen.org/en/articles/explainer/how-gender-inequality-and-climate-change-are-interconnected • https://wrd.unwomen.org/sites/default/files/2021-11/Gender-Dimensions-of-Disaster-Risk-and-Resilience-Existing-Evidence.pdf • https://spotlightinitiative.org/sites/default/files/publication/2025-08/Colliding%20Crises%20How%20the%20climate%20crisis%20fuels%20gender-based%20violence%202025.pdf • https://gnhre.org/?p=17714

	• https://verfassungsblog.de/gender-and-climate-in-the-iacthrs-ao-32-25/
Youth	• https://docs.un.org/en/CRC/C/GC/15 • https://www.sciencedirect.com/science/article/pii/S0272494423002578

(d) Media Reports

Disproportionate impact generally	• https://www.ifaw.org/international/journal/interconnected-crises-climate-change-biodiversity-loss-poverty • https://www.epa.gov/climateimpacts/climate-change-and-health-socially-vulnerable-people
First Nations Communities	• https://theconversation.com/effects-of-climate-change-such-as-flooding-makes-existing-disadvantages-for-indigenous-communities-so-much-worse-192090 • https://www.weforum.org/stories/2024/02/indigenous-challenges-displacement-climate-change/ • https://minorityrights.org/resources/the-impact-of-climate-change-on-minorities-and-indigenous-peoples/ • https://www.firstnationscleanenergy.org.au/more_than_half_of_australia_s_critical_minerals_mines_lie_on_indigenous_land_mongabay
People with disabilities	• https://www.theguardian.com/environment/2022/jun/10/disabled-people-systematically-ignored-climate-crisis-study • https://lsj.com.au/articles/people-with-disability-more-vulnerable-to-climate-change/ • https://euobserver.com/health-and-society/arc56b2e6c
Rural Communities	• https://www.ohio.edu/chsp/social-public-health/community-public-health/graduate/resources/impacts-climate-change
Women	• https://www.unwomen.org/en/articles/explainer/how-gender-inequality-and-climate-change-are-interconnected • https://www.un.org/en/climatechange/science/climate-issues/women
Youth	• https://www.orygen.org.au/About/News-And-Events/2024/Six-in-10-young-Aussies-worry-about-climate-change • https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-025-01142-3 • https://erc.europa.eu/news-events/news/study-highlights-disproportionate-climate-risk-children-worldwide • https://www.unicef.org/eca/programme/sustainability-climate-change-and-environment

5.4 Mitigation Q1: Legal claims for Climate Action

Prepare an effective legal strategy that will utilise and/or challenge existing legal frameworks to support legal claims for climate action.

(a) Background

See section 4 above.

(b) Key Cases

(i) Judicial review

***Gloucester Resources v Minister for Planning* [2019] NSWLEC 7**

Following an unsuccessful application by Gloucester Resources Limited (**GRL**) to the Minister for Planning for development consent in relation to an open cut coal mine (proposed to produce 21 million tonnes of coal over 16 years), GLR appealed the decision in the NSW Land and Environment Court.

Preston CJ, stepping into the Minister's shoes as the consent authority to determine the development application, dismissed the appeal and upheld the Minister's refusal by the to approve the mine on various environmental grounds, including "avoiding dire consequences"[666] in the form of:

- the "significant adverse impacts on the visual amenity and rural and scenic character of the valley, significant adverse social impacts on the community and particular demographic groups in the area, and significant impacts on the existing, approved and likely preferred uses of land in the vicinity of the mine"[667]; and
- "the contribution to climate change" in the form of the emission of greenhouse gases emitted in the construction and operation of the mine and via the transportation and combustion of coal from the mine.[668] In particular, his Honour stated that "the greenhouse gas emissions of the coal mine and its coal product will increase global total concentrations of greenhouse gases at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in greenhouse gas emissions".[669]

Initially, neither party had raised the impact of the mine on climate change as an issue in the proceedings. A non-profit community organisation sought to be joined to the proceedings to raise the impact of the mine on climate change and further social impacts. On the application for joinder, GRL submitted that if the intervener were to be joined, the raising of the climate issue in a domestic court, "would not serve the purpose of improving the planning decision; and, instead, would be a "side show and a distraction".[670] The Court did not agree, finding that it was appropriate to permit the joinder and allow these issues to be raised.

***Australian Conservation Foundation Inc. v Minister for Environment and Water & Anor* (2025); *Friends of Australian Rock Art Inc. v Minister for Environment and Water & Anor* (2025)**

In October 2025, the Australian Conservation Foundation filed two sets of proceedings in the Federal Court against the Federal Environment Minister in respect of Woodside Energy's North West Shelf gas hub extension, in which the ACF alleges that:

- (Federal Court proceeding no. VID1356/2025): the Minister wrongly considered the economic benefits of the unapproved gas project in his Statement of Reasons for approving the NW Shelf extension, left out critical details in his approval, gave approval without knowing the details of the gas the project will process and what pollution it will cause and failed to consider the physical effects of climate change as an 'impact', for the purposes of the EPBC Act; and
- (Federal Court proceeding no. VID1400/2025): arguing that "that the Minister was not legally permitted to exclude the climate damage caused by the project when deciding whether and how to assess it under the EPBC Act".[671]

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[666] *Gloucester Resources v Minister for Planning* [2019] NSWLEC 7 [699].
[667] Ibid [8].
[668] Ibid.
[669] Ibid [699].
[670] *Gloucester Resources Limited v Minister for Planning and Environment (No 2)* [2018] NSWLEC 1200 [31].
[671] Australian Conservation Foundation, *'ACF Announces Further Legal Action Against Federal Environment Minister'* (Web Page, 29 October 2025).

On the same day that the first proceedings were filed by ACF, Friends of Australian Rock Art Incorporated filed separate proceedings (VID1357/2025) in the Federal Court seeking judicial review of the same approval, in respect of the impact on the Murujuga rock art. Each proceeding is scheduled to be heard in July 2026.

In November 2025, the UN Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment sought leave from the Court to make submissions in each proceeding (which are being case managed together) as an amicus curiae. This application is due to be determined on the papers in May 2026.[672] During a case management hearing in November 2025, the Special Rapporteur's lawyer told the court she wants the opportunity to address:

- Australia's international legal obligations.
- The international law context which is relevant to how the court interprets Australia's national environment law (the EPBC Act).
- How the international law context should be considered when interpreting the meaning of 'impact' under the EPBC Act.[673]

***Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2) ('Living Wonders')* [2023] FCA 1208**

This was a judicial review appeal decision in which the Applicants unsuccessfully sought that the Federal Court interpret certain of the MNES specified in the EPBC Act broadly enough to include climate change impacts.

The Applicants challenged the Minister's decisions regarding two development applications by large export-oriented coal mines, including on the grounds that they were affected by irrationality, involved illogic or were insupportable in circumstances where the Minister accepted that:

- climate change from anthropogenic sources of greenhouse gas emissions "has and/or will have physical effects on [the MNES]";
- "the combustion of coal and/or gas on a global scale results in greenhouse gas emissions, which increases the effects of climate change, including the regularity, scope and intensity of climate hazards"; and
- these effects "will adversely affect" each MNES identified in the application,[674]

but determined that the proposed action was not a substantial cause of "the stated physical effects of climate change on world heritage values of declared World Heritage properties" for the following reasons:

- "the information does not demonstrate that the proposed action will cause any net increase in global greenhouse gas emissions and global average temperature" as "whether this will happen is subject to multiple variables"; and
- "even if that were demonstrated, any contribution from the proposed action to global greenhouse gas emissions would be very small. It is therefore not possible to say that the proposed action will be a substantial cause of the physical effects of climate change on the world heritage values of declared World Heritage properties."[675]

The Federal Court was particularly concerned, in determining irrationality, not to assess the merits of the decision but to stick strictly to the legal errors alleged to have been made by the

[672] Federal Court of Australia, *VID1400/2025 – Court Document* (Document ID 2639896, filed 2025) <https://www.comcourts.gov.au/file/Federal/P/VID1400/2025/4035578/event/32568078/document/2639896>.
[673] Australian Conservation Foundation, *'UN Special Rapporteur to Join Legal Cases Challenging North West Shelf Gas Hub Extensions'* (Web Page).
[674] *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2) ('Living Wonders')* [2023] FCA 1208, 15[31].
[675] Ibid 16[33].

Minister. The applicant's subsequent appeal was dismissed, and special leave was refused by the High Court.[676]

The *Living Wonders* judgment undermined hopes for progressive, climate-friendly interpretation of Australia's federal law in coal litigation but strengthens the argument for federal law reform to address the EPBC Act's limitations as a means for addressing the climate consequences of Australian fossil fuel projects.[677] In particular, Dicta from Mortimer CJ and Colvin J during the appeal noted "the ill-suitedness of the present legislative scheme of the EPBC Act to the assessment of environmental threats such as climate change and global warming and their impacts on MNES in Australia" and this impact of this case in "rais[ing] the question whether the legislative scheme is fit for purpose in this respect."[678]

***KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc* [2021] NSWCA 216**

In this case, KEPCO Bylong Australia Pty Ltd (**KEPCO**) applied for development consent to construct and operate a thermal coal mine in the Bylong Valley for export to South Korea. The Independent Planning Commission (**IPC**), the relevant consent authority, refused consent in 2019, finding that the proposal failed to contain steps minimising:

(i) greenhouse gas emissions, and particularly scope 3 emissions created by the use of the coal to generate electricity, and

(ii) adverse effects on groundwater resources, to the greatest extent practicable

KEPCO sought judicial review of the IPC's decision in the Land and Environment Court, which was dismissed both at first instance and in this decision. After the IPC declined to participate in the proceedings, the Bylong Valley Protection Alliance, a community group, successfully intervened and was joined as a second respondent. The Court found that the IPC had adequately found that KEPCO had not proposed to minimize greenhouse gas emissions and that the NSW State Climate Change Policy concerning greenhouse gas emissions was applicable. The High Court refused KEPCO's application for special leave to appeal.

***Commonwealth v Tasmania* (1983) 158 CLR 1**

In this case, the seven judges of the High Court split 4:3 in deciding (amongst other matters) that the Commonwealth had power under section 51(xxix) of the Australian Constitution to stop the construction of a large hydro-electric dam proposed to be constructed in South-West Tasmania, on the basis of Australia's international obligations under the World Heritage Convention.

In 1982 the Tasmanian Government passed laws allowing the dam to proceed and the Tasmanian Hydro-Electric Commission commenced preliminary works for the construction of the dam. The Commonwealth Government subsequently passed the *World Heritage Properties Conservation Act 1983* (Cth), which, in conjunction with the *National Parks and Wildlife Conservation Act 1975* (Cth) enabled them to prohibit clearing, excavation and other activities within the Tasmanian Wilderness World Heritage Area. The Tasmanian Government challenged these actions and refused to halt construction of the dam. It argued that the Commonwealth Government did not have power under the Commonwealth Constitution to stop the dam. This decision firmly established that the Australian Government can enact legislation that is reasonably capable of being considered appropriate and adapted to fulfil Australia's international legal obligations, including regarding climate change, pursuant to the external affairs power.

[676] Environment Council of Central Queensland Inc v Minister for the Environment and Water [2024] FCAFC 56.
[677] Jacqueline Peel, 'The *Living Wonders* case: A Backwards Step in Australian Climate Litigation on Coal Mines' (2024) 36 *Journal of Environmental Law* 125, 126.
[678] Ibid [140], [144].

***Queensland Conservation Council Inc v Minister for the Environment & Heritage* [2003] FCA 1463**

This case concerned a review of the Environment Minister's decision to approve a proposal by Sudaw Developments Ltd to build a dam on the Dawson River in Central Queensland. Pursuant to the EPBC Act, in deciding whether to approve the project, the Minister was required to have regard to certain specified impacts of the project.[679]

The Applicants successfully argued that in considering the specified impacts, "the Minister was obliged to have regard to all of the consequences which could be predicted to follow from the dam's operation" and not just to the immediate impacts of the dam. The Minister's decision was overturned for failure to take into account the potential pollution impacts of farms which might be able to irrigate using water supplied by the dam, being an "indirect impact" of the dam.

***Minister for the Environment and Heritage v Queensland Conservation Council ('Nathan Dam')* [2004] FCAFC 190; 139 FCR 24; *Queensland Conservation Council Inc v Minister for the Environment and Heritage* [2003] FCA 1463**

In this case, the Queensland Conservation Council and WWF-Australia successfully sought judicial review of the decisions of the Federal Environment Minister to approve the proposal to construct a large dam in central Queensland (the Nathan Dam), in an area likely to have an impact on the Great Barrier Reef, a World Heritage Area.

The case was concerned with whether an assessment of "all adverse impacts" of the dam, for the purposes of the EPBC Act could include downstream pollution from farmers using water supplied by the dam, with the Full Federal Court finding that "all adverse impacts" includes "each consequence which can reasonably be imputed as within the contemplation of the proponent of the action, whether those consequences are within the control of the proponent or not". This led to a finding in *Australian Conservation Foundation v Minister for Planning*[680] that a planning scheme amendment to allow an expansion of a coalmine must consider the indirect impacts of greenhouse gas emissions resulting from the burning of the coal at a power station and a new State Environmental Planning Policy which required an assessment of "greenhouse gas emissions (including downstream emissions) in determining an application for development of mining, petroleum, production or production or extractive industry projects".[681]

The Nathan Dam Case is important for the future assessment of the environmental impacts of major projects throughout Australia by preventing those projects from being divorced from their indirect impacts.[682]

***Sweetwater Action Group Inc v Minister for the Environment, Heritage and the Arts* (Unreported, Federal Court of Australia, NSD 1136/2009)**

This case is an example of the impact a withdrawn or discontinued proceeding can have on accountability. Following the initiation of judicial review proceedings in relation to a residential development, the Minister revoked the development approval, and a revised proposal was approved, with significant changes and conditions added to the project.

(ii) Statutory-specific claims

[679] *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 75(2).
[680] *Australian Conservation Foundation v Minister for Planning* [2004] VCAT 2029.
[681] Gloucester Resources Ltd v Minister for Planning [2019] NSWLEC 7, citing *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (NSW) cl 14(2).
[682] Chris McGrath, *'Federal Environmental Laws Consider Direct and Indirect Impacts of an Action'* (1 March 2005) 9.

***Environment Victoria Inc v AGL Loy Yang Pty Ltd* [2022] VSC 814**

This was the first test case concerning the interpretation of Victoria's climate change legislation, the *Climate Change Act 2017* (Vic). The Applicant, Environment Victoria, argued that the Victorian EPA was required to consider various factors when granting new licences to Victoria's coal-fired power stations. In particular, Environment Victoria alleged that when reviewing the licence application the subject of the claim, the Victorian EPA had failed to consider the potential impacts of climate change relevant to the decision as well as the decision's potential contribution to Victoria's greenhouse gas emissions, contrary to its obligations under the *Climate Change Act 2017* (Vic). The Court rejected Environment Victoria's arguments and found that the Victorian EPA was only required to consider climate impacts "relevant to" its decision, which in this instance was confined to regulating pollutants, rather than imposing limits on greenhouse gases as the applicant argued.[683]

(iii) Breach of statutory duty

***Bushfire Survivors for Climate Action Inc v Environment Protection Authority* [2021] NSWLEC 92**

Climate action group, Bushfire Survivors for Climate Action (**BSCA**), commenced proceedings seeking an order in the nature of mandamus to compel the NSW Environment Protection Authority (**NSW EPA**), to perform its statutory duty to "develop environmental quality objectives, guidelines and policies to ensure environmental protection" (per s 9(1)(a) of the *Protection of the Environment Administration Act 1991* (NSW) (**POEA Act**)) regarding climate change.

The NSW Land and Environment Court granted the mandamus order, finding that the NSW EPA was in breach of its duty to develop instruments to ensure the protection of the NSW environment from climate change, as the NSW EPA's policies lacked 'concrete and direct objectives or standards to ensure environment protection' and failed to identify how success would be measured. However, Preston CJ noted that the duty does not, as alleged by BSCA, specifically demand that such instruments regulate sources of greenhouse gas emissions in a way consistent with limiting global temperature rise to 1.5°C above pre-industrial levels, given the NSW EPA's discretion as to the specific content of the instruments it develops.

The Applicants relied in part on expert scientific evidence from Professor Penny Sackett, who opined that many individual extreme events can be directly linked to climate change, including the devastating Australian 2019-20 bushfires, which were at least 30% more likely because of climatic changes caused by humans and the coral bleaching of the Great Barrier Reef during 2016, which was made 175 times more likely by climate change. She concluded her evidence by stating that "[i]t is reasonable to state that unabated climate change is the greatest threat to the environment and people of NSW".

Following this decision being handed down, the NSW Environment and Energy Minister announced that the NSW Government "will not be appealing that decision and would "be doing everything necessary to give it full effect".[684]

(iv) Civil enforcement

***Donnelly v Delta Gold Pty Ltd* (2001) 113 LGERA 34; *Donnelly v Delta Gold Pty Ltd* [2002] NSWLEC 44**

This was a civil enforcement action commenced under the PEO Act in respect of a goldmine's license variation by a private individual, who was a representative of the Wahlabul/Malerah

[683] Justine Bell-James and Matthew Lawson, *Global Perspectives on Corporate Climate Legal Tactics: Australia – National Report* (British Institute of International and Comparative Law, 2023) 10.

[684] ABC News, *'Matt Kean Says Inaction on Climate Change Worse than COVID-19'* (Web Page, 31 August 2021) <https://www.abc.net.au/listen/programs/radionational-breakfast/matt-kean-inaction-climate-change-covid-nsw/13535922>.

Bandjalung Aboriginal Communities, the traditional custodians of the land and waters on which the goldmine sat. The variation allowed treated mining wastewater to be spray irrigated over a total area of 18 hectares of the land. The applicant alleged that the NSW Environmental Protection Authority had breached its obligation to seek public consultation, in circumstances where the variation would "authorise a significant increase in the environmental impact' of the licensed activity" and had "failed to consider the impact of the variation upon "Aboriginal relics" within the meaning of the *National Parks and Wildlife Act 1974* (NSW). The Applicant was unsuccessful, in circumstances where the evidence indicated that the environmental impact authorised by the licence variation was insignificant, but successfully defended the Respondent's application for costs, with Bignold J finding that the litigation involved important matters of public interest and that the Applicant had nothing personally to gain from the proceeding.

(v) Tortious claims

***Pabai v Commonwealth of Australia (No 2)* [2025] FCA 796**

The lead Applicants, residents of the Guda Maluyligal Nation filed this representative proceeding on behalf of Torres Strait Islanders against the Commonwealth of Australia, alleging that the Commonwealth Government owed a duty of care to Torres Strait Islanders to:

- take reasonable steps to protect them, their culture and traditional way of life, and their environment from harms caused by climate change or;
- (in the alternative) take reasonable care to avoid causing property damage arising from a failure to adequately implement adaptation measures to prevent or minimise the current and projected impacts of climate change in the Torres Strait Islands.

The Applicants argued that the Government (should the Court uphold either such duty) was in breach of each duty, including for:

- setting greenhouse gas emission targets in 2015, 2020, 2021 and 2022 that were not consistent with the best available science (as set out in the Paris Agreement);
- funding (which the Applicants alleged was delayed, unpredictable and inadequate) in respect of a key infrastructure project in the Torres Strait Islands, concerning construction, or planned construction, of seawalls (including wave return walls and bunds) on the islands of Sabai, Boigu, Poruma, Iama, Masig and Warraber.

The Applicants sought damages from the Commonwealth as well as declaratory and injunctive relief.

In July 2025, Wigney J rejected the Applicants' claims. He noted that while:

- the impacts of climate change on the land and marine environment of the Torres Strait Islands have had a profound impact on the customary way of life of the inhabitants and traditional owners of the Torres Strait Islands;
- the Commonwealth, when setting the 2015, 2020 and 2021 targets failed to engage with or give any real or genuine consideration to what the best available science indicated was required for Australia to play its part in the critically important global objective set by the Paris Agreement; and
- "there could be little, if any, doubt that the Torres Strait Islands and their traditional inhabitants face a bleak future if urgent action is not taken to address climate change and its impacts",

the case against the Commonwealth failed:

- "not so much because there was no merit in [the Applicants'] factual allegations concerning the emissions reduction targets", rather, "because the common law of negligence in Australia was not a suitable legal vehicle through which the Applicants could obtain effective relief for the type of harm they claimed to have suffered as a result of the type of governmental action or inaction in issue; and

- as Australian law "as it currently stands provides no real or effective legal avenue through which individuals and communities, like those in the Torres Strait Islands, can claim damages or other relief in respect of harm that they claim to have suffered as a result of governmental decisions and conduct which involve matters of high or core government policy, including in respect of the responses to climate change and its impacts."

His Honour found that:

- neither of the alleged duties of care arose in circumstances where governmental conduct and decisions which involve matters of high or core government policy are not properly or appropriately made the subject of common law duties of care;
- it was not unreasonable for the Commonwealth, when setting greenhouse gas emissions reduction targets, to have regard not only to the best available science, but also broader economic, social and political considerations;
- even if a duty of care had been found, the alleged breach by the Commonwealth could not be found to have **materially** contributed to the harm suffered by Torres Strait Islanders, in circumstances where:
  - on a per capita basis, Australia's emissions make up only a relatively small proportion of the global greenhouse gas emissions that induce climate change; and
  - any additional greenhouse gases that might have been emitted by Australia as a result of the emissions reductions targets set in 2015, 2020 and 2021 would have caused no more than an extremely small and almost immeasurable increase in global average temperature; and
- the loss of fulfilment of culture, customs, observances, beliefs and traditions, either by an individual or collectively by a community, is not currently a recognized category of actionable damage in tort.

In November 2025, the Applicants filed an appeal to this decision with the Full Court of the Federal Court.[685]

Subsequently, the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (**DOC Bill**) was introduced to Federal Parliament, proposing to require decision-makers:

- to consider the health and wellbeing of children in Australia when making significant decisions;
- not to make significant decisions in relation to the exploration or extraction of coal, oil or natural gas if the decision poses a material risk of harm to the health and wellbeing of children in Australia.

The DOC Bill lapsed on 21 July 2025.

***Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No 22)* [2019] NSWSC 1657**; ***Queensland Bulk Water Supply Authority t/as SeqWater v Rodriguez & Sons Pty Ltd* [2021] NSWCA 206**

Following the Brisbane floods in 2011, small business Rodriguez & Sons Pty Ltd, a small business, commenced a class action in the NSW Supreme Court (as Queensland legal system did not provide for class actions at that time) claiming damages due to alleged negligence on the part of the Government operators of the Wivenhoe Dam, by releasing water from the Dam at a time which led to a higher flood peak than would have otherwise occurred had the release been made earlier.

[685] Pabai Pabai & Anor v Commonwealth of Australia (Federal Court of Australia, Victoria Registry, File No VID1479/2025, filed 11 November 2025).

In 2019, in first instance, the NSW Supreme Court found that the state of Queensland, and the two statutory organisations responsible for operating the dam (Seqwater and SunWater) were negligent, in breach of their statutory duty of care. The Court allocated the liability as 50% to Seqwater, 30% to SunWater and 20% to the state of Queensland and applied the ordinary standard of reasonable care under s 9 of the *Civil Liability Act 2003* (Qld) (**CL Act**). Following this, SunWater and the state of Queensland settled the claims against them, but SeqWater successfully appealed the decision, with the NSW Court of Appeal finding that SeqWater was a public authority and the lower standard of care required of public authorities under s 36 of the CL Act should be applied instead. The Plaintiff was ordered to pay SeqWater's costs. The High Court refused the Plaintiff's special leave application for appeal.[686]

***State of Queensland v Baker Superannuation Fund Pty Ltd & Anor; Aurizon Operations Limited v Baker Superannuation Fund Pty Ltd & Anor* [2018] QCA 168; *Baker Superannuation Fund Pty Ltd v Aurizon Operations Ltd* [2017] QSC 026**

The Plaintiff in this proceeding owned land adjoining property owned by the State of Queensland (**Queensland**) and used for the Brisbane Valley rail line. During the construction of the rail line, an embankment was formed to provide a level surface for the rail track. Two culverts were installed in that embankment (**Culverts**) so that surface water could pass underneath the embankment and follow the line of the pre-existing channel. Due to clearance and development activity of landowners on the other side of the rail line, the volume of water flowing through the Culverts onto the Adjoining Property significantly increased, badly eroding the Plaintiff's property. The Plaintiff commenced proceedings against Queensland and Queensland Rail (who had become Aurizon Operations Limited (**Aurizon**)).

In first instance, the Plaintiff succeeded in proving that both the first and second defendants were liable for nuisance. On appeal, the Queensland Court of Appeal dismissed the claim of nuisance against Aurizon but upheld the claim against Queensland, on the basis that Aurizon was not aware of the erosion until the Plaintiff's claim and had acted reasonably not abating the nuisance for various reasons, including the cost of the restoration works and ownership of the property being transferred to Queensland during the period in which it became aware of the claim.

In respect of Queensland, the Court of Appeal found that there was no evidence that the works required to abate the nuisance would have compromised the use of Queensland's property and the only justification for not carrying out remedial works was the cost saving to Queensland. Accordingly, the use of the Culverts on the Valley Trail no longer constituted the use of Queensland land in a reasonable and proper manner, having regard to the damage that the Culverts continued to cause to the Plaintiff's property.

(vi) Mandatory disclosure

***Jubilee Australia Research Centre Ltd v Export Finance and Insurance Corporation & Ors* (Federal Court Proceeding NSD724/2023)**

Jubilee Australia, a human rights and environmental organisation, commenced proceedings in the Federal Court against Australia's export credit agency, Export Finance Australia (**EFA**), and the Northern Australia Infrastructure Facility (**NAIF**), a A$7bn fund for infrastructure in northern Australia, seeking to compel those agencies to disclose the full environmental effects of the fossil fuel activities they subsidise pursuant to s 46 of the *Public Governance, Performance and Accountability Act 2013* (Cth) and s 516A of the EPBC Act, which require Commonwealth Government Agencies to include the following information in their annual reports:

1. How their activities accord with the principles of ecologically sustainable development – including the precautionary principle and the principle of intergenerational equity;

[686] High Court of Australia, *Results of Applications Listed at Canberra – 12 April 2022* (Special Leave Results, 12 April 2022).

2. The effect of their activities on the environment;
3. The measures they are taking to minimise the impact of their activities on the environment; and
4. The mechanisms for reviewing and increasing the effectiveness of measures to minimise the impact of the activities on the environment.

Jubilee discontinued the proceedings following the release by EFA of its FY2022-23 Annual Report and a further annual report by NAIF, which Jubilee considered demonstrates compliance with each agency's legal obligations.[687]

***O'Donnell v Commonwealth of Australia* [2023] FCA 1227; *O'Donnell v Commonwealth of Australia* [2021] FCA 1223**

The Plaintiff commenced proceedings on behalf of all persons who owned specified exchange-traded Australian Government bonds between a specified period, alleging that the Commonwealth had failed to disclose, in information about the bonds:

- the alleged physical risks of climate change, meaning impacts caused directly by a changing climate, and associated costs; and/or
- the alleged transition risks of climate change, meaning the impact of global and domestic efforts to reduce greenhouse emissions, and associated costs,

in circumstances where such risks pose a real risk that there will be significantly increased Commonwealth budget deficits (by reason of reduced revenue and increased expenditure) relative to Australia's annual GDP, a significant increase in Commonwealth government borrowing, and, accordingly, a significant increase in government debt (relative to Australia's annual GDP).

The Plaintiff sought a declaration (and not damages) that by failing to disclose that information (being information that might reasonably be expected to have a material influence on the holders of exchange traded government bonds as to whether to hold or dispose of them and decisions by potential investors as to whether to purchase such bonds) the Commonwealth had engaged conduct that is misleading or deceptive and/or likely to mislead or deceive in breach of s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth).

Following an unsuccessful strikeout application by the Commonwealth, the matter was settled, and the Commonwealth published a statement acknowledging that climate change is a systemic risk that may affect the value of government bonds.[688]

***Mark McVeigh v Retail Employees Superannuation Pty Ltd* (Unreported, Federal Court of Australia, NSD1333/2018)**

In this case an Australian pension fund member commenced proceedings against the Retail Employees Superannuation Trust (**REST**) seeking declarations that REST breached its obligations:

- under the Corporations Act[689] to provide beneficiaries with information that they need to make an informed decision about the management and financial condition of the fund. The Plaintiff argued that the information not disclosed related to climate change business risks and REST's plans to address those risks; and
- to act with care, skill, and diligence, and to perform their duties and exercise their powers in the best interests of their beneficiaries;[690]

and an injunction requiring REST to provide that information.

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[687] *Equity Generation Lawyers*, "*Jubilee v Export Finance Australia & NAIF*" (Web Page) <https://equitygenerationlawyers.com/case/jubilee-v-efa-and-naif/>.
[688] Commonwealth of Australia, *Treasury*, "*Statement on O'Donnell v Commonwealth*" (Media Release, 16 October 2023) <https://treasury.gov.au/media-release/statement-odonnell-v-commonwealth>.
[689] *Corporations Act 2001* (Cth) s 1017C; *Superannuation Industry (Supervision) Act 1993* (Cth) s 52(2)(j).
[690] *Superannuation Industry (Supervision) Act 1993* (Cth) s 52(2).

While this matter settled before the final hearing began and, accordingly, did not establish a binding precedent, experts consider it will likely set a standard for the identification and management of climate change related risks by superannuation funds. In the settlement statement, REST acknowledged that "climate change is a material, direct and current financial risk to the superannuation fund across many risk categories" and committed to nine actions, including achieving a net zero carbon footprint for the fund by 2050 and reporting on climate related progress in line with TCFD recommendations.[691]

***Guy Abrahams v Commonwealth Bank of Australia* (Unreported, Federal Court of Australia, VID879/2017); *Abrahams v Commonwealth Bank of Australia* (Unreported, Federal Court of Australia NSD864/2021)**

In 2017, the Abrahams, long term shareholders of the Commonwealth Bank of Australia (**CBA**) commenced proceedings alleging that CBA's 2016 annual report failed to disclose climate change-related business risks (including, in particular possible investment in the Adani Carmichael coal mine), in breach of its obligations under the Corporations Act to include a financial report within the annual report which gives a "true and fair" view of its financial position and performance[692] and include a director's report that allows shareholders to make an "informed assessment" of the company's operations, financial position, business strategies and prospects.[693] The Plaintiffs argued that CBA knew or ought to have known that climate-related risks could seriously disrupt its performance. Prior to the matter being determined, the Plaintiffs withdrew from proceedings in circumstances where CBA had released an annual report in 2017 that acknowledged the risk of climate change and pledged to undertake climate change scenario analysis to estimate the risks to CBA's business.

In August 2021, the Plaintiffs filed a new application seeking access to documents relating to CBA's publicly announced Environmental and Social Framework. Pursuant to s 247A of the Corporations Act, the documents sought related to CBA's reported involvement in seven oil and gas projects and to CBA'S adoption or implementation of its revised climate change commitments. Following orders being made granting the Plaintiffs access to specified documents, the proceeding was dismissed by consent.

***Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia* (2016) 248 FCR 280**

In this case, the Federal Court dismissed an appeal from the Australasian Centre for Corporate Responsibility (**ACCR**) brought on behalf of over 100 Commonwealth Bank of Australia (**CBA**) shareholders. The ACCR sought a declaration that resolutions which the shareholders had sought be included in the notice of meeting for CBA's 2014 annual general meeting (**AGM**) "could validly be moved" at an AGM. The proposed resolutions included a requirement that CBA report to its shareholders regarding the greenhouse gas emissions attributable to CBA's lending activity, the resultant risks to CBA of such emissions and the approaches taken by CBA to mitigate those risks. CBA had declined to include the resolutions on the basis they were "matters within the purview of the Board and management of the Bank".

The Full Court agreed with the first instance decision that the actions of the CBA were lawful, affirming that Australian shareholders have no authority to speak or act on behalf of a company, except to the extent and in the manner authorised by the company's constitution or any relevant statute, and to the extent and in a manner consistent with the constitution and statute.

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[691] *Rest*, "Statement from Rest" (Media Release, 2 November 2020) <https://equitygenerationlawyers.com/wp/wp-content/uploads/2020/11/Statement-from-Rest-2-November-2020.pdf>.

[692] Environmental Justice Australia, *Shareholders Taking Commonwealth Bank to Court to Discover Climate Risk* (Web Page, August 2017) https://envirojustice.org.au/legal-work/climate-justice/shareholders-taking-commonwealth-bank-to-court-to-discover-climate-risk/; *Corporations Act 2001* (Cth) s 297.

[693] *Corporations Act 2001* (Cth) s 299A(1).

***In the matter of AGL Limited* [2022] NSWSC 576**

AGL Energy Limited commenced proceedings seeking orders under s 411 of the Corporations Act providing for the convening of a scheme meeting to consider the proposed demerger of AGL into two new entities. During the proceeding in which the Court was considering whether the materials provided to shareholders ahead of the scheme meeting provided sufficient disclosure, a shareholder was granted leave to appear and expressed concern that the materials did not adequately address risks associated with the demerger, including regarding decarbonisation. The NSW Supreme Court made orders approving the scheme booklet but ordered that the videos that AGL proposed to publish on the demerger be amended to disclose the risks and disadvantages of the demerger. Shortly after this decision, AGL withdrew its demerger proposal, following campaigning by several shareholders who opposed the demerger on the basis that the fossil fuel assets were proposed to be continued to run well into the 2040s.

(c) Key Resources

Climate change litigation	• Jacqueline Peel and Hari Osofsky, Climate Change Litigation (Cambridge University Press 2015). • Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, 'Global Perspectives on Corporate Climate Legal Tactics: Australia National Report' (2024) British Institute of International and Comparative Law. • Thomas Gray KC, Dr Beth Nosworthy and Astrid Gillam, 'National and international perspectives on climate change litigation' (2024) 54 *Australian Bar Review* 16. • Brian Preston and Nicola Silbert, 'Trends in Human Rights-Based Climate Litigation: Pathways for Litigation in Australia' (Speech, 2021 Castan Centre for Human Rights Law and King & Wood Mallesons Annual Lecture, 9 December 2021). • Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer* (La Trobe University, 2024). • Setzer, Joana; Higham, Catherine, Global Trends in Climate Change Litigation: 2025 Snapshot, Grantham Research Institute/Sabin Center. • Nicola Silbert, 'Challenging Decisions: Environmental Non-Government Organisations' Use of Judicial Review under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)' (2018) 35(6) Environmental and Planning Law Journal 714, 729 • Australian Government Solicitors Office, 'Legal Briefing: Recent Trends in Climate Change Litigation' (1 June 2022) 2 https://www.ags.gov.au/sites/default/files/2022-06/lb-RecentTrendsInClimateChangeLitigation.pdf • Elena Aydos, Belinda Charlton, Gabrielle Cornett, Kelsey Gray and Nita Scott, 'Rocky Hill: A Legal Breakthrough in the Consideration of Climate Change and Social Impacts of Coal Mines' (2020) 14(2) Carbon and Climate Law Review 98, 101. • Jacqueline Peel, Hari Osofsky and Anita Foerster, 'Shaping the 'next generation' of climate change litigation in Australia' (2017) 41(2) Melbourne University Law Review 793. • Laura Schuijers and Margaret Young, 'Climate Change Litigation in Australia: Law and Practice in the Sunburnt Country' in Ivano

	Alogna, Christine Bakker & Jean-Pierre Gauci (eds), *Climate Change Litigation: Global Perspectives* (Brill, 2020). • Cynthia Nixon, Claire Konkes, Libby Lester and Kathleen Williams, 'Mediated Visibility and Public Environmental Litigation: The Interplay between Inside and Outside Court during Environmental Conflict in Australia' (2021) 10(2) *Laws* 35. • Climate Litigation Network, 'Laying the Foundation for Our Shared Future: How ten years of climate cases built a legal architecture for climate protection' (2025).

(d) Media Reports

Climate change litigation	• Wesley Morgan and Riona Moodley, 'Australia got off on a technicality for its climate inaction. But there are plenty more judgement days to come', UNSW Newsroom (Article, 17 July 2025). • 'Can legal action save the planet? Wins and losses in climate litigation', ABC Radio National: Late Night Live (Audio program, 16 July 2025). • Cindy Cameronne, 'Class action failure won't stem tide of climate litigation, experts say', Lawyerly (Analysis, 16 July 2025) • Adam Morton, 'Australia warned it could face legal action over "wrongful" fossil fuel actions after landmark climate ruling from world's top court', The Guardian (News Article, 24 July 2025).

5.5 Mitigation Q2: Accountability for contributions to climate crisis

Prepare an effective legal strategy that will hold big polluters and government to account for their contribution to the climate crisis in the absence of a human rights act or bill of rights.

(a) Background

As the only Western liberal democracy without national human rights legislation,[694] Australia has been frequently criticised for failing to provide legal remedies at the national level for human rights harms.[695] Moon and Kennedy posit that this effectively prevents direct enforcement of ICCPR rights in Australia, including in relation to the harms from the worsening climate. While individuals and groups have sought to protect their human rights against climate-driven harms through other legal avenues, for example state human rights law (see, e.g. *Waratah* in section 5.1(b)(i) above), local planning laws (see, e.g. *Gloucester Resources* in section 5.4(b)(i) above) tort law (see, e.g. *Sharma* in section 5.3(b)(iii) above) and from international forums (see section 4.4 above), as set out in section 4 above, with limited established bases to do so, they have experienced significant difficulty in seeking to enforce their human rights claims, particularly, as set out in subsection (b) below, in holding big polluters and government to account for their contribution to the climate crisis.

As noted in section 4.1 above, accountability has been the focus of next generation cases. Globally around 20% of climate cases filed in 2024 targeted companies, or their

[694] Australian Human Rights Commission, '*A Human Rights Act for Australia*', 2023, at 1.

[695] Australian Human Rights Institute, *State of Denial: Australia's Legal Obligations for Human Rights Harms Within Australia from its Fossil Fuel Exports* (Report, September 2025); Australian Human Rights Commission, *'Review of Australia's Fourth Periodic Report on the Implementation of the International Covenant on Economic Social and Cultural Rights'*, 2009; Refugee Council of Australia, 'UN member states challenge Australia's refugee and asylum policies', 31 March 2023.

directors and officers, having been steadily increasing since 2015[696] and more than 75% of cases filed globally in 2024 were filed against governments.[697]

While climate attribution science allows scientists to establish general causal links between given quantities of emissions and given increases in certain harms from worsening climate impacts, proving specific individual human rights harms remains challenging in court proceedings, particularly due to:

- difficulty in establishing actionable damage in the form of harms which will predictably occur in the future as a result of actions taken now;
- Courts being reluctant to intervene, seeing climate-related grievances as a matter for the legislature; and
- difficulty in establishing causation between the specific act of emitting and the individual human rights harm. As set out in section 4.2(b) above, this is the result of a multiplicity of greenhouse gas emitting actions and the fact that exacerbated harms attributable to temperature rises tend to occur sometime after the emissions to which the rises are attributable, and exactly to whom, when, where and how those exacerbated harms will occur may not be knowable in advance. [698]

This is aggravated by narratives perpetuated by big polluters seeking to shift responsibility and the public focus away from their actions. For example, in a study of material published between 2015 and 2022 on the websites of 44 Australian energy market players, including energy providers, non-government organisations and policy makers, Van Laer found that "hundreds of public reports and media releases from the Australian energy sector identified a common story of the "net-zero hero" – a consumer who, through careful choices, becomes a champion in the fight against climate change", creating a "mythical market" made up of small-scale energy consumers, in which everyone makes an equally significant contribution to total emissions.[699] In respect of this study Professor van Laer stated: "[i]n shifting responsibility for net-zero emissions to consumers, we risk minimising the accountability of larger entities that have a more substantial impact on the environment. We reduce pressure on industries and governments to implement more comprehensive environmental policies and structural change."[700]

There is scope for development in terms of future accountability action, including:

- following the release of the ICJ Advisory Opinion, with many arguing that it may open the door for actions commenced by States such as Pacific Island nations damaged by climate change against high emitters, including Australia, and actions commenced in Australia's domestic courts in respect of approvals of coal and gas exploration licences;[701]
- if the proposal to recognise the crime of ecocide in the Rome Statute is accepted, permitting the ICC's Office of the Prosecutor to initiate an investigation against an individual suspected of 'ecocide', either on its own initiative or upon referral;[702]

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[696] Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2025 Snapshot* (Grantham Research Institute on Climate Change and the Environment, 2025) 3.
[697] Ibid 18.
[698] Australian Human Rights Institute, *State of Denial: Australia's Legal Obligations for Human Rights Harms Within Australia from its Fossil Fuel Exports* (Report, September 2025).
[699] University of Sydney, 'Energy Sector Shifts Climate Crisis Responsibility to Consumers' (News Article, 14 January 2025) <https://www.sydney.edu.au/news-opinion/news/2025/01/14/energy-sector-shifts-climate-crisis-responsibility-to-consumers.html>.
[700] Ibid.
[701] Ernst Willheim, 'What the ICJ's Climate Law Decision Means for Australia' (Blog Post, 3 December 2025) <https://johnmenadue.com/post/2025/12/icj-advisory-opinion-obligations-of-states-in-respect-of-climate-change/>.
[702] Stop Ecocide International, *Mass Destruction of Nature Reaches International Criminal Court as Pacific Island States Propose Recognition of "Ecocide" as International Crime* (Press Release, 9 September 2024) <https://www.stopecocide.earth/>.

- changes to mandatory reporting, requiring certain companies, including public companies and those deemed to have a significant exposure to climate-related risks to make public climate-related financial disclosures (see section 3.4(f) above);
- increasing focus on directors' duties and climate change, following the publication of the Hutley and Hartford-Davis opinions (see section 4.3(c)(ii) above).[703]

(i) Climate attribution science

Climate attribution science involves "the use of statistical methods and computer modelling to compare and observe climate data with global climate simulations that include and exclude human influence".[704] It involves the comparison of two data sets to establish the probability that "human activities are responsible for observed changes in temperature, precipitation patterns, sea level rise and other climate change indicators. They can also look at known carbon emission sources and model the world with and without them".[705]

While historically, climate attribution science was generally based on global-scale emissions rather than assigning climate change responsibility to major emitters, in 2014, climate researcher Richard Heede released a paper in attributing a proportion of the global emissions to specific emitters of greenhouse gases.[706] Heede subsequently concluded that 63% of the carbon dioxide and methane emitted between 1854 and 2010 could be attributed to just 90 entities (referred to as the "**Carbon Majors**").[707] The greenhouse gas emissions of the Carbon Majors are now tracked on a public database here. Since the release of this report, climate litigation targeting the Carbon Majors for their contribution to the climate crisis has increased, including for non-disclosure of known harm or misleading disclosure of harm and the use of climate attribution science is growing in its use as expert evidence to support these claims.[708]

However, while climate attribution science is relatively mature, the scientific community has not coalesced on standardised methodologies for making such assessments.[709] Moreover, even if it is known that climate change contributed to an event, it can be difficult to quantify:

- how much of the damage can be attributed to climate change;
- the extent to which climate change changed the likelihood of particular extreme weather events, and thus attribute specific weather events to different actors.[710] Rainfall attribution has been identified as a particular challenge, "as our understanding of the interplay between long-term climate

[703] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, *Global Perspectives on Corporate Climate Legal Tactics: Australia National Report* (British Institute of International and Comparative Law, Version 1.1, March 2024) 37.
[704] Union of Concerned Scientists, *From Research to Action: The Growing Impact of Attribution Science* (Blog Post, 7 March 2023).
[705] Environmental Defenders Office, *Is attribution science the silver bullet that could help hold greenhouse gas emitters accountable?* (Blog Post, 30 October 2023); Union of Concerned Scientists, *From Research to Action: The Growing Impact of Attribution Science* (Blog Post, 7 March 2023)..
[706] R Heede, *'Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010', (2014) 122(1–2) Climatic Change.*
[707] R Heede, *Carbon Majors: Accounting for Carbon and Methane Emissions 1854–2010 – Methods and Results Report* (Methodology and Results Report, 2014).
[708] Environmental Defenders Office, *'Is Attribution Science the Silver Bullet that Could Help Hold Greenhouse Gas Emitters Accountable?'* (Blog Post, 30 October 2023).
[709] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, *Global Perspectives on Corporate Climate Legal Tactics: Australia National Report* (British Institute of International and Comparative Law, Version 1.1, March 2024) 40.
[710] Ibid 40, citing Brenda Ekwurzel, J Boneham and M W Dalton *et al*, 'The Rise in Global Atmospheric CO_2, Surface Temperature, and Sea Level from Emissions Traced to Major Carbon Producers' (2017) 144 *Climatic Change* 579; F E L Otto, N Massey and G J van Oldenborgh *et al*, 'Reconciling Two Approaches to Attribution of the 2010 Russian Heat Wave' (2012) 39(4) *Geophysical Research Letters* 1.

drivers and short-term variability is still relatively immature".[711] Peel, Markey-Tower and Shields provide the 2022 Lismore floods as an example of an extreme event in relation to which is difficult to assess, with any certainty, exactly how much climate change impacted the likelihood and size of the floods.[712]

(ii) Ecocide

Ecocide has been defined as "unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts." In this context:

- "Wanton" means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
- "Severe" means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
- "Widespread" means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
- "Long-term" means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;
- "Environment" means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.[713]

As noted in section 4.4 above, a formal proposal to include the crime of ecocide in the Rome Statute has been submitted to the ICC Assembly's Working Group on Amendments by Vanuatu (co-sponsored by Fiji and Samoa).[714] At present, the Rome Statute lists four crimes: Genocide, Crimes Against Humanity, War Crimes and the Crime of Aggression.

Stop Ecocide International, an organisation advocating for the international criminalisation of ecocide considers that this amendment could deter States and multinational corporations from engaging in practices that cause large-scale and long-term environmental damage[715] and create enforceable accountability for these key decision-makers, so that where there is a threat of severe and either widespread or long-term damage, the dangers will be better researched and taken very seriously and appropriate safety protocols will be employed in order to avoid criminal liability.[716]

(b) Key Cases

***Macquarie Generation v Hodgson [2011] NSWCA 424; Gray v Macquarie Generation* [2010] NSWLEC 34; *Gray v Macquarie Generation* [2011] NSWLEC 3**

In this decision, environmental activists commenced civil enforcement proceedings against Macquarie Generation (the owner of a coal-fired power station and holder of a license to generate electricity and for certain waste activities (**License**)) pursuant to the PEO Act alleging (along the lines of seminal US case *Massachusetts v EPA* (see below) that Macquarie Generation was emitting carbon dioxide (**CO^2**) into the atmosphere without lawful authority to do so. Macquarie successfully sought summary dismissal of the Applicant's claims.

[711] Jacqueline Peel, Rebekkah Markey-Towler and Thea Shields, *Global Perspectives on Corporate Climate Legal Tactics: Australia National Report* (British Institute of International and Comparative Law, Version 1.1, March 2024) 40.
[712] Ibid.
[713] Stop Ecocide International, *'Legal Definition of Ecocide'* (Online Resource, June 2021).
[714] Assembly of States Parties, International Criminal Court, *'Report of the Working Group on Amendments'* ICC-ASP/23/26 (1 December 2024).
[715] Tara Dutt, '*Ecocide as the Fifth International Crime*' (Völkerrechtsblog, 16 January 2025) <https://voelkerrechtsblog.org/>.
[716] Stop Ecocide International, *'Ecocide Law'*.

The Applicants sought declarations that:

- Macquarie Generation wilfully or negligently disposed of waste by way of the emission of CO^2 into the atmosphere in a manner that harmed or was likely to harm the environment, in contravention of s 115 of the PEO Act;
- Macquarie Generation's License contained an implied condition (or in the alternative, was subject to an implied limitation) that Macquarie Generation could not emit CO^2 in a manner that fails to have reasonable regard and care for the interests of other persons and/or the environment, on the basis of the principle that "negligence would ordinarily defeat a defence of statutory authority to a claim in nuisance".
- Macquarie Generation was in breach of that implied condition; and
- Macquarie Generation be restrained from burning any more than an average of 7 million tonnes of coal per calendar year at Bayswater Power Station.

Whilst in first instance Pain J of the NSW Land and Environment Court found that it was reasonably arguable that the authority conferred by the Licence "was subject to an "implied" or "common law" limitation or condition preventing Macquarie emitting CO^2 in excess of the level it could achieve by exercising "reasonable regard and care for the interests of other persons and/or the environment", the Court of Appeal overturned this, finding that as the Applicants had not pleaded an actionable common law claim, for example in nuisance or negligence, the "defence" did not apply. In obiter, the Court of Appeal noted that:

- the Applicant's decision not to plead nuisance were "not surprising" "because CO^2 is colourless, odourless and inert, and the Court has no jurisdiction in actions in tort"; and
- "the CO^2 emissions may not have caused an actionable nuisance to anyone and proceedings in tort may have failed on their merits".

The Court of Appeal decision left the question of whether CO^2 is a "waste" for the purposes of s 115(1) of the PEO Act open. As noted by Wright, the question is also open as to whether the Court of Appeal "would have reached the same conclusion if a more blatantly 'harmful' substance, such as arsenic or heavy metals, was the pollutant in question".[717]

***Vince Impiombato, and Klemweb Nominees Pty Ltd as trustee for Klemweb Superannuation Fund v BHP Group Ltd* (VID649/2018)**

While not a climate change case, these proceedings provide an example of how shareholders might bring similar claims for breach of continuous disclosure obligations in the climate case context in future.

On 5 November 2015, the Fundão tailings dam at the Germano mine (a joint venture of BHP Group Limited (**BHP**)) in Brazil collapsed in the largest tailings dam rupture ever recorded. The mudflow killed 19 people, destroyed the homes of 700 people and the livelihoods of 8,500 fishermen and resulted in 400,000 people losing access to fresh water.[718]

In the period that followed the dam collapse, BHP's stock price plunged across all markets, with its combined market capitalisation having fallen by more than $25 billion.[719] Shareholders of BHP commenced class action proceedings seeking to recover their losses during this period, alleging that BHP:

[717] Sarah Wright, 'Holding Regulators to Account in New South Wales Pollution Law: Part 2 — The Limits of Judicial Review and Civil Enforcement', *AIAL Forum* No 87.
[718] Maurice Blackburn, *'BHP Class Action'* (Class Action Information Page, 2025).
[719] Ibid.

- contravened its continuous disclosure obligations by failing to properly inform the Australian Securities Exchange of BHP's knowledge of the Fundão dam being at risk of failure, and knowledge that if the dam failed serious adverse human, environmental, and financial consequences would likely result; and
- engaged in misleading or deceptive conduct by representing to the ASX (through its annual reports) that:
  - the primary consideration in every aspect of BHP's business was the safety of its people and the safety and sustainability of the environment and the communities in which it, and its subsidiaries, carried on business; and
  - BHP had effective systems and processes in place to identify and effectively manage risks to the safety of its people and the safety and sustainability of the environment and the communities in which it, and its subsidiaries, carried on business, including the Samarco mining operation.

BHP agreed to an $110 million settlement with the class in September 2025, which was approved on 5 December 2025.

***Dagi v Broken Hill Proprietary Co Ltd* (Unreported, BC9503952, 1994-1996)**

Four cases with four plaintiffs were commenced in the Supreme Court of Victoria on grounds including nuisance, trespass and negligence, in relation to the "Ok Tedi Mine", an open-pit copper, gold and silver mine located at Mt. Fubilan in Papua New Guinea (**PNG**).[720] Three of the proceedings were representative proceedings commenced on behalf of the traditional owners of the land, members of the Miripiki Clan[721], Yelan Marapka Clan[722] and Marapka Clan[723] and the fourth by a commercial fisherman that catches fish downstream from the mine. At the time of the litigation, the Ok Tedi Mine was operated by Ok Tedi Mining Ltd (**OTML**), a company incorporated in PNG which was 52% owned by Broken Hill Proprietary Company Ltd (**BHP**).[724] BHP was incorporated in Victoria, Australia, hence capable of being sued in Victoria.

The plaintiffs all claimed that they suffered great loss from the devastating pollution in the river, caused by waste from the mine that infected the water and poisoned forests and villages, and sought $2billon in exemplary damages and for building of a tailings dam, $2billion in compensation and an injunction until a dam was constructed. The Court Found, on the basis of the Moçambique rule (a common law principle under which a Court does not have jurisdiction to determine the title or the right to possession of an immoveable situate outside the forum, and will not award damages for trespass to such an immoveable[725]) that it lacked jurisdiction over claims of nuisance, trespass, and negligence insofar as they related to proprietary rights, but permitted the claimants to proceed with negligence claims in relation to losses incidental to their rights to land, including damages for their loss of amenity or enjoyment of the land and the Ok Tedi river.[726]

Contempt findings were made against BHP in the course of this proceeding[727] as, during the course of proceedings, BHP offered a $110million supplementary package to persons affected by the mining, which had to be ratified by legislation enacted by

[720] *Dagi v Broken Hill Proprietary Co Ltd* (Supreme Court of Victoria, Cummins J, 20 September 1995) ('Dagi').
'Dagi v Broken Hill Proprietary Co Ltd' is used here to refer collectively to four related proceedings in the Supreme Court of Victoria: Proceeding No 5782 of 1994 (Rex Dagi and others), Proceeding No 5980 of 1994 (Barry John Shackles and Daru Fish Supplies Pty Ltd), Proceeding No 6861 of 1994 (Baat Ambetu and others) and Proceeding No 6862 of 1994 (Alex Maun and others).
[721] Dagi, Proceeding No 5782 of 1994.
[722] Dagi, Proceeding No 6861 of 1994.
[723] Dagi, Proceeding No 6862 of 1994.
[724] James Cameron and Ross Ramsay "Transnational Environmental Disputes' (1996) 1 *APJEL* 5.
[725] *British South Africa Co v Companhia de Mocambique* [1893] AC 602, 605.
[726] *Dagi and Others v the Broken Hill Proprietary Company Ltd and Another (No 2)* [1997] 1 VR 428.
[727] *Dagi v Broken Hill Proprietary Co Ltd* [1996] 2 VR 117 (15 December 1995).

PNG's parliament. A draft copy of the legislation proposed to criminalise the bringing or supporting of legal proceedings of the kind commenced by the plaintiffs and contained BHP's lawyers' word processing code at the bottom.[728]

In June 1996, BHP agreed to a $400-million out-of-court settlement for the land holders, which included $110 million in compensation, $40 million to relocate 10 villages, and $7.6 million in legal expenses. BHP also agreed to sell ten per cent of OTML to the PNG Government for the benefit of local communities.[729]

The Ok Tedi mine is still operational in 2025 and is projected to be operational until 2050,[730] despite being cited as "one of the worst environmental disasters in history".[731]

Smith v Fonterra [2024] NZSC 5

In this case, the plaintiff, an Elder of Ngāpuhi and Ngāti Kahu, and a climate change spokesperson for the Iwi Chairs Forum, a national forum of tribal leaders, commenced proceedings against seven companies involved in an industry that either emits greenhouse gases or supplies products which release greenhouse gases when burned. The Plaintiff alleged that the Respondents contributed materially to the climate crisis and have damaged, and will continue to damage, his whenua and moana, including places of customary, cultural, historical, nutritional and spiritual significance to him and his whānau. The case was based on the following causes of action:

- public nuisance;
- negligence; and
- a proposed new tort involving a duty, cognisable at law, to cease materially contributing to: damage to the climate system; dangerous anthropogenic interference with the climate system; and the adverse effects of climate change.

The Plaintiff sought a declaration that the Respondents (individually and/or collectively) unlawfully either breached a duty owed to him or caused or contributed to a public nuisance, and have caused or will cause him loss through their activities. He also sought injunctions requiring the respondents to produce or cause a peaking of their emissions by 2025, a particularised reduction in their emissions by the ends of 2030 and 2040 (by linear reductions in net emissions each year until those times), and zero net emissions by 2050 or, alternatively, that the Respondents immediately cease emitting (or contributing to) net emissions.

In first instance, the claims of public nuisance and negligence were struck out but the proposed new tort was permitted to proceed. In second instance, all three claims were struck out. In this decision, the Supreme Court overturned the Court of Appeal's decision to strike out all three claims against the Respondents and allowed the Plaintiff's claims in negligence, public nuisance, and his proposed new tort claim regarding "climate system damage" to proceed to trial.

Another significant part of the decision is the Supreme Court's finding that tikanga Māori (customs and traditional values, especially in a Māori context) is relevant in informing the reach and content of his causes of action. The Court held, … "tikanga

[728] John Gordon, 'Down by the River: The OK Tedi Litigation' (2000) 41 *Plaintiff* 6, <https://www.austlii.edu.au/au/journals/PlaintiffJlAUPLA/2000/87.pdf>.
[729] 'OK Tedi Case Study' (PDF), BobM Teaching Materials, <https://www.bobm.net.au/teaching/BE/Cases_pdf/Ok_Tedi.pdf>.
[730] Ok Tedi Mining Ltd, 'Successful Completion of Underground Pump Station Project Marks Milestone for Ok Tedi' (Media Release, 7 October 2025) <https://www.oktedi.com/2025/10/07/successful-completion-of-underground-pump-station-project-marks-milestone-for-ok-tedi/>; Daniel Gleeson, 'OK Tedi Mining Board Greenlights Mine Life Extension to 2050' *International Mining* (22 September 2023) <https://im-mining.com/2023/09/22/ok-tedi-mining-board-greenlights-mine-life-extension-to-2050/>.
[731] Raewyn Connell, 'Foreword' (2016) *Electronic Legal Education Collection* <https://classic.austlii.edu.au/au/journals/ELECD/2016/61.pdf>.

was the first law of New Zealand, and it will continue to influence New Zealand's distinctive common law as appropriate according to the case and the extent appropriate in the case".[732]

The matter is still before the New Zealand High Court, with trial scheduled for April 2027. In a recent decision the High Court rejected the Respondents attempt to join various other parties to the proceeding, including "the complexity, expense and delay, and a very high likelihood,.. that the trial scheduled for April 2027 would not proceed on that date".[733]

***State of Connecticut v Exxon Mobil Corporation* (Docket No. HHDCV206132568S)**

In the United States, a Superior Court in Hartford has denied Exxon Mobil's application to dismiss a claim commenced by the State of Connecticut, pursuant to the Connecticut Unfair Trade Practices Act, alleging that Exxon Mobil has engaged in a "systematic campaign of deception" concerning the impact of its fossil fuel products on the earth's climate in circumstances where Exxon:

- sells fossil fuels and petroleum products "that emit large quantities of greenhouse gases responsible for trapping atmospheric heat that causes global warming";
- "knew decades ago that the release of greenhouse gases, including carbon dioxide ("CO^2"), when fossil fuels are combusted, was a substantial factor in causing global warming";
- "as early as the 1950s and 1960s, was allegedly aware that the combustion of fossil fuels was impacting the climate";
- "by the early 1980s, …was able to predict the concentration of carbon dioxide in the atmosphere and the corresponding temperature increase for the year 2020;"
- despite its defendant's knowledge of the harmful effects of its fossil fuel products, "continuously advertised and sold those products at multiple locations in Connecticut" throughout the 1970s and up to the present day"; and
- "funded and collaborated with third party groups who spread disinformation about the effects of fossil fuel products on the climate".

The State of Connecticut argues that by doing so, Exxon engaged in a "campaign to deceive Connecticut consumers about the harmful climatic effects of its fossil fuel products.

A similar case has been commenced in the Circuit Court of Cook County, by the City of Chicago naming BP, Chevron, ConocoPhillips, Exxon Mobil, Phillips 66, Shell, and the American Petroleum Institute as Defendants and alleging causes of action including Failure to Warn, Negligence, Public Nuisance, Civil Conspiracy, Unjust Enrichment, and violations of Chicago's municipal codes concerning Consumer Fraud and Misrepresentations in Connection with Sale or Advertisement of Merchandise.[734]

The evidence relied upon in such cases might be able to be relied upon by plaintiffs in other jurisdictions, such as Australia.

***Massachusetts v Environmental Protection Agency*, 549 US 497 (2007)**

In this case, a group of private organisations and state and local governments petitioned the United States Environmental Protection Agency (**US EPA**) to begin regulating the emissions of four greenhouse gases, including carbon dioxide, under §202(a)(1) of the Clean Air Act,[735] which required that the US EPA "shall by regulation

[732] *Michael John Smith v Fonterra Co-Operative Group Limited* [2024] NZSC 5 (7 February 2024) [187].
[733] *Smith v Fonterra Co-Operative Group Ltd & Ors* [2025] NZHC 940 (16 April 2025) [49].
[734] See 'City of Chicago v BP p.l.c.', *Climate Case Chart* <https://www.climatecasechart.com/collections/city-of-chicago-v-bp-p-l-c-_eae7af>.
[735] *Clean Air Act*, 42 USC § 7521(a)(1) (1970).

prescribe . . . standards applicable to the emission of any air pollutant from any class . . . of new motor vehicles . . . which in [the US EPA Administrator's] judgment cause[s], or contribute[s] to, air pollution . . . reasonably . . . anticipated to endanger public health or welfare". The Applicants relied on scientific opinion that "a well-documented rise in global temperatures and attendant climatological and environmental changes have resulted from a significant increase in the atmospheric concentration of "greenhouse gases."

Two key issues were:

- whether the US EPA had statutory authority to regulate greenhouse gas emissions under the Clean Air Act; and
- whether the US EPA could decline to regulate greenhouse gas emissions based on policy judgments that "a causal link between greenhouse gases and the increase in global surface air temperatures was not unequivocally established".

The Supreme Court held that:

- the US EPA did have statutory authority to regulate greenhouse gases because carbon dioxide and other greenhouse gases fall within the Clean Air Act's definition of "air pollutant";
- the harms associated with climate change were serious and well recognised;
- the US EPA's refusal to regulate such emissions, at a minimum, "contributes" to the state of Massachusetts' injuries; and
- the US EPA could not avoid its statutory obligation by noting the uncertainty surrounding various features of climate change and concluding that it would therefore be better not to regulate greenhouse gas emissions.

The court remanded the decision to the US EPA, instructing the agency to either issue an endangerment finding for greenhouse gases or provide a basis for not issuing the endangerment finding that is grounded in the Clean Air Act. On remand, the US EPA issued a positive endangerment finding that greenhouse gases from motor vehicles do endanger public health and welfare.[736]

(c) Key Resources

Accountability for contributions	• Jacqueline Peel, Hari Osofsky and Anita Foerster, 'Shaping the 'next generation' of climate change litigation in Australia' (2017) 41(2) *Melbourne University Law Review* 793. • Assembly of States Parties, Report of the Working Group on Amendments (International Criminal Court, ICC-ASP/23/26, 1 December 2024). • Quayle, Brett, Nick Sciulli and Elisabeth Wilson-Evered, 'Accountable to Who, to Whom, for What and How? Unpacking Accountability in Local Government Response to Climate Change' (2020) 14(3) *Australasian Accounting, Business and Finance Journal* 56. • Moon, Gillian and Nathan Kennedy, State of Denial: Australia's Legal Obligations for Human Rights Harms within Australia from Its Fossil Fuel Exports (Australian Human Rights Institute, University of New South Wales, 2025). • Setzer, Joana and Catherine Higham, Global Trends in Climate Change Litigation: 2025 Snapshot (Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, 2025).

[736] 'Massachusetts v EPA', *Sabin Center for Climate Change Law* <https://climate.law.columbia.edu/content/massachusetts-v-epa>.

	• M Deva Prasad and Salamah Ansari, 'Legal and ethical accountability of fossil fuel corporations: Need for a new social contract' (2023) 423 *Journal of Cleaner Production*. • Heede, Richard, 'The Evolution of Corporate Accountability for Climate Change' in César Rodríguez-Garavito (ed), Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action (Cambridge University Press, 2022) 239. • Burger, Michael and Jessica Wentz, 'Holding Fossil Fuel Companies Accountable for Their Contribution to Climate Change: Where Does the Law Stand?' (2018) 74(6) Bulletin of the Atomic Scientists 397. • British Institute of International and Comparative Law, Corporate Accountability and Liability Mechanisms for Climate Change: Developments and Comparative Models – Event Report (Event Report, 9 December 2021).

(d) Media Reports

Accountability for contributions	• ActionAid Australia, 'Make Big Polluters Pay: Australians Think Coal, Oil and Gas Corporations Should Pay for Climate Pollution Damage' (Media Release, 18 August 2025) • ESG News, 'Australia Passes Landmark Bill Mandating Climate Risk Disclosures for Companies, Enhancing Transparency and Global Alignment' (Online Article, 23 August 2024) • Australian Accounting Standards Board, 'Australian Sustainability Reporting Standards AASB S1 and AASB S2 Are Now Available on the AASB Digital Standards Portal' (Media Release, 8 October 2024) • Gilbert + Tobin, 'Global Trends in Climate Change Litigation: Key Themes from 2025 Snapshot Report' (Insight, 17 July 2025) • Igini, Martina, '"Global Accountability System": Climate Litigation Is Forcing Governments to Act on Climate, Says Report' Earth.Org (Online Article, 2 December 2025).

5.6 Mitigation Q3: Changes to professional practises

Prepare an effective legal strategy that will Change our professional practises to work as 'everyday climate lawyers' as outlined by Chief Judge Preston of the NSW Land and Environment Court.

(a) Background

In a paper originally presented in 2015[737] and subsequently updated in 2020[738], Preston CJ of the NSW Land and Environment Court noted that:[739]

- climate change is "a small scale, local and immediate issue as it is a global issue" as well as a cumulative problem, in which the combined effect of many small-scale and individual actions is significant;
- climate change "will not be solved in one fell swoop, but by a series of small, incremental responses across all levels of governance: global, regional, national, subnational, local and individual scales"; and
- any legal action which touches on climate change issues will impact on climate change policy.

His Honour considered that, in the above circumstances, addressing climate change depends on responses on a small scale and imposes responsibility on lawyers to be aware of climate change issues in daily legal practice and to take a "climate conscious approach", as opposed to a "climate blind approach", defined as follows:

- **climate conscious approach**: involves "actively identifying the intersections between the issues of the legal problem or dispute and climate change issues and, secondly, giving advice and litigating or resolving the legal problem or dispute in ways that meaningfully address the climate change issues"; and
- **climate blind approach:** wherein **"**the outcome of the legal problem or dispute will have some impact on climate change issues, but legal advice is given or the dispute is litigated or resolved without any attention to climate change issues".

In his paper, he suggested five ways, "consistent with legal ethics" by which lawyers could implement a climate conscious approach in their daily legal practice:

(i) **Holistic legal advice:**
Providing "holistic legal advice" to clients which addresses the financial, the emotional and psychological, the relational and social, the environmental, and the ethical consequences of different courses of action, as opposed to just the legal issues, so that clients can understand the consequences, costs and uncertainties associated with alternative courses of action and make an informed choice.

Such considerations may include:

1. whether a client would have a "social license" to undertake particular activities (as opposed to merely a legal license) and will accordingly be subject to business risks associated with protestors;
2. financial risks to businesses posed by:

[737] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Australian & New Zealand Legal Ethics Colloquium Fifth Bi-Annual Meeting: Sustainable Legal Ethics, 4 December 2015).
[738] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020).
[739] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) citing Hari M. Osofsky, 'Is Climate Change 'International'? Litigation's Diagonal Regulatory Role,' (2009) 49 *Virginia Journal of International Law* 3.

3. physical risks, for example extreme weather events damaging business assets or affecting supply routes;
4. transition risks 'associated with developments that may (or may not) occur in the process of adjusting to a lower-carbon economy'[740]; and
5. liability risks, of being held to account for contributing to, or failing to adapt to, climate change.

and, as set out section 4.3(c)(ii) (Directors Duties) above, are factors which directors may be required to assess, manage and disclose in complying with their directors' duties.

Pursuant to their professional duties, lawyers are required to deliver legal services competently and diligently and owe a duty of care to their clients. If failing to advise on such matters falls below the standard of care expected of a reasonably competent lawyer, this may amount to professional negligence.

(ii) **Identification, interpretation and application of legal rules**:
The process of identification, interpretation and application of the law to a particular legal problem or dispute are rarely clear cut (both by Judges and the lawyers that appear and argue before them), including for the four reasons set out below. However, in making choices as to identification, interpretation and application of legal rules, lawyers and judges can be aware of the climate change consequences of each choice.

1. In circumstances where:
   - the language of legal rules is often indeterminate and open textured; and
   - it is impossible to have a complete legislative provision in advance covering every case,

   the process of identifying, interpreting and applying the law is attended with doubt, making it difficult to advise in binary terms as to what the law is. "The need for interpretation of legal rules creates opportunities for climate conscious lawyers and judges to adopt an interpretation of legal rules that promotes or better implements climate change goals, provided that doing so is consonant with and required by the principles of genuine interpretation".[741]
2. Climate change law is ever evolving and is difficult to ascertain at any particular time. For example, see section 4.3(c)(ii) (Directors Duties) above regarding the lifting bar for company directors to account for their climate-related risks, to take proactive measures to address them and to disclose them to the market as required (see also section 3.4(f) above).
3. While Courts make decisions as to what the law was at the time when the impugned action or inaction occurred, not at the present time when its decision is handed down, in making their decision, the judge may make choices in its identification, interpretation and application of the law that accord with the facts and values of the community at the present time. When advising on the legal responsibilities of governments and enterprises in relation to climate change, there is a need for lawyers to predict what courts are likely to pronounce to be the legal responsibilities in future litigation, rather than look backwards to what courts have held to be legal responsibilities in past judgments.

[740] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020), quoting Noel Hutley SC and Sebastian Hartford-Davis, 'Climate Change and Directors' Duties' (Memorandum of Opinion, Centre for Policy Development and Business Council, 7 October 2016), 3; see also, Noel Hutley SC and Sebastian Hartford Davis, 'Climate Change and Directors' Duties: Supplementary Memorandum' (Supplementary Memorandum of Opinion, Centre for Policy Development, 26 March 2019).

[741] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) 11.

4. In planning and environmental matters involving merits review, "law, policy and fact interact to obscure any bright distinction between what is and what is not the law". Lawyers advising clients regarding such matters cannot simply say what the law is and thus anticipate a result. The Court's decision will be influenced by more than a strict view of "the law", including policy and the Court's findings of fact.

(iii) **Ethical Duties of Lawyers**

Australian lawyers commit to equal justice under law[742] and are subject to an obligation to abide by moral and ethical principles.[743] Preston CJ refers to various studies indicating that many lawyers:

- view the giving of legal advice in "binary terms: either an action was lawful or it was not. The lawyer's role was to present technical legal advice, devoid of an ethical dimension. Where the law was ambiguous, ethical decisions were purely for the business and not for them as lawyers";[744]
- in major commercial law firms considered that the firms were "reforming themselves into the image of the ever-merging, 'big business' clients they serve" and operated on the basis that "the client is always right", thereby diminishing lawyer autonomy. The study found that lawyers are likely to find it more difficult to be able to adhere to professional and ethical principles that do not cohere with the client's objectives".[745] Oakley and Vaughan consider that the vulnerability of corporate lawyers in large firms to develop and normalise potentially risky and irresponsible practices stems from competition from other law firms, the demands of clients, the shift over time from "trusted advisor" to "service provider", regulatory requirements and pressures to make profit.[746]

Climate conscious lawyers will appreciate the ethical dimensions of legal practice by engaging in ethical thinking about climate change and its consequences.[747]

(iv) **Overriding Duty to the Court:**

By being conscious of lawyers' paramount duty to the court and the administration of justice, which overrides any particular client interests that are contrary to this duty.[748] In this respect, Preston CJ notes that:

- responsible lawyers still act as an advocate for their clients but will act against their clients' interests in order to "maintain the justice and integrity of the legal system… in the public interest;[749]"

[742] Paula Baron and Lillian Corbin, *Ethics and Legal Professionalism in Australia* (Oxford University Press, 2nd ed, 2017) 12.

[743] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) 19 citing John McKenzie, 'Legal Ethics - What Are They Today' (Paper delivered at Holding Redlich, 16 February 2017) 1-2. See also, James Allsop, 'Professionalism and commercialism: Conflict of harmony in modern legal practice' (2010) 84 *Australian Law Journal* 765, 766.

[744] Brian J Preston, 'Implementing a Climate Conscious Approach in Daily Legal Practice' (Conference Paper, Faculty of Laws, University College London, 11 February 2020) 20, citing Richard Moorhead and Steven Vaughan, 'The Ethical Dimension', *Law Gazette* (online, 19 June 2019) <https://www.lawgazette.co.uk/features/the-ethical-dimension/5061576.article>; see also Richard Moorhead, Steven Vaughan and Cristina Godinho, *In-House Lawyer's Ethics: Institutional Logic, Legal Risk and the Tournament of Influence* (Hart, 2018).

[745] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) 21 citing Joanne Bagust, 'The Legal Profession and the Business of Law' (2013) 35 *Sydney Law Review* 27, 29.

[746] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) 21 citing Emma Oakley and Steven Vaughan, 'In Dependence: The Paradox of Professional Independence and Taking Seriously the Vulnerabilities of Lawyers in Large Corporate Law Firms' (2019) 46 *Journal of Law and Society* 83.

[747] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) 22.

[748] *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) r 3.

[749] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) 22 referring to Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30(1) *Monash University Law Review* 49, 61.

- "climate conscious lawyers should advise and act in ways that uphold and advance the fundamental values and integrity of the legal system, including climate change justice";
- climate conscious lawyers will not use loopholes, procedural rules or arguments without legal prospects of success to frustrate the substance and spirit of the law and the legal system, including pursuant to their obligations in r 21 of the Uniform Legal Profession Uniform Law Australian Solicitors' Conduct Rules (**LPULASCR)**; and
- climate conscious lawyers will not advise and act for clients to bring unmeritorious SLAPP suits against persons and groups seeking to advance climate justice.

(v) **Personal Ethics Approach:**
By integrating integrate ethical thinking and ethical action, based on their own moral convictions, into their daily legal practice, including by:

- moral counselling with clients, "discussing with the client the rightness or wrongness of their projects";[750]
- providing pro bono or reduced fee services, given climate change litigation is often commenced by community groups without access to financial means to support legal action or seek legal advice;
- commencing on legislative changes or advocating the need for reform, for example in publications by individuals, law firms or through participation in reform processes;
- increasing awareness (including as individual lawyers, law firm or group of law firms) regarding climate change issues. For example, the Australian Legal Sector Alliance (**AusLSA**), a group of 46 law firms, has developed a Sustainability Framework, pursuant to which members of AusLSA are encouraged to measure and monitor their sustainability and voluntarily report on matters such as environmental management, climate action, greenhouse gas emissions, paper use and selection, waste and recycling, renewable electricity and carbon offsets purchased.[751] The 2024 Sustainability Update can be found here; and
- considering climate change impacts when determining whether to act for a client, for example, the UK Law Society's guide on the impact of climate change on solicitors confirmed in 2023 that "climate- related issues are a valid consideration when determining whether to act" for a client.[752] The group Lawyers Are Responsible invites lawyers to sign a pledge (called the *Declaration of Conscience*) not to act on any new fossil fuel projects (nor to prosecute environmental protestors).

Climate-consciousness has also become an important consideration for early-career lawyers choosing their future employers.[753]

However, there are some gaps in legal conduct regulation as it pertains to climate change issues:

[750] Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020) 25 quoting David Luban, *Lawyers and Justice: An Ethical Study* (Princeton University Press, 1988) 173.
[751] Australian Legal Sector Alliance, *Sustainability Framework* <https://www.legalsectoralliance.com.au/AusLSAs-Sustainability-Framework>.
[752] *The Law Society (UK), Guidance on the Impact of Climate Change on Solicitors* (Guidance, 19 April 2023) 25 www.lawsociety.org.uk/topics/climate-change/impact-of-climate-change-on-solicitors; Olivia Walker, 'Impacts of Climate Change on Legal Professional Ethics: Creating Climate Conscious Lawyers' (2023) 37(9) *Australian Environmental Review (Newsletter)* 183, 183.
[753] Olivia Walker, 'Impacts of Climate Change on Legal Professional Ethics: Creating Climate Conscious Lawyers' (2023) 37(9) *Australian Environmental Review (Newsletter)* 183, 183.

- LPULASCR r 7 requires solicitors "to provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter …". As noted by Holmes and Webb,[754] when an existing client proposes action that would harm the environment, it is open to the lawyer to advise against such action, citing the various risks that may arise. But if a client does not accept that advice, and the client's instructions are lawful, neither the LPULASCR nor Law Society Guidance provide practical guidelines for lawyers who do not want to facilitate that environmental harm.
- Unless expressly permitted to disclose client wrongdoing by LPULASCR r 9.2 (for example 'for the sole purpose of avoiding the probable commission of a serious criminal offence' or 'for the purpose of preventing imminent serious physical harm to [a] person'), lawyers are required to maintain strict confidence in client matters and have little discretion to disclose actual or anticipated client-caused or client-facilitated climate harms.[755]
- While it is acceptable as a solicitor to decline representation, it is more difficult to withdraw from the retainer once established. While the solicitor might arguably have a 'just cause' to terminate the retainer with notice, pursuant to r 13, "the scope of 'just cause' is imprecise. It clearly permits withdrawal in some circumstances - for example, where a solicitor cannot act without breaching other professional obligations, or possibly where the client refuses to follow advice - but the scope of conscientious objection as a ground for withdrawal has not been tested. The lawyer might argue that there is a breakdown in the relationship between the solicitor and client in these circumstances, but if the personal conflict was foreseeable at the point of entering into the retainer, then withdrawing later could be problematic, unless the client's conduct crosses some unanticipated boundary".[756]

(b) Key Resources

Everyday climate lawyers	• Brian J Preson, 'Implementing a climate conscious approach in daily legal practice' (Conference Paper, Faculty of Laws, University of College London, 11 February 2020). • Vivien Holmes and Julian Webb, "Professional Ethics and Climate Change" in Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer* (La Trobe University, 2024). • Brian Preston, 'Climate Conscious Lawyering' (2021) 95 *Australian Law Journal* 51. • Vivien Holmes, 'Ethical Lawyering in the Anthropocene' (2024) 26 *Legal Ethics,* 201. • Steven Vaughan, 'Existential Ethics: Thinking Hard About Lawyer Responsibility for Clients' Environmental Harm' (2023) 76(1) *Current Legal Problems* 1.
Directors Duties	• Stephanie Venuti and Martijn Wilder, "Obligations on Australian Companies to Address Climate Change" (2018) 92(10) *Australian Law Journal* 789. • Anita Foerster and Louis de Koker, "Developments in Company Law in Response to Climate Change" in Julia Dehm, Nicole Graham and Zoe Nay (eds), *Becoming a Climate Conscious Lawyer* (La Trobe University, 2024).

[754] Jacqueline Peel and Rebekkah Markey-Towler, 'Professional Ethics and Climate Change' in Jacqueline Peel and Hari M Osofsky (eds), The Climate-conscious Lawyer: Building the Legal Response to the Climate Crisis (CAUL Open Educational Resources Collective, 2025).
[755] Ibid.
[756] Ibid.

	• Aristova, Ekaterina and Lionel Nichols, 'Climate Change on the Board: Navigating Directors' Duties' (2024) *Journal of Corporate Law Studies* 1–36 • Bakan, Joel, 'Reflection: Corporate Capitalism's Moral Lack' (2024) 98(1) *Business History Review* 301–24 • Benjamin, Lisa, *Companies and Climate Change: Theory and Law in the United Kingdom* (Cambridge University Press, 2021) • Dine, Janet, 'Corporate Regulation, Climate Change and Corporate Law: Challenges and Balance in an International and Global World' (2015) 26(1) *European Business Law Review* 173–202 • Foerster, Anita, Ingrid Landau, Mayleah House, 'Sustainable Finance and Corporate Sustainability Due Diligence – Interactions, Complementarities and Accountability Logics' (2025) 48(3) *University of NSW Law Journal* (*forthcoming*) • Sjåfjell, Beate, 'Re-embedding the Corporation in Society and on Our Planet' in Beate Sjåfjell, Carol Liao and Aikaterini Argyrou (eds), *Innovating Business for Sustainability: Regulatory Approaches in the Anthropocene* (Edward Elgar, 2022)

(c) Media Reports

Everyday climate lawyers	• ICLG, 'Climate Education for Lawyers Should Be Upped, IBA Report Reveals' (News Article, 23 April 2024) <https://iclg.com/news/22585-climate-education-for-lawyers-should-be-upped-iba-report-reveals>. • Felicity Nelson, 'From Little Things Big Things Grow: Lawyers' Role in Climate Disclosure' Law Society Journal (Online, 15 March 2023) <https://lsj.com.au/articles/from-little-things-big-things-grow-lawyers-role-in-climate-disclosure/>. • Aaron Patrick, 'Brian Preston: The "Activist" Judge Shaking the Climate Change World' Australian Financial Review (Online, 15 February 2019) <https://www.afr.com/politics/brian-preston-the-activist-judge-shaking-the-climate-change-world-20190214-h1b982>.
Directors Duties	• Melbourne Law School, 'Is Australian Corporate Law Fit for Purpose?' (News Article, 7 June 2022) https://law.unimelb.edu.au/news/MLS/is-australian-corporate-law-fit-for-purpose • Michael Pelly, 'Directors' Duties and the Risky Business of Greenwashing' Law Society Journal (Online, 18 October 2022) <https://lsj.com.au/articles/directors-duties-and-the-risky-business-of-greenwashing/>. • Kate Austin and Claire Smith, 'Company Directors Must Act Now and Consider Nature-related Risks According to New Legal Opinion' Clayton Utz Insights (Web Page, 15 November 2023) <https://www.claytonutz.com/insights/2023/november/company-directors-must-act-now-and-consider-nature-related-risks-according-to-new-legal-opinion>.